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Queensland Floods Commission of Inquiry

October/November 2011

Statement of Michael Roche

QFCI

Date:

9/11/11 Jm

Exhibit Number:

945

**COMMISSION OF INQUIRY (QUEENSLAND FLOODS INQUIRY)
STATEMENT OF MICHAEL ANTHONY ROCHE**

I, **MICHAEL ANTHONY ROCHE**, Chief Executive, Queensland Resources Council (**QRC**), Level 13, 133 Mary Street, Brisbane, in the State of Queensland, solemnly and sincerely affirm and declare:

1. I was engaged by QRC in my current position as Chief Executive, in June 2005.
2. As Chief Executive, I am not normally closely involved in day-to-day advocacy and consultation with State Government on behalf of QRC's members in relation to environmental policy issues, which is the responsibility of QRC's Director Environment and Social Policy, Frances Hayter, so I refer to her statement in that regard, lodged on 7 September 2011. Nevertheless, I have personally been responsible for some particular discussions and negotiations in relation to flood preparation and response issues, with State Government Ministers, their advisers and senior public servants.
3. As mentioned in the Statement of Frances Hayter, I was on leave overseas commencing on 15 August 2011 and returning to work on 26 September 2011. I did not access my QRC correspondence during that period, so I was unaware at the time of the various requirements directed from the Commission of Inquiry to QRC personnel including myself.
4. This statement responds to the questions set out in a Requirement to Provide Statement to the Commission of Inquiry, addressed to me, dated 14 October 2011, (the Requirement) a copy of which is at **Annexure 1**.

Question 1: An elaboration of the opinion of the Queensland Resources Council (QRC) on how the emergency direction power under the *Environmental Protection Act 1994* should be used, by reference to paragraphs 42 to 44 of the statement of Ms Frances Hayter provided to the Commission and dated 7 September 2011.

5. I adopt the views expressed by Frances Hayter in her statement submitted 7 September 2011.

Historic context

6. Before expressing a more detailed opinion on a future approach to the emergency direction power, I should first mention that:
 - (a) Historically, there have been examples of the use of the emergency direction power in relation to flooding at mines. **Item 1** of the bundle of documents in **Annexure 2** is a copy of an Emergency Direction issued to the Ensham Coal Mine dated 1 February 2008. **Item 2 of Annexure 2** is a copy of the Emergency Direction issued to Moranbah North Coal Pty Ltd (a subsidiary of Anglo American Metallurgical Coal Pty Ltd) dated 20 December 2010.
 - (b) There was a particular unusual situation at the time of the 2010/11 wet season, in that many mines had been prevented from reducing their water storages adequately for the onset of the wet season, primarily due to a set of flawed environmental authority conditions that had been imposed on the mining industry by State Government, as mentioned in paragraph 43 of the Statement of Frances Hayter. Given that the Department of Environment and Resource Management (DERM) has subsequently devoted considerable effort to resolving those flaws in the Fitzroy model water



conditions, some of the reasons that I put forward to State Government Ministers and Directors-General in early 2011 for a one-off widespread use of the emergency directions power should logically not be applicable to a future heavy (but not unprecedented) wet season, once mines have adopted and implemented the revised environmental authority conditions (including a schedule of conditions mentioned in the Explanatory Notes for Table 4 to address particularly heavy rainfall and flooding that is similar to previous events) and also once they have been able to increase their freeboard (that is, recover from the 2010/11 wet season).

Future possible types of emergencies

7. However, I agree with the opinion expressed by Frances Hayter at paragraph 44 of her statement that, even with adequate conditions in effect to address a future foreseeable heavy wet season, *'...there may be other types of more extraordinary emergencies, such as a tsunami or severe cyclone, which would still justify an emergency response rather than the paperwork of a TEP.'* Other examples might include earthquakes or catastrophic bushfires. In other words, there are some types of disasters which are either so sudden or unforeseen that they are likely to require an emergency response, involving on-the-spot professional judgments. Also, if there is a future heavy wet season similar to the last one, before mines have had an opportunity to release sufficient water, it is possible that human safety emergencies could arise, even with the revised Fitzroy conditions in effect.
8. In expressing a more detailed opinion about a preferred future approach to the use of the emergency directions power, it should be noted that I am not a lawyer. QRC received legal advice on the topic of emergency directions (which is included in my volume of documents), and I rely on a combination of that advice, a review of statements from mining industry representatives, informal feedback from members about their experience with the last wet season and above all, the high priority given to human health and safety by QRC and our individual members.

Suggestion 1: Give express priority to human health and safety

9. First, I am concerned that the *Environmental Protection Act 1994* does not spell out that human health and safety is to be given priority over ecological considerations, if a conflict arises between these two values. As explained in Appendix E, section 4 of QRC's submission:

'Section 23 of the Environmental Protection Act 1994 (Qld) provides:

'23 Relationship with other Acts

(1) This Act is in addition to, and does not limit, any other Act.

(2) If this Act conflicts with an Act as follows, that Act prevails, but only to the extent of the conflict—

- *Ambulance Service Act 1991*
- *Disaster Management Act 2003*
- *Exotic Diseases in Animals Act 1981*
- *Fire and Rescue Service Act 1990*
- *Public Safety Preservation Act 1986, part 3*
- *Radiation Safety Act 1999*
- *Transport Operations (Marine Pollution) Act 1995.'*

It is clear from this section that there was a general intention to give priority to health and safety issues, particularly in emergency situations. The difficulties with achieving this intention are:

- (a) That the list is limited and in particular does not include mine safety legislation or general workplace health and safety legislation.*
- (b) This list of safety Acts only prevails to the extent of a conflict with the Environmental Protection Act 1994 (Qld). There may be many situations when a human safety issue conflicts with an ecological issue in practical terms, but that does not mean that the conflict is spelled out in the Act. The general principle of statutory interpretation is that, if there is argued to be any inconsistency between statutes, the courts will try to read both statutes together so that it is necessary to comply with both, rather than to give priority to one over the other.¹*
- (c) The section only refers to conflict with an 'Act', not with instruments issued under the Act, such as directions and notices.'*

10. In my opinion, it would clearly be desirable for gaps identified in (a) to (c) above to be addressed by legislative amendments. Although QRC's legal advice was, in summary, that these gaps did not prevent DERM from issuing emergency directions during the 2010/11 flooding, legislative amendments would make the intention more clear.
11. An example of a human safety risk which would probably have benefited from emergency priority was provided by Anglo American Metallurgical Coal at paragraph 6 of the Statement of Mark Heaton dated 6 September 2011, in relation to the risks to the underground Grasree coal mine from high water storages at the adjoining Capcoal mining project. I was not personally involved in that issue and merely provide it as a reference.

Recommendation 2: Address drafting deficiencies in the emergency directions power

12. Secondly, there appear to be some deficiencies in Section 468 of the *Environmental Protection Act 1994*, the Emergency Directions power. Section 468 provides:

'468 Authorised person may direct emergency release of contaminant

*(1) An authorised person may give a written direction (an **emergency direction**) to a person to release a contaminant into the environment if the authorised person is satisfied—*

(a) it is necessary and reasonable to release the contaminant because of an emergency; and

(b) there is no other practicable alternative to the release.

(2) The authorised person may impose reasonable conditions on the direction.'

These are some suggested deficiencies:

¹ Eg: *NSW Aboriginal Land Council v Minister Administering the Crown Lands Act* (2007) 157 LGERA 18.



- (a) In some types of emergency scenarios, it would be desirable for an authorised person to be able to issue a spoken direction under Section 468 and then confirm in writing afterwards.
- (b) The expression, '*there is no other practicable alternative to the release*' places an unnecessarily heavy onus on the decision-maker in an emergency situation. Given that the term 'contaminant' does not have its ordinary dictionary meaning, but rather it is defined in the Act² in a way which could include clean water (or water that is about the same as the receiving environment), it is not appropriate that the officer should have to be satisfied that there is no alternative to the release. Potential alternatives could include either:
- (i) That the release is unlikely to cause an unacceptable impact on the environment; or
 - (ii) That the risks to the environment of not authorising the release are likely to be greater than the risks of authorising the release; or
 - (iii) That the release is reasonably required for human health and safety reasons.
13. The most common example of a human safety issue which I was aware of during the 2010/11 wet season was the example of monitoring stations which were unsafe to access, either under environmental authority conditions or transitional environmental programs. There does not seem to be any logical reason why emergency directions should be restricted to the topic of releases. The problem of unsafe access to monitoring locations imposed by environmental authority conditions and transitional environmental programs is mentioned in the statement of Stuart John Ritchie of Rio Tinto Coal Australia Pty Ltd at paragraph 56(a). I was not personally involved in the events described in that paragraph and merely mention it as a reference.
14. My experience during the 2010/11 wet season was that DERM officers appeared to interpret the term 'emergency' as referring only to a human safety. I believe most people would interpret the term 'emergency' as referring to the nature of the disaster that has occurred (for example, a flood, cyclone, earthquake or fire). In any of those emergencies, there may be many reasons other than human safety why it would be reasonable to make an emergency direction, for example, to prevent loss or damage to property or stock, to allow water to be released before its quality deteriorates, or to allow homes or businesses to return to normal quickly if this is unlikely to create unacceptable risks.
15. An example where there was a combination of possible human safety risks and other serious consequences such as declaration of *force majeure*, which would probably have benefited from an emergency direction if that option had been available, was at the Hail Creek coal mine, as described in the submission by Rio Tinto Coal Australia Pty Ltd dated 11 March 2011. I was not personally involved in the events described in that submission and merely mention Hail Creek as a reference.

² Section 11 *Environmental Protection Act 1994* (Qld): 'A **contaminant** can be—

(a) a gas, liquid or solid; or
 (b) an odour; or
 (c) an organism (whether alive or dead), including a virus; or
 (d) energy, including noise, heat, radioactivity and electromagnetic radiation; or
 (e) a combination of contaminants.'



Recommendation 3: Emergency direction to override conditions etc

16. Thirdly, it is not specified in the various sections of the *Environmental Protection Act 1994* dealing with contraventions of conditions of environmental authorities, development permits or transitional environmental programs (Chapter 8 Parts 2 and 2A) or in Chapter 8 Part 3C (offences relating to water contamination) that it is a defence to comply with an emergency direction, or that an emergency direction overrides the other instrument.
17. QRC's legal advice was that, notwithstanding this drafting gap, sufficient authorisation should reasonably be implied by Section 493A of the *Environmental Protection Act 1994*, which provides for 'relevant acts' to be not unlawful if they are authorised by an emergency direction. It would logically follow that they are not unlawful whether or not they involve a contravention of condition in passing. However, it would probably be desirable for this reasoning to be set out expressly.
18. A related issue is that Section 344(3) of the *Environmental Protection Act 1994* prohibits an amendment to an approved transitional environmental program unless the administering authority '*is reasonably satisfied it will not result in increased environmental harm being caused...*' In other words, if the amendment could potentially result in even a slight increase in environmental harm, and even if this is consistent with an overwhelming increase of background contaminants such as during a flood, statutory priority is given to avoiding that tiny risk of increase in ecological impacts notwithstanding that this may be balanced against major risks to human factors such as safety if the amendment is not made. This is not intended as a comment on implementation, as I was not personally closely enough involved in members' problems with their transitional environmental programs to be in a position to comment on implementation; this is only intended as a comment on the apparent statutory priority given to ecology over human safety and the protection of property.

Question 2. A detailed account of any discussions held between officers and employees of the QRC and officers and employees of the Department of Environment and Resource Management (DERM) or any other agency or any Minister regarding refusals by DERM or any Minister to invoke emergency direction powers; and

A related extract from Question 3: 'An overview of any meetings, discussions or negotiations involving the QRC and any Minister or Director-General regarding... transitional environmental programs...'

Emergency directions that were granted

19. Before outlining the history of State Government refusal to consider the emergency direction powers for the purpose of managing the response to the 2010/11 floods, it is worth acknowledging (as noted in paragraph 6 of my statement) that, historically, there have been examples of the use of the emergency direction power in relation to flooding at mines. I am aware of the Emergency Direction issued to the Ensham Coal Mine dated 1 February 2008 and the Emergency Direction issued to Moranbah North Coal Pty Ltd (a subsidiary of Anglo American Metallurgical Coal Pty Ltd) dated 20 December 2010. (However, in January 2011, I was not aware that this emergency direction had been granted to Moranbah North Coal Pty Ltd on 20 December 2010 and it was not mentioned by any State Government representatives during any of our discussions or correspondence, as far as I can recall.)



Discussions and correspondence about the TEP process and the need to remove water from mines

20. Also, before outlining the history of discussions and correspondence about the emergency directions power, I have responded below to the first part of question 3 of the Requirement, relating to the history of earlier discussions and correspondence about the need to discharge water as quickly as possible from mines, essentially relating to the DERM template for a transitional environmental program (TEP), before QRC obtained legal advice about other options such as the emergency directions power.
21. On 5 January 2011, in a telephone conversation with Mr John Bradley, I suggested the concept of a more generic or simplified TEP template than the version which DERM had provided in December 2010.
22. **Item 3 of Appendix 2** is a copy of my e.mail to the Director-General of DERM, Mr John Bradley dated 5 January 2011 in which I outlined various feedback from QRC members, including the need for water to be discharged from coal mines as soon as possible. This was before QRC had obtained legal advice about the possible mechanisms available such as emergency directions, so I did not raise that option in that e.mail.
23. Relevantly, this e.mail included the line: *"To take best 'advantage' of the current flood situation, DERM could consider issuing an open invitation (see 'letter of comfort' concept in attached letter of 24 November) which invites all companies (coal and gas) to discharge as much water as possible within as short a period of time as possible."* I have only recently become aware, from having reviewed copies of Ministerial briefing notes which have been provided to me by the Commission of Inquiry, that an extract from this sentence was subsequently quoted out of context and without the various qualifications which were included in my e.mail of 5 January 2011. For example, in a briefing note to the Minister for Environment and Resources dated 17 March 2011 (ie, long after the heavy rains had ceased) there is a quotation at the tenth bullet point as follows: 'The Queensland Resources Council (QRC) has become increasingly critical of the need to conduct a detailed assessment of TEP applications and on 6 January proposed that the department issue "an open invitation which invites all companies to discharge as much water as possible within as short a period of time as possible." This is followed by the bullet point: *'The department advised QRC that it was not supportive of this concept as the risks to the environment, downstream water users and some drinking water supplies were unacceptable.'* In fact that was not the response that I received to my e.mail of 5 January 2011 or my letter of 6 January 2011, because at that time the discussion related to negotiating a simplified form of a TEP template which I believe was intended by Terry Wall and John Bradley of DERM to be for the same purpose I had suggested, which was to move water off mines as soon as possible, during the 'window of opportunity' of high dilution which was available at that time.
24. On 6 January 2011, I had a further telephone conversation with the Director-General of DERM, Mr John Bradley. I did not make a file note of that telephone call but I did send an e.mail to Frances Hayter shortly after the meeting, reporting on my impressions of the discussion, a copy of which is included at **Item 4 of Appendix 2**. In summary, John Bradley proposed producing a template for a 'tick a box TEP' for mines affected by flooding.
25. **Item 5 of Appendix 2** is a copy of a letter dated 6 January 2011 which I received from Ms Debbie Best, Acting Director-General of DERM by e.mail at 5.11pm on 6 January 2011, attaching a proposed simplified TEP application template, which was essentially proposed to



replace the previous *pro forma* guide for preparing TEPs provided by DERM in December 2010 explained in paragraph 36 of the Statement of Frances Hayter.

26. At 9.12pm that day, I forwarded an e.mail to Debbie Best seeking some clarifications and she responded at 10.28am on 7 January 2010. These e-mails are at **Item 6 of Appendix 2**.

27. **Item 7 of Appendix 2** is an e.mail trail including:

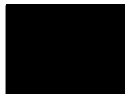
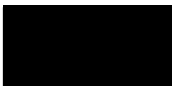
- (a) My e.mail of 10.38am on 10 January 2011 to various senior DERM officers, company representatives and QRC personnel, suggesting topics for discussion at a meeting that morning at 11.30am for the purpose of trying to improve the TEP template and its implementation;
- (b) My e.mail of 5.39pm on 10 January 2011 to the same personnel outlining the action points from the meeting; and
- (c) An e.mail confirmation from Mr Terry Wall of DERM that I received at 10.35am on 11 January 2011.
(To avoid wasting paper, I have deleted from this e.mail trail the earlier e-mails which have been provided at item 6.)

28. **Item 8 of Appendix 2** is an e.mail trail including:

- (a) My e.mail of 2.37pm on 14 January 2011 to Mr Terry Wall of DERM pressing for implementation of the actions agreed at the meeting of 10 January 2011;
- (b) An e.mail response to me from Terry Wall at 4.22pm on 14 January 2011 deferring a response until Monday 17 January 2011;
- (c) An e.mail from Terry Wall at 5.53pm on 17 January 2011 attaching his undated letter (originally provided to the Commission as Part of Appendix D of the QRC submission dated 11 March 2011) and copied again here; and
- (d) My e.mail to Terry Wall at 8.27pm on 17 January 2011, copied to Mr John Bradley and others, expressing strong disappointment with that response.
(To avoid wasting paper, I have deleted from this e.mail trail the earlier e-mails which have been provided at items 6 and 7.)

29. **Item 9 of Appendix 2** is an e.mail trail including:

- (a) An e.mail from John Bradley to myself at 9.11pm on 17 January 2011 (copied to others) inviting a meeting to discuss the issues and expressing concern that my response seemed to understate DERM's continued efforts to work closely with the sector to resolve issues urgently;
- (b) My e.mail to John Bradley (copied to others) at 9.50pm on 17 January 2011 acknowledging that DERM's performance in recent weeks had by and large been very responsive, but expressing concern about the fact that flood waters could be pumped out of other types of businesses without going through a TEP process, but not from mines;
- (c) An e.mail from John Bradley to myself at 10.34pm on 17 January 2011 inviting a meeting to discuss the issues, including inviting a discussion of 'an alternative approach' and suggesting that we were probably trying to seek the same outcome;
- (d) My e.mail to John Bradley at 11.26pm confirming the meeting;
- (e) My e.mail to John Bradley at 8.11am on 18 January 2011 suggesting some topics for discussion, including reiterating a concern (previously raised with Debbie Best on 6 January 2011) about the difficulties for flooded mines located near creeks with no flow or low flow, which would be unable to meet DERM's template for high flow of receiving waters in order to discharge;



- (f) A series of e-mails confirming the meeting arrangements.
(To avoid wasting paper, I have deleted from this e-mail trail the earlier e-mails which have been provided at items 6, 7 and 8.)

Discussions and correspondence about emergency directions

30. **Item 10 of Appendix 2** is a copy of my file note of my meeting with Mr John Bradley, Director-General of DERM on 18 January 2011. As far as I recall, this was the first occasion on which the option of emergency directions was mentioned in QRC's discussions with DERM about an emergency response to flooding of mines. It arose in the context that I asked John Bradley for advice on what other options were available under the *Environmental Protection Act 1994* apart from TEPs and this was one of the options mentioned by John Bradley.
31. **Item 11 of Appendix 2** is a copy of my e-mail of 1.50pm on 19 January 2011 to Nicole Scurrah (the Premier's chief of staff) requesting an opportunity to brief the Premier's advisors on the current status of water discharge from mines together with her response of 2.48pm on 19 January 2011 agreeing to the meeting.
32. **Item 12 of Appendix 2** is a copy of the powerpoint presentation for a briefing to the Governor of Queensland, Her Excellency Ms Penelope Wensley AO, which was jointly presented to her by [REDACTED] (QRC's Chief Economist) and myself on 19 January 2011 about the impact of flooding on the Queensland resources sector. One of the key points from this presentation was the '*need to build resilience by getting rid of maximum amount of water NOW to prevent disruption and greater environmental harm (eg uncontrolled dam overflows)*' (on the second last page of the powerpoint).
33. On 19 January 2011 at 5pm, I met with the following personnel at the Executive Building: Advisers to the Premier [REDACTED] and David Shankey. (Nicole Scurrah, the Premier's Chief of Staff was not able to attend due to the later than scheduled start). As far as I can recall, John Bradley (Director-General of DERM) was also in attendance. I did not make a contemporaneous file note of that meeting, but I did send an e-mail to Nicole Scurrah at 10.43pm that evening in which I mentioned what I saw as the key points for her. In summary, I outlined to the meeting the latest information on the production impacts on coal mines from their water issues. I emphasised that I thought that DERM officers had worked very hard to process TEP applications but that the situation was such that DERM was about to reach the limit of its experience and comfort in approving water discharges from mines. I expressed the opinion that we were getting too close to where DERM would need Ministerial or political support as we moved into this new territory. In order to try to achieve downstream dilution factors, I suggested that water should be discharged while major watercourses still had strong flows. I outlined the scenario where a further major rainfall event (such as a cyclone) could run the risk of uncontrolled discharges from mines whose dams were nearly full. The Premier's advisers thanked me for the briefing. **Item 13 of Appendix 2** is a copy of my e-mail of 10.43pm on 19 January 2011 to Nicole Scurrah.
34. **Item 14 of Appendix 2** is a copy of my e-mail of 12.06pm on 20 January addressed to the same people who had attended the meeting of 5pm on 19 January 2011 and also some others, in which I provided quotations from feedback received from various members about difficulties being experienced with the DERM approach to addressing flooding at a number of mines and setting out the summary I would propose to give to the media if asked about the situation.



35. On 20 January 2011, I attended a meeting of the Resources and Energy Recovery Group chaired by DEEDI Associate Director-General [REDACTED]. I did not make a contemporaneous file note, but my recollection is that representatives from the Department of Employment, Economic Development and Innovation (DEEDI) (in particular, [REDACTED], then the General Manager Mining and Petroleum Operations) outlined their statistics on mines which were 'operating, partly operating or struggling'. Representatives from the Department of Transport and Main Roads outlined the situation regarding roads and rail, especially Western line washaways. Representatives from DERM [REDACTED] and Mike Birchley) outlined the status of TEP applications and approvals. In response to my question about the delays with responding to several TEP applications, a representative from DERM (from recollection, Mr [REDACTED]) said that *'the risk is too much for a delegate at DERM to accept'* in some of those cases.
36. Also on 20 January 2011, I received a telephone call from the Hon Kate Jones MLA, then Minister for Environment and Resource Management. This was in response to my comment at the foot of my e.mail set out in Item 13 of Appendix 2, which stated: *"Happy to discuss. Indeed, I would welcome some show of interest from Minister Jones."* The reason why I had made this comment was that while I was having almost daily contact with officers of DERM, I had received no queries from Ministers as to the QRC perspective and so we were reliant on Ministers being informed only by briefings being provided by their officers. The Minister expressed some displeasure about that comment. I took the opportunity to brief her on the current status of flooding at mines and about industry concerns that TEPs were not proving to be a suitable mechanism to deal with what was already a crisis situation. I raised with her the suggestion that emergency direction powers would be an alternative mechanism. The Minister undertook to seek advice on that suggestion and to revert to me.
37. **Item 15 of Appendix 2** is a copy of an e.mail trail starting with my e.mail of 12.06pm on 20 January 2011 which has already been provided at item 14 of Appendix 2 and also including:
- (a) An e.mail response from [REDACTED] at 4.32pm on 20 January 2011, stating that he had onforwarded a copy of my previous e.mail to [REDACTED] (Principal Advisor) and [REDACTED] (Senior Media Advisor) within the office of the Minister for Environment and Resource Management; and
 - (b) My e.mail to [REDACTED] advising that I had already received a telephone call from the Minister for Environment and Resource Management.
38. **Item 16 of Appendix 2** is a copy of the powerpoint presentation, which was jointly presented to the Shadow Cabinet by [REDACTED] (QRC's Chief Economist) and myself on 21 January 2011 about the impact of flooding on the Queensland resources sector. This was the same as the presentation previously given to the Governor on 19 January 2011.
39. **Item 17 of Appendix 2** is a copy of an e.mail trail including:
- (a) An e.mail from John Bradley to myself of 7.47pm on Friday 21 January 2011 attaching the letter dated 21 January 2011 which was previously provided to the Inquiry with QRC's submission (a further copy is attached) and proposing a meeting *'at the end of next week or early the following week'*; and
 - (b) My e.mail response to John Bradley of 9.34pm on 21 January 2011 expressing disappointment at the proposal to defer a meeting *'until a week or more away'*,

identifying the unanswered questions in the letter and pressing for consideration of the emergency directions option.

40. **Item 18 of Appendix 2** is a file note of a meeting that I attended on 25 January 2011 with the Director-General of the Department of Premier and Cabinet (Ken Smith), the Director-General of DERM (John Bradley) and the Director-General of DEEDI (Ian Fletcher), at which the Directors-General opposed the use of emergency directions powers in relation to flooding at mines.

41. **Item 19 of Appendix 2** is a file note of a meeting that I attended (together with other QRC personnel, [REDACTED] and [REDACTED] with the Hon Stephen Robertson MLA, who was at that time Minister for Natural Resources, Mines and Energy and Trade. [REDACTED] and I jointly briefed the Minister on QRC's published estimates of the impact of inundation upon coal mines and coal production. After outlining the frustration of some of QRC's members with the TEP mechanism, I said that QRC had received legal advice that it was possible and appropriate for Government to allow flooding to be treated as an emergency under the Environmental Protection Act. The Minister opposed that suggestion. He said that a higher priority for the Government was the impact of discharged mine water on the Great Barrier Reef. My experience was that normally DERM's reasoning for requiring a high level of dilution of mine affected water is essentially because of a concern that elevated salt content in mine affected water could otherwise affect either the taste of downstream drinking water or freshwater aquatic ecosystems, but the view that discharging water with an elevated salt content would be detrimental to seawater seemed to me to be novel approach. I informed the Minister that the information available to QRC was that mine water discharges at their peak accounted for less than one per cent of flows in the Fitzroy River system.

42. **Item 20 of Appendix 2** is a further copy of my letter to the Hon Anna Bligh MLA, Premier and Minister for the Arts dated 28 January 2011, which was previously included in Appendix D to QRC's submission, in which I requested the considered use of emergency directions powers to authorise water releases in preparation for the threat of cyclones.

