

Mining law update

(i) *Extractive Industries State Planning Policy finalised after three years*

A new State Planning Policy (SPP) on the Protection of Extractive Resources and a supporting Guideline was adopted on 8 June 2007, and will come into effect on 3 September 2007.

The Extractives SPP identifies extractive resources of State or regional significance where extractive industry development is appropriate in principle, and protects those resources from developments that might prevent or constrain current or future extraction. The Extractives SPP has been proposed since 2004, and a draft was first put out for public comment in December 2004. Conservation groups were widely critical of the draft SPP for overriding protection for important koala habitat. The SPP is available at www.nrw.qld.gov.au/mines/land_tenure/pdf/dme_stateplan_policy.pdf.

(ii) *Mining laws under review*

The *Mineral Resources Act 1989*, Queensland's main mining legislation, is under review.

A discussion paper has been released for public comment, and is available from www.nrw.qld.gov.au/mines/legislation/pdf/mra_discussion_paper.pdf. Comments will inform amendments to the Act, and a draft Bill will also be subject to consultation prior to tabling in Parliament.

This author's examination of the discussion paper has revealed no mention of greenhouse gases and only two references to climate change in the entire document. There is no consideration of explicitly making mining companies responsible for the greenhouse gas emissions generated from coal mined in Queensland, and encouraged to avoid, reduce or offset those emissions, the subject of the *QCC v Xstrata* case coming before the Queensland Court of Appeal in August 2007 (see Caselaw update below).

Planning and development law update

State government call-in protects coastal Kin Kin from tourism development

The Queensland government has used its planning powers to call-in a proposed tourism development on the Sunshine Coast and reject it because it breached the South East Queensland Regional Plan.

Noosa Shire Council refused approval for the \$400 million hotel, villa, golf course and conference centre development in Kin Kin, known as The Edge, because it contravened Noosa's planning scheme and was rural land outside the urban footprint set by the Regional Plan. The developer, Titanium Enterprises, challenged Council's decision in the Planning and Environment Court but the Deputy Premier, Treasurer and Minister for Infrastructure Anna Bligh used powers under the *Integrated Planning Act 1997* (Qld) to call-in the development and refuse it, because the SEQ Plan allows for only smaller scale tourism facilities in the Noosa hinterland. The state government's call-in and decision cannot be challenged and will end the developer's Court appeal.

Caselaw update

For updates on recent Planning and Environment Court and relevant Court of Appeal cases, see Deacons Lawyers' website www.deacons.com.au and follow links to updates by the Environment and Planning section, or Corrs Chambers Westgarth's website www.corrs.com.au and follow links to the Planning Environment and Local Government Practice Area.

SOUTH AUSTRALIA

Rebecca McAulay

Development (Division of Land) Variation Regulations 2007

By David Billington (Associate) - Norman Waterhouse Lawyers

On 16 August 2007 the *Development (Division of Land) Variation Regulations 2007* came into effect. The Variation Regulations provided for three changes to the *Development Regulations 1993*. Firstly, the Regulations were amended throughout so as delete the word "provisional" wherever

occurring so as to accord with recent changes to the Act which substituted “development plan consent” for “provisional development plan consent” and “building rules consent” for “provisional building rules consent”.

The second change affected Regulation 5A. Previously, Torrens title land division of a Class 1 or 2 building required that any walls exposed by the division to a fire source must be appropriately fire-rated and no development authorisation could be issued until this occurred. Now, Regulation 5A provides that *a certificate under Section 51* (rather than a development authorisation) cannot be issued until the appropriate fire-rating has occurred.

The third change introduces a new form of development by amendment of Schedule 2 to the Regulations, being the division of land subject to a lease under a prescribed Crown Lands Act (in practical terms, land held pursuant to a Crown Lease) where an application has been made to freehold the land and it is envisaged the division would occur after the grant of the land in fee simple. This seeks to address the situation which arose in *Hagger v Development Assessment Commission* [2006] SAERDC 56.

Development (Schedule 10) Variation Regulations 2007

By Lisa Goodchild – Normans Waterhouse Lawyers

The Variation Regulations vary the Development Regulations 1993 (“the Regulations”). A new clause 3A has been inserted into Schedule 10 to the Regulations prescribing that any development involving a change in the use of land for the purpose of establishing or expanding a commercial forest within a prescribed area where the area to be planted pursuant to the development equals or exceeds 20 hectares.

For the purpose of this clause a prescribed area will mean any areas in the Adelaide Hills Council, Alexandrina Council, Barossa Council, District Council of Mount Barker, City of Victor Harbour, District Council of Yankalilla, or any part of the City of Onkaparinga outside the metropolitan area or within the metropolitan area that is Policy Area 61 or 62 in the Rural Zone of the City of Onkaparinga Development Plan.

TASMANIA

Tom Baxter

The Wilderness Society Inc v The Hon Malcolm Turnbull, Minister for the Environment and Water Resources and Gunns Limited [2007] FCA 1178

As reported in the previous edition, on 2 May 2007 Minister Turnbull made two important decisions for the assessment of Gunns’ Tamar Valley pulp mill proposal. The Minister decided that under the EPBC Act ss 75 and 87 respectively:

- Gunns’ 2007 referral of its pulp mill proposal is a controlled action subject to the EPBC controlling provisions the Minister specified; and
- the assessment approach is by preliminary documentation.

On 17 May 2007, The Wilderness Society filed an application in the Federal Court seeking judicial review of both these decisions. The application named Minister Turnbull and Gunns Limited as the two respondents. The Construction, Forestry, Mining and Energy Union subsequently applied for leave to intervene opposing the application but this was refused.

The hearing of the proceeding was expedited and occurred from 4-6 and 9-10 July 2007. On 9 August 2007, Marshall J delivered his decision in *The Wilderness Society Inc v The Hon Malcolm Turnbull, Minister for the Environment and Water Resources and Gunns Limited* [2007] FCA 1178 (the TWS proceeding).