

1 June 2004

Review of National Competition Policy Arrangements  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

Dear Sir/Madam,

On behalf of the members of the East End Mine Action Group Inc (EEMAG), I wish to lodge a Submission to the Productivity Commission's review of National Competition Policy Arrangements. Our submission relates to the arrangements for the National Competition Council to administer the CoAG Agreement on Water Reform.

EEMAG members respectfully request the Productivity Commission to consider and recommend the urgent establishment of an affordable, accessible and impartial appeals and dispute-resolution mechanism, independent of State administration, empowered to review and amend disputed decisions relating to CoAG Agreements administered by the States. We request the Commission to recommend that such a mechanism require accuracy, full and frank disclosure and proper consideration of all data/information including local knowledge, so that decisions are based on honest science and natural justice. We request the Productivity Commission to recommend funding so that weaker parties can be represented by their own experts.

We understand that the National Competition Council is not an office of dispute resolution. We believe such a process is essential if the National Competition Policy arrangements are intended to ensure all parties receive equal treatment, equal protection and equal opportunity, and so that Impact Assessments are required to be at least tolerably accurate and accountable.

In our rural community, there is no prospect of the Calliope River draft water resource plan (WRP) delivering the principles and achieving the objectives of Water Reform since the Minister for Natural Resources, Mines and Energy exempted Cement Australia's limestone mine's pit dewatering discharges of up to 10 megalitres per day from the WRP and did not include groundwater. We do not understand how the WRP can properly assess surface flows in our area since it is authoritatively recognised that surface/sinking streams in karst/limestone aquifers are interconnected with groundwater, and since independent findings conclude there is a loss of 30-40 km of perennial flows from 4 creek systems due to mine dewatering that has resulted in loss of aquatic biota. Refer Page 40 of the Main Volume of the Mt Larcom CRP Report Segment 2.2.4.2 Surface Stream flow, and 2.2.4.3 An analysis of stream flow at Weir 2, and the separate report on rainfall analysis and streamflow modelling.

We understand the mine's discharges may be deemed a water allocation under the WRP. From EEMAG members' perspective the Minister has basically allocated the majority of the district's water resources to the mine to discharge as waste whilst landholders are starved of access to water resources available pre-mining (available water has fallen to one third of pre-mining sustainable use, refer Attachment 17 CRP Report) and without requiring the mine to repair/avoid their cumulative and continuous depletion of the water table.

Despite total rainfall from February 2003 to February 2004 of over 1500 mm (575 mm above annual average of 925 mm), East End and Hut Creek aquifers (in the QCL 33 sq km mine impacted area of 2000) remain irreparably damaged. While Bracewell's approx 50% recharge of the limestone aquifer is falling rapidly. The mine's water monitoring data shows that discharges for December 2003, January and February 2004 totalled more than 1,000 megalitres. (Copy of monitoring data attached.)

A NRM&E Officer stated that finalisation of the Calliope River WRP [expected after the third quarter of 2005] will accord the area Ecologically Sustainable Development (ESD) status, which we can only presume will include mine dewatering. ESD status would be accorded despite substantial evidence the mine's depletion of the water table is contrary to the principles and objectives of ESD and Water Reform. For example, in 2000 the Company conceded that mining had impacted 33 sq km, in 2001 an "Independent" assessment for EPA supported the mine's consultant's findings of depletion affecting 33 sq km, while in 1997, 1998 and 2003 various independent consultants determined that mine depletion has caused up to 18 metres loss of water levels affecting 60-90 sq km with loss of 30-40 km of perennial flows from 4 creek systems. (Refer Mt Larcom Community Restoration Project Report Page 28 Section 2.2.2 Limestone Hydrology to Page 47 and Statistical data rainfall analysis and investigations into streamflow data in the Machine Creek Catchment.)

The Minister's action in exempting the mine from the WRP would be facilitated by the mine's current (2002) Environmental Management Overview Strategy (EMOS) and Environmental Authority (for lease renewal in March 2003) being improperly framed on false benchmarks fixed by 1996 IAS/EIS findings of mine depletion of approx 500 metres from the pit 'with no significant increase in environmental harm'. FOI documents show that the Minister's action has its origins in a key agreement of the Queensland Government's 1995 support package to assist QCL to bring forward their \$220 million Gladstone Expansion project by 2-5 years, following the 1994 decision not to renew QCL's licences to dredge dead coral from Moreton Bay. One of the key agreements was that QCL's EMOS for lease renewal would be fixed by 1996 IAS/EIS findings of depletion approx 500 metres from the pit. (1988 findings by the Irrigation and Water Supply Commission that mine depletion was (already) 2 km from the mine, and other important information was omitted from the IAS and withheld from affected landholders.)