43. **Item 21 of Appendix 2** is a copy of an e.mail trail including:

- (a) My e.mail sent at 4.48pm on Friday 28 January 2011 to Ken Smith, John Bradley, [REDACTED], [REDACTED], [REDACTED], Nicole Scurrah, [REDACTED], [REDACTED] and Terry Wall, providing them with a copy of my letter to the Premier of 28 January 2011;
- (b) An e.mail to me from Nicole Scurrah of 6.14pm on 28 January 2011 requesting evidence of *'what you believe to be outstanding or not approved Transitional Environmental Programs'*;
- (c) My e.mail to Nicole Scurrah of 9.29pm on 28 January 2011 providing some examples in response to her enquiry, updating her on my meeting with Minister Robertson and suggesting a meeting with coal company representatives;
- (d) An e.mail to me from Nicole Scurrah of 9.47pm on 28 January 2011 expressing disbelief that companies were experiencing delays in the processing of their TEP applications; and
- (e) My e.mail to Nicole Scurrah of 3.40pm on Saturday 30 January 2011, responding to her doubts about the examples provided and giving her a copy of QRC's legal advice (included in item 20 of Appendix 2).

44. **Item 22 of Appendix 2** is a copy of an e.mail trail including:

[REDACTED]

[REDACTED]

- (a) An e.mail from [REDACTED] (Vice President, Commercial Relations, BHP Billiton Mitsubishi Alliance) to David Shankey (Senior Policy Advisor, Environment, Energy and Resources, Officer of Premier and Cabinet) which he copied to [REDACTED] (Chief Executive Officer of BMA) and Ken Smith, sent at 11.14am on Sunday 30 January 2011, outlining the problems for BMA with the TEP procedure;
 - (b) An e.mail from [REDACTED] providing me with a copy of his previous e.mail to David Shankey at 1.25pm on 30 January 2011 and updating me that he was discussing the issues further with David Shankey.
45. **Item 23 of Appendix 2** is a copy of the response I received from Nicole Scurrah at 3.44pm on 30 January 2011, as follows: *"Michael, thanks for the email."*
46. **Item 24 of Appendix 2** is a copy of my e.mail updates to members of 30 January 2011.
47. **Item 25 of Appendix 2** is a copy of a briefing that I received from QRC's Director Environment and Social Policy, Frances Hayter and my Deputy Chief Executive, Greg Lane on [date?] about the status of TEP applications and problems reported by members.
48. **Item 26 of Appendix 2** is a copy of a file note of my meeting with John Bradley of 4 February 2011, together with a copy of the agenda of 'key points' which I presented at that meeting. Relevantly to the question of emergency directions, item 3 of the 'key points' I presented at that meeting was that: *'DERM (in its media release of 28/1) and government spokespeople have misrepresented QRC position as seeking an unconditional blanket exemption. This was then misrepresented to companies on Monday 31/1 as a "cookie cutter" approach'*.
49. **Item 27 of Appendix 2** is a further copy of the letter I received from the Premier by e.mail at 5.03pm on Friday 4 February 2011, refusing to use emergency directions powers. (A copy of this letter was originally included in Appendix D to QRC's submission to the Inquiry.)
50. **Item 28 of Appendix 2** is a copy of an e.mail trail including, relevantly:
- (a) The e.mail received at 5.03pm on Friday 4 February 2011 from David Shankey, Senior Ministerial Policy Advisor, Environment, Energy and Resources, Department of Premier and Cabinet, which attached the Premier's response declining the use of emergency directions powers; and
 - (b) My e.mail to David Shankey of 6.21pm on 4 February 2011 explaining that the Premier's letter was inaccurate in having represented that I had asked the Premier for a 'blanket exemption' and quoting to him the sections of my letter in which I had requested that the mechanism should be 'added to their armoury of options'.

Question 3. An overview of any meetings, discussions or negotiations involving the QRC and any Minister or Director-General regarding the Fitzroy model conditions, environmental authorities, transitional environmental programs and emergency directions since 1 January 2010, with specific reference to:

- a. the meeting held between Mr Roche and Mr John Bradley, Director-General of DERM, on 8 October 2010 concerning the Fitzroy model water conditions
- b. a meeting held between Mr Roche and Ms Kate Jones MP, then Minister for Environment in early 2011, concerning the review of the Fitzroy model water conditions, and
- c. any meeting or discussion between Mr Roche and the Honourable Andrew Fraser MP, Treasurer in relation to excess water being retained at mines.



Review of the Fitzroy model water conditions before the 2010/11 wet season

51. **Item 1 of Annexure 3** is a copy of a file note of my meeting with the former Environment Minister, the Hon Kate Jones MLA of 11 March 2010. In summary, at that meeting with the Minister, I had expressed the concern that the Fitzroy model water conditions that had been imposed on mines in the Bowen Basin in 2009/2010 'set up both industry and the government regulator to fail' and I requested a review to be undertaken in readiness for the next wet season. When the Minister agreed to a review, she did not express any qualification that this review was to be limited to minor issues only.
52. The next steps to follow up that commitment from the Minister have been described at paragraph 14 of the Statement of Frances Hayter and she has provided copies of relevant documents (Annexure D items 1 and 2 of her statement).
53. Due to my increasing concern about the lengthy delay by DERM in the implementation of this Ministerial commitment, I then took personal responsibility for the next steps to follow up the commitment. Frances Hayter was not present when I undertook those next steps and accordingly, they were not mentioned in her statement. **Item 2 of Annexure 3** to my statement is a copy of a file note of the relevant part of a luncheon discussion held in the QRC Boardroom on 13 August 2010 with the former Environment Minister, the Hon Kate Jones MLA and Mr John Bradley, Director-General of DERM. Several QRC Board members raised concerns that the Fitzroy model water conditions were impacting on the mines' ability to manage water and to prepare for the next wet season. Some QRC Board members observed that the model water conditions were operating such that their mines were effectively under 'zero discharge' conditions. Although not mentioned in my file note, my recollection is that Mr Bradley had to leave this discussion early, so he may not have been personally aware of the extent of concerns raised. As an action point from this luncheon discussion, I agreed with the Minister that I would come to see her to follow up on industry concerns.
54. Accordingly, I met with the former Environment Minister, the Hon Kate Jones MLA again on 8 September 2010 to press for a review of the Fitzroy model water conditions in readiness for the wet season. Also present at that meeting were the Minister's Senior Adviser Josh Cooney and Assistant Director-General, Dean Ellwood. A file note of that meeting is at **Item 3 of Annexure 3**. I was quite blunt with the Minister that QRC was not getting any satisfaction from DERM about kickstarting the review of the Fitzroy model water conditions which the Minister had agreed to back in March of that year. A difficulty with this meeting was that the Director-General, Mr John Bradley, was not present.
55. Accordingly, upon the return of the Director-General, Mr John Bradley, I met with him on 8 October 2010 for the purpose of following up on the discussion held during his absence on 8 September 2010 with his Minister and to determine a process for the review. Unfortunately, it appears that I have not kept a file note of that meeting with Mr Bradley. However, as noted in Annexure D item 3 of the Statement of Frances Hayter, I advised her shortly after the meeting that: *"he [JB] will write and propose workshop on 25/10 to work through our list of points (from June). I said we would want to prioritise items to be addressed in near term. I ran him through my fear scenario of La Nina, early wet season, lots of water in mines, how do we get it out without environmental harm (meaning relaxation of end of pipe measurement)"*. That summary is consistent with my recollection of the meeting. Mr Bradley committed to arrange a workshop between QRC and DERM representatives to

review the conditions and he proposed to send a letter confirming this. Apart from discussing the need for a review of the Fitzroy model water conditions, I also raised with Mr Bradley during that meeting an unrelated issue about a clerical error in DERM's new invoicing system.

56. On 14 October 2010, I had still not received the promised letter. **Item 4 of Annexure 3** is a copy of my e.mail to Mr Bradley, (following up the promised letter) together with the response from Mr Bradley later that morning stating that he had already signed the letter and asking Mr Terry Wall, Associate Director-General of DERM, to ensure that I received the letter as Mr Bradley was in Townsville that day.
57. I received the letter from Mr Bradley dated 13 October 2010 under cover of an e.mail from [REDACTED] on behalf of Mr Terry Wall of DERM on 14 October 2010. A copy of that e.mail is at **Item 5 of Annexure 3**.
58. The balance of the review process for the Fitzroy model water conditions before the 2010/2011 wet season is described at paragraph 14 of the Statement of Frances Hayter and Annexure D to her Statement.

Transitional environmental programs and emergency directions

59. This part of question 3 overlaps with question 2 of the Requirement. Please refer to my response to question 2.

Review of the Fitzroy model water conditions after the 2010/11 wet season

60. On 21 February 2011, just prior to a scheduled meeting about strategic cropping land, I had an opportunity to meet briefly with the Director-General of DERM, John Bradley, to discuss the review of the Fitzroy model water conditions, taking into account what had been learned from the 2010/11 wet season and the TEP experience. Mr Mike Birchley, then Acting Assistant Director-General, Regional Service Delivery for DERM was also in attendance. Mr Bradley confirmed that the review would be led by Mr Andrew Brier, a General Manager in DERM. Mr Brier would be in touch with QRC shortly to set up a review "kick off" meeting. There was also a brief discussion about the regulatory approach DERM may employ where mines use water treatment technology such as "reverse osmosis". I did not make a contemporaneous file note of that meeting.
61. **Item 6 of Annexure 3** is a copy of a letter dated 25 February 2011 that I sent to the Hon Kate Jones MLA upon her appointment as Minister for Resource Management (in addition to her existing portfolio as Minister for Environment). In that letter, I mentioned numerous issues including mine water management and I requested a meeting 'to work through some of these vexed policy issues'.
62. On 28 February 2011, I received an e.mail from [REDACTED] then Acting Assistant Director-General, Regional Service Delivery for DERM, advising that in light of the recent wet season, the review of Fitzroy model water conditions would be brought forward and was intended to be completed by the end of July 2011. The email also noted that this process was to be run by Andrew Brier, General Manager Coal & CSG Operations. A copy of this e.mail has already been provided as item 1 of Appendix E to the Statement of Frances Hayter.



63. My letter dated 25 February 2011 led to my meeting with the former Minister for Environment and Natural Resources, the Hon Kate Jones MLA on 17 March 2011. I did not make a contemporaneous file note of that meeting. The meeting covered a wide range of issues, most of which are not relevant to the subject-matter of this Statement and the part of the meeting relating to mine water management was quite brief. Relevantly, the Minister committed to completion of a detailed review of the Fitzroy model water conditions by the end of July 2011, to enable sufficient time for implementation before the next wet season. I thanked her for that commitment. However, that commitment had already been set out in the e.mail I had received from Michael Birchley dated 28 February 2011, so the meeting with the Minister in effect achieved no more than a confirmation of that existing commitment.
64. The balance of the chronology relating to the consultation process for the revised Fitzroy model water conditions 2011 is set out in paragraph 18 of the Statement of Frances Hayter.

Discussions with Queensland Treasury relating to the impact of flooding on mines

65. I did not engage in direct discussions with the Treasurer, the Hon Andrew Fraser, about the impact of flooding on mines, but rather with senior Treasury personnel. However, I did provide copies to the Treasurer and the Minister for Environment of the letter dated 28 January 2011 addressed to the Premier, referred to in paragraph 42 of this Statement.
66. Please refer to paragraph 35 of this Statement, which sets out my recollection of a meeting of the Resources and Energy Recovery Group that I attended on 20 January 2011 at the offices of DEEDI.
67. On 21 January 2011, [REDACTED] (QRC's Chief Economist) and I met with [REDACTED], Assistant Under Treasurer. (Another Treasury representative was also present at that meeting, but I did not have a note of that person's name.) [REDACTED] had prepared a draft list of estimates of the worst case and best case impacts on coal production as a result of the 2010/11 flooding and he outlined and explained his estimates. Neither [REDACTED] nor I kept a contemporaneous file note of that meeting.
68. Please refer to paragraph 40 of my statement, which outlines a meeting that I attended on 25 January 2011 with the Director-General of the Department of Premier and Cabinet (Ken Smith), the Director-General of DERM (John Bradley) and the Director-General of DEEDI [REDACTED], at which the Directors-General opposed the use of emergency directions powers in relation to flooding at mines. My file note of that meeting is at Item 18 of Appendix 2. Relevantly to Question 3c of the Requirement relating to Treasury, the Director-General of DEEDI [REDACTED], expressed the view that government could not possibly anticipate a weather event in applying emergency directions powers.
69. I am informed by [REDACTED] and believe that he had a further discussion with [REDACTED] on 27 January 2011, in which [REDACTED] advised [REDACTED] that the State Government's numbers for the mid-year fiscal review would be predicated on:
- (a) A lower saleable production number of 47.5 mt compared to QRC's estimate of 51 mt in the September quarter (because QRC relied on ABARE data, but Treasury had access to the full royalties data);
 - (b) Treasury had also estimated that the forecast production impacts would be at the lower end of the range estimated by QRC, that is, quite close to QRC's best case scenario;

- (c) Treasury was assuming lower coal prices. ([REDACTED] also speculated that Treasury was possibly also using a lower percentage of companies who would have access to the anticipated higher coal prices in the June quarter.)
- (d) Overall, this meant that the estimated production impacts would be lower, meaning that Queensland Treasury forecasts were that the impact on royalties would be lower.

70. On 28 January, I e.mailed to various senior public servants and policy advisors (including [REDACTED] at Queensland Treasury) a copy of QRC's State of the Sector report, which focussed on floods and the impact in particular on the coal sector. A copy of my e.mail is at **Item 7 of Annexure 3.**

71. On 28 January, I e.mailed to various senior public servants and policy advisors (including [REDACTED] at Queensland Treasury) a copy of my letter to the Premier dated 28 January 2011 referred to in paragraph 42 of my statement. A copy of my e.mail is at **Item 8 of Annexure 3.**

Other

72. My other discussions and correspondence with Ministers and Directors-General are outlined in response to Question 2 of the Requirement above.

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1867*.

Signed.

[REDACTED]
MICHAEL ANTHONY ROCHE

Taken and declared before me at Brisbane this 26th day of October 2011

.....
[REDACTED]
Solicitor

Annexure 1 to the Statement of Michael Anthony Roche

Our ref: Doc 1744026

14 October 2011

Mr Michael Roche
Chief Executive
Queensland Resources Council
Level 13, 133 Mary Street
BRISBANE QLD 4000

REQUIREMENT TO PROVIDE STATEMENT TO COMMISSION OF INQUIRY

I, Justice Catherine E Holmes, Commissioner of Inquiry, pursuant to section 5(1)(d) of the *Commissions of Inquiry Act 1950* (Qld), require Mr Michael Roche, Chief Executive, Queensland Resources Council, to provide a written statement, under oath or affirmation, to the Queensland Floods Commission of Inquiry, in which the said Mr Roche provides the following:

1. An elaboration of the opinion of the Queensland Resources Council (QRC) on how the emergency direction power under the *Environmental Protection Act 1994* should be used, by reference to paragraphs 42 to 44 of the statement of Ms Frances Hayter provided to the Commission and dated 7 September 2011.
2. A detailed account of any discussions held between officers and employees of the QRC and officers and employees of the Department of Environment and Resource Management (DERM) or any other agency or any Minister regarding refusals by DERM or any Minister to invoke emergency direction powers.
3. An overview of any meetings, discussions or negotiations involving the QRC and any Minister or Director-General regarding the Fitzroy model conditions, environmental authorities, transitional environmental programs and emergency directions since 1 January 2010, with specific reference to:
 - a. the meeting held between Mr Roche and Mr John Bradley, Director-General of DERM, on 8 October 2010 concerning the Fitzroy model water conditions
 - b. a meeting held between Mr Roche and Ms Kate Jones MP, then Minister for Environment in early 2011, concerning the review of the Fitzroy model water conditions, and
 - c. any meeting or discussion between Mr Roche and the Honourable Andrew Fraser MP, Treasurer in relation to excess water being retained at mines.

In addressing these matters, Mr Roche is to:

- provide all information in his possession and identify the source or sources of that information;
- make commentary and provide opinions he is qualified to give as to the appropriateness of particular actions or decisions and the basis of that commentary or opinion.

Mr Roche may also address other topics relevant to the Terms of Reference of the Commission in the statement, if he wishes.

The statement is to be provided to the Queensland Floods Commission of Inquiry by 4 pm, Tuesday, 26 October 2011.

The statement can be provided by post, email or by arranging delivery to the Commission by emailing info@floodcommission.qld.gov.au.



Commissioner
Justice C E Holmes

Annexure 2 to the Statement of Michael Anthony Roche Item 1

Enquiries
Telephone: (07) 4682 3333
Your reference: Ensham Coal Mine
Qm reference: EMD6-11



Queensland
Government

1 February 2008

Environmental Protection Agency
Incorporating the
Queensland Parks and Wildlife Service

Mr Graham Morris
Manager Project and Environment
PO Box 1565
EMERALD QLD 4720

RE: Emergency direction to discharge from mining pits B,C and D on ML7459 Ensham Coal Mine

The Environmental Protection Agency (EPA) refers to meetings undertaken in Brisbane on 29 and 30 January 2008 between Graham Morris from Ensham Resources Pty Ltd and Jon Womersley, [REDACTED] and [REDACTED] from the Environmental Protection Agency (EPA), and a site visit undertaken by [REDACTED] and [REDACTED] from the EPA on 31 January 2008, and supporting information provided to the EPA by [REDACTED] on 1 February 2008, regarding permission to discharge mine affected water from mining pit B on the southern side of the Nogoa River, and mining pits C and D on the northern side of the Nogoa River located on ML7459.

The EPA hereby issues an Emergency Direction to Ensham Resources Pty Ltd to discharge mine affected water from mining pits B, C and D located on ML7459. The EPA considers the request to issue an emergency direction to discharge the mine affected water is:

- necessary and reasonable because it is an emergency; and
- there are no practicable alternatives to the removal of river water that has inundated the affected mining pits.

Accordingly, the following is authorised under s468 of the *Environmental Protection Act 1994*:

Pit B dewatering south of Nogoa River

- Subject to landholder permission, mine affected water may be released via an engineered channel excavated from pit B, ramp 24, through the eastern haul road to the former tributary of Old Winton Creek; or
- In the absence of landholder permission, mine affected water may be released via an engineered channel excavated from pit B, ramp 26, running parallel to the haul road, and conveyed to the Nogoa River utilising existing haul road drains; and
- Concurrently with dot point one or two above, mine affected water may be released from pit B via high volume pumps to the excavated channel joining the former tributary of Old Winton Creek, Winton Creek and the head of a series of three gullies flowing into the Nogoa River.

Pits C and D dewatering north of Nogoa River

- Concurrently with dot points one or two above, mine affected water may be released from pits C and D via high volume pumps to the Nogoia River anabranch and Boggy Creek.

The discharge of mine affected water must be in accordance with the following conditions:

- All reasonable and practicable measures must be implemented to minimise scour, erosion or flooding from the excavated channels and drainage flow paths;
- If unexpected scour, erosion or flooding from an excavated channel or drainage flow path occurs, releases of contaminated water must immediately cease and appropriate scour protection and flow velocity controls must be installed;
- The mine affected water proposed to be discharged must be monitored at its point of origin in pits B, C and D and downstream of its discharge point into Old Winton Creek, Boggy Creek, Nogoa River anabranch, and the Nogoa River.
- Water quality must also be monitored at the upstream and downstream lease boundary Nogoa River compliance points 1 and 2 specified in Schedule C – Table 1 (Water monitoring locations and frequency) of Environmental Authority MIM800086202;
- Water quality must be monitored twice daily at each point of origin and downstream location during the discharge events, and discharge must immediately cease if the quality of water exceeds the limits for pH, EC and TSS specified in Schedule C – Table 2 (Receiving water contaminant limits) of Environmental Authority MIM800086202, or is more than 10% above the TSS level at the upstream lease boundary Nogoa River compliance point 2;
- The discharge of contaminated water via engineered channels and high volume pumps from pits B, C and D is authorised until **15 February 2008**;
- No other discharges are authorised under this Emergency Direction; and
- A copy of a Temporary Environmental Program to replace the Emergency Direction and an amended Plan of Operations to accommodate the works proposed must be submitted to the RPA by **15 February 2008**.

If you have any questions regarding this emergency direction, please contact [REDACTED] on ([REDACTED])

Yours sincerely

District Manager

Enquiries
Telephone [REDACTED]
Your reference Ensham Coal Mine
Our reference EMTX:11



**Queensland
Government**

15 February 2008

Queensland Parks and Wildlife Service

An entity of the
Environmental Protection Agency

[REDACTED]
[REDACTED]
Manager Project and Environment
PO Box 1565
EMERALD QLD 4720

**RE: New Emergency direction to discharge from mining pits B,C and D on
ML7459 Ensham Coal Mine**

I refer to my letter of 1 February 2008 providing Ensham Resources Pty Ltd with an Emergency Direction until 15 February 2008 to discharge mine affected water from mining pits, B, C and D located on ML7459.

The EPA hereby issues a new Emergency Direction to Ensham Resources Pty Ltd to discharge mine affected water from mining pit B on the southern side of the Nogoa River, and mining pits C and D on the northern side of the Nogoa River located on ML7459. The EPA considers the request to issue an Emergency Direction to discharge the mine affected water is:

- necessary and reasonable because it is an emergency; and
- there are no practicable alternatives to the removal of river water that has inundated the affected mining pits.

Accordingly, the following is authorised under s468 of the *Environmental Protection Act 1994*:

Pit B dewatering south of Nogoa River

- Subject to landholder permission, mine affected water may be released via an engineered channel excavated from pit B, ramp 24, through the eastern haul road to the former tributary of Old Winton Creek; or
- In the absence of landholder permission, mine affected water may be released via an engineered channel excavated from pit B, ramp 26, running parallel to the haul road, and conveyed to the Nogoa River utilising existing haul road drains; and
- Concurrently with dot point one or two above, mine affected water may be released from pit D via high volume pumps to the excavated channel joining the former tributary of Old Winton Creek, Winton Creek and the head of a series of three gullies flowing into the Nogoa River.

Pits C and D dewatering north of Nogoa River

- Mine affected water may be released via an engineered channel excavated from the pit C highwall and conveyed to the anabranch of the Nogoa River via an existing gully; or

- Mine affected water may be released via an engineered channel excavated from pit C, ramp 4 and conveyed to Boggy Creek via the existing drainage system; and
- Concurrently with dot points one or two above, mine affected water may be released from pits C and D via high volume pumps to the Nogoa River anabranch and Boggy Creek.

The discharge of mine affected water must be in accordance with the following conditions:

- All reasonable and practicable measures must be implemented to minimise scour, erosion or flooding from the excavated channels and drainage flow paths;
- If unexpected scour, erosion or flooding from an excavated channel or drainage flow path occurs, releases of contaminated water must immediately cease and appropriate scour protection and flow velocity controls must be installed;
- The mine affected water proposed to be discharged must be monitored at its point of origin in pits B, C and D and downstream of its discharge point into Old Winton Creek, Boggy Creek, Nogoa River anabranch, and the Nogoa River.
- Water quality must also be monitored at the upstream and downstream lease boundary Nogoa River compliance points 1 and 2 specified in Schedule C - Table 1 (Water monitoring locations and frequency) of Environmental Authority MIM800086202;
- Water quality must be monitored twice daily at each point of origin and downstream location during the discharge events, and discharge must immediately cease if the quality of water exceeds the limits for pH, EC and TSS specified in Schedule C - Table 2 (Receiving water contaminant limits) of Environmental Authority MIM800086202, or is more than 10% above the TSS level at the upstream lease boundary Nogoa River compliance point 2;
- The discharge of contaminated water via engineered channels and high volume pumps from pits B, C and D is permitted to take effect under this Emergency Directive from 16 February 2008 and is authorised to continue until 29 February 2008;
- No other discharges are authorised under this Emergency Direction; and
- A copy of a Temporary Environmental Program to replace the Emergency Direction and an amended Plan of Operations to accommodate the works proposed must be submitted to the EPA by 29 February 2008.

If you have any questions regarding this emergency direction, please contact [REDACTED]

Yours sincerely

[REDACTED]
District Manager



**Queensland
Government**

Department of
**Environment and Resource
Management**

File/Ref EMD136

20 December 2010

Mr Daniel Yates
Health, Safety and Environment Superintendent
Moranbah North Coal Mine
Moranbah North Coal Pty Ltd
1164 Goonyella Road
Moranbah Qld 4744

Attention: [REDACTED] (Environmental Superintendent)

[REDACTED]

Emergency Direction for release of water from Dam 4, Moranbah North Coal Mine

The Department of Environment and Resource Management (the department) refers to correspondence received 11:12am, 20 December 2010, requesting permission to discharge contaminated water from Dam 4 located at the Moranbah North Coal Mine. The administering authority is issuing an emergency direction to Moranbah North Coal Pty Ltd to discharge contaminated water from Dam 4 located on Mining Lease 70108. The department considers the request to issue an emergency direction to discharge the contaminated water is:

- necessary and reasonable because it is an emergency; and
- there are no practical alternatives to the release.

Accordingly the following is authorised under s468 of the *Environmental Protection Act 1994*:

- water contaminated by mining activities may be released to the Isaac River from the Discharge Point 2, as nominated within Environmental Authority MIN100557107 and not in accordance with contaminant release limits specified in condition W3 of Environmental Authority MIN100557107.

Under s468(b) of the *Environmental Protection Act 1994*, the administering authority has imposed conditions on this direction that Moranbah North Coal Pty Ltd must comply with (attached).

Department of Environment and Resource Management
99 Hospital Road
PO Box 19
Emerald Qld 4720
Telephone 07 4980 6200
Facsimile 07 4982 2568
Website www.derm.qld.gov.au
ABN 46 640 294 485

You are reminded that section 319 of the Environmental Protection Act 1994, which sets out the general environmental duty, requires anyone who carries out an activity that causes or is likely to cause environmental harm to take all reasonable and practicable measures to prevent or minimise the harm. In that regard, you are encouraged to actively identify all of the environmental risks associated with the activities conducted on the site on an ongoing bases, and to implement strategies to effectively address them.

This Emergency direction remains in effect until **25 December 2010**.

