Overview of Changes to Environment & Planning Laws - North Queensland

April 2015 Update

Stuart Watson - Solicitor

NQ LEGAL

Environmental Law and Planning & Development

- Land-use & Project Approvals
  - planning - strategic and land use planning;
  - assessment - environmental values, heritage, planning regulation compliance;
  - refusal/conditioning of approvals (e.g., environmental offsets, court options);
  - operational phases - compliance

- Environmental Law
  - incidents, assessments, protected areas & species, government processes (state/Fed)

- Mining projects
  - generally regulated under purpose specific legislation, though overlap with matters of national environmental significance (NES) under EPBC Act

Environmental Regulation - State

Environmental Protection Act 1994
Nature Conservation Act 1992
Marine Parks Act 2004

Assessment

State Environmental Protection Act 1995
Natural Resources Management Act 1995
National Parks Act 2004

New Queensland Acts

- Environmental Offsets Act 2014
  - no longer "no net loss" approach, new much more comprehensive

- Regional Planning Interests Act 2014
  - attempting to provide some protection for impacts from mining, yet allows for regular back in relation to resource & mining project developments

'green tape reduction'

EPOLA 2014

- number of significant reforms
- increased scope and extent of environmental assessment
- standardised approach to environmental assessments
- requirements for external consultants
- increased state protection of strategic environmental assessments
- increased state protection of significant environmental assessments

Planning Changes

- increased scope and extent of environmental assessment
- standardised approach to environmental assessments
- increased state protection of strategic environmental assessments
- increased state protection of significant environmental assessments

Recent developments - Commonwealth

EPBC Act regime - determined by (Red) Minister

Bilateral Agreements

EPBC Act decisions now reflecting focus on social and economic impacts (benefits) as well as on environmental protection
- more approvals & managed by conditions

Environmental Assessment - Cwth

Environment Protection and Biodiversity Conservation Act 1999 - EPBC Act
- Commonwealth decisions about assessments and approval of
  - construction activities
  - NES - protected and listed species, marine areas, types - number activities
  - biodiversity, heritage
  - other: environment moving
  - application of plans processes - biodiversity assessment & approval

Environmental Offsets

- standardised approach to environmental assessment
- requirements for external consultants
- increased state protection of strategic environmental assessments
- increased state protection of significant environmental assessments

Planning & Development

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Presentation for:

Environment Institute of Australia and New Zealand
Environmental Law and Planning & Development

- **Land-use & Project Approvals**
  - planning - strategic and land use planning;
  - assessment - environmental values, heritage, planning regulation compliance;
  - refusal/conditioning of approvals (e.g. environmental offsets, court options);
  - operational phases - compliance

- **Environmental Law**
  - incidents, assessments, protected areas & species, government processes (state/Fed)

- **Mining projects**
  - generally regulated under purpose specific legislation, though overlap with matters of national environmental significance ('NES') under EPBC Act
Environmental Assessment - Cwlth

Environment Protection and Biodiversity Conservation Act 1999 - 'EPBC Act'

- Commonwealth decision about assessment and approval of 'controlled actions';
- NES - protected and listed species, various areas, types:- nuclear actions,
- Regional and strategic planning;
- Accreditation of State Processes - bilateral assessment & approval agreements - tensions e.g. Abbott Point project, Carmichael Mine
Recent developments - Commonwealth

EPBC Act regime - determined by (Fed) Minister

Bilateral Agreements

EPBC Act decisions now reflecting more focus on social and economic impacts (benefits) as a balance on environmental protection
- fewer contentious refusals
- more approvals & managed by conditions
Environmental Regulation - State

Environmental Protection Act 1994
Nature Conservation Act 1992
Marine Parks Act 2004

Assessment

State Development Public Works Organisation Act 1971
Sustainable Planning Act 2009

Integrated Development Assessment System - IDAS
New Queensland Acts

- **Environmental Offsets Act 2014**
  'no net loss' type conditions; no longer 'last resort' option, now much more commonplace

- **Regional Planning Interests Act 2014**
  attempting to provide some protection for important non-mining land uses on a region by region basis in relation to resource & mining project developments
'green tape reduction'
EPOLA 2014

Number of significant reforms

• Increased maximum penalties & offences subject to that (from one to 10 / Corporation now exceeds $3.5M)
  • e.g. max 2 years imprisonment increases to 5 years,
• now crimes (and not misdemeanours)
• Introduction of enforceable undertakings in relation to offenders (not indictable offences)
• Restructure of contaminated land provisions of legislation
Environmental Law and Planning & Development

- **Land-use & Project Approvals**
  - planning - strategic and land use planning;
  - assessment - environmental values, heritage, planning regulation compliance;
  - refusal/conditioning of approvals (e.g. environmental offsets, court options);
  - operational phases - compliance

- **Environmental Law**
  - incidents, assessments, protected areas & species, government processes (state/Fed)

- **Mining projects**
  - generally regulated under purpose specific legislation, though overlap with matters of national environmental significance ('NES') under EPBC Act
Planning & Development

Primarily regulated under State legislation -

- Sustainable Planning Act 2009
  - Regulations, and Planning & Environment Court Rules

- State Development & public Works Organisation Act 1971
Planning Changes

Number of significant reforms

- Changes to EIS - now can have an Impact Assessment Report ('IAR') under SDPWO Act, seeking bilateral accreditation of assessment on a project basis
  - accreditation of state assessment, but still two separate approval processes at State & Federal levels

- Changes to costs provisions (since 2012) now flowing through decisions of the Planning and Environment Court

YFG Shopping Centres v Brisbane City Council [2014] - costs awarded against commercial competitors
Local Government

Planning Instruments

- New planning scheme for Townsville - October 2014
  (formerly two local government areas of Thuringowa and Townsville, each with their own scheme)

Planning Tools - GIS

Now TCC releasing property-level flood mapping, anticipated to be reflected in insurance assessments
Environmental Law and Planning & Development

- Land-use & Project Approvals
  - Planning: strategic and land use planning;
  - Assessment: environmental values, heritage, planning regulation compliance;
  - Refusal/conditioning of approvals (e.g. environmental offsets, court options);
  - Operational phases - compliance
- Environmental Law
  - Incidents, assessments, protected areas & species, government processes (state/Fed)
- Mining projects
  - Generally regulated under purpose specific legislation, though overlap with matters of national environmental significance (NES) under EPBC Act

Environmental Law - State
- Environmental Protection Act 1994
- Nature Conservation Act 1992
- Marine Parks Act 2004

Assessment
- State Development Public Works Organisation Act 1971
- Sustainable Planning Act 2009
- Indigenous development assessment guidelines - 1976

New Queensland Acts
- Environmental Offsets Act 2014
  - Key 
  - Strategic, land use, planning, development, protection and management
- Regional Planning Interests Act 2014
  - Key
  - Planning for land use and regional planning and development

'green tape reduction' EPIOLA 2014
- Number of significant reforms
  - Significant reductions in paperwork, allowing for more efficient and effective decision-making

Planning Changes
- Number of significant reforms
  - Changes to local planning schemes
  - Increased flexibility in development 
  - Streamlined approval processes
  - Enhanced community participation

Recent developments - Commonwealth
- EPBC Act regime - determined by (Fed) National Bilateral Agreements
- EPBC Act includes new focus on social and economic impacts (biophysical) as a balance on environmental protection
  - More approvals managed by conditions

Prevention & Development
- Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)
  - Commonwealth decision about assessment and approval of "Environmentally Significant" activities
  - NES - protected and listed species, various areas, types, natural sections, regional and strategic plans

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