We allege that the Queensland Government's 1995 agreement with QCL was able to be used to exempt Cement Australia [formerly QCL] from compliance with the principles and objectives of Water Reform because;

- (a) although QCL provided alternative water supplies to some injuriously affected landholders in DNR's 1998 22 sq km zone of depletion, the regulating Agencies have basically abstained from enforcing QCL to properly comply with their 1976 Special Conditions No 9 and 11 up until lease renewal in March 2003, these Conditions were legislated to;
  - (1) monitor the mine's impacts on the water table,
  - (2) safeguard landholders entitlements to water supplies, water quality and protect land values,
  - (3) protect the company against frivolous claims;
- (b) administrative procedures for evaluating the mine's impacts selectively disregard factual, relevant information when it disagrees with the position the Government has adopted, and consistently curtail opportunity for procedural fairness and for natural justice. This is recognised by the Mt Larcom CRP Report October 2003 Executive

Summary, Item 13 ‘There is evidence that on several occasions the consultation process has been abused and has degenerated into an inequitable manipulative farce’; by Recommendation No 8, Action ii) ‘A probity audit be conducted of the extent and timing of all correspondence relating to the East End Mining Lease renewal, including the role of the Ombudsman, to validate the legality of the renewal process.’; and by Section 2.3.2 beginning on Page 48 ‘The Mt Larcom study must be viewed against a background of favourable treatment of mining companies by the Queensland government, at the expense of landholders and the community in general.’;

- (c) in October 2001 EPA decided that QCL’s 1996 IAS findings of mine depletion of approx 500 metres were still relevant for their 2002 EMOS for lease renewal despite QCL’s 2000 findings of 33 sq km impacted area, despite EPA’s May 2001 “Independent” Assessment also finding 33 sq km depletion and despite 1997 and 1998 independent findings of mine depletion affecting more than 60 sq km. EPA instigated and manoeuvred an amendment to QCL’s 1996 EMOS so that their 2002 EMOS would be based on ‘no significant increase in environmental harm’ with the EMOS omitting to state areas of water depletion determined by studies subsequent to QCL’s 1996 IAS. EPA then increased the mine’s allowable maximum discharge from 6 megalitres per day to 10 megalitres per day for their 2002 Environmental Authority, and circumvented the requirement under EPOLA 2000 for submission of objections with review by the Land and Resources Tribunal (QCL’s 2002 EA included in CRP Report Attachment 18);
- (d) on 27 September 2002 the Ombudsman denied EEMAG members natural justice when his Office advised of the Ombudsman’s refusal to continue to investigate our complaints on the basis they did not have the technical expertise to assess the various reports and could not separate technical and administrative issues, but on the same date the Ombudsman provided DNR&M (and EPA) with “clearance” that facilitated renewal of QCL’s mining leases on depletion of approx 500 metres in accord with the 1995 agreement, despite the Ombudsman’s Office knowing that in February 2000 the company conceded to a mine impacted area of 33 sq km and that in 1997 and 1998 independent findings assessed depletion as affecting more than 60 sq km;
- (e) **letters from the Premier, his Chief of Staff, the Minister for Natural Resources and Mines and the Regional Mining Registrar indicate they all interpreted the Ombudsman’s letter of 27 September 2002 as a “clearance”, and it could be reasonably expected that Federal Agencies would automatically accept State Agencies’s decisions on this basis;**
- (f) after the Ombudsman refused to investigate EEMAG’s complaints we verbally took allegations of improper Agency conduct to the Crime and Misconduct Commission (CMC), but were advised that since the Ombudsman had not referred any misconduct to them, the CMC would not accept our complaint;
- (g) the Minister for Natural Resources Mines and Energy, Minister for Environment and Minister for State Development are not prepared to require/enter into an Arbitration process that takes into account the Federally funded Mt Larcom Community Restoration Project Report of October 2003, to end the 9 year old dispute;
- (h) EEMAG members lack the considerable financial resources required to take the matter to Court;
- (i) our appeals (including a CD of the Mt Larcom CRP Report) to various Queensland and interstate Conservation and Wildlife organisations, and to Queensland, interstate and national Mining/Resources Councils have not resulted in any tangible interest/support for the mine to be required to sustainably manage its environmental impacts;