Should you have any further enquiries, please do not hesitate to contact [REDACTED]
[REDACTED], Principal Environmental Officer of the department on telephone [REDACTED]

Yours sincerely,

[REDACTED]

Christopher Loveday
Manager (Environmental Services – Mining)
Central West Region

**Conditions imposed under section 468 of the *Environmental Protection Act 1994* on
Emergency Direction, issued to Moranbah North Coal Pty Ltd on 20 December 2010
for the release of mine affected water from Dam 4 on Mining Lease 70108.**

In carrying out this Emergency Direction, Moranbah North Coal Pty Ltd must comply with the following conditions.

Release of contaminants

- 1 Contaminants that will, or have the potential to cause environmental harm must not be released directly or indirectly to any waters except as permitted under this Emergency Direction, unless otherwise authorised to under the *Environmental Protection Act 1994*.
- 2 The release of contaminants to waters must only occur from the release points specified in Table 1 of this Emergency Direction.
- 3 The release of contaminants to waters must not exceed the release limits stated in Table 3 at the monitoring points specified in Table 2 of this Emergency Direction.
- 4 The release of contaminants to waters from the release points must be monitored at the locations specified in Table 2 for each quality characteristic and at the frequency specified in Table 3 of this Emergency Direction.

Contaminant Release Events

- 5 Moranbah North Coal Pty Ltd must monitor the departments stream flow gauging station, site identification number 130414A to determine and record stream flows at the locations upstream of each release point specified in Table 1 for any receiving waters into which a release occurs.
- 6 The release of contaminants to waters must only take place during periods of natural flow events specified as minimum flow in Table 4 for the contaminant release point(s) specified in Table 2.
- 7 Contaminant release flow rate must not exceed a release ratio of 1 (release of mine effected water from Dam 4) to 39 (receiving flow in the Isaac River).
- 8 The daily quantity of contaminants released from each release point must be measured and recorded at the monitoring points in Table 2.

Erosions and Sediment Control

- 9 Releases to waters must be undertaken so as not to cause erosion of the bed and banks of the receiving waters, or cause a material build up of sediment in such waters.

Notification of Release Events

- 10 Moranbah North Coal Pty Ltd must notify the administering authority within 6 hours of having commenced releasing mine affected water to the receiving environment. Notification must include the submission of written verification to the administering authority (either via facsimile (07) 4982 2568 or email to Manager.MiningCWR@derm.qld.gov.au) of the following information:
 - a) release commencement date/time
 - b) expected release cessation date/time
 - c) release point/s
 - d) release volume (estimated)
 - e) receiving water/s including the natural flow rate
 - f) any details (including available data) regarding likely impacts on the receiving water(s).

- 11 Moranbah North Coal Pty Ltd must provide the administering authority daily during the release of mine affected water, in writing (either via facsimile [REDACTED] or email to [REDACTED]) of the following information:
- all in situ monitoring data for that day
 - the receiving water flow rate
 - the release flow rate.
- 12 Moranbah North Coal Pty Ltd must notify the administering authority as soon as practicable, (no later than within 6 hours after cessation of a release) of the cessation of a release notified under condition 10 and within 28 days provide the following information in writing:
- release cessation date/time
 - natural flow volume in receiving water
 - volume of water released
 - details regarding the compliance of the release with the conditions of this Emergency Direction (i.e. contamination limits, natural flow, discharge volume)
 - all in-situ water quality monitoring results
 - any other matters pertinent to the water release event.

Notification of release event exceedence

- 13 If the release limits defined in Table 3 are exceeded, Moranbah North Coal Pty Ltd must notify the administering authority within 24 hours of receiving the results.
- 14 Moranbah North Coal Pty Ltd must, within 28 days of a release that exceeds the conditions of this Moranbah North Coal Pty Ltd, provide a report to the administering authority detailing:
- the reason for the release
 - the location of the release
 - all water quality monitoring results
 - any general observations
 - all calculations
 - any other matters pertinent to the water release event.

Requirements to cease the release of mine affected water

- 15 The release of mine affected waters must cease immediately if any water quality limit as specified in Table 2 is exceeded.
- 16 The release of mine affected waters must cease immediately if identified that the release of mine affected waters is causing erosion of the bed and banks of the receiving waters, or is causing a material build up of sediment in such waters.
- 17 The release of mine affected waters must cease immediately if Moranbah North Coal Pty Ltd is directed to do so by the administering authority.
- 18 The release of mine affected waters authorised under this Emergency Direction must cease by 24 December 2010.

Monitoring Requirements

- 23 Where monitoring is a requirement of this Emergency Direction, Moranbah North Coal Pty Ltd must ensure that a competent person(s) conducts all monitoring.
- 24 All monitoring undertaken as a requirement of this Emergency Direction must be undertaken in accordance with the administering authority's Water Sampling Manual.

Table 1 - Contaminant release points, sources and receiving waters

Release point (ED RP)	Longitude (GDA94)	Latitude (GDA94)	Contaminant source and location	Monitoring point	Receiving waters
ED RP 1	147 59 49	-21 53 41	Dam 4 spillway via pipeline	ED MP 1	Isaac River

Table 2 - Contaminant release monitoring points

Monitoring point (ED MP)	Longitude (GDA94)	Latitude (GDA94)	Contaminant source and location	Monitoring point location	Receiving waters
ED MP 1	147 59 49	-21 53 41	Dam 4 spillway via pipeline	End of Pipe	Isaac River

Table 3 - Contaminant release limits

Quality characteristic	Release Limit	Monitoring Frequency	Sample Type	Monitoring Point
Electrical conductivity (uS/cm)	10,000	Daily during release (the first sample must be taken within 2 hours of commencement of release)	<i>In situ</i> ¹	ED MP 1
			Samples require laboratory analysis ²	ED MP 1
pH (pH Unit)	6.5 (minimum) 9.0 (maximum)	Daily during release (the first sample must be taken within 2 hours of commencement of release)	<i>In situ</i> ¹	ED MP 1
			Samples require laboratory analysis ²	ED MP 1
Sulphate (SO ₄ ²⁻) (mg/L)	250	Daily during release (the first sample must be taken within 2 hours of commencement of release)	Samples require laboratory analysis ²	ED MP 1

¹ In situ samples can be taken using electronic sampling equipment.

² Samples are required to be analysed at a NATA accredited facility in accordance with this Emergency Direction.

Table 4 - Contaminant release during flow events

Receiving waters	Release point (ED RP)	Gauging station description	Longitude (GDA94)	Latitude (GDA94)	Minimum flow in receiving water required for a release event	Flow recording frequency
Isaac River	ED RP1	Isaac River @ Goonyella Site ID:130414A	147 58 21	-21 51 20	= > 39m ³ /sec	Continuous (minimum daily)

Michael Roche

From: Michael Roche
Sent: Wednesday, 5 January 2011 8:59 PM
To: john.bradley [REDACTED]
Subject: Our discussion in the morning
Attachments: CTS21349-10.pdf

Importance: High

Dear John

Thanks for agreeing to chat in the morning.

I will reference the attached letter on the Fitzroy model conditions received on the 24th of November from DERM. The key paragraph is the last on the third page before the signature.

Key points fromn QRC members' viewpoint re a possible approach to water discharge are as follows:

- DERM response to TEP applications has been good, with very good feedback from Ensham just this afternoon (see below).
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- There would also need to be acceptance of a monitoring regime by sites.
- In other words - I think we are looking for a letter from DERM to all sites which in effect contains a generic TEP.

Look forward to discussing in the morning.

Regards

Michael

From: [REDACTED]
Sent: Wednesday, 24 November 2010 11:21 AM
To: Frances Hayter
Cc: [REDACTED]
Subject: Fitzroy River Basin Model Conditions

<<CTS21349-10.pdf>>

Good morning Frances

Please see attached Letter re: Fitzroy River Basin Model Conditions. Approved by [REDACTED] on behalf of [REDACTED]

I will send the hardcopy to you today.

Kind Regards
[REDACTED]

+-----+
Think B4U Print

1 ream of paper = 6% of a tree and 5.4kg CO2 in the atmosphere
3 sheets of A4 paper = 1 litre of water

+-----+

File/Ref CTS 21349/10

Department of
**Environment and Resource
Management**

24 November 2010

Ms Frances Hayter
Director
Environment and Social Policy
Queensland Resources Council
Level 13
33 Mary Street
BRISBANE QLD 4000

Dear Frances

I refer to the work that the Department of Environment and Resource Management and the Queensland Resources Council have jointly undertaken with respect to the Fitzroy River Basin Model Conditions for Mine Water Management.

Enclosed are two documents - the agreed record of the workshop with the QRC, and the model conditions with amendments that DERM intends to make included in "track changes".

The following is a summary of the changes that have been made to the model conditions in reference to the particular issues identified in the Final Meeting Notes:

(a) Notification timeframes

Condition W12 has been amended as follows:

The authority holder must notify the administering authority as soon as practicable (within no later than 6 hours of having commenced deliberately releasing mine affected water to the receiving environment from an authorised discharge point, and no later than 12 hours after any uncontrolled release from an authorised discharge point). Notification must include the submission of written advice to the administering authority of the following information:

(b) Dilutions and flow rates

Condition W9 and Table 4 have been amended as a result of consultation with [REDACTED] of Environment and Natural Resource Science who attended the workshop.

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ABN 46 640 294 485

The modified explanations to Table 4 and the amendments to Table 4 and condition W9 are believed by DERM to satisfactorily address the issues raised by QRC for the purposes of the model conditions. Condition W9 has been amended as follows:

The volume released through the release point(s) must not exceed the maximum allowable flow at any time determined by multiplying the recorded receiving water flow at the corresponding gauging station in Table 4 with the corresponding percentages for maximum release in Table 4.

As a matter of principle there can not be releases where there is no flow in a river. However the revised provisions give greater flexibility with respect to the calculation of the proportion of that flow that can be taken up by a mine discharge.

(c) Suspended solid limits

Table 2 has been amended to allow for the monitoring of turbidity as a measure of compliance where there is evidence of a correlation between turbidity and suspended solids.

The modified requirements of Table 2 are believed by DERM to satisfactorily address the issues raised by QRC for the purposes of the model conditions.

(d) End of pipe water quality limits

In essence the QRC position on this came down to a request that the model conditions provide for mixing zones in the rivers as a means of achieving water quality outcomes.

No changes have been made to the model conditions in relation to this matter. On review DERM considers that it is open to individual sites to make a case based on toxicity assessment at the end of pipe to deal with this issue.

(e) Distinctions between different types of water releases

QRC provided a detailed paper about ways in which it may be possible to define different types of water on mine sites – worked water and non-worked water. The paper sought to differentiate water that has been affected by mining activities from water that was unaffected.

This is a complex issue that DERM does not believe can be resolved by simple variations to the model conditions. DERM has gone some way towards dealing with part of this matter by including in the explanation to Table 1 some guidance about the exclusion as release points of sediment traps and dams that have been installed in accordance with the standards and requirements of an Erosion and Sediment Control Plan.

Revision of the way in which water on a mine site is classified and regulated should await the further review of the model conditions in the second half of 2011.

It is the responsibility of individual mines to be planning for the management of water in a timely fashion and with sufficient foresight to anticipate what impacts the accumulation and discharge of water may have. There are a range of measures that mines can take through amendments to environmental authorities and Transitional Environmental Programs that can be used to ensure that their operations are compliant with the *Environmental Protection Act 1994*.

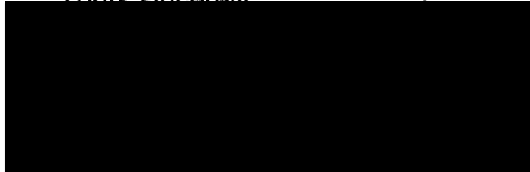
DERM has recently approved a Transitional Environmental Program for Xstrata Coal's Rolleston Mine that goes further than the model conditions and under particular circumstances allows that mine to discharge water held on site thereby providing greater

capacity for the forthcoming wet season. DERM has had discussions with both Macarthur Coal and BMA about a similar approach for their mines. DERM will continue to respond to these issues in a timely and practical way.

I am aware that there is often a reluctance to go down the path of using a Transitional Environmental Program. It is nevertheless an effective lawful mechanism that is available to companies that may have difficult circumstances to manage, and wish to seek some dispensation in the way in which the normal environmental authority conditions apply.

With respect to these revised conditions taking effect, DERM intends to issue a 'letter of comfort' for the notification timeframes in order to minimise amendment application processes for this minor change. This will remain in effect until such time as a company makes an amendment application for other matters. The remaining changes to the model conditions will require evidence based applications and therefore will require an amendment application to be made in the normal way, that is it will be for each company to decide when/if they wish to have any changes made via an application for an amendment to their environmental authority.

Yours sincerely,



**Acting Assistant Director-General
Environment and Natural Resource Regulation**

Encl.

Michael Roche

From: Michael Roche
Sent: Thursday, 6 January 2011 9:22 AM
To: Frances Hayter
Cc: Greg Lane; [REDACTED]
Subject: Discussion with John Bradley this morning

Frances

To his credit, John worked through your proposal for a generic TEP with some of his team before calling me about 8.15am.

Clearly they are keeping an eye to conservation groups arcing up - he mentioned the Mackay groups. He also has an eye to future "right to information" requests.

He agrees that where there are "no brainer" opportunities to get rid of mine water, they should be taken and that is a net environmental positive.

He claimed that an issue for them is that not all companies have a good state of knowledge of the water quality on site. I later challenged this - that he should not confuse knowledge about TEP processes with lower scientific knowledge.

He then went on to describe the bones of a "tick a box" TEP.

This would build on the template TEP produced late 2010 - he said he thought we had this???

In this template TEP it would set down parameters which if satisfied would streamline the process - essentially it would involve the officers of the company warranting that they are satisfying:

- discharged water is a % of receiving water
- some cap on EC levels
- assurance on heavy metal risks
- something on ph levels - needing flexibility and relate back to dilution factors
- some cap on downstream EC levels
- assurance that DERM has ability to step in and call halt to discharge if concern re environmental harm

Companies taking advantage of this process would need to be in good standing with their financial assurance.

John is on leave but directing traffic from his holiday place. Debbie Best is acting and will take charge of this work, with Damien Brown and [REDACTED]. A draft will be sent to you and me.

I said we would want to run it by experienced hands like [REDACTED] as well.

Not sure when we'll see the draft document - hopefully by cob.

Let's see what they come up with.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

From: Michael Roche
Sent: Wednesday, 5 January 2011 8:59 PM

To: [redacted]
Subject: Our discussion in the morning

Dear John

Thanks for agreeing to chat in the morning.

I will reference the attached letter on the Fitzroy model conditions received on the 24th of November from DERM. The key paragraph is the last on the third page before the signature.

Key points fromn QRC members' viewpoint re a possible approach to water discharge are as follows:

- DERM response to TEP applications has been good, with very good feedback from Ensham just this afternoon (see below).
- However, not all companies are created equal in their capacity and knowledge of this TEP process, which does not mean that they are any less deserving of obtaining a TEP - they may just not have ever experienced the need for one (instance Cockatoo Coal's slow response re Baralaba). This obviously impacts on the time taken to issue a TEP and a related resource burden on DERM.
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[redacted]

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3 sheets of A4 paper = 1 litre of water
+-----+

6 JAN 2011



**Queensland
Government**

Ref CTS 00139/10

Department of
**Environment and Resource
Management**

Mr Michael Roche

Email: [REDACTED]

Dear Mr Roche *Michael*

I refer to your discussions today with Mr John Bradley, Director-General of the Department of Environment and Resource Management requesting an expedited approval process to allow mines to discharge water during the current high flows in receiving watercourses.

As you will be aware, in early December 2010 the department contacted all of the coal mines in the Bowen Basin and offered priority assistance to them in dealing with existing water management issues and to support the mines' preparedness for more rainfall during of the wet season. This included the development of a transitional environment program (TEP) template to streamline the application and assessment process and the adoption of a case management approach with each mine. A copy of the template that is being used is attached.

Several mines availed themselves of this assistance resulting in the department approving 11 TEPs before Christmas. Notably, using this approach the average turnaround time for these TEPs was less than four days, with only three of the 11 applications taking more than four days to approve.

Departmental staff worked over the Christmas period assisting operations including: authorising a relaxation in the application of environmental authority (EA) conditions in response to emergent issues at Moranbah North, Dawson and Burton mines; working with Sonoma and Peak Downs on their TEP applications; and approving a TEP for Origin Energy's Coal Seam Gas operation at Spring Gully.

In the new year, the department made further contact with mines to determine what urgent assistance could be provided and is currently discussing TEP applications with several mines. The degree of urgency expressed by operations varies between mines. As you will be aware, the TEP for Ensham was approved on 5 January 2010, the same day that it was lodged. In regard to Baralaba mine, the department made contact with officers from the company, provided TEP application information and is standing-by to assist as soon as Baralaba is in a position to consider its recovery program.

I refer to the recent advice in your email to Mr Bradley dated 5 January 2010, that some QRC members are of the view that in order to take best advantage of the current flood situation the department could consider issuing an "open invitation which invites all companies to discharge as much water as possible within a short a period of time as possible".

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I affirm Mr Bradley's advice to you that whilst the department does not support the concept of an "open invitation", it is happy to work with QRC on an even more simplified TEP application to be applied on a case-by-case basis where the company is seeking dispensation over only limited parameters of an EA with all other conditions remaining in force.

The department, as the environmental regulator, has, as its first priority, the need to safeguard the environment and any abridged process that is agreed to should not compromise this. Companies would still need to meet their obligations to understand and manage environmental risk. The simplified process would still need to contain conditions on water quality, flow conditions, monitoring, and reporting to ensure that the environment is protected. In addition, in order for companies to qualify to apply under the simplified process, the department has an expectation that they have a good compliance record and that their financial assurance is paid up to date.

I have attached a draft simplified TEP template for QRC to consider and provide advice back to the department. Note that this would be specifically applicable to mines in the Fitzroy Basin which have the current model conditions included in their EAs, and site specific considerations may also need to be made. In the interim period, prior to receiving your advice on the simplified template, the department will continue to work with mines using its existing TEP template and process which has proven to be effective to date.

Senior departmental officers are available to meet with you to discuss this process as soon as you like.

Should you have any further enquiries, please do not hesitate to contact me on telephone

[REDACTED]

Yours sincerely

[REDACTED]

Debbie Best
Acting Director-General

Atts

**DRAFT TRANSITIONAL ENVIRONMENTAL PROGRAM UNDER SECTION 333
OF THE ENVIRONMENTAL PROTECTION ACT 1994**

Principal Holder: XXXXXXXX
XXXXXXX
XXXXXXX

EA Number: XXXXXXXX

Title: XXXXXXXXXXXXXXXX

Date: XXXXXXXX

Finish Date: *NOTE: The 'End Date' should be approximately 2 months after the lodgement date of the completion report.*

BACKGROUND

Explains why a TEP is required, as a result of an incident, breach, emergency. i.e. what went wrong – keep the submission and the discharge plan to a scale, based on the company's immediate and urgent priorities, that will allow timely consideration.

NOTE: Include relevant reporting requirements, monitoring locations and discharge limits from EA conditions, rainfall data, pits and water management structures affected, quantity of water proposed to be discharged, pumping/discharge rates and locations, creeks/rivers to be discharged to, whether creeks/rivers are still flowing naturally, water quality monitoring locations and downstream limits in creeks/rivers during discharge, results of previous sampling, ongoing reporting requirements to the administering authority, downstream water uses and affected properties. Also include contingency plans for possibility of having to cease discharge due to poor water quality or significant flow path erosion etc. Include whether there are other permits involved and status of the applications.

SUPPORTING INFORMATION

The *Environmental Protection Regulation 2008* commenced on 1 January 2009. The regulation consolidated considerations that must be made when making a range of decisions including TEPs into Chapter 4 of the regulation. This has resulted in making the range of matters to be considered clearer to decision makers. These include, but are not limited to:

- s51(1) (a) requires the consideration of the management hierarchy, environmental values, quality objectives and management intent specified in an EPP. The *Environmental Protection (Water) Policy 2009* lists a range of values that includes the biological integrity, the agricultural value, the drinking water value, the recreation value and the value for industrial purposes. If these values are correctly identified, the 'beneficial uses' of the waterway will be identified.
- s51(1) (d) requires consideration of the impact of the release of contaminants on the environment including the cumulative impact
- s51(1) (f) the order of occupancy between the person carrying out the activity and the affected person
- s51(1) (g) the remaining capacity of the receiving environment to accept contaminants while protecting the environmental values.
- s52(1) (a) requires consideration of imposing a condition requiring the implementation of a system for managing risks to the environment
- S52(1) (g) requires consideration of imposing a condition on the way in which contaminants are released for example a condition restricting the release of a contaminant at a particular temperature, velocity or rate or during particular meteorological conditions or water flows.
- s53(1) requires consideration of whether to impose monitoring conditions about the release
- s56 (2) requires consideration of any available toxicity data relevant to the release and the receiving environment.

Note: Section 330 of the EP Act defines a TEP as:

A transitional environmental program is a specific program that, when approved, achieves compliance with this Act for the matters dealt with by the program by:
(a) reducing environmental harm; or
(b) detailing the transition to an environmental standard.

OBJECTIVES

NOTE: As required under section 331 the transitional environmental program must state the objectives to be achieved and maintained under the program.

The objectives of the TEP must relate to the time frames for mines returning to operation in accordance with / compliance with the EA conditions, and must also include the prevention or re-occurrence in the short, medium and long term of the situation that gave rise to the approval of an TEP

HOW OBJECTIVES ARE TO BE ACHIEVED

NOTE: As required under section 331 the TEP must state how the objectives are to be achieved, and provide a timetable to achieve the objectives, taking into account the application of best practice environmental management and the risks of environmental harm being caused by the activity. The timetable must state appropriate performance indicators that can be measured at various intervals.

As an approved TEP can protect the holder from enforcement action for non-compliances with the Act, the commitments or terms of the TEP made by the client need to be clearly drafted, unambiguous and easily auditable. Please note that a failure to comply with the terms of a TEP is an offence so the terms outlined within the document act in a similar way to conditions contained within an EA.

Table 1 – achieving TEP objectives

OBJECTIVE	ACTION	RESPONSIBILITY	TIME FRAME	PERFORMANCE INDICATOR
XXXXX		Nominate officer/person responsible for fulfilling objective.	The release of contaminants under this approval will cease on 13 May 2011	
XXXXX				
XXXXX				
XXXXX				

*If the table above is not sufficient in size please use in the landscape format.
If the table is insufficient due to the quantity of detail required utilise subheadings e.g. objective, action, responsibility, timeframe and performance indicator with detailed information included below each heading. This information can then be modified in the reporting for successes, issues, incidents and failures.*

MONITORING

*NOTE: As required under section 331 –
Also include specific upstream and downstream monitoring locations and detailed supporting aerial photographs and maps defining discharge points and monitoring locations.*

The following tables are provided as an example on providing the required data and how to apply varying limits to different monitoring points. If you are proposing to meet a specific water quality downstream (i.e. as a compliance point, approximately 500m is acceptable – receiving water monitoring locations should not be utilised), compliance will need to be monitored at both the 'end of pipe' location and the 'compliance point'. Justification of the discharge actions proposed need to be provided in the documentation, considering Chapter 4 of the Environmental Protection Regulation 2008.

Table 2 - Contaminant release points, sources and receiving waters

Release point (TEP RP)	Easting (GDA94)	Northing (GDA94)	Contaminant source and location	Monitoring point	Receiving waters
TEP RP 1	xxxx	xxxx	xxxx	TEP MP 1	xxxx
TEP RP 2	xxxx	xxxx	xxxx	TEP MP 2	xxxx
				TEP MP 3	

Table 3 - Contaminant release monitoring points

Monitoring point (TEP MP)	Easting (GDA94)	Northing (GDA94)	Contaminant source and location	Monitoring point location	Receiving waters
TEP MP 1	xxxx	xxxx	xxxx	xxx dam spillway	xxxx
TEP MP 2	xxxx	xxxx	xxxx	xxx dam spillway	xxxx
TEP MP 3	xxxx	xxxx	xxxx	500m downstream of junction of xxx dam spillway on the xxx receiving waters	xxxx

Table 4 - Contaminant release limits

Quality characteristic	Release Limit	Monitoring Frequency	Sample Type	Monitoring Point
Electrical conductivity (uS/cm)	xxxx (e.g. 1500)	Daily during release (the first sample must be taken within 2 hours of commencement of release)	In situ ¹	TEP MP 1
				TEP MP 3
			Samples require laboratory analysis ²	TEP MP 1
				TEP MP 3
	xxxx (e.g. 3000)	Daily during release (the first sample must be taken within 2 hours of commencement of release)	In situ ¹	TEP MP 2
			Samples require laboratory analysis ²	TEP MP 2
pH (pH Unit)	6.5 (minimum)	Daily during	In situ ¹	TEP MP 1

	9.0 (maximum)	release (the first sample must be taken within 2 hours of commencement of release)		TEP MP 2
				TEP MP 3
				TEP MP 1
			Samples require laboratory analysis ²	TEP MP 2
				TEP MP 3
				TEP MP 1
Turbidity (NTU)	xxxxx	Daily during release (the first sample must be taken within 2 hours of commencement of release)	<i>In situ</i> ¹	TEP MP 2
				TEP MP 3
				TEP MP 1
			Samples require laboratory analysis ²	TEP MP 2
				TEP MP 3
				TEP MP 1
Sulphate (SO ₄ ²⁻) (mg/L)	xxxxx	Daily during release (the first sample must be taken within 2 hours of commencement of release)	<i>In situ</i> ¹	TEP MP 2
				TEP MP 3
				TEP MP 1
			Samples require laboratory analysis ²	TEP MP 2
				TEP MP 3
				TEP MP 1

¹ In situ samples can be taken using electronic sampling equipment.

² Samples are required to be analysed at a NATA accredited facility in accordance with this Transitional Environmental Program.

Table 5 - Release contaminant trigger investigation levels

Quality characteristic	Trigger levels (µg/L)	Monitoring frequency	Monitoring Point
Aluminium	55	Commencement of release and thereafter weekly during release	TEP MP 1
Arsenic	13		TEP MP 2
Cadmium	0.2		

Chromium	1.0		
Copper	2.0		
Iron	300		
Lead	10		
Mercury	0.2		
Nickel	11		
Zinc	8.0		
Boron	370		
Cobalt	90		
Manganese	1900		
Molybdenum	34		
Selenium	10		
Silver	1.0		
Uranium	1.0		
Vanadium	10		
Ammonia	900		
Nitrate	1100		
Petroleum hydrocarbons (C6-C9)	20		
Petroleum hydrocarbons (C10-C36)	100		
Fluoride (total)	2000		

Table 6 - Contaminant release during flow events

Receiving waters	Release point (TEP RP)	Gauging station description	Easting (GDA94)	Northing (GDA94)	Minimum flow in receiving water required for a release event	Flow recording frequency
XXXX Creek	TEP RP1	WX	XXXXX	XXXXX	= > XXm ³ /sec	Continuous (minimum daily)
XXXX Creek	TEP RP2	WX	XXXXX	XXXXX	= > XXm ³ /sec	Continuous (minimum daily)

Table 7 - Receiving water downstream monitoring points

Monitoring points (TEP MP)	Receiving waters location description	Easting (GDA94)	Northing (GDA94)
TEP MP X	CX – XXXX Creek XXX metres downstream of RP X	XXXX	XXXX
TEP MP X	CX - XXXX Gully XXXX metres downstream of RP X	XXXX	XXXX

REPORTING

NOTE: The department will require daily reporting of insitu water quality parameters.

Progress reports will be required to be submitted to the department (i.e. monthly, can be stated as the 5th business day of each month) describing activities and issues from previous month and proposed activities for next month and a final report defining how the objectives of the TEP have been achieved.

A final report is required to be submitted to the report upon completion of all actions, and at least 2 months prior to the end date of the TEP.

'Principal EA Holder Name' will notify the administering authority, in writing, within six hours of commencing a release of contaminants under this Transitional Environmental Program, detailing:

- a) release commencement date/time
- b) expected release cessation date/time
- c) release point/s
- d) release volume (estimated)
- e) receiving water/s including the natural flow rate
- f) any details (including available data) regarding likely impacts on the receiving water(s).

'Principal EA Holder Name' will submit a report to the administering authority daily during the release of contaminants under this Transitional Environmental Program, detailing:

- a) all in situ monitoring data for that day
- b) the receiving water flow rate
- c) the release flow rate.

'Principal EA Holder Name' will notify the administering authority, in writing, within twenty-four hours of ceasing a release of contaminants under this Transitional Environmental Program, detailing:

- a) release cessation date/time
- b) natural flow volume in receiving water
- c) volume of water released
- d) details regarding the compliance of the release with the conditions of this Transitional Environmental Program (i.e. contamination limits, natural flow, discharge volume)
- e) all in-situ water quality monitoring results
- f) any other matters pertinent to the water release event.

'Principal EA Holder Name' will submit a report to the administering authority on the fifth business day of each month detailing:

- a) all activities undertaken under the Transitional Environmental Program,
- b) how the Transitional Environmental Program holder has met the objectives of the Transitional Environmental Program, taking into account:
 - i. the best practice environmental management for the activity, and
 - ii. the risks of environmental harm being caused by the activity, and
- c) how the Transitional Environmental Program holder has complied with all conditions contained within the Transitional Environmental Program.

'Principal EA Holder Name' will submit a report to the administering authority by **27 May 2011** including:

- a) details of the completion of the Transitional Environmental Program,
- b) details on all activities undertaken under the Transitional Environmental Program,
- c) identification of how the Transitional Environmental Program holder has met the objectives of the Transitional Environmental Program, taking into account:
 - i. the best practice environmental management for the activity, and
 - ii. the risks of environmental harm being caused by the activity,
- d) identification of how the Transitional Environmental Program holder has complied with all conditions contained within the Transitional Environmental Program, and

- e) confirmation that at closure of the Transitional Environmental Program, the holder will be able to comply with the conditions of the current Environmental Authority issued for the XXXX Coal Mine, located at Mining Lease XXXX and the *Environmental Protection Act 1994*.

CONDITIONS

NOTE: the TEP applicant should outline the rules they will follow in undertaking the proposed actions. Where the action results in a variation of the EA conditions, the rules should be set with the proposed variation. Example below:

In carrying out this Transitional Environmental Program, **Client Name (i.e. principal EA holder)** will undertake all activities in accordance with the following conditions.

Undertaking the release of mine affected water

- 1 Contaminants that will, or have the potential to cause environmental harm must not be released directly or indirectly to any waters except as permitted under this Transitional Environmental Approval – Certificate of Approval, unless otherwise authorised to under the *Environmental Protection Act 1994*.
- 2 The release of contaminants to waters must only occur from the release points specified in Table 2 and depicted in Figure 1 attached to this Transitional Environmental Program.
- 3 The release of contaminants to waters must not exceed the release limits stated in Table 4 at the monitoring points specified in Table 2 and Table 3 of this Transitional Environmental Program.
- 4 The release of contaminants to waters from the release points must be monitored at the locations specified in Table 2 and Table 3 for each quality characteristic and at the frequency specified in Table 4 and Table 5 of this Transitional Environmental Program.
- 5 If quality characteristics of the release exceed any of the trigger levels specified in Table 5 during a release event, the Transitional Environmental Program holder must compare the downstream results in the receiving waters identified in Table 7 to the trigger values specified in Table 5 and:
 - a) where the trigger values are not exceeded then no action is to be taken
 - b) where the downstream results exceed the trigger values specified Table 5 for any quality characteristic, compare the results of the downstream site to the data from background monitoring sites and
 - i) if the result is less than the background monitoring site data, then no action is to be taken or
 - ii) if the result is greater than the background monitoring site data, complete an investigation in accordance with the ANZECC & ARMCANZ 2000 methodology, into the potential for environmental harm and provide a written report to the administering authority in the next annual return, outlining
 - 1) details of the investigations carried out
 - 2) actions taken to prevent environmental harm.
- 6 If an exceedance in accordance with condition 5(a)(ii)(2) is identified, the holder of the Transitional Environmental Program must notify the administering authority within 24 hours of receiving the result. The notification must include written verification of the exceedance forwarded to the administering authority either via facsimile (INSERT LOCAL OFFICE NUMBER) or email to Manager.MiningCWR@derm.qld.gov.au.

Contaminant Release Events

- 7 The Transitional Environmental Program holder must install, operate and maintain a stream flow gauging station to determine and record stream flows at the locations upstream of each release point specified in Table 2 for any receiving waters into which a release occurs.

- 8 Notwithstanding any other condition of this Transitional Environmental Program, the release of contaminants to waters must only take place during periods of natural flow events specified as minimum flow in Table 6 for the contaminant release point(s) specified in Table 2.
- 9 Contaminant release flow rate must not exceed ~~XXX~~% of receiving water flow rate.
- 10 The daily quantity of contaminants released from each release point must be measured and recorded at the monitoring points in Table 2.

Erosions and Sediment Control

- 11 releases to waters must be undertaken so as not to cause erosion of the bed and banks of the receiving waters, or cause a material build up of sediment in such waters.
- 12 Erosion protection must be designed, installed and maintained at each release point authorised by this Transitional Environmental Program and must:
 - a) designed and constructed by a suitably qualified and experienced person, and
 - b) be inspected by a suitably qualified and experienced person
 1. prior to the commencement of dewatering operations; and
 2. following the cessation of release in accordance with the conditions of this Transitional Environmental Program – Certificate of Approval.
- 13 The holder of this Transitional Environmental Program must provide a report to the administering authority within 10 business days following the cessation of release of mine affected water authorised under authority of this Transitional Environmental Program. The report must detail the performance of erosion protection measures, including:
 - a) identification of erosion, slumping and scour impacts to vegetation,
 - b) rehabilitation, including earthworks, scour protection and flow velocity controls undertaken to minimise environmental harm, and
 - c) detailed engineering assessment of erosion protection works completed to date and any proposed works to be undertaken.

Notification of Release Events

- 14 The Transitional Environmental Program holder must notify the administering authority within ~~XXX~~ hours of having commenced releasing mine affected water to the receiving environment. Notification must include the submission of written verification to the administering authority (either via facsimile (INSERT LOCAL OFFICE NUMBER) or email to Manager.MiningCWR@derm.qld.gov.au) of the following information:
 - g) release commencement date/time
 - h) expected release cessation date/time
 - i) release point/s
 - j) release volume (estimated)
 - k) receiving water/s including the natural flow rate
 - l) any details (including available data) regarding likely impacts on the receiving water(s).
- 15 The Transitional Environmental Program holder must provide the administering authority daily during the release of mine affected water, in writing (either via facsimile (INSERT LOCAL OFFICE NUMBER) or email to Manager.MiningCWR@derm.qld.gov.au) of the following information:
 - a) all in situ monitoring data for that day
 - b) the receiving water flow rate
 - c) the release flow rate.
- 16 The Transitional Environmental Program holder must notify the administering authority as soon as practicable, (no later than within 24 hours after cessation of a release) of the cessation of a release notified under condition 14 and within 28 days provide the following information in writing:
 - g) release cessation date/time
 - h) natural flow volume in receiving water

- i) volume of water released
- j) details regarding the compliance of the release with the conditions of this Transitional Environmental Program (i.e. contamination limits, natural flow, discharge volume)
- k) all in-situ water quality monitoring results
- l) any other matters pertinent to the water release event.

Notification of release event exceedence

- 17 If the release limits defined in Table 3 are exceeded, the holder of the Transitional Environmental Program must notify the administering authority within 24 hours of receiving the results.
- 18 The Transitional Environmental Program holder must, within 28 days of a release that exceeds the conditions of this Transitional Environmental Program, provide a report to the administering authority detailing:
 - a) the reason for the release
 - b) the location of the release
 - c) all water quality monitoring results
 - d) any general observations
 - e) all calculations
 - f) any other matters pertinent to the water release event.

Requirements to cease the release of mine affected water

- 19 The release of mine affected waters must cease immediately if any water quality limit as specified in Table 2 is exceeded.
- 20 The release of mine affected waters must cease immediately if identified that the release of mine affected waters is causing erosion of the bed and banks of the receiving waters, or is causing a material build up of sediment in such waters.
- 21 The release of mine affected waters must cease immediately if the holder of this Transitional Environmental Program is directed to do so by the administering authority.
- 22 The release of mine affected waters authorised under this Transitional Environmental Program must cease by **DATE** (i.e. the last action date for discharges in Table 1).

Monitoring Requirements

- 23 Where monitoring is a requirement of this Transitional Environmental Program, ensure that a competent person(s) conducts all monitoring.
- 24 All monitoring undertaken as a requirement of this Transitional Environmental Program must be undertaken in accordance with the administering authority's Water Sampling Manual.

Notification of emergencies, incidents and exceptions

- 25 As soon as practicable after becoming aware of any emergency or incident which results in the release of contaminants not in accordance, or reasonably expected to be not in accordance with the conditions of this Transitional Environmental Program, the administering authority must be notified of the release by telephone, facsimile or email.
- 26 The notification of emergencies or incidents must include but not be limited to the following:
 - a) the holder of the Transitional Environmental Program
 - b) the location of the emergency or incident
 - c) the number of the Transitional Environmental Program
 - d) the name and telephone number of the designated contact person
 - e) the time of the release
 - f) the time the holder of the Transitional Environmental Program became aware of the release

- g) the suspected cause of the release
 - h) the environmental harm caused, threatened, or suspected to be caused by the release, and
 - i) actions taken to prevent any further release and mitigate any environmental harm caused by the release.
- 27 Not more than fourteen days following the initial notification of an emergency or incident, written advice must be provided of the information supplied to the administering authority in relation to:
- a) proposed actions to prevent a recurrence of the emergency or incident, and
 - b) outcomes of actions taken at the time to prevent or minimise environmental harm.

Any other conditions that require a response, contingency for matters under this TEP, i.e. if constructing a new regulated structure, design plans will be required to be submitted to the administering authority for approval prior to construction.

NOTES FOR THE CLIENT

These regulatory requirements of Chapter 4 of the *Environmental Protection Regulation 2008*, the Standard Criteria and the requirements of EP Act.

In deciding to accept or refuse a TEP the administering authority is required to consider section 338 of the EP Act, which states:

338 Criteria for deciding draft program

(1) In deciding whether to approve or refuse to approve the draft program or the conditions (if any) of the approval, the administering authority—

(a) must comply with any relevant regulatory requirement; and

(b) subject to paragraph (a), must also consider the following—

(i) the standard criteria;

- *The principles of ecological sustainable development as set out in the 'National Strategy for Ecologically Sustainable Development'.*
- *Any applicable environmental protection policy.*
- *Any applicable Commonwealth, State or local government plans, standards, agreements or requirements.*
- *Any applicable environmental impact study, assessment or report.*
- *The character, resilience and values of the receiving environment.*
- *All submissions made by the applicant and submitters.*
- *The best practice environmental management for activities under any relevant instrument, or proposed instrument, as follows – a transitional environmental program.*
- *The financial implications of the requirements under an instrument, or proposed instrument, mentioned in paragraph (g) (above) as they would relate to the type of activity or industry carried out, or proposed to be carried out, under the instrument.*
- *The public interest.*
- *Any applicable site management plan.*
- *Any relevant integrated environmental management system or proposed integrated environmental management system.*
- *Any other matter prescribed under a regulation.*

(ii) additional information given in relation to the draft program;

(iii) the views expressed at a conference held in relation to the draft program.

As has been demonstrated a significant consideration for the draft TEP is for the standard criteria. Recommendations in relation to a submission of a draft TEP in line with section 338 and the standard criteria are:

- Provide all relevant stakeholders, which may included Local Government and potentially affected landholders, with a copy of the draft TEP, and allow sufficient time for relevant stakeholders to provide comment for consideration.

- The applicant is required to consider Environmental Protection Policies, the character, resilience and values of the receiving environment, any applicable plans and standards, such as ANECC (aquatic ecosystem guidelines), the Queensland Water Quality Guidelines and 'A study of the cumulative impacts on water quality of mining activities in the Fitzroy River Basin'.

In accordance with the legislation, the submitted TEP must adequately address methods to reduce environmental harm (Section 330) and must meet the content requirements detailed in section 331.

**DRAFT TRANSITIONAL ENVIRONMENTAL PROGRAM UNDER SECTION 333
OF THE ENVIRONMENTAL PROTECTION ACT 1994**

Principal Holder: XXXXXXXX
XXXXXXX
XXXXXXX

EA Number: XXXXXXXX

Title: XXXXXXXXXXXXXXXX

Date: XXXXXXXX

Finish Date: 30 June 2011

BACKGROUND

Explains why a TEP is required, as a result of an incident, breach, emergency. i.e. what went wrong – keep the submission and the discharge plan to a scale, based on the company's immediate and urgent priorities, that will allow timely consideration.

NOTE: Include relevant reporting requirements, monitoring locations and discharge limits from EA conditions, rainfall data, pits and water management structures affected, quantity of water proposed to be discharged, pumping/discharge rates and locations, creeks/ivers to be discharged to, whether creeks/ivers are still flowing naturally, water quality monitoring locations and downstream limits in creeks/ivers during discharge, results of previous sampling, ongoing reporting requirements to the administering authority, downstream water uses and affected properties. Also include contingency plans for possibility of having to cease discharge due to poor water quality or significant flow path erosion etc. Include whether there are other permits involved and status of the applications.

SUPPORTING INFORMATION

The *Environmental Protection Regulation 2008* (the regulation) commenced on 1 January 2009. The regulation consolidated considerations that must be made when making a range of decisions including TEPs into Chapter 4 of the regulation. This has resulted in making the range of matters to be considered clearer to decision makers. These include, but are not limited to relevant parts of sections 51, 52, 53 and 56 of the regulation. Particularly information of the impacts of the release of contaminants on the receiving environment in the context of the nature of the contaminants (including toxicity) and the nature of the receiving environment and its ability to assimilate contaminants.

Note: Section 330 of the EP Act defines a TEP as:

A transitional environmental program is a specific program that, when approved, achieves compliance with this Act for the matters dealt with by the program by:

- (a) reducing environmental harm; or*
- (b) detailing the transition to an environmental standard.*

OBJECTIVES

NOTE: As required under section 331 the transitional environmental program must state the objectives to be achieved and maintained under the program.

The objectives of the TEP must relate to the time frames for mines returning to operation in accordance with / compliance with the EA conditions, and must also include the prevention or re-occurrence in the short, medium and long term of the situation that gave rise to the approval of an TEP

HOW OBJECTIVES ARE TO BE ACHIEVED

NOTE: As required under section 331 the TEP must state how the objectives are to be achieved, and provide a timetable to achieve the objectives, taking into account the application of best practice environmental management and the risks of environmental harm

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being caused by the activity. The timetable must state appropriate performance indicators that can be measured at various intervals.

As an approved TEP can protect the holder from enforcement action for non-compliances with the Act, the commitments or terms of the TEP made by the client need to be clearly drafted, unambiguous and easily auditable. Please note that a failure to comply with the terms of a TEP is an offence so the terms outlined within the document act in a similar way to conditions contained within an EA.

Table 1 – achieving TEP objectives

OBJECTIVE	ACTION	RESPONSIBILITY	TIME FRAME	PERFORMANCE INDICATOR
XXXXX		Nominate officer/person responsible for fulfilling objective.	The release of contaminants under this approval will cease on 13 May 2011	
XXXXX				
XXXXX				
XXXXX				

If the table above is not sufficient in size please use in the landscape format.
If the table is insufficient due to the quantity of detail required utilise subheadings e.g. objective, action, responsibility, timeframe and performance indicator with detailed information included below each heading. This information can then be modified in the reporting for successes, issues, incidents and failures.

MONITORING

As required under s331 of the EP Act

Table 2 – Discharge and Downstream Contaminant limits and Monitoring

Quality characteristic	Release or Downstream Limit	Monitoring Frequency	Sample Type	Monitoring Point
Electrical conductivity (uS/cm)	8000	Daily during release (the first sample must be taken within 2 hours of commencement of release)	In situ ¹	At each discharge location
			Samples require laboratory analysis ²	At each discharge location
	400 *different EC limits may be required for different monitoring points	Daily during release (the first sample must be taken within 2 hours of commencement of release)	In situ ¹	At each downstream monitoring location for each waterway released to. At a minimum the first downstream monitoring point must be within 1000m of the release point.

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pH (pH Unit)	6.5 (minimum) 9.0 (maximum)	Daily during release (the first sample must be taken within 2 hours of commencement of release)	<i>In situ</i> ¹	At each discharge location
			Samples require laboratory analysis ²	At each discharge location
			<i>In situ</i> ¹	At each downstream monitoring location for each waterway released to. At a minimum the first downstream monitoring point must be within 1000m of the release point.
Turbidity (NTU) and Suspended Solids	N/A	Daily during release (the first sample must be taken within 2 hours of commencement of release)	<i>In situ</i> ¹	At each discharge location
			Samples require laboratory analysis ²	At each discharge location
Sulphate (SO ₄ ²⁻) (mg/L)	1000	Daily during release (the first sample must be taken within 2 hours of commencement of release)	<i>In situ</i> ¹	At each discharge location

SIMPLIFIED VERSION

			Samples require laboratory analysis ²	At each discharge location
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¹ In situ samples can be taken using correctly calibrated electronic sampling equipment.

² Samples are required to be analysed at a NATA accredited facility in accordance with this Transitional Environmental Program.

Table 3 – Flow monitoring and Minimum flows in receiving waters

Receiving waters	Gauging station description	Easting (GDA94)	Northing (GDA94)	Minimum flow in receiving water required for a release event	Flow recording frequency
XXXX Creek	WX	XXXXX	XXXXX	100m ³ /sec	Continuous (minimum daily)
XXXX Creek	WX	XXXXX	XXXXX	100 XXm ³ /sec	Continuous (minimum daily)

REPORTING

NOTE: The department will require daily reporting of insitu water quality parameters.

Progress reports will be required to be submitted to the department (i.e. monthly, can be stated as the 5th business day of each month) describing activities and issues from previous month and proposed activities for next month and a final report defining how the objectives of the TEP have been achieved.

A final report is required to be submitted to the report upon completion of all actions, and at least 2 months prior to the end date of the TEP.

'Principal EA Holder Name' will notify the administering authority, in writing, within six hours of commencing a release of contaminants under this Transitional Environmental Program, detailing:

- a) release commencement date/time
- b) expected release cessation date/time
- c) release point/s
- d) release volume (estimated)
- e) receiving water/s including the natural flow rate
- f) any details (including available data) regarding likely impacts on the receiving water(s).

'Principal EA Holder Name' will submit a report to the administering authority daily during the release of contaminants under this Transitional Environmental Program, detailing:

- a) all in situ monitoring data for that day
- b) the receiving water flow rate
- c) the release flow rate.

'Principal EA Holder Name' will notify the administering authority, in writing, within twenty-four hours of ceasing a release of contaminants under this Transitional Environmental Program, detailing:

- a) release cessation date/time
- b) natural flow volume in receiving water
- c) volume of water released
- d) details regarding the compliance of the release with the conditions of this Transitional Environmental Program (i.e. contamination limits, natural flow, discharge volume)
- e) all in-situ water quality monitoring results
- f) any other matters pertinent to the water release event.

'Principal EA Holder Name' will submit a report to the administering authority on the fifth business day of each month detailing:

- a) all activities undertaken under the Transitional Environmental Program,
- b) how the Transitional Environmental Program holder has met the objectives of the Transitional Environmental Program, taking into account:
 - i. the best practice environmental management for the activity, and
 - ii. the risks of environmental harm being caused by the activity, and
- c) how the Transitional Environmental Program holder has complied with all conditions contained within the Transitional Environmental Program.

'Principal EA Holder Name' will submit a report to the administering authority by **27 May 2011** including:

- a) details of the completion of the Transitional Environmental Program,
- b) details on all activities undertaken under the Transitional Environmental Program,
- c) identification of how the Transitional Environmental Program holder has met the objectives of the Transitional Environmental Program, taking into account:
 - i. the best practice environmental management for the activity, and
 - ii. the risks of environmental harm being caused by the activity,
- d) identification of how the Transitional Environmental Program holder has complied with all conditions contained within the Transitional Environmental Program, and
- e) confirmation that at closure of the Transitional Environmental Program, the holder will be able to comply with the conditions of the current Environmental Authority issued for the XXXX Coal Mine, located at Mining Lease XXXX and the *Environmental Protection Act 1994*.

CONDITIONS

NOTE: the TEP applicant should outline the rules they will follow in undertaking the proposed actions. Where the action results in a variation of the EA conditions, the rules should be set with the proposed variation. Example below:

In carrying out this Transitional Environmental Program, **'Client Name (i.e. principal EA holder)'** will undertake all activities in accordance with the following conditions.

Undertaking the release of mine affected water

1. Contaminants that will, or have the potential to cause environmental harm must not be released directly or indirectly to any waters except as explicitly permitted under this Transitional Environmental Approval – Certificate of Approval, unless otherwise authorised to under the *Environmental Protection Act 1994*.
2. The combined discharge of mine affected water, to each receiving waters, from the mining leases to which this TEP relates shall not exceed 2% of the background flow as measured at a point upstream of the discharge of mine affected water.
3. For those parameters specified in this TEP, the release of contaminants to waters from each discharge point must not exceed that specified in this TEP.
4. The release of contaminants to waters from the release points must be monitored at each discharge location, and receiving water locations, for each quality characteristic and at the frequency specified in this TEP.

5. Irrespective of the Release Points used as part of this TEP, the requirements related to "Trigger Levels" (including monitoring) for contaminants listed in the Environmental Authority will be complied with as part of this TEP with and any exceedance of trigger levels in discharge water will be immediately (within 24 hours) notified to the administering authority. This notification shall include via e-mail to [REDACTED]

Contaminant Release Events

1. The Transitional Environmental Program holder must install, operate and maintain a stream flow gauging station to determine and record stream flows at locations upstream of the first release point on each waterway released to.
2. Notwithstanding any other condition of this Transitional Environmental Program, the release of contaminants to waters must only take place during periods of natural flow events as specified in this TEP.
3. The daily quantity of contaminants released from each release point must be measured and recorded at the monitoring points in Table 2.

Erosions and Sediment Control

1. Releases to waters must be undertaken so as not to cause erosion of the bed and banks of the receiving waters, or cause a material build up of sediment in such waters.
2. Erosion protection must be designed, installed and maintained at each release point authorised by this Transitional Environmental Program and must:
 - a) designed and constructed by a suitably qualified and experienced person, and
 - b) be inspected by a suitably qualified and experienced person
 1. prior to the commencement of dewatering operations; and
 2. following the cessation of release in accordance with the conditions of this Transitional Environmental Program – Certificate of Approval.
3. The holder of this Transitional Environmental Program must provide a report to the administering authority within 10 business days following the cessation of release of mine affected water authorised under authority of this Transitional Environmental Program. The report must detail the performance of erosion protection measures, including:
 - a) identification of erosion, slumping and scour impacts to vegetation,
 - b) rehabilitation, including earthworks, scour protection and flow velocity controls undertaken to minimise environmental harm, and
 - c) detailed engineering assessment of erosion protection works completed to date and any proposed works to be undertaken.

Notification of release event exceedance

1. If the release limits or receiving water quality limits included in this TEP are exceeded, the holder of the Transitional Environmental Program must notify the administering authority within 24 hours of receiving the results.
2. The Transitional Environmental Program holder must, within 28 days of a release that exceeds the conditions of this Transitional Environmental Program, provide a report to the administering authority detailing:
 - a) the reason for the release
 - b) the location of the release
 - c) all water quality monitoring results
 - d) any general observations
 - e) all calculations
 - f) any other matters pertinent to the water release event.

Requirements to cease the release of mine affected water

1. The release of mine affected waters must cease immediately if any water quality limit for discharge or receiving water as specified in this TEP are exceeded.
2. The release of mine affected waters must cease immediately if identified that the release of mine affected waters is causing erosion of the bed and banks of the receiving waters, or is causing a material build up of sediment in such waters.
3. The release of mine affected waters must cease immediately if the holder of this Transitional Environmental Program is directed to do so by the administering authority.