- (j) Cement Australia, despite stating on 12 February 2004 that ‘it is important to recognize that we have and will always operate ethically within the processes established under local, state and national planning and environment laws’, is seemingly not prepared to improve its performance and abide by the principles of sustainable development such as minimisation of wastage of water, protection of water quality, responsible stewardship of the natural environment and social responsibility in mining;
- (k) **there is no provision for an affordable, accessible and impartial appeals/dispute resolution process under CoAG/National Competition Policy Arrangements, as a remedy when there is evidence that weak-voiced minorities are discriminated against and their entitlements are inappropriately traded off by State decisions; which can result in these decisions being accepted on face value by CoAG Agreements/NCP arrangements as a matter of process. (Similar to when EEMAG unsuccessfully sought the Policy Division of Foreign Investment not to approve QCL’s 2003 merger with ACH without QCL having redressed its backlog of social and environmental impacts.)**

Thank you for accepting our Submission. Copies of relevant documents are included as per attached list.

Yours sincerely,

Heather Lucke  
Secretary  
East End Mine Action Group Inc (EEMAG)  
Mt Larcom Qld 4695

List of attachments./

LIST OF DOCUMENTS SUPPORTING EEMAG'S SUBMISSION

- (1) CD of the 4 volumes of the federally funded \$100,000 Mt Larcom Community Restoration Project Report of October 2003 – Independent Team Leader Prof Brian Roberts with copy of Prof Roberts letter to respondents of the report.
- (2) Newspaper advertisement for Calliope River draft Water Resources Plan
- (3) Water Monitoring data that we interpret show Cement Australia's mine discharges totalled more than 1,000 megalitres for December 2003, January and February 2004.
- (4) 'Mine Impacted Area 2/2000 Dr F Kalf Model' that also shows DNR 1998 Map 10 of 22 sq km depleted area as 'mine impacted area extrapolated to 1997'. (Mt Larcom CRP Report Attachment 16, Map 9)
- (5) Map from 'QCL East End Mine Project Groundwater Review, July 1997 also used as Figure 1 in Mt Larcom CRP Report, after Page 34 in the Main Volume of the Report
- (6) Mt Larcom Rainfall Record and Machine Creek Flow Record Figure 6 of the Mt Larcom CRP Report that shows the results of a sophisticated modelling analysis of Machine Creek stream flow at Weir 2 against rainfall for the period November 1978 to February 1997. The creek flow modelling identifies declining rainfall trends, but also finds that creek flow progressively and disproportionately declined due to mining, and that these effects markedly increased in late 1992 – 3 years before QCL's 1995 IAS Report of depletion approx 500 metres from the pit. Weir 2 is approx 5 kilometres from the mine.
- (7) Copy of Page 46 from QCL Gladstone Expansion Draft IAS of October 1995, on Current Situation After 15 Years of Mining 'Pumping from the mine has created a steep drawdown cone extending approximately 500 metres from the pit boundaries..'
- (8) FOI of Ministerial Correspondence from Irrigation & Water Supply Commission dated 20.12.88 stating 'The effects of limestone mining and the associated pit dewatering is applying additional pressure to the groundwater resource. Data on hand indicates that water levels may have fallen by up to 2.5 metres at distances of 2 km from the mine due to mine dewatering.' Obtained in April 2000. Plus Pages 1 and 4 of an Affidavit by Tony Spiering for QCL lodged with the Land Court on 23 Aug 2001 stating that reports/maps/charts etc by Dr Col Dudgeon for QCL 'when stacked together will reach a height of five metres.' EEMAG members believe that Dr Dudgeon's reports etc should have been brought forward under QCL's 1996 IAS process and provided to affected landholders under Special Condition 9. They continue to be withheld. There is evidence that QCL's 1995/96 IAS findings were shaped to fit the 1995 agreement reached between QCL and Government.
- (9) FOI documents dated 7 Jun 1995, 8 August 1995, 28/09/95 and 30 Oct 1995 re 1995 agreement that QCL's EMOS for lease renewal would be based on 1995/96 IAS findings of mine depletion approx 500 metres from the pit
- (10) Extract from QCL's 1976 Special Conditions which we understand remained in force until lease renewal in March 2003, plus copy of Crown Law advice to Department of Mines and Energy defining administration of "*affect injuriously*" as included in Condition 11 and 1996 EMOS Commitment 32.
- (11) FOI of EPA Memorandum of 22 October 2002, quote '*2 EIS conducted in 1996 when cement plant upgraded. Information still valid.*' We interpret that QCL's six (6) expiring lease renewal applications should have been locked into QCL's new, incomplete 2000 EMOS [referred to on Page 2 Item 2 EPA Initiated Amendment (M2017)] (2000 EMOS unseen by EEMAG), and that a new EIS and consideration of objections before the Land and Resources Tribunal under EPOLA 2000 was required.