SIMPLIFIED VERSION

4. The release of mine affected waters authorised under this Transitional Environmental Program must cease by **DATE** (*i.e. the last action date for discharges in Table 1*).

Monitoring Requirements

1. Where monitoring is a requirement of this Transitional Environmental Program, ensure that a competent person(s) conducts all monitoring.
2. All monitoring undertaken as a requirement of this Transitional Environmental Program must be undertaken in accordance with the administering authority's Water Sampling Manual.

Notification of emergencies, incidents and exceptions

1. As soon as practicable, and within 24 hours, after becoming aware of any emergency or incident which results in the release of contaminants not in accordance, or reasonably expected to be not in accordance with the conditions of this Transitional Environmental Program, the administering authority must be notified of the release by telephone, facsimile or email.
2. The notification of emergencies or incidents must include but not be limited to the following:
 - a) the holder of the Transitional Environmental Program
 - b) the location of the emergency or incident
 - c) the number of the Transitional Environmental Program
 - d) the name and telephone number of the designated contact person
 - e) the time of the release
 - f) the time the holder of the Transitional Environmental Program became aware of the release
 - g) the suspected cause of the release
 - h) the environmental harm caused, threatened, or suspected to be caused by the release, and
 - i) actions taken to prevent any further release and mitigate any environmental harm caused by the release.
3. Not more than fourteen days following the initial notification of an emergency or incident, written advice must be provided of the information supplied to the administering authority in relation to:
 - a) proposed actions to prevent a recurrence of the emergency or incident, and
 - b) outcomes of actions taken at the time to prevent or minimise environmental harm.

Any other conditions that require a response, contingency for matters under this TEP, i.e. if constructing a new regulated structure, design plans will be required to be submitted to the administering authority for approval prior to construction.

NOTES FOR THE CLIENT

These regulatory requirements of Chapter 4 of the *Environmental Protection Regulation 2008*, the Standard Criteria and the requirements of EP Act.

In deciding to accept or refuse a TEP the administering authority is required to consider section 338 of the EP Act, which states:

338 Criteria for deciding draft program

(1) In deciding whether to approve or refuse to approve the draft program or the conditions (if any) of the approval, the administering authority—

(a) must comply with any relevant regulatory requirement; and

(b) subject to paragraph (a), must also consider the following—

(i) the standard criteria;

- *The principles of ecological sustainable development as set out in the 'National Strategy for Ecologically Sustainable Development'.*
- *Any applicable environmental protection policy.*
- *Any applicable Commonwealth, State or local government plans, standards, agreements or requirements.*

SIMPLIFIED VERSION

- *Any applicable environmental impact study, assessment or report.*
- *The character, resilience and values of the receiving environment.*
- *All submissions made by the applicant and submitters.*
- *The best practice environmental management for activities under any relevant instrument, or proposed instrument, as follows – a transitional environmental program.*
- *The financial implications of the requirements under an instrument, or proposed instrument, mentioned in paragraph (g) (above) as they would relate to the type of activity or industry carried out, or proposed to be carried out, under the instrument.*
- *The public interest.*
- *Any applicable site management plan.*
- *Any relevant integrated environmental management system or proposed integrated environmental management system.*
- *Any other matter prescribed under a regulation.*
- ***(ii) additional information given in relation to the draft program;***
- ***(iii) the views expressed at a conference held in relation to the draft program.***

As has been demonstrated a significant consideration for the draft TEP is for the standard criteria. Recommendations in relation to a submission of a draft TEP in line with section 338 and the standard criteria are:

- Provide all relevant stakeholders, which may include Local Government and potentially affected landholders, with a copy of the draft TEP, and allow sufficient time for relevant stakeholders to provide comment for consideration.
- The applicant is required to consider Environmental Protection Policies, the character, resilience and values of the receiving environment, any applicable plans and standards, such as ANECC (aquatic ecosystem guidelines), the Queensland Water Quality Guidelines and 'A study of the cumulative impacts on water quality of mining activities in the Fitzroy River Basin'.

In accordance with the legislation, the submitted TEP must adequately address methods to reduce environmental harm (Section 330) and must meet the content requirements detailed in section 331.

Ref CTS [CTS No.]

Department of
**Environment and Resource
Management**

21 JAN 2011

Mr Michael Roche
Chief Executive
Queensland Resources Council
Level 13, 133 Mary Street
Brisbane, Queensland 4000, Australia

Dear  Mr Roche

I wish to provide you with an update on my Department's progress in processing applications for Transitional Environmental Programs (TEP's) and to address some of the concerns you have raised in recent email correspondence.

As at 1pm on the 21st January, my department had approved 25 TEP applications or amendments to existing approvals since the 1st December 2010. A further 15 applications or amendment requests have been received and are currently undergoing assessment. Several of the outstanding applications are awaiting more detailed information from the applicants before they can be properly assessed.

1. Issues raised in Recent Discussions

As per my commitment to you in our meeting on the 18th January 2011, I have attached some general guidelines relating to TEP applications involving discharge of mine affected water to waterways. These guidelines are not intended to be definitive or exhaustive and are intended to provide a basic level of guidance to some of the risks and issues that are necessary to consider in a TEP application of this nature.

As has been discussed on several occasions, applications will be considered on a case by case basis to ensure they achieve the best result for the applicant while still ensuring the safety and well being of the environment and downstream water users. As such, applications that do not fall within the broad guidelines provided may still be acceptable in certain situations. Similarly, if an application appears to meet the requirements of the attached document, this does not mean it will be automatically approved as there may be other mitigating circumstances.

My department has recently approved a TEP application that involved the discharge of mine affected waters to an ephemeral stream under low or no flow conditions. In this instance, the environmental values of the ephemeral stream and the quality of the discharge water were such that the application could be approved. Conditions have been placed on the TEP which require a minimum flow in the major watercourse which receives the discharge from the ephemeral stream and minimum water quality triggers for this major watercourse have also been specified. Decisions such as this demonstrate the flexibility and innovation in DERM's approach, while maintaining the rigour of the environmental assessment and

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ABN 46 640 294 485

defensible outcomes. I note that several other applications which propose similar receiving flows are under consideration and will be assessed on a case by case basis.

2. Issues Raised in QRC Correspondence

In reference to your email correspondence of 20 January, I would like address a number of issues.

- As you noted, a TEP application for the **Millenium mine** was submitted two weeks ago on January 7 2011. In discussions with the applicant, departmental staff were informed that the mines operation was not currently impacted by the water on site, although there was the potential for this situation to change in the future as coal in other mining areas needed to be accessed. This advice was confirmed in further communication with the mine on the 20th January. My department has considered this advice when prioritising its review of TEPs while meeting statutory timeframes in all cases. This has permitted the assessment of applications for TEPs from mines where the discharge of water was essential in restoring mine operations to be expedited. Nevertheless, comments on the application were provided back to the mine on the 20th January and it is likely that a TEP will be issued in the near future.
- With regards to the **Lake Vermont mine**, a TEP application was received by my department on the 14th January, six days prior to your email correspondence. The application relates to the discharge of mine affected water into a watercourse with a low receiving flow. There has been ongoing discussion between staff of my department and the mine since the application was submitted. Given the lack of a receiving flow, the application proposes the release of better quality water in order to provide a flow in the watercourse to allow the discharge of the mine affected water. As previously discussed, proposals to discharge into watercourses without a reasonable receiving flow require a higher degree of technical assessment and there has been ongoing contact and communication with the applicant in this regard as further information to support the application was required. It is anticipated that a decision on this application will be finalised shortly.
- You indicated you had received feedback that my department has been conservative in the conditions applying to the approval of some TEP applications received prior to Christmas. As you are aware, these applications were assessed and approved in exceptionally short timeframes in order to allow approved discharges to commence as soon as possible. In order to achieve this timeframe, the flow conditions in the TEP would necessarily be higher to permit earlier and larger discharges and to ensure the cumulative impacts could be managed. Such approvals cannot reasonably be compared to the assessments now being conducted on applications to discharge to significantly smaller receiving flows. Several of the companies which received TEPs have since applied for amendments allowing them to discharge at reduced receiving flows and these amended applications in turn require a more rigorous technical assessment prior to making a decision.

3. Importance of Proactive Action by Companies

My Department is highly conscious of the extraordinary recent rainfall events and their impact on the resources sector. We are committed to remaining responsive, flexible and appropriately resourced to assist proponents as they meet their obligations in relation to environmental compliance.

Equally, it will be important for applicants, particularly those seeking to discharge in low flow environments, to be proactive in managing the information and other resources which will improve the prospects of a TEP application being approved. Staff of my department have been dedicated in assessing applications for TEP's in a timely and efficient manner over the last few weeks. In many instances, the level of information and detail supplied by the

applicants has been insufficient for a decision to be made. In these cases, staff of the department have been as helpful as possible in identifying these deficiencies and requesting further information as appropriate.

I would like to reiterate two important considerations discussed in our recent meetings, which have assisted companies in successfully receiving TEP approvals.

- Companies which have received approval of TEPs have been able to clearly address the identification and management of mine-affected water environmental risks.
- Some companies have been active in maintaining or gathering fundamental information requirements for TEP application (as identified to the QRC last year) relating to proposed discharge water quality, blending options, environmental values and receiving water flows, etc.
- Many companies have undertaken careful onsite water management, implemented infrastructure solutions or procured additional pumping capacity so as to be able to take advantage of flows opportunistically. I am informed that several mines have not made the most of the opportunity that has been available to them to date. Some mines have been authorised under TEPs to discharge significantly more affected water than has actually been disposed of in the last few weeks. It would appear that equipment constraints or other operational factors have limited some mines' ability to discharge affected water and they have therefore not taken full advantage of the high flows that were apparent in receiving waters while they were available.

As acknowledged in our recent discussion, for some companies the granting of a TEP will be delayed at least partly by their environmental assessment capacity and the available information they have maintained. Equally, it should be noted that some applications have been of very good quality and several mines should be commended on their demonstrated ability to manage water on their sites through this difficult time.

Should you have any further enquiries, please do not hesitate to contact Mr Mike Birchley, Assistant Director General - Regional Service Delivery of the department on telephone [REDACTED]

Yours sincerely

[REDACTED]
John Bradley
Director-General

General and Non-Binding Guidance on Coal Mine TEPs and Managing Salinity

1. For releases associated with stream flow

Generally, the discharge waters can be considered in three categories:

- Lower Risk - EC <1500uS/cm
- Medium Risk – EC between 1500uS/cm and 4000uS/cm
- Higher Risk – EC > 4000uS/cm

Obviously these are broad generalisations and only relate to EC values whereas there must be consideration of other analytes in determining the risk of the discharge waters to the environment. An indication of what is generally expected for each category in relation to discharge to receiving waters is as follows:

- **Lower risk water – EC<1500uS/cm**
 - Generally 1:1 or 1:2 dilution with receiving waters may be permitted for good quality water depending on the receiving waters quality and the location of the mine. Upper catchment mine will be given more allowance
 - Flow triggers for local gauging stations can typically be reduced.
 - Gauging station locations reasonably flexible. For example, downstream gauging stations on major waterway may be used in some cases.
- **Medium risk water – 1500uS/cm < EC < 4000uS/cm**
 - Immediately downstream of the discharge point must achieve less than 750 to 1000uS/cm with better results further downstream. Downstream trigger for ceasing discharge are typically around 500uS/cm to manage potential cumulative impacts
 - Less flexibility is available in relation discharge, dilution and sampling
 - If the discharge is into ephemeral streams or tributaries that feed into a major watercourse, lower dilution rates (and hence higher combined EC values) may be possible in the tributary providing there are no key environmental values in the tributary that may be affected
- **Higher risk water – EC>4000uS/cm**
 - Generally more applicable to those mine located adjacent to major waterways.
 - Obviously the higher the EC then the lower the discharge rate and the higher the dilution that must be achieved immediately downstream of the discharge point
 - Immediately downstream of the discharge point typically required to achieve less than 750 to 1000uS/cm. Downstream trigger for ceasing discharge are typically around 500uS/cm or better to manage potential cumulative impacts
 - Conditions relating to discharge rate, dilutions and sampling locations will remain and may be more detailed/onerous. Typically higher stream flow triggers for release may be required.

- The same considerations relating to ephemeral streams or tributaries apply as per the medium risk water but obviously dilution rates will generally need to be considerably higher

2. For releases not associated with stream flow (or minimal flow)

Generally these releases will need to meet ambient reference water quality at the discharge point and in the receiving environment. This option would normally only be suitable where there are no other alternatives and a “good” water quality can be achieved end-of-pipe (most likely 100 to 750uS/cm depending on the location). Historical DERM water quality data can be used to derive the release limits and the downstream trigger values. The numbers typically used would be between taken from between 50th and 90th percentile of the historical DERM data depending on the situation.

General Comments

The above indications are not absolute and each application/case will be assessed on its merits based on the information available. Indeed, consideration and approval has been given for applications that do not adhere to the generalisations presented above but these applications obviously require a certain level of detail in order to ensure that the potential for environmental harm is appropriately managed and minimised.

Similarly, some applications that do meet the above generalisations may not be approved due to other considerations and contributing factors. Some of these considerations include:

- Drinking water supplies that might be affected by discharges requiring consultation with the Office of the Water Supply Regulator and Queensland Health
- Target water quality parameters for major watercourses
- Cumulative impacts of multiple discharges
- The turbulence of the receiving waters and whether layers of differing water quality are likely to eventuate
- Sensitive key environmental assets
- Downstream land and water use
- The flow rate of receiving waters – low and no flows can pose significantly higher risk
- The availability of a suitable watercourse – ie is the discharge to overland flow
- Background water quality
- Duration of discharge
- Prioritising discharges based on safety, key infrastructure and operational ability in times of low river flow
- Proximity to other discharges

As such, each application must be assessed on a case by case basis in order to consider all contributing factors. That being said, the information in this sheet may be considered by applicants in preparing a TEP requiring the discharge of mine affected water.

Michael Roche

From: Michael Roche
Sent: Wednesday, 19 January 2011 10:43 PM
To: Nicole Scurrah
Cc: [REDACTED]; David Shankey; Ken Smith; Bradley John; [REDACTED]; Frances Hayter
Subject: Re: Urgent: Getting water out of mines

Nicole

Many thanks for agreeing to this meeting at short notice. The session with the Governor went somewhat longer than anticipated but her engagement with the issues is very welcome.

I assume [REDACTED] and David will report back to you on the thrust of our discussions but my essential point is that we may be about to reach the limit of DERM's experience and comfort with approval of mine water discharge. Day by day we have more and more mines with water impairing recovery but which they cannot discharge because nearby creeks have for the time being have stopped flowing. I essentially was saying that I saw this as a looming economic and environmental timebomb.

QRC will continue to work with DERM but I have to signal that we may shortly reach the position where DERM are in new territory in terms of water discharge from mines.

We will stay in touch.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

On 19/01/2011, at 2:47 PM, "Nicole Scurrah" [REDACTED] > wrote:

Hi Michael,

Happy to have our office briefed so issues are well understood.

Given the timing of your meeting with the Governor, which no doubt is a priority, I suggest that a 5pm meeting on level 15 may be suitable.

I will organise David Shankey and [REDACTED] from our office, with John Bradley to attend also.

Thank you so much for taking the time to bring these issue to my attention.

Regards,

Nicole

From: Michael Roche [REDACTED]
Sent: Wednesday, 19 January 2011 1:50 PM
To: Nicole Scurrah
Cc: [REDACTED] David Shankey; Ken Smith
Subject: Urgent: Getting water out of mines
Importance: High

Nicole

I would like the opportunity to brief people close to the Premier on the situation re water discharge from mines. This is the number priority for the coal sector (together with getting a way around the western line outage blocking coal exports to Port of Brisbane - we are talking to TMR on this one). We may be about to rub against the limit of what DERM is prepared to do for approving discharge from several mines without further political input. Let me add that the co-operation of DERM has been very good throughout the period since mid-December. However, I suspect we have to go a step beyond what DERM has been prepared to do in the past. A number of the TEP approvals granted before Christmas are no longer helping and will need to be amended to deal with a lower flow environment in many creeks and other water courses.

Can we discuss asap. I have to go and brief the Governor at 3pm but am available from about 4.30pm.

Regards

Michael

Michael Roche

Chief Executive

Queensland Resources Council

<image001.jpg>

t: [REDACTED]

f: [REDACTED]

Level 13 133 Mary Street Brisbane Queensland 4000

www.qrc.org.au

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Please consider the environment before printing this email.

Annexure 2 Item 6

>> From: Best Debbie [REDACTED]
>>
>> Sent: Friday, 7 January 2011 10:28 AM
>>
>> To: Michael Roche
>>
>> Subject: RE: Letter from Acting Director-General DERM>
>>
>>
>> Dear Michael>>
>>
>> Thank you for your response yesterday evening. We would welcome the
opportunity to meet with you on Monday.
>> Could you please advise whether 11.30am at level 13, 400 George Street is>>
convenient for you.
>>
>>>>
>> In relation to the specific questions in your e-mail, please
>> note that:
>>
>>* The streamlined TEP template can be applied to coal
>> mines
>>
>> outside of the Fitzroy Basin but will need to be amended to
>> include
>>
>> reference to conditions that are contained the model Fitzroy
>>
>> Environmental Authorities but that may be absent from
>> Environmental
>>
>> Authorities applying to mines in other catchments. For example
>> the
>>
>> heavy metal "triggers" were removed from the longer version of
>> the TEP
>>
>> template as these are included in all the Environmental
>> Authorities for
>>
>> coal mines in the Fitzroy Basin. If a TEP is issued for mines
>> outside
>>
>> the Fitzroy Basin these heavy metal "triggers" may need to be
>> reinserted
>>
>> into the TEP if the Environmental Authority for the site does
>> not
>>
>> include these. This would be particularly the case where the
>> mine
>>
>> affected water proposed to be discharged is of lower general
>> quality.
>>

Either as part of the TEP template or as an associated exercise, we are keen to discuss how we can "anticipate" resumption of water flows (given weather forecasts for the wet season) and so allow continuity of discharge.

>>

Can you confirm DERM availability to meet with QRC during the afternoon of Monday 10 January on the TEP template and the other matters raised in this email?

>>

Regards

>>

Michael

>>

Michael Roche

Chief Executive

Queensland Resources Council

>>

>>

>>

>>

>>

>>

From: [REDACTED]

>>

>>

Sent: Thursday, 6 January 2011 5:11 PM

>>

>>

To: Michael Roche

>>

>>

Subject: Letter from Acting Director-General DERM

>>

>>

>>

Dear Mr Roche

>>

>

Please find attached a letter and attachments from the
>> Acting Director-General Debbie Best.

>>

>>

>

Thanks

>>

>

>>

>>

>>

>>

A/Senior Project Officer

>

>>

>>

Office of the Director-General

>>

>>

Telephone [REDACTED]

Facsimile [REDACTED]

>>

>>

Email: <[REDACTED]>

>>

www.derm.qld.gov.au <file:///\\www.derm.qld.gov.au

>> <file:///5C%5Cwww.derm.qld.gov.au> >

>>

>>

<<http://www.derm.qld.gov.au/> <<http://www.derm.qld.gov.au/>> >

Michael Roche

From: Wall Terry [REDACTED]
Sent: Tuesday, 11 January 2011 10:35 AM
To: Michael Roche
Cc: [REDACTED] Birchley Michael; Brier Andrew
Subject: RE: Today's TEP meeting

Thanks Michael. I agree with your summation of outcomes. We will come back to you with the EC guidance and responses to the other matters in your earlier email. Happy to get our guys meeting to discuss your case study at your convenience. I have been in contact with [REDACTED] confirming we will also meet with them to discuss a CSG case study.

Regards

Terry

From: Michael Roche [mailto:michaelr@qrc.org.au]

Sent: Monday, 10 January 2011 5:39 PM

To: Michael Roche; [REDACTED]; [REDACTED]; Wall Terry; Brown Damien; [REDACTED]; [REDACTED]; [REDACTED]

Cc: Frances Hayter; Greg Lane; Bradley John

Subject: Today's TEP meeting

Terry

Many thanks for today's meeting with the DERM team.

My understanding of the key outcomes are:

- Urgent follow up with CSG companies re better understanding the urgent challenges for them with water management and TEPs
- DERM to provide guidance on how the EC levels and flow rates may vary from the 2%/8000 EC example in the modified TEP template
- DERM to consider how to handle situations where mines and CSG sites do not have access to major watercourses for discharge and where nearby creeks are subject to low or no flow, but where the mine or CSG site's operations are being severely hampered by water inundation and where water management/storage options on site don't now exist. (QRC is talking with one major mining company about a possible meeting with DERM and QRC in next couple of days to illustrate a case study. I assume you will also cover off these scenarios with CSG sector in the abovementioned separate meetings).

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council



t. [REDACTED]
f. [REDACTED]

Level 13 133 Mary Street Brisbane Queensland 4000
www.qrc.org.au

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From: Michael Roche

Sent: Monday, 10 January 2011 10:38 AM

To: [REDACTED]; [REDACTED]; Wall Terry; Brown Damien; [REDACTED]; [REDACTED]; [REDACTED];

Cc: Frances Hayter; Greg Lane; Bradley John; [REDACTED]; [REDACTED]

Subject: Urgent: QRC key points for today's 11.30am meeting

Importance: High

All

In advance of today's meeting, herewith QRC key points, based on coal and CSG member feedback. Also attach a recut of the modified template to suit CSG sites prepared by Arrow Energy.

Four overarching points:

- there was general appreciation that DERM would consider a way to expedite the TEP process during this time
- the 2% receiving flow restriction would prevent all but those relatively few operations on the major rivers from benefiting from the higher EC and removal of turbidity in the contaminant limits.
DERM is asked whether there can be a 'sliding scale' of EC to flow percentage so that if a company nominates less than the 8000 EC, than the discharge can be proportionally higher.
- For CSG the TEP ideally needs to provide protection from the Water (Safety & Reliability) Act as well as EA conditions.
DERM is asked to facilitate this arrangement with Queensland Health as soon as possible.
- The TEPs do not cover off on low / post-flow releases.

More specific:

- Given the short length of time that DERM is issuing these TEPs for, it is suggested that 4. under 'Requirements to cease the release of mine affected water' be reworded to state, 'The release of mine / petroleum operations affected water authorised under this Transitional Environmental Program must cease by DATE (i.e. the last action date for discharges in Table 1 *or upon completion of the stated contingency which may be the approval, construction and commissioning of additional infrastructure*). The addition of the italics allows for the TEP to operate throughout a period where exact timeframes cannot be controlled (such as approvals).
- The maximum allowable EC must have some more flexibility to reflect the CSG industry.
- Water quality parameters should remain the same for both mines and CSG.
- It is unclear, as there is no mention of metals, whether they are to remain as per current EA conditions
- We seek an upper limit of 9.5 for pH
- Clarification is sought as to whether sulphate can be lab tested only.
- Clarification is sought of whether flow can be measured using flowmeters and / or using runtime and capacity of pumps.

Regards

Michael

Michael Roche

Chief Executive

Queensland Resources Council



t: [REDACTED]

f: [REDACTED]

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Michael Roche

From: Michael Roche
Sent: Monday, 17 January 2011 8:27 PM
To: Wall Terry
Cc: Bradley John; Ken Smith; Frances Hayter; Greg Lane; [REDACTED]
Subject: Coal mine water discharge

John, Terry

This is a very disappointing response a week on from QRC submissions. DERM has in effect declined to take on any general risk and instead reverted to the safe haven of a 'case by case' approach.

If asked about these matters in the morning on ABC breakfast TV and ABC radio then I will have to say that DERM seems unwilling to rise to the occasion and help the coal industry to deal with it's emergency situation.

Michael Roche
Chief Executive
Queensland Resources Council

On 17/01/2011, at 5:53 PM, "Wall Terry" [REDACTED] wrote:

>
> Michael
>
> Please find attached letter of response as per request below.
>
> Regards
>
> Terry
>
>
>
> -----Original Message-----
> From: Wall Terry
> Sent: Friday, 14 January 2011 4:22 PM
> To: [REDACTED]
> Subject: Re: Today's TEP meeting
>
> Michael
>
> As you would appreciate systems have been impacted by floods. We are
> awaiting some scientific advice. Expect to provide our response to you
> on Monday. However we have been procesing TEPs on a case by case
> basis
> in order of priority over this period
>
> Regards
>
> Terry
>
> ----- Original Message -----
> From: Michael Roche [REDACTED]
> To: Wall Terry
> Cc: [REDACTED] Birchley Michael; Brier Andrew; Frances Hayter
> [REDACTED]; Greg Lane [REDACTED] Bradley John
> Sent: Fri Jan 14 14:37:35 2011

> Subject: Re: Today's TEP meeting
>
> Terry
> I trust you and your colleagues have survived the Bris floods in ok
> shape.
>
> My members are seeking an update on issues raised by QRC in my email
> and
> at Monday's meeting. Many are in situation I described of having
> hugely
> disruptive amounts of water but rapidly diminishing creek flow.
>
> I can be contacted on this email address (back on air this morning)
> or
> mobile [REDACTED]
>
> Regards
>
> Michael
>
> Michael Roche
> Chief Executive
> Queensland Resources Council
>
> On 11/01/2011, at 10:45 AM, "Wall Terry" [REDACTED]
> wrote:
>
>
>
> No problems Michael. We will ensure the response addresses all
> the issues in your email.
>
> Terry
>
>
>
>
>
> From: Michael Roche [REDACTED]
> Sent: Tuesday, 11 January 2011 10:39 AM
> To: Wall Terry
> Cc: [REDACTED]; Birchley Michael; Brier Andrew; Frances Hayter
> Subject: RE: Today's TEP meeting
>
>
>
> Thanks Terry. There were also a few other points in the
> material I sent through yesterday that I would like a response on.
>
>
>
> The company we have in mind as a case study (Anglo) is still
> doing their homework. May have to be Monday.
>
>
>
> Michael Roche
>
> Chief Executive
>
> Queensland Resources Council
>
> <image001.jpg> <<http://www.queenslandeconomy.com.au/>>

>
>
> t: [REDACTED]
>

> f: [REDACTED]
>

> Level 13 133 Mary Street Brisbane Queensland 4000
>

> <<http://www.qrc.org.au>> www.qrc.org.au
>
>
>

> Working together for a shared future
>
>
>

> From: Wall Terry [REDACTED]
> Sent: Tuesday, 11 January 2011 10:35 AM
> To: Michael Roche
> Cc: [REDACTED] Birchley Michael; Brier Andrew
> Subject: RE: Today's TEP meeting
>
>

> Thanks Michael. I agree with your summation of outcomes. We
> will come back to you with the EC guidance and responses to the other
> matters in your earlier email. Happy to get our guys meeting to
> discuss
> your case study at your convenience. I have been in contact with
> [REDACTED] confirming we will also meet with them to discuss a
> CSG
> case study.
>
>
>

> Regards
>
>
>

> Terry
>
>
>

>
>
> _____
> From: Michael Roche [REDACTED]
> Sent: Monday, 10 January 2011 5:39 PM
> To: Michael Roche: [REDACTED]; Wall Terry;
> Brown Damien: [REDACTED]
> [REDACTED]
> [REDACTED]
> Cc: Frances Hayter; Greg Lane; Bradley John
> Subject: Today's TEP meeting
>
>

> Terry
>

> Many thanks for today's meeting with the DERM team.
>
>
>

> My understanding of the key outcomes are:

>
> * Urgent follow up with CSG companies re better
> understanding the urgent challenges for them with water management and
> TEPs
>
> * DERM to provide guidance on how the EC levels and
> flow
> rates may vary from the 2%/8000 EC example in the modified TEP
> template
>
> * DERM to consider how to handle situations where mines
> and CSG sites do not have access to major watercourses for discharge
> and
> where nearby creeks are subject to low or no flow, but where the
> mine or
> CSG site's operations are being severely hampered by water inundation
> and where water management/storage options on site don't now exist.
> (QRC
> is talking with one major mining company about a possible meeting with
> DERM and QRC in next couple of days to illustrate a case study. I
> assume
> you will also cover off these scenarios with CSG sector in the
> abovementioned separate meetings).

>
>
>
> Regards

>
>
>
> Michael

>
>
>
> Michael Roche

>
>
>
> Chief Executive

>
>
>
> Queensland Resources Council

>
> <image002.jpg> <<http://www.queenslandeconomy.com.au/>>

>
> t: [REDACTED]

>
> f: [REDACTED]

>
> Level 13 133 Mary Street Brisbane Queensland 4000

>
> <<http://www.qrc.org.au>> www.qrc.org.au

>
>
>
> Working together for a shared future

>
>
>
> From: Michael Roche

> Sent: Monday, 10 January 2011 10:38 AM

> To: [REDACTED]; [REDACTED]; Wall Terry; Brown

> Damien;

> [REDACTED];

Michael Roche

From: Michael Roche
Sent: Tuesday, 18 January 2011 10:12 AM
To: 'Wall Terry'
Subject: RE: Coal mine water discharge

ta

Michael Roche
Chief Executive
Queensland Resources Council

t: [REDACTED]
f: [REDACTED]

Level 13 133 Mary Street Brisbane Queensland 4000 www.qrc.org.au

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-----Original Message-----

From: Wall Terry [REDACTED]
Sent: Tuesday, 18 January 2011 10:10 AM
To: Michael Roche
Cc: Bradley John
Subject: FW: Coal mine water discharge

Michael

We will also bring Andrew Brier and Mark Evans who have been closely involved in TEP approvals.

Terry

-----Original Message-----

From: Bradley John
Sent: Tuesday, 18 January 2011 10:00 AM
To: Michael Roche
Cc: Wall Terry; Birchley Michael
Subject: RE: Coal mine water discharge

Michael

I am happy with proceeding in two parts - at this stage it will be Mike Birchley and Terry Wall with me but I will ask them to confirm with you if there will be anyone else involved.

regards

John Bradley
Director-General
Department of Environment and Resource Management

Telephone: [REDACTED]
Email: [REDACTED]
www.derm.qld.gov.au

Department of Environment and Resource Management 400 George Street,
Brisbane Q 4000 GPO Box 2454, Brisbane Q 4001 -----Original Message-----
From: Michael Roche [REDACTED]
Sent: Tuesday, 18 January 2011 9:57 AM
To: Bradley John
Cc: Wall Terry
Subject: RE: Coal mine water discharge

John
Can we do the meeting in two parts. First with reps from Anglo Coal -
the case study I had been discussing with Terry early last week. Anglo
can tell their story then leave and we can continue on an industry wide
picture.

I will have Frances Hayter with me. From Anglo it will be head of
external affairs [REDACTED] and Environment Manager [REDACTED].

Will you have anyone with you?

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

t: [REDACTED]
f: [REDACTED]
Level 13 133 Mary Street Brisbane Queensland 4000 www.qrc.org.au

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-----Original Message-----

From: Bradley John [REDACTED]
Sent: Tuesday, 18 January 2011 8:27 AM
To: Michael Roche
Cc: Wall Terry
Subject: Re: Coal mine water discharge

Morning Michael,

Yes, we are locked in. Do you mind if we make it 145pm to give me time
to get down to your place after previous finishes at 130 pm?

Will endeavour to bring info requested - and step through each of the
less straightforward ones.

Regards
John B

----- Original Message -----

From: Michael Roche [REDACTED]
Sent: Tuesday, January 18, 2011 08:11 AM
To: Bradley John
Cc: Wall Terry

Subject: RE: Coal mine water discharge

John

Are you able to confirm you can meet this afternoon as per our email exchange last night?

Please note from the beginning of this email chain, I raised with acting DG Debbie Best the issue about low/no flow creeks way back on Thursday 6 Jan. It is now 18 Jan.

When we meet it would be good if you can have stats on TEPs:

- how many approved since mid-December
- how many applications you have in front of you now (coal, CSG, power stations)- and how many of these involve discharge into low flow/no flow creeks/watercourses
- how many foreshadowed TEP applications and how many involve low flow/no flow creeks.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

t: [REDACTED]
f: [REDACTED]
Level 13 133 Mary Street Brisbane Queensland 4000 www.qrc.org.au

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-----Original Message-----

From: Michael Roche
Sent: Monday, 17 January 2011 11:26 PM
To: Bradley John
Cc: Wall Terry; [REDACTED]; Frances Hayter; Greg Lane; [REDACTED] Michael Roche
Subject: Re: Coal mine water discharge

John

I will reorder my afternoon to meet. I will keep the 1.30-3pm slot free and look forward to welcoming you to QRC offices when you can get here.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

On 17/01/2011, at 10:34 PM, "Bradley John"
[REDACTED] > wrote:

- > Michael
- >
- > Terry's letter explained why we think a tailored approach gets better
- > outcomes for companies and the environment but I'm happy to discuss
- > why you think this unworkable and how an alternative approach would
- > work.

>
> I think we are seeking the same outcome - as the QRC sought a
> differential approach based on different flow levels and EC levels.
>
> I am free between 130 and 3pm but can move things in the morning if
> need be and am happy to come to your offices.
>
> Regards
> John B
>
>
> ----- Original Message -----
> From: Michael Roche [REDACTED]
> Sent: Monday, January 17, 2011 09:50 PM
> To: Bradley John
> Cc: Wall Terry; [REDACTED]
> [REDACTED]
> [REDACTED]; Greg Lane
> [REDACTED]
> Subject: Re: Coal mine water discharge
>
> John
> DERM's performance in recent weeks has by and large been very
> responsive. I have been very forthcoming in acknowledging that fact.
>
> However, it was perfectly clear what QRC was asking of DERM last
> Monday 10 January. In declining to move beyond it's 'case by case'
> approach and insisting on confirming that position in writing late
> today, some 7 days later, I am left with nowhere to go.
>
> I find myself in the surreal situation where CBD buildings are pumping
>
> away apparently unsupervised while my members can get no 'class
> relief' from DERM in their own emergency situation. My members were
> sweating on this DERM response and are mightily disappointed to have
> lost a week spinning wheels.
>
> If you can advise tonight that this afternoon's letter signed by Terry
>
> has been withdrawn then that will influence the approach I take in
> tomorrow morning's media commitments.
>
> Regards
>
> Michael
>
> Michael Roche
> Chief Executive
> Queensland Resources Council
>
> On 17/01/2011, at 9:11 PM, "Bradley John"
> [REDACTED] wrote:
>
>> Michael
>>
>> I am would be happy to meet you tomorrow to discuss these issues if
>> that would assist.
>>
>> Your response seems to understate DERM's continued efforts to work
>> closely with the sector to resolve issues urgently.
>>

>> For clarity, our Department isn't approaching this with a view to it
>> either 'avoiding' or 'taking on' risk. Both mining companies and
>> DERM must be able to demonstrate environmental risks have been
>> adequately addressed. There are clearly substantive issues where
>> receiving waters are at low or no flows.
>>
>> While we are confident that these risks are publicly understood
>> particularly in the Fitzroy, we would prefer to work with you face to

>> face than to debate issues through the media.
>>
>> Our record in the last two months demonstrate that this approach
>> delivers defensible and practical outcomes in urgent timeframes.
>>
>> Could you pls give me a ring tomorrow morning if you are available to

>> discuss?

>>
>> Regards
>> John B
>>
>>

>> ----- Original Message -----

>> From: Michael Roche [REDACTED]
>> Sent: Monday, January 17, 2011 08:26 PM
>> To: Wall Terry
>> Cc: Bradley John; Ken Smith [REDACTED] Frances
>> Hayter [REDACTED] Greg Lane [REDACTED]
>> [REDACTED]
>> Subject: Coal mine water discharge

>>
>> John, Terry
>> This is a very disappointing response a week on from QRC submissions.
>> DERM has in effect declined to take on any general risk and instead
>> reverted to the safe haven of a 'case by case' approach.
>>
>> If asked about these matters in the morning on ABC breakfast TV and
>> ABC radio then I will have to say that DERM seems unwilling to rise
>> to the occasion and help the coal industry to deal with it's
>> emergency situation.

>>
>> Michael Roche
>> Chief Executive
>> Queensland Resources Council

>>
>> On 17/01/2011, at 5:53 PM, "Wall Terry" [REDACTED]
>> wrote:

>>
>>>
>>> Michael
>>>
>>> Please find attached letter of response as per request below.

>>>
>>> Regards
>>>
>>> Terry

>>>
>>> -----Original Message-----
>>> From: Wall Terry

Notes of meeting with John Bradley, DG of DERM, 18 January 2011. QRC offices

After discussing particular case of Anglo's Dawson North, JB observed that lack of data was holding back ability of DERM to approve TEPs. He said DERM needed a "fig leaf" by which he meant scientific information from companies about likely impacts of a proposed discharge on the receiving environment ie the creek or stream..

MR asked JB were there other instruments or options available under the EP Act rather than a TEP.

JB said under the EP Act as company could discharge at its own instigation but it would have to have assessed its EP Act obligations and duties and then DERM would come along and assess what the company had done and what it had considered in making a decision to discharge.

He said that a second instrument was an environment protection order.

A third instrument was an "emergency directive".

JB undertook to revert by Friday 21 January with some benchmarks and scenarios for water discharge from mines.

Michael Roche

From: Nicole Scurrah [REDACTED]
Sent: Wednesday, 19 January 2011 2:48 PM
To: Michael Roche
Cc: [REDACTED]; David Shankey; Ken Smith; Bradley John
Subject: RE: Urgent: Getting water out of mines

Importance: High

Hi Michael,

Happy to have our office briefed so issues are well understood.

Given the timing of your meeting with the Governor, which no doubt is a priority, I suggest that a 5pm meeting on level 15 may be suitable.

I will organise David Shankey and Lachlan from our office, with John Bradley to attend also.

Thank you so much for taking the time to bring these issue to my attention.

Regards,

Nicole

From: Michael Roche [REDACTED]
Sent: Wednesday, 19 January 2011 1:50 PM
To: Nicole Scurrah
Cc: [REDACTED]; David Shankey; Ken Smith
Subject: Urgent: Getting water out of mines
Importance: High

Nicole

I would like the opportunity to brief people close to the Premier on the situation re water discharge from mines. This is the number priority for the coal sector (together with getting a way around the western line outage blocking coal exports to Port of Brisbane - we are talking to TMR on this one). We may be about to rub against the limit of what DERM is prepared to do for approving discharge from several mines without further political input. Let me add that the co-operation of DERM has been very good throughout the period since mid-December. However, I suspect we have to go a step beyond what DERM has been prepared to do in the past. A number of the TEP approvals granted before Christmas are no longer helping and will need to be amended to deal with a lower flow environment in many creeks and other water courses.

Can we discuss asap. I have to go and brief the Governor at 3pm but am available from about 4.30pm.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

[REDACTED]
[REDACTED]
t: [REDACTED]

f. [REDACTED]
Level 13 133 Mary Street Brisbane Queensland 4000
www.qrc.org.au

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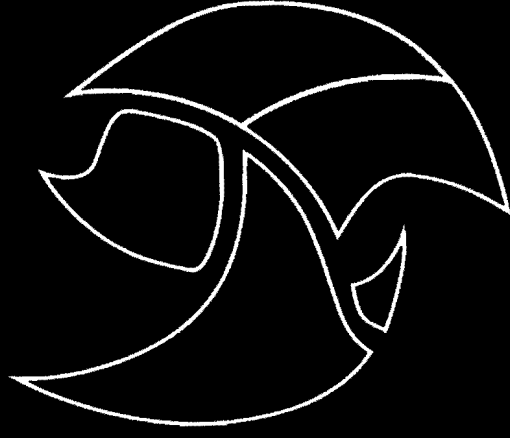
QRC Briefing to
Her Excellency Ms Penelope Wensley AO
Governor of Queensland

19 January 2011

Impact of flooding on the Queensland
Resources Sector

Mr Michael Roche - Chief Executive

Mr David Rynne - Chief Economist



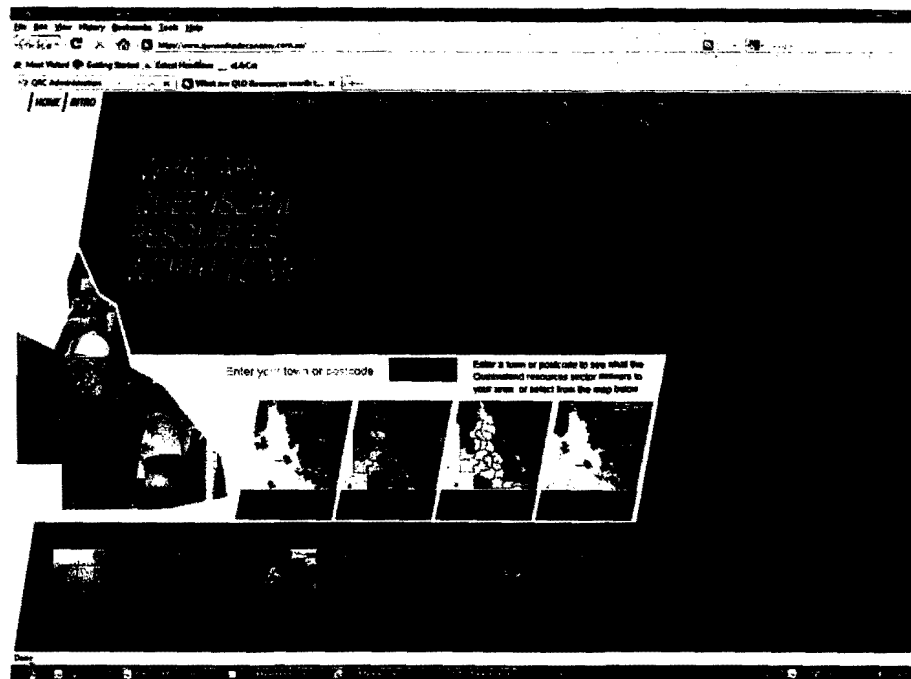
shared future



Latest available data and information contained on QRC's new website:

<http://queenslandeconomy.com.au/home>

- Economic contribution (spend and jobs) by area (LGA and SD)
- Taxes & royalties contribution
- Stories of workers and businesses that rely on the sector
- Land use of the sector vis-a-vis other sectors
- Maps showing current and future projects
- Full economic report undertaken by Central QLD University and Eidos





The 2009/10 contribution of the QLD resources sector

In 2009-10 the sector purchased \$17.4 billion of goods and services from QLD businesses (development and exploration, electricity, explosives, administration - professional advisory services etc, fuel, parts, tyres, repairs, railway and port charges)

These purchases were from 95 per cent of QLD postcodes

In 2009-10 the sector paid \$4.9 billion on wages and salaries to workers residing in QLD

The sector in 2009-10 injected \$707 into QLD every second of the day through wages, business purchases and community payments

The resources sector accounts for 21% of the QLD economy (Gross State Product)

The resources sector accounts for 13% of QLD's total employment (1 in 8 jobs)

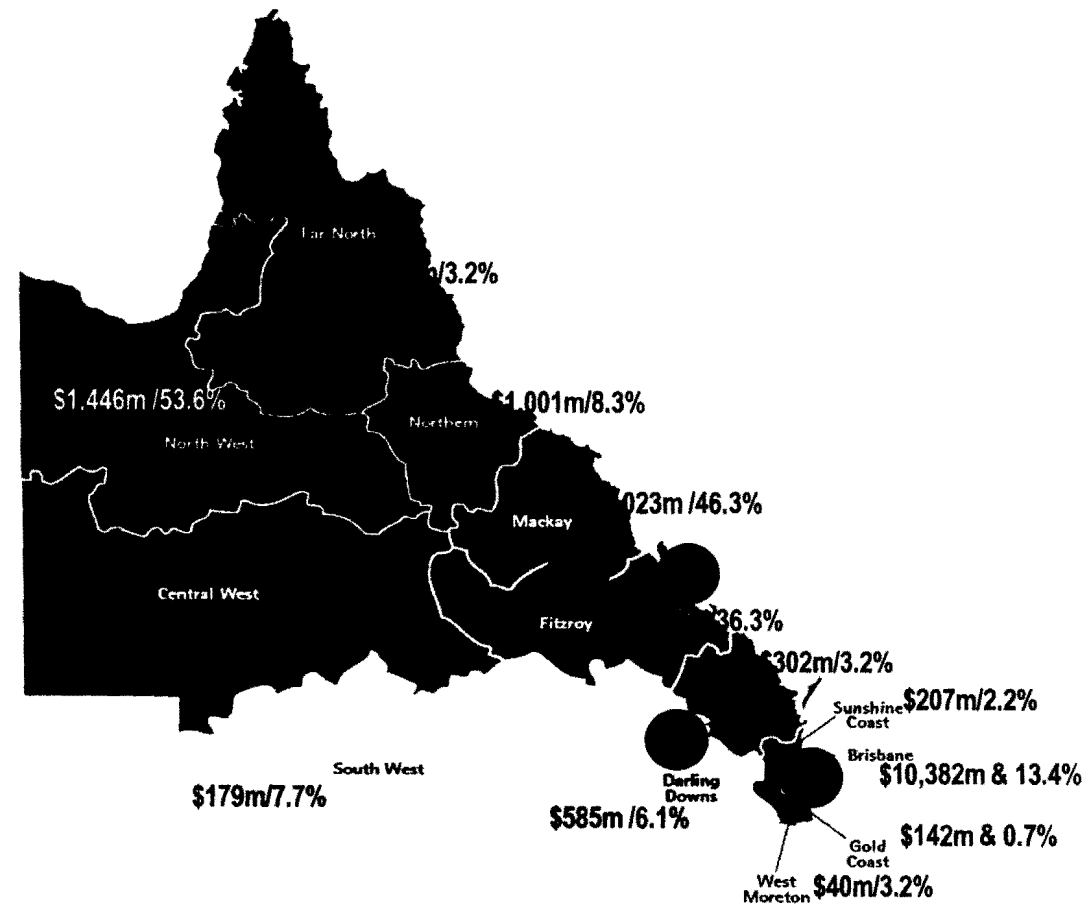


The 2009/10 contribution of the QLD resources sector

\$100 billion in additional capital expenditure is proposed over the next 5 years. Royalties paid to the QLD government are expected to increase from \$3.2b in 2010-11 to \$6.1b by 2020-21 at current prices

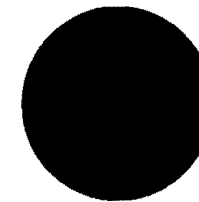
Royalties per Queenslander could increase from \$700 in 2010/11 to \$1,139 by 2020-21 at current prices

The resources sector's land disturbance is just 0.09% of QLD's land mass (by comparison, 86% of QLD's land mass is taken up by grazing and 2.1% by cropping)



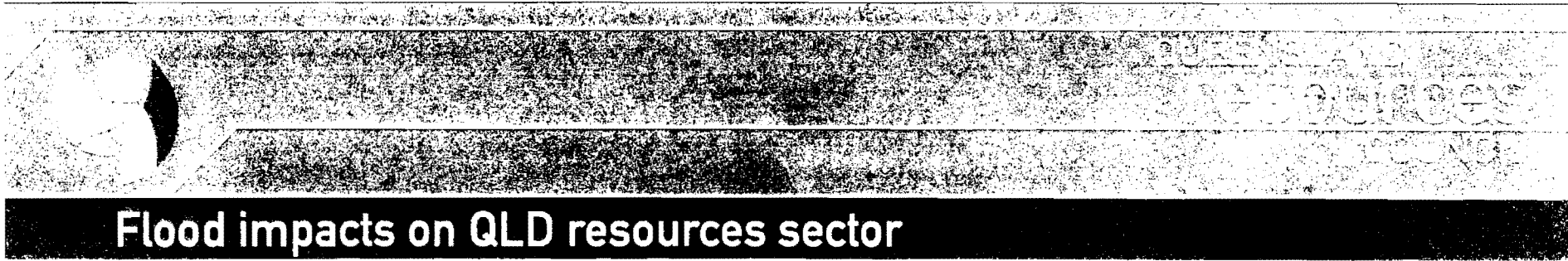
The direct economic stimulus of the QLD resources sector (salaries, purchases and community payments) and job creation as a percentage of total

Seriously affected flood communities



Source: As contained on <http://queenstandeconomy.com.au/home>. Data from company members 2010, and captures supplier, salary and community spend, last 12 month reporting period, QLD operations of QRC members (approximately 90% of total value of production)

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Flood impacts on QLD resources sector

Queensland is the world's leading exporter of metallurgical coal (approximately 120 mtpa in 2009/10 - used in iron and steel production) and also a significant exporter of thermal coal (approximately 80 mtpa in 2009/10 - used in electricity production)

Flooding and rain inundation is causing significant production problems in the Bowen, Surat and Clarence-Moreton coal basins



Flood impacts on QLD resources sector

There are five main rail lines utilised by QLD coal producers. Current status:

- [1] Newlands (to Abbot Point near Bowen) – operational with some minor restrictions
- [2] Goonyella (to DBCT and Hay Point) - operational after one week, minor restrictions
- [3] Blackwater (to Gladstone) – main line operational from 19/1 after 4 weeks flooding
however some branch and spur lines closed for another one to four weeks
- [4] Moura (to Gladstone) - operational after 4 weeks with some minor restrictions
- [5] Western Line (to Port of Brisbane) – closed west of Toowoomba



Flood impacts on QLD resources sector

Rail issues mostly fixed or in sight of being fixed except three mines on the Western Line west of Toowoomba that have few alternatives and prospect of line impassable for 8-12 weeks (New Hope have advised that they wish to utilise B-Double road transport to move coal to rail facility west of Ipswich via Warwick (120 trucks moving 5,000 tonnes per day)

Given the extent of rain, flooding the recovery of the rail network has been impressive

Coal exports are now more likely to be negatively impacted by the inability of mines to remove the water from pits, whether that be due to risk averse environment regulator and/or a lack of pumping equipment and/or other damage

Queensland a significant producer of coal-fired electricity into the NEM. Latest advice is that coal supply and generation has been affected but not compromised by the recent flooding. One gas fired power station went off line until it could discharge water from site



Flood impacts on QLD resources sector

The QRC estimates that about 15 per cent of the state's 57 coal mines are in full production, with 60 per cent operating under restrictions and a further 25 per cent yet to resume normal operations

Some impacts on gas production due to flooding and more severe impacts on new gas drilling and exploration

Following charts show an enormous impact on production, value of production and royalties compared to a BAU scenario, HOWEVER when compared to previous years, 2010/11 from a value of production perspective held up by already high prices and likely higher prices between April to July 2011

Mine by mine data is yet to be received by the QRC so forecasts are 'best estimates'. A more accurate picture will be gained over the following weeks

Anticipated 2010/11 revenue losses likely to be offset by already and increasing high coal prices

Queensland Resources Sector Production and Value of Production (A\$billion) (nominal)										
	2006/07		2007/08		2008/09		2009/10		2010/11(f)	
	Production	Value (\$b)	Production	Value (\$b)	Production	Value (\$b)	Production	Value (\$b)	Production	Value (\$b)
Alumina (kt)	4,419	1.7	4,291	1.7	4,374	1.4	4,508	1.3	4,573	1.4
Aluminium (kt)	328	1.1	328	1.0	329	1.0	333	0.7	336	0.7
Bauxite (kt)	16,969	0.5	16,813	0.5	16,201	0.5	17,068	0.5	16,809	0.5
Black Coal (Thermal) (Mt)	73	4.5	72	5.2	74	10.0	77	6.8	66	7.2
Gold (t)	21	0.5	20	0.5	17	0.8	15	0.6	16	0.7
Lead (kt)	415	0.7	469	1.4	440	1.0	436	1.0	448	0.9
Silver (t)	1,347	1.7	1,504	2.3	1,473	0.9	1,469	0.9	1,648	1.0
Zinc (kt)	843	3.1	897	2.3	912	1.9	857	1.9	988	2.0
Crude Oil and Condensate (ML)	640	0.2	632	0.2	632	0.2	632	0.2	632	0.2
LPG (ML)	271	0.1	151	0.1	134	0.1	150	0.1	165	0.1
Processed Natural Gas (PJ)	128	0.4	107	0.4	110	0.4	105	0.4	111	0.4
Electricity (MWh)	50,588,962	1.5	52,152,888	1.5	52,289,205	1.6	54,611,627	1.6	52,010,400	1.6
Total		31.2		33.2		51.4		35.5		43.3