We interpret actions documented in Pages 2 and 3 of EPA's memorandum, show that EPA circumvented those requirements by initiating an amendment to QCL's accepted 1996 EMOS as its expired transitional authority (NOT the August 2000 incomplete EMOS) and attaching the 1996 EMOS to unexpired Mining Lease 80002 which is for waste rock disposal and current until 2012, and then providing ML80002 with an Environmental Authority based on the decision that it (waste rock disposal) did not involve a significant increase in environmental harm.

We interpret that EPA then took QCL's six (6) expired leases and included them all under the umbrella of unexpired Mining Lease 80002 so as to arrive at whole of project environmental approvals [EMOS and Environmental Authority] based on no significant increase in environmental harm. We consider that the amended (substantially weakened) EMOS and EA facilitated QCL's mining leases to be renewed in March 2003 on largely the same basis as the Queensland Government's 1995 agreement with QCL for lease renewal, by way of EPA acting to avoid having to take into account either DNR's 1998 22 sq km zone of mine depletion, QCL's 2000 mine impacted area of 33 sq km water depletion or independent findings of 60-90 sq km mine depletion, and **circumvented the requirement for objections to be heard by the Land and Resources Tribunal.**

- (12) Copy of Ombudsman letter to EEMAG dated 27 September 2002 and to DNR&M (obtained under FOI) dated 27 September 2002. Copy of EEMAG's letter to the Ombudsman requesting the "clearance" of DNR&M and EPA be retracted dated 15 February 2004 and 1 March 2004. The Ombudsman's Office has verbally advised that a review is being conducted, but we have received no written acknowledgement of our letters or confirmation of the review.
- (13) Copy of letter from the Premier to the Member for Gladstone dated 22 August 2003, Copy of letter from the Minister for natural Resources and Mines to the Member for Gladstone dated 23 June 2003, Copy of letter from the Regional Mining Registrar to EEMAG dated 31 July 2003 and Copy of letter from the Premier's Chief of Staff of 6 February 2004 all regarding "clearance" of Regulating agencies by the Ombudsman.
- (14) EEMAG submission to Minister for Natural Resources, Mines & Energy, Minister for Environment and Minister for State Development on 7 March 2004 requesting an Arbitration by a QC we do not know but who was recommended by someone we trust, taking into account the Mt Larcom CRP Report. Copy of the Environment Minister's refusal to enter into Arbitration dated 6 April 2004, copy of Minister for Natural Resources Mines and Energy's refusal of our Arbitration proposal, dated 21 Apr 2004.
- (15) Submission to Cement Australia's Consultant, Groundwork EMS Pty Ltd dated 22/04/2004 with a proposal for consideration of options regarding the better application of waste water from the mine and a copy of Cement Australia's response dated 14 May 2004 refusing the proposal. Note: There are numerous errors in Cement Australia's letter therefore we are attaching our letter to QCL dated 11 September 2000 that gives EEMAG's formal support for a proposed two week trial water injection at conductivity of 1840 as an example of one of the errors. This letter is included in the Mt Larcom CRP Report Appendix 5 'Trial Water Injection (Wallaby Lane). QCL's Consultant Dr Col Dudgeon's 1980 Report documented Hut, Scrub and Machine Creeks as

perennial and charted water levels and water quality pre mining that shows various bores and wells had water with conductivity of 800, 1000  $\mu\text{S}/\text{cm}$  etc pre mining. This report was omitted from QCL's 1996 IAS. The report is available.

- (16) Copy of letter from Treasury dated 6 March 2003 stating that the Queensland Government's advice indicated that water depletion at the mine was being monitored and addressed to their satisfaction and that the [Federal] Government decided to raise no objections to QCL's merger with ACH and the proposal was approved unconditionally.

All documents referred to in our Submission are available.