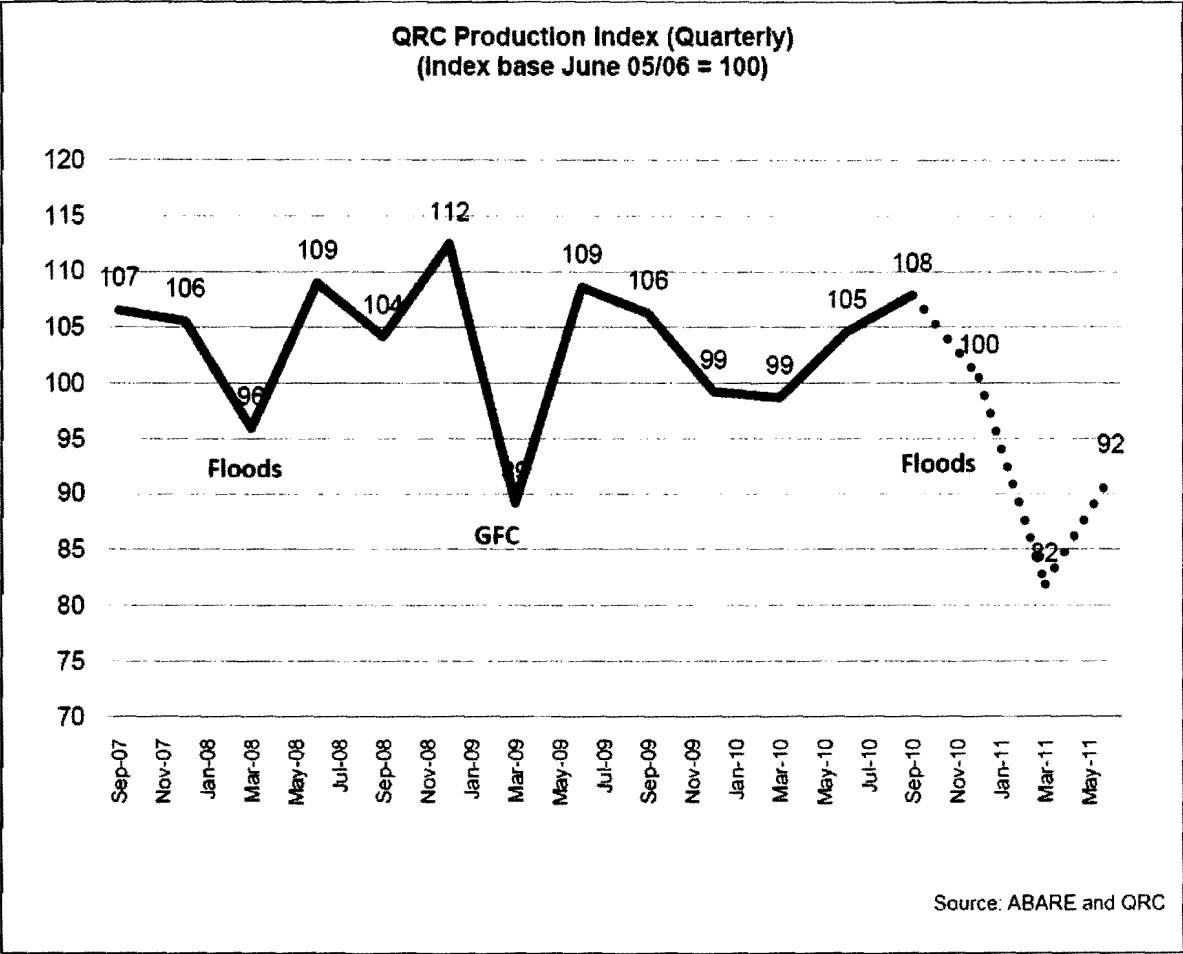
Compared to a BAU scenario, the economic losses are however significant with a huge incentive to get mines operational ASAP

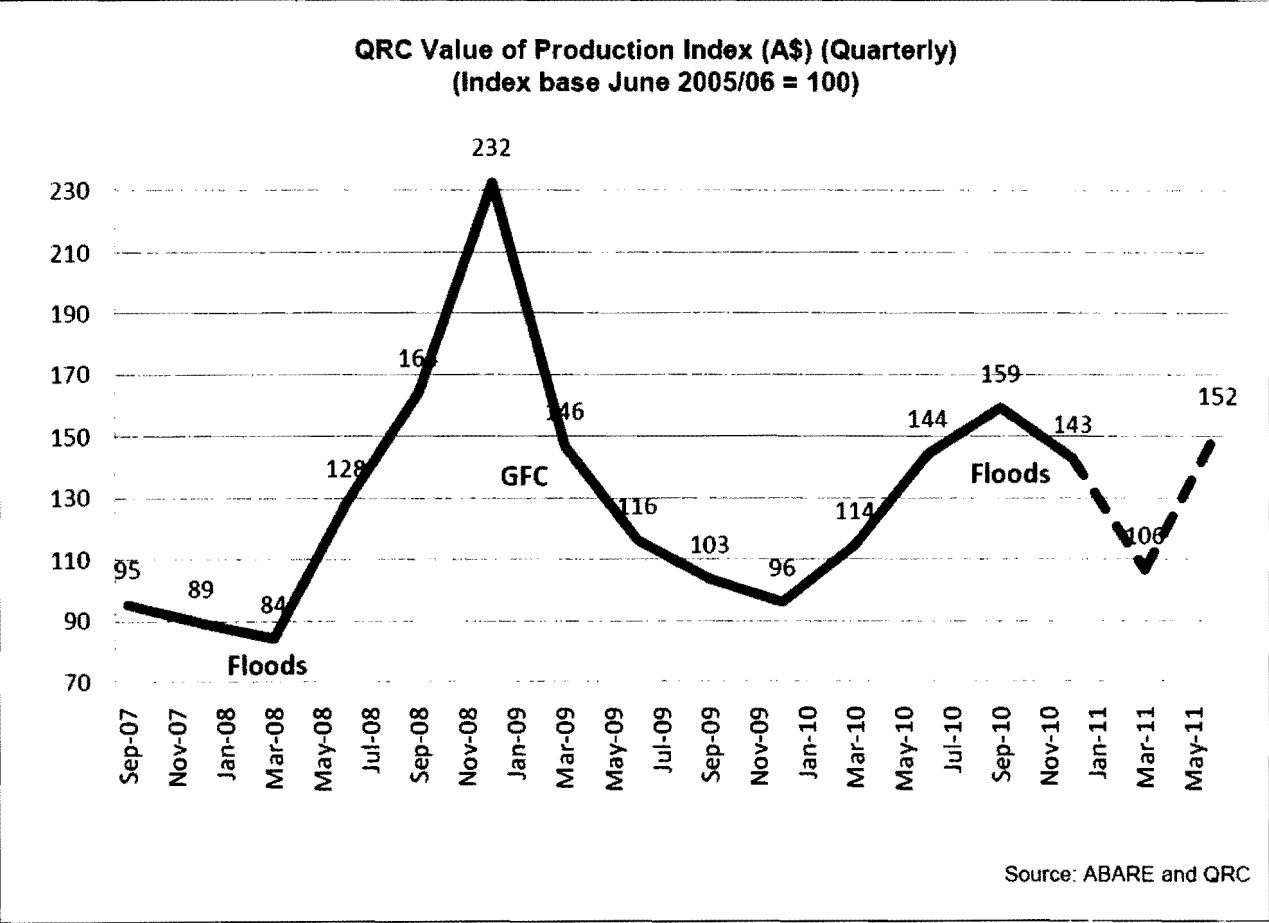
	Sept Qtr 2010	Dec Qtr 2010 (f)	Mar Qtr 2011 (f)	June Qtr 2011 (f)
QLD coal production (mt)	51	45	30	38
Value of QLD coal production (A\$m)	\$ 9,200	\$ 8,073	\$ 5,382	\$ 8,816
Coal royalties (A\$m)	\$ 767	\$ 673	\$ 449	\$ 747
Lost coal royalties per day (A\$m) (1 Oct 2010 - 31 December 2011)	\$ 1.0			
Lost coal royalties per day (A\$m) (1 Oct 2010 - 31 March 2011)	\$ 2.3			
Lost coal royalties per day (A\$m) (1 Oct 2010 - 30 June 2011)	\$ 1.6			

The sector’s production
is likely to drop to
historically low levels

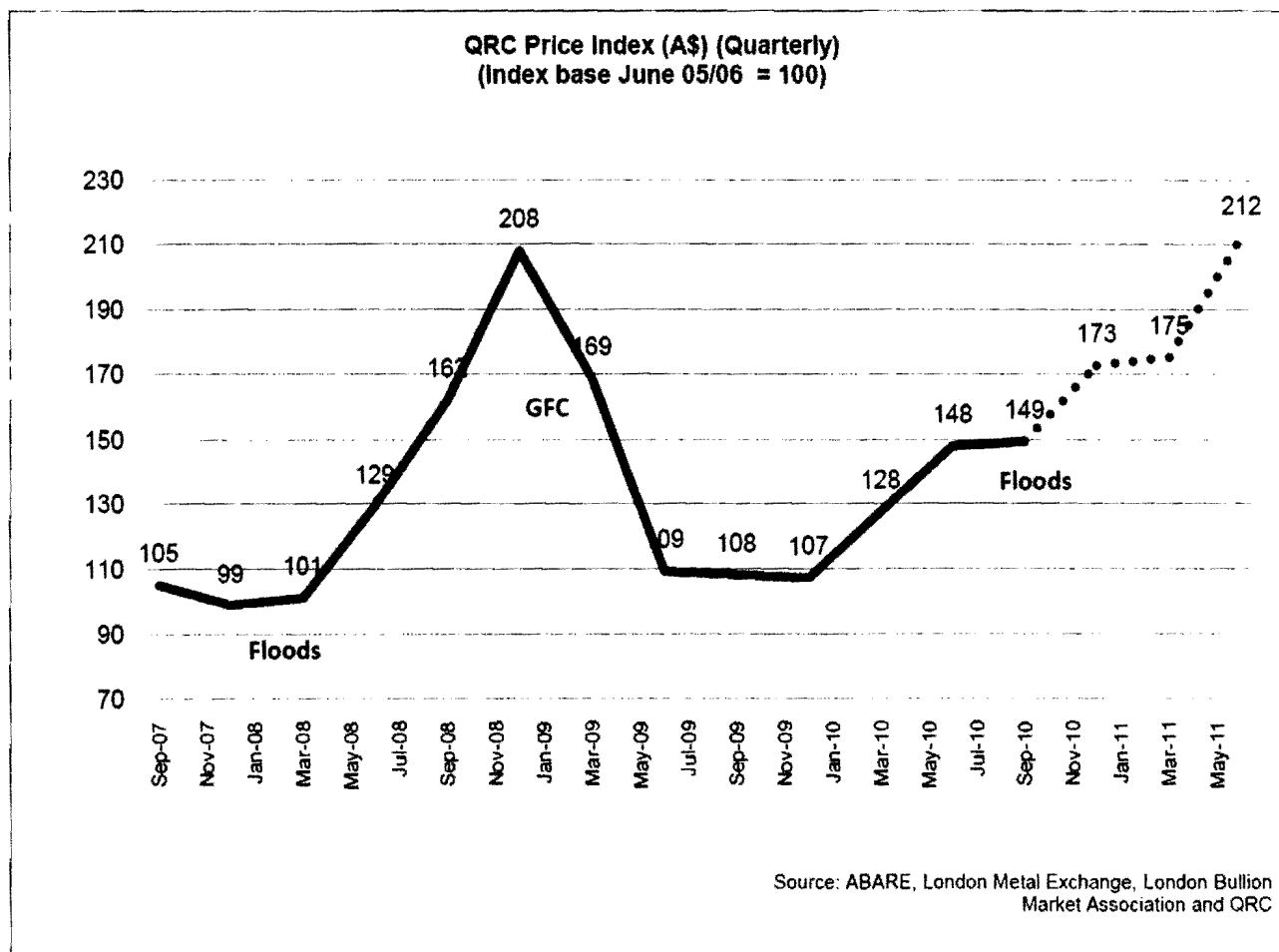


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**Value of production
remains buoyant on
account of already high
and increasing global
coal prices**



**Prices already high
and are likely to
reach highest on
record**



Outlook

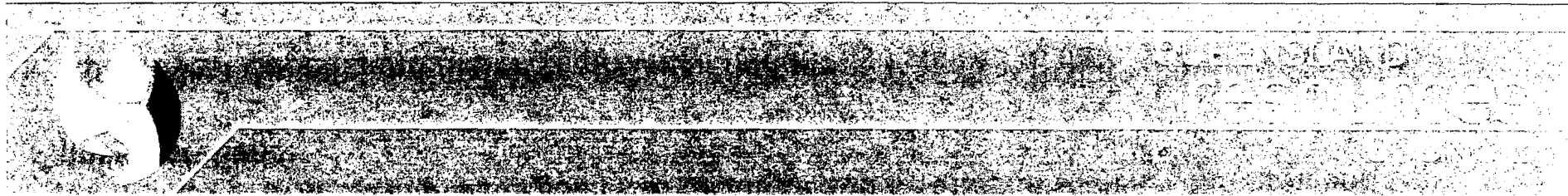
Wet season started early (September) and could be above average rain until end April

Mine, CSG and power station dams are full and vulnerable to further major wet weather events.

Need to build in resilience by getting rid of maximum amount of water NOW to prevent bigger disruption and greater environmental harm (eg uncontrolled dam overflows)

Challenge of prioritising road repairs to facilitate supply lines to mines, CSG sites and power stations

North West Queensland minerals province (Mount Isa) spared to date, but for how long?



Part of the community

QRC member companies have contributed best part of \$10 million to Premier's and local appeals and in-kind contributions.

Entire evacuated town of Theodore housed at expense of Anglo Coal

Mine/CSG employees worked shoulder to shoulder with residents on town defence and clean-up

Return to full operations means dollars for local community and to Treasury coffers

Workforce retained but concerns for mines without transport links

From: Michael Roche [REDACTED]
Sent: Wednesday, 19 January 2011 10:43 PM *Annexure 2 Item 13*
To: Nicole Scurrah
Cc: [REDACTED]; David Shankey; Ken Smith; Bradley John; [REDACTED] Frances Hayter
Subject: Re: Urgent: Getting water out of mines

Nicole

Many thanks for agreeing to this meeting at short notice. The session with the Governor went somewhat longer than anticipated but her engagement with the issues is very welcome.

I assume [REDACTED] and David will report back to you on the thrust of our discussions but my essential point is that we may be about to reach the limit of DERM's experience and comfort with approval of mine water discharge. Day by day we have more and more mines with water impairing recovery but which they cannot discharge because nearby creeks have for the time being have stopped flowing. I essentially was saying that I saw this as a looming economic and environmental timebomb.

QRC will continue to work with DERM but I have to signal that we may shortly reach the position where DERM are in new territory in terms of water discharge from mines.

We will stay in touch.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

On 19/01/2011, at 2:47 PM, "Nicole Scurrah" [REDACTED] > wrote:

Hi Michael,

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Importance: High

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Can we discuss asap. I have to go and brief the Governor at 3pm but am available from about 4.30pm.

Regards

Michael

Michael Roche

Chief Executive

Queensland Resources Council

<image001.jpg>

t: [REDACTED]

f: [REDACTED]

Level 13 133 Mary Street Brisbane Queensland 4000

www.qrc.org.au

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Michael Roche

From: Michael Roche
Sent: Thursday, 20 January 2011 12:06 PM
To: Michael Roche; [REDACTED]; David Shankey; Bradley John; Nicole Scurrah; Ken Smith; Wall Terry
Cc: [REDACTED]; Greg Lane; Frances Hayter
Subject: URGENT: Water discharge TEP feedback from QRC members

Nicole, All

In response to a circular I sent to QRC members yesterday, the feedback I am getting is that members are now not getting satisfaction on several TEP applications. At the meeting up at Premier's office late yesterday I talked about the fact that we are getting to a situation where political government needs to step in and take on the risk DERM is not prepared to take, in particular re discharge into low flow/no flow creeks.

I mentioned last night that Peabody's Millenium mine has had an application in for two weeks. Today I heard from Jellinbah Resources re their Lake Vermont Mine:

~~9 days ago~~ Lake Vermont applied for a TEP requesting the ability to discharge water of a relatively high quality (less than 1000ms - suitable for stock watering) in low/no flow conditions. The application is still stalled with the regional office view being that though the water is good quality it is not a natural flow, whatever that is and therefore it is a problem in no flow creek conditions. In addition we were advised that the application would be improved by the inclusion of some specific undertakings so we cut and pasted the EPAs words into our document and they objected to the fact that we had done so. I guess the point is that they may be "accountable" as you suggest but, at least for LV, there is not much evidence that they are responding in any other than their normal bureaucratic way - after 8 days with creek flows diminishing we really wonder if anything has changed to deal with the abnormal circumstances

Since that advice from Jellinbah earlier today, DERM have provided further advice re their TEP application so hopefully it can be processed quickly now.

Other feedback speaks of DERM being "very very conservative" and that TEPs approved before Xmas (in a high flow situation) no longer working in low flow situations they now find themselves in.

If asked by the media to comment today and in coming days I believe it would be appropriate for me to say something along the lines of the following:

"QRC believes we are getting very close to the situation where the State is facing an economic and environmental emergency requiring the State Government to step in and approve the discharge of water from mines that have not been able to do so to date. The economic emergency is obvious in today's production figures from our biggest coal miner BHP – down 30% in December quarter. 85% of coal mines are partly or completely impaired by water in the mines. The environmental emergency is that we need to get rid of this water now while major water courses have strong flows - to minimise the risk of uncontrolled discharges from mines as a result of another major rainfall event – something that is unfortunately on the cards according to BOM."

Happy to discuss. Indeed, I would welcome some show of interest from Minister Jones.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council



t: [REDACTED]
f: [REDACTED]

Level 13 133 Mary Street Brisbane Queensland 4000
www.qrc.org.au

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From: Michael Roche
Sent: Thursday, 20 January 2011 9:59 AM
To: [REDACTED]; 'David Shankey'; 'Bradley John'; [REDACTED]
Subject: BHP quarterly report today

All
See link below to this morning's BHPB quarterly production report. They say Dec Q coal prodn in Qld down 30%, sales down 15%. 30% is the water impact, 15% reflects use of stockpiles. With no stockpiles, and their water issues, 30% down in March Q must seem likely.
Regards
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Michael Roche
Chief Executive
Queensland Resources Council



Level 13 133 Mary Street Brisbane Queensland 4000
www.qrc.org.au

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<http://www.bhpbilliton.com/bbContentRepository/docs/110120bhpBillitonProductionReportForTheQuarterEnded31December2010.pdf>

Michael Roche

From: Michael Roche
Sent: Thursday, 20 January 2011 6:03 PM
To: [REDACTED]
Subject: RE: URGENT: Water discharge TEP feedback from QRC members

Minister Jones called me this afternoon, a bit toey, but ok in the end.. That's good. I was surprised that [REDACTED] was not at yesterday's meeting I must admit, given I had flagged my messages were for political government.

Michael Roche
Chief Executive
Queensland Resources Council

t: [REDACTED]
f: [REDACTED]
Level 13 133 Mary Street Brisbane Queensland 4000
www.qrc.org.au

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From: [REDACTED]
Sent: Thursday, 20 January 2011 4:32 PM
To: Michael Roche; David Shankey; Bradley John; Nicole Scurrah; Ken Smith; Wall Terry
Cc: [REDACTED]; Greg Lane; Frances Hayter
Subject: RE: URGENT: Water discharge TEP feedback from QRC members

Hi Michael,

Thank you for your email.

With regard to your final comment, I do note that Minister Jones' office was not included on this email, so I have taken the liberty of forwarding it on to [REDACTED], Principal Advisor, and [REDACTED], Senior Media Advisor, for their attention.

Regards,

[REDACTED] | Senior Policy Advisor to
The Hon Anna Bligh MP
Premier of Queensland

[REDACTED]
[REDACTED]
[REDACTED] Please consider the environment before printing this email

From: Michael Roche [REDACTED]
Sent: Thursday, 20 January 2011 12:06 PM
To: Michael Roche; [REDACTED]; David Shankey; Bradley John; Nicole Scurrah; Ken Smith; Wall Terry

Cc: [REDACTED]; Greg Lane; Frances Hayter
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Regards

Michael

Michael Roche
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Queensland Resources Council



t: [REDACTED]
Level 13 133 Mary Street Brisbane Queensland 4000
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From: Michael Roche

Sent: Thursday, 20 January 2011 9:59 AM

To: [REDACTED]; 'David Shankey'; 'Bradley John' [REDACTED]
[REDACTED]

Subject: BHP quarterly report today

All

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Michael Roche

Chief Executive

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<http://www.bhpbilliton.com/bbContentRepository/docs/110120bhpBillitonProductionReportForTheQuarterEnded31December2010.pdf>

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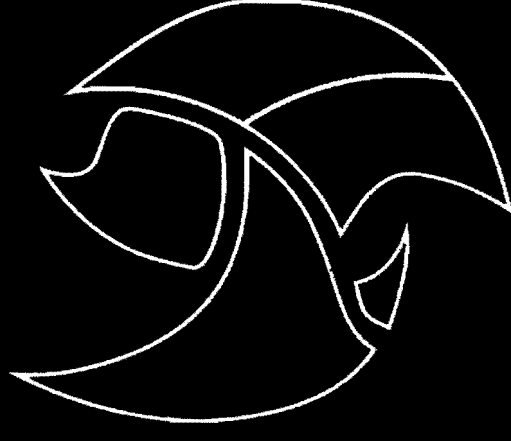
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QRC Briefing to
Shadow Cabinet

21 January 2011

Impact of flooding on the Queensland Resources Sector



Mr Michael Roche - Chief Executive

Mr Greg Lane - Deputy Chief Executive

shared future



QUEENSLAND
resources
COUNCIL

The 2009/10 contribution of the QLD resources sector

In 2009-10 the sector purchased \$17.4 billion of goods and services from QLD businesses

These purchases were from 95 per cent of QLD postcodes

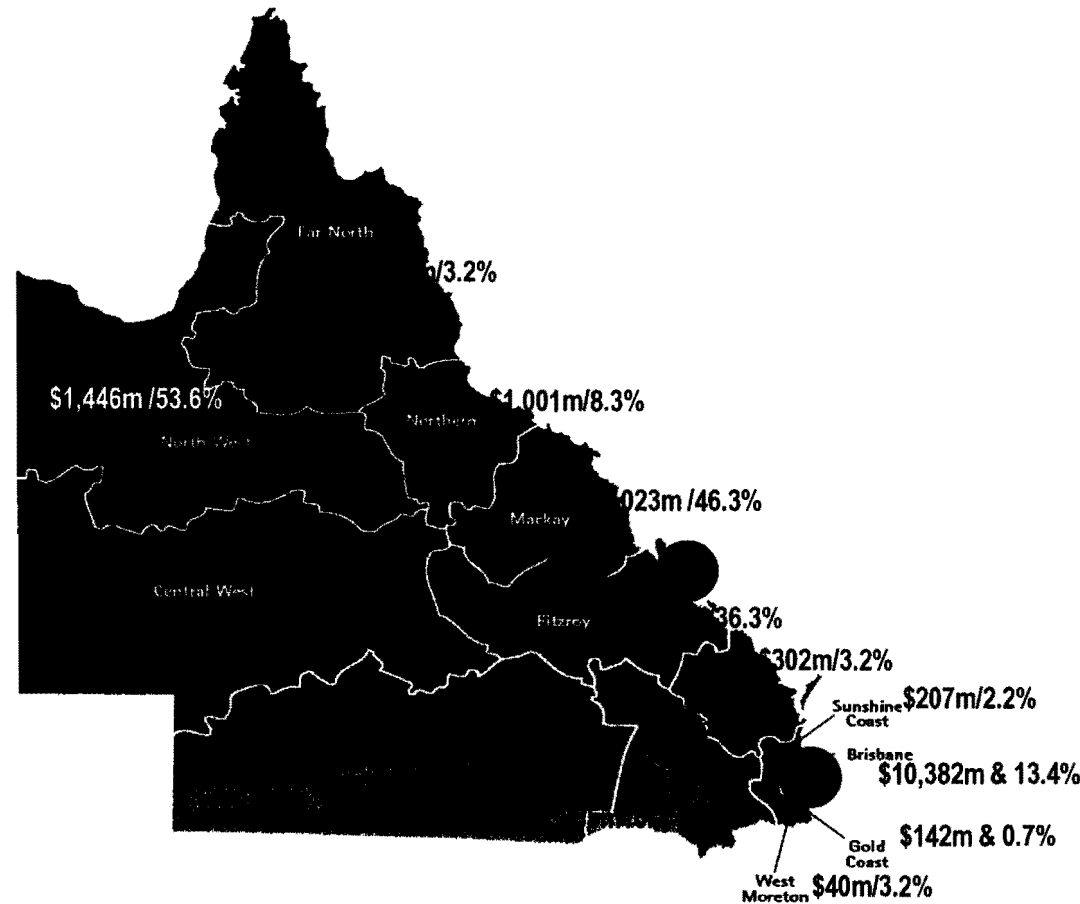
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The State Budget for 2009-10 assumes receipt of \$3.2 billion in resource sector royalties

The resources sector accounts for 21% of the QLD economy (Gross State Product)

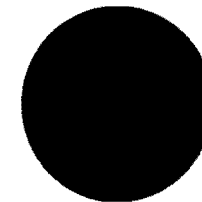
The resources sector accounts for 13% of QLD's total employment (1 in 8 jobs)

The resources sector's land disturbance is 0.09 per cent of QLD's land mass



The direct economic stimulus of the QLD resources sector (salaries, purchases and community payments) and job creation as a percentage of total

Seriously affected flood communities



Source: As contained on <http://queenslandeconomy.com.au/home> . Data from company members 2010, and captures supplier, salary and community spend, last 12 month reporting period, QLD operations of QRC members (approximately 90% of total value of production)



QUEENSLAND
resources
COUNCIL

Flood impacts on QLD resources sector

Queensland is the world's leading exporter of metallurgical coal (approximately 120 mtpa in 2009/10 - used in iron and steel production) and also a significant exporter of thermal coal (approximately 80 mtpa in 2009/10 - used in electricity production)

Flooding and rain inundation is causing significant production problems in the Bowen, Surat and Clarence-Moreton coal basins



Flood impacts on QLD resources sector

There are five main rail lines utilised by QLD coal producers. Current status:

- (1) Newlands (to Abbot Point near Bowen) – operational
- (2) Goonyella (to DBCT and Hay Point) - operational (lost one week), minor restrictions
- (3) Blackwater (to Gladstone) – progressively re-opening from 19/1 to 25/1 after 4-5 weeks outage. Rolleston spur line has no confirmed re-opening date.
- (4) Moura (to Gladstone) - operational (lost 4 weeks) with some minor restrictions
- (5) Western Line (to Port of Brisbane) – closed west of Toowoomba for up to 3 months



Flood impacts on QLD resources sector – Key Issues

Rail issues mostly fixed or in sight of being fixed except for Rolleston mine and three mines on the Western Line west of Toowoomba. (Mines are talking to Transport and main Roads reinterim road-based solutions to move coal to market). Repairing western line (owned by QLD Govt GOC QR) is a key priority as is approval to move some coal by road to the nearest rail loading facility.

Water discharge: Coal exports are now more likely to be negatively impacted by the inability of mines to remove the water from pits. QRC estimates 85% of coal mines partly or fully constrained by water issues. Gaining speedy DERM approval for water discharge is a key priority.

Roads: State-wide Permit Office for freight a good step. 60 Day Recovery Plan for 85% of network gives some certainty. Toowoomba Range road haulage critical. Need sustained speedy decisions as communities/industries begin to recover.



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Flood impacts on QLD resources sector

The QRC estimates that about 15 per cent of the state's 57 coal mines are in full production, with 60 per cent operating under restrictions and a further 25 per cent yet to resume normal operations. BHP Billiton say their production was down 30 per cent in December quarter.

Mine by mine data is yet to be received by the QRC so forecasts are 'best estimates'. A more accurate picture will be gained over the following weeks but production for 2010-11 could be down 15-20% on potential. There may be a temporary spike in coking coal price.

Some minor impacts on gas production due to flooding and delays to new gas drilling and exploration.

Concerns on power supply have eased but Gladstone Power Station supply from Rolleston mine non existent. GPS looking to source coal elsewhere.



Outlook

Wet season started early (September) and could be above average rain until end April

Mine, CSG and power station sites vulnerable to further major wet weather events.

Need to build in resilience by getting rid of maximum amount of water NOW to prevent bigger disruption and greater environmental harm (eg uncontrolled dam overflows)

Challenge of prioritising road repairs to facilitate supply lines to mines, CSG sites and power stations

North West Queensland minerals province (Mount Isa) spared to date, but for how long?



Part of the community

QRC member companies have contributed best part of \$12 million to Premier's and local appeals and in-kind contributions.

Entire evacuated town of Theodore housed at expense of Anglo Coal

Mine/CSG employees worked shoulder to shoulder with residents on town defence and clean-up

Return to full operations means dollars for local community and to Treasury coffers

Workforce retained but concerns for mines without transport links or are waterbound for lengthy period.

Michael Roche

From: Michael Roche
Sent: Friday, 21 January 2011 9:34 PM
To: Bradley John
Cc: Birchley Michael; Wall Terry; [REDACTED]; David Shankey; [REDACTED]; Frances Hayter; Greg Lane;
Subject: RE: Advice Promised in relation to TEP and Mine Discharge Issues

Dear John

Thankyou for the update in relation to TEP and Mine Discharge Issues. I must say at the outset that I am surprised that you would think I would be happy to leave a further discussion of these matters until late next week or early the following week. I need to make clear that I would want to catch up with you and your team on Tuesday 24 Jan to take stock. My office will be in touch to arrange a time. I would be happy to come to 400 George St. At such a meeting I would want to discuss legal advice coming to QRC re options available to DERM/Government. The urgency we attach to these issues are simply not consistent with leaving a further catch-up until a week or more away.

We will study your letter and the attached material in the next day or so and revert.

As per my email to [REDACTED] of DERM this afternoon, gaps in your advice this evening are as follows:

- likely timing on a decision on Lake Vermont mine TEP application?
- status of handling of Dawson North mine TEP application?
- how many outstanding TEP applications involve low flow/no flow situations?

In addition, I was expecting tonight advice on DERM consideration of the emergency direction option raised by QRC - Minister Jones indicated to me yesterday that this issue was actively being considered by DERM.

John, your suggestion that we could touch base in a week or more was concerning - it suggested to me, rightly or wrongly, that DERM attached little urgency to your engagement with QRC on these important matters.

Any advice you can provide over the weekend on matters I have raised will be useful in how I handle my interview with [REDACTED] breakfast program on ABC Radio National on Monday morning.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

From: Bradley John [REDACTED]
Sent: Friday, 21 January 2011 7:47 PM
To: Michael Roche
Cc: Birchley Michael; Wall Terry
Subject: Advice Promised in relation to TEP and Mine Discharge Issues

Good Evening Michael,

1

Please don't hesitate to contact me if you have any concerns or wish to discuss contents.

We will stay in touch on these issues and would welcome an opportunity to take stock of TEP status in a further meeting with you at the end of next week or early the following week. Please advise me if this suits you.

regards

John Bradley
Director-General
Department of Environment and Resource Management
Telephone: 07 3330 6298
Email: [REDACTED]
[REDACTED] [ld.gov.au](mailto:[REDACTED]@ld.gov.au)

Annexure 2 Item 17

Michael Roche

From: Michael Roche
Sent: Friday, 21 January 2011 9:34 PM
To: Bradley John
Cc: Birchley Michael; Wall Terry; [REDACTED]; David Shankey; [REDACTED]; Frances Hayter; Greg Lane;
Subject: RE: Advice Promised in relation to TEP and Mine Discharge Issues

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Any advice you can provide over the weekend on matters I have raised will be useful in how I handle my interview with Fran Kelly breakfast program on ABC Radio National on Monday morning.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

From: Bradley John [REDACTED]
Sent: Friday, 21 January 2011 7:47 PM
To: Michael Roche
Cc: Birchley Michael; Wall Terry
Subject: Advice Promised in relation to TEP and Mine Discharge Issues

Good Evening Michael,

As attached, please find advice we promised to get you by COB today.

Please don't hesitate to contact me if you have any concerns or wish to discuss contents.

We will stay in touch on these issues and would welcome an opportunity to take stock of TEP status in a further meeting with you at the end of next week or early the following week. Please advise me if this suits you.

regards

John Bradley
Director-General
Department of Environment and Resource Management
Telephone: [REDACTED]
Email: [REDACTED]
www.derm.qld.gov.au

Department of Environment and Resource Management 400 George Street, Brisbane Q 4000 GPO
Box 2454, Brisbane Q 4001

-----Original Message-----

From: Level 13 Digital Sender

[REDACTED]

Sent: Friday, 21 January 2011 7:43 PM

To: Bradley John

Subject:

This document was digitally sent to you using an HP Digital Sending device.

+-----+
Think B4U Print
1 ream of paper = 6% of a tree and 5.4kg CO2 in the atmosphere
3 sheets of A4 paper = 1 litre of water
+-----+



**Queensland
Government**

Ref CTS [CTS No.]

21 JAN 2011

Department of
Environment and Resource
Management

Mr Michael Roche
Chief Executive
Queensland Resources Council
Level 13, 133 Mary Street
Brisbane, Queensland 4000, Australia


Dear Mr Roche

I wish to provide you with an update on my Department's progress in processing applications for Transitional Environmental Programs (TEP's) and to address some of the concerns you have raised in recent email correspondence.

As at 1pm on the 21st January, my department had approved 25 TEP applications or amendments to existing approvals since the 1st December 2010. A further 15 applications or amendment requests have been received and are currently undergoing assessment. Several of the outstanding applications are awaiting more detailed information from the applicants before they can be properly assessed.

1. Issues raised in Recent Discussions

As per my commitment to you in our meeting on the 18th January 2011, I have attached some general guidelines relating to TEP applications involving discharge of mine affected water to waterways. These guidelines are not intended to be definitive or exhaustive and are intended to provide a basic level of guidance to some of the risks and issues that are necessary to consider in a TEP application of this nature.

As has been discussed on several occasions, applications will be considered on a case by case basis to ensure they achieve the best result for the applicant while still ensuring the safety and well being of the environment and downstream water users. As such, applications that do not fall within the broad guidelines provided may still be acceptable in certain situations. Similarly, if an application appears to meet the requirements of the attached document, this does not mean it will be automatically approved as there may be other mitigating circumstances.

My department has recently approved a TEP application that involved the discharge of mine affected waters to an ephemeral stream under low or no flow conditions. In this instance, the environmental values of the ephemeral stream and the quality of the discharge water were such that the application could be approved. Conditions have been placed on the TEP which require a minimum flow in the major watercourse which receives the discharge from the ephemeral stream and minimum water quality triggers for this major watercourse have also been specified. Decisions such as this demonstrate the flexibility and innovation in DERM's approach, while maintaining the rigour of the environmental assessment and

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Website www.derm.qld.gov.au
ABN 46 640 294 485

defensible outcomes. I note that several other applications which propose similar receiving flows are under consideration and will be assessed on a case by case basis.

2. Issues Raised in QRC Correspondence

In reference to your email correspondence of 20 January, I would like address a number of issues.

- As you noted, a TEP application for the **Millenium mine** was submitted two weeks ago on January 7 2011. In discussions with the applicant, departmental staff were informed that the mines operation was not currently impacted by the water on site, although there was the potential for this situation to change in the future as coal in other mining areas needed to be accessed. This advice was confirmed in further communication with the mine on the 20th January. My department has considered this advice when prioritising its review of TEPs while meeting statutory timeframes in all cases. This has permitted the assessment of applications for TEPs from mines where the discharge of water was essential in restoring mine operations to be expedited. Nevertheless, comments on the application were provided back to the mine on the 20th January and it is likely that a TEP will be issued in the near future.
- With regards to the **Lake Vermont** mine, a TEP application was received by my department on the 14th January, six days prior to your email correspondence. The application relates to the discharge of mine affected water into a watercourse with a low receiving flow. There has been ongoing discussion between staff of my department and the mine since the application was submitted. Given the lack of a receiving flow, the application proposes the release of better quality water in order to provide a flow in the watercourse to allow the discharge of the mine affected water. As previously discussed, proposals to discharge into watercourses without a reasonable receiving flow require a higher degree of technical assessment and there has been ongoing contact and communication with the applicant in this regard as further information to support the application was required. It is anticipated that a decision on this application will be finalised shortly.
- You indicated you had received feedback that my department has been conservative in the conditions applying to the approval of some TEP applications received prior to Christmas. As you are aware, these applications were assessed and approved in exceptionally short timeframes in order to allow approved discharges to commence as soon as possible. In order to achieve this timeframe, the flow conditions in the TEP would necessarily be higher to permit earlier and larger discharges and to ensure the cumulative impacts could be managed. Such approvals cannot reasonably be compared to the assessments now being conducted on applications to discharge to significantly smaller receiving flows. Several of the companies which received TEPs have since applied for amendments allowing them to discharge at reduced receiving flows and these amended applications in turn require a more rigorous technical assessment prior to making a decision.

3. Importance of Proactive Action by Companies

My Department is highly conscious of the extraordinary recent rainfall events and their impact on the resources sector. We are committed to remaining responsive, flexible and appropriately resourced to assist proponents as they meet their obligations in relation to environmental compliance.

Equally, it will be important for applicants, particularly those seeking to discharge in low flow environments, to be proactive in managing the information and other resources which will improve the prospects of a TEP application being approved. Staff of my department have been dedicated in assessing applications for TEP's in a timely and efficient manner over the last few weeks. In many instances, the level of information and detail supplied by the

applicants has been insufficient for a decision to be made. In these cases, staff of the department have been as helpful as possible in identifying these deficiencies and requesting further information as appropriate.

I would like to reiterate two important considerations discussed in our recent meetings, which have assisted companies in successfully receiving TEP approvals.

- Companies which have received approval of TEPs have been able to clearly address the identification and management of mine-affected water environmental risks.
- Some companies have been active in maintaining or gathering fundamental information requirements for TEP application (as identified to the QRC last year) relating to proposed discharge water quality, blending options, environmental values and receiving water flows, etc.
- Many companies have undertaken careful onsite water management, implemented infrastructure solutions or procured additional pumping capacity so as to be able to take advantage of flows opportunistically. I am informed that several mines have not made the most of the opportunity that has been available to them to date. Some mines have been authorised under TEPs to discharge significantly more affected water than has actually been disposed of in the last few weeks. It would appear that equipment constraints or other operational factors have limited some mines' ability to discharge affected water and they have therefore not taken full advantage of the high flows that were apparent in receiving waters while they were available.

As acknowledged in our recent discussion, for some companies the granting of a TEP will be delayed at least partly by their environmental assessment capacity and the available information they have maintained. Equally, it should be noted that some applications have been of very good quality and several mines should be commended on their demonstrated ability to manage water on their sites through this difficult time.

this is a fundamentally unfair comment

Should you have any further enquiries, please do not hesitate to contact Mr Mike Birchley, Assistant Director General - Regional Service Delivery of the department on telephone [REDACTED].

Yours sincerely

John Bradley
Director-General

General and Non-Binding Guidance on Coal Mine TEPs and Managing Salinity

1. For releases associated with stream flow

Generally, the discharge waters can be considered in three categories:

- Lower Risk - EC <1500uS/cm
- Medium Risk – EC between 1500uS/cm and 4000uS/cm
- Higher Risk – EC > 4000uS/cm

Obviously these are broad generalisations and only relate to EC values whereas there must be consideration of other analytes in determining the risk of the discharge waters to the environment. An indication of what is generally expected for each category in relation to discharge to receiving waters is as follows:

- **Lower risk water – EC<1500uS/cm**
 - Generally 1:1 or 1:2 dilution with receiving waters may be permitted for good quality water depending on the receiving waters quality and the location of the mine. Upper catchment mine will be given more allowance
 - Flow triggers for local gauging stations can typically be reduced.
 - Gauging station locations reasonably flexible. For example, downstream gauging stations on major waterway may be used in some cases.
- **Medium risk water – 1500uS/cm < EC < 4000uS/cm**
 - Immediately downstream of the discharge point must achieve less than 750 to 1000uS/cm with better results further downstream. Downstream trigger for ceasing discharge are typically around 500uS/cm to manage potential cumulative impacts
 - Less flexibility is available in relation discharge, dilution and sampling
 - If the discharge is into ephemeral streams or tributaries that feed into a major watercourse, lower dilution rates (and hence higher combined EC values) may be possible in the tributary providing there are no key environmental values in the tributary that may be affected
- **Higher risk water – EC>4000uS/cm**
 - Generally more applicable to those mine located adjacent to major waterways.
 - Obviously the higher the EC then the lower the discharge rate and the higher the dilution that must be achieved immediately downstream of the discharge point
 - Immediately downstream of the discharge point typically required to achieve less than 750 to 1000uS/cm. Downstream trigger for ceasing discharge are typically around 500uS/cm or better to manage potential cumulative impacts
 - Conditions relating to discharge rate, dilutions and sampling locations will remain and may be more detailed/onerous. Typically higher stream flow triggers for release may be required.

- The same considerations relating to ephemeral streams or tributaries apply as per the medium risk water but obviously dilution rates will generally need to be considerably higher

2. For releases not associated with stream flow (or minimal flow)

Generally these releases will need to meet ambient reference water quality at the discharge point and in the receiving environment. This option would normally only be suitable where there are no other alternatives and a “good” water quality can be achieved end-of-pipe (most likely 100 to 750uS/cm depending on the location). Historical DERM water quality data can be used to derive the release limits and the downstream trigger values. The numbers typically used would be between taken from between 50th and 90th percentile of the historical DERM data depending on the situation.

General Comments

The above indications are not absolute and each application/case will be assessed on its merits based on the information available. Indeed, consideration and approval has been given for applications that do not adhere to the generalisations presented above but these applications obviously require a certain level of detail in order to ensure that the potential for environmental harm is appropriately managed and minimised.

Similarly, some applications that do meet the above generalisations may not be approved due to other considerations and contributing factors. Some of these considerations include:

- Drinking water supplies that might be affected by discharges requiring consultation with the Office of the Water Supply Regulator and Queensland Health
- Target water quality parameters for major watercourses
- Cumulative impacts of multiple discharges
- The turbulence of the receiving waters and whether layers of differing water quality are likely to eventuate
- Sensitive key environmental assets
- Downstream land and water use
- The flow rate of receiving waters – low and no flows can pose significantly higher risk
- The availability of a suitable watercourse – ie is the discharge to overland flow
- Background water quality
- Duration of discharge
- Prioritising discharges based on safety, key infrastructure and operational ability in times of low river flow
- Proximity to other discharges

As such, each application must be assessed on a case by case basis in order to consider all contributing factors. That being said, the information in this sheet may be considered by applicants in preparing a TEP requiring the discharge of mine affected water.

Annexure 2 Item 18

Notes of meeting of Michael Roche with DGs Ken Smith (Premiers), John Bradley (DERM) and [REDACTED] (DEEDI), Level 15, Executive Bldg. 25 January 2011

John Bradley outlined situation on TEP approvals (26), applications (15) and that 3 applications were judged to be “critical” to operations.

MR advised of company feedback that TEP applications were now getting bogged down in DERM. KS proposed that there be a project management approach employed where DERM, QRC and companies met regularly to work through issues re outstanding TEPs.

John Bradley said that companies could be putting in TEP applications in advance of improved flows in creeks and streams.

MR said that the legal advice QRC was receiving pointed to ability to use emergency direction powers under the EP Act. MR said that with [REDACTED] forming and perhaps more TCs on the way, now was the time to act – to allow discharges within a specified EC limit in anticipation of resumed stream flows.

JB response was that the trigger for use of emergency directions was where serious environmental harm has or will occur. IT won’t allow such acts for “economic reasons” MR said that QRC advice was that the emergency power was broader. In any case, was there not a risk of environmental harm if already nearly full dams overtopped or burst in an uncontrolled way as a result of rain from upcoming cyclone activity?

IF said that government could not possibly anticipate a weather event in applying such powers.

Annexure 2 Item 19

Notes of meeting with Minister Stephen Robertson, 28 January 2011, 1.30pm, Level 17 61 Mary St, Brisbane. Michael Roche, Greg Lane and [REDACTED].

Met with Minister Robertson to brief him on QRC's just published estimates of the impact of water inundation of coal mines on coal production. Took him through QRC's low and high scenario estimates of lost production and gave him a flavour of company frustration with the TEP system.

MR said QRC had advice that it was possible and appropriate for Government to allow DERM to treat the situation as an emergency under the EP Act. The Minister was not sympathetic with that position. He said that a higher priority for the Government was the impact of discharged mine water on the Great Barrier Reef.

Annexure 2 Item 20

28 January 2011

The Honourable Anna Bligh MP
Premier of Queensland and Minister for the Arts
PO Box 15185
City East Qld 4002



Dear Premier

As you reactivate the State Disaster Management Group in the facing of looming cyclone emergencies threatening our State, I must bring to your attention the emergency facing the great Queensland coal industry.

First, let me place on the record our appreciation of your leadership through the floods crisis and for the hard work done by your officials. In the case of the Department of Environment and Resource Management (DERM), they have worked long hours, giving up weekends and holidays to process a large number of applications from QRC members for Transitional Environmental Programs (TEP) for release of water outside of their normal environmental authorities. However, with the return to normal flows in local streams – albeit feeding still strongly flowing major water courses - the rate of TEP approvals has slowed and many of those TEPs already granted do not allow releases in these low flow streams. Some mines have had applications with DERM for over two weeks.

Many, many mines find themselves with heavily inundated coal pits and full mine dams. Without approval to release water, they have few options to handle water on site. Some mines are using existing coal pits as temporary dams simply to be able to get at least some coal to recommence mining.

Mine company CEOs are telling me of their fears about future major rainfall events leading to both further severe production disruptions, but also to the risk of uncontrolled release of water from dams and coal pits. That is not going to be a good outcome for the environment.

I have raised with the Directors-General of your own department, DERM and DEEDI and with Ministers Jones and Robertson the option of the Queensland Government using the emergency direction powers under section 468 of the Environment Protection Act to direct the release of larger quantities of water from mines, irrespective of flows in the receiving streams, provided that water does not exceed some agreed level of salinity (the EC level). In the absence of pre-determined conditions in environmental authorities which address authorised water releases for the purpose of prevention or mitigation of emergencies, and with the TEP mechanism now proving of limited use to achieve necessary levels of water release, QRC believes that your Government needs to be willing to indicate to DERM that use of the emergency direction power should be immediately added to their armoury of options to deal with the current crisis and the looming threat of further cyclones.

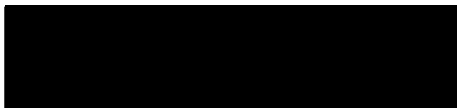
DERM advise QRC that mines should be applying for TEPs in anticipation of a return to high flows in creeks. However, if the cause of the return to high flows is in fact torrential rain from, say, another cyclone, the reality is that these mines will experience even greater water inundation. Their situation will deteriorate even further. What we are asking is that mines be permitted to release at least some of their excess water before the next major rainfall event creates even greater challenges, for production and for the environment.

It is not clear that the Government fully appreciates the dimension of the crisis facing large parts of the coal industry. Today's MYFER for 2010-11 talks of a 15 million hit to coal production in 2010-11 due to the flooding and other water impacts on mines. The public and private intelligence we have drawn on in compiling the economic impact estimate we released yesterday point to a loss of 30 million tonnes being a low end estimate.

I would be happy to discuss these matters with you or your advisers at any time.

I trust Queensland manages to avoid this next cyclone threat. However, as you yourself have said in recent times – we need to prepare for the worst and hope for the best.

Yours sincerely



Michael Roche
Chief Executive

cc Minister Jones
 Minister Robertson

Annexure 2 Item 21

Michael Roche

From: Michael Roche
Sent: Sunday, 30 January 2011 3:40 PM
To: Nicole Scurrah
Subject: RE: QRC letter to Premier
Attachments: Extracts of Advice to QRC on flood preparation response.doc
Importance: High

Nicole

Given your obvious doubts about the veracity of what was said in my letter to the Premier, I trust you have been appraised of what BHP Billiton () have told David Shankey and put it in writing to him today: that their TEPs are of little use, that the situation in terms of loss of production is more serious than the government imagines and that industry supports use of the emergency direction powers of the EP Act.

Nicole. I have been raising these points with government - with your office (in person 19/1 and email 20/1), DERM DG (in person 18/1), Minister Jones (by phone 20/1), DERM/DEEDI/Premier's DGs (in person 25/1), via QRC State of the Sector report (emailed to you 27/1) and with Minister Robertson (in person 28/1).

I feel I have been treated as "the boy who cried wolf" when in fact what I am doing is reflecting the feedback from members I have been getting constantly. I had spent an hour with the head of BMA, , as recently as Thursday.

You may be interested in aspects of the legal advice on which I have been relying - from , until recently a Minter's partner, expert in the EP Act. She now has her own law practice. I have provided lengthy extracts from this advice which was formally received on 27/1 but which was the subject of extensive email traffic between and QRC throughout January while she was travelling in Europe.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

From: Nicole Scurrah
Sent: Friday, 28 January 2011 9:47 PM
To: Michael Roche
Cc:
Subject: Re: QRC letter to Premier

Hi Michael, Thanks for your response. Our office has contacted some of the companies direct, who, i am advised, have not detailed the issues that you outline, so wanted to receive the information you have to see why the story is different to that we are hearing direct.

Yes, I can get a list from the agency but also have an obligation to test the information and service with the industry.

Happy to go back to the companies direct again, and get further views in writing, company by company if QRC do not have the information.

I will organize that and come back to you asap.

Thanks again

Nicole

Sent from my iPad

On 28/01/2011, at 9:29 PM, "Michael Roche" [REDACTED] wrote:

Nicole

In relation to TEPs, DERM can assist you with the list of outstanding applications. They provided me this afternoon with the latest list of approved TEPs and that they have 13 applications before them. They will not tell me who is on the application list. In response I asked DERM for an update on Anglo Coal's Dawson North application, submitted two weeks ago today. I also asked about Jellinbah Resources' Lake Vermont mine application, also about two weeks old. The Peabody Millenium mine's application of nearly three weeks was approved today. The totally inundated small Baralaba mine has no TEP as yet. Companies that have TEPs tell me that what they are being allowed to discharge in current low flow situations is well below their needs and in some cases is negligible.

Most of my information is by talking to the company CEOs, which I do by phone and face to face every day. I would encourage you or your delgate to do the same. Our biggest coal company, BMA is already on the record that their December qtr was down 30% and I know that they told DEEDI that the March qtr would be at least as bad. Wesfarmers Curragh are on the public record as saying production will be down 17% in 2010-11. Macarthur Coal announced yesterday Dec qtr production was down 24%. Their Coppabella mine mined their first coal in over a month yesterday. They did so by pumping water out of a mine pit into another active pit - their dams are 97% full. Their coal pits are under 6 metres of water. Apart from water issues, the three mines west of Toowoomba and Rolleston mine have no rail for three months or more. And on it goes. It is not a pretty picture.

I note your obvious scepticism. That scepticism and defensiveness seems to have infused the government. I visited Minister Robertson today, outlined our take on the situation and in response to my suggestion re use of EP Act emergency direction powers he told me that the government needed to protect the GBR from mine water releases. Every independent study (including Hart) and reputable conservation groups say the only industry threatening the GBR is agriculture. I have said nothing publicly about flooding runoff from chemically infused cotton crops, from feedlots and damaged sewerage plants flowing into the Fitzroy system. Sewage is ok'd to to be pumped into Oxley Creek and then the Brisbane River and Moreton Bay, but not some moderately saline water from mines that fell out of the sky.

Can I suggest therefore that I arrange a delegation of coal company representatives to meet with the Premier and relevant Ministers next week, to hear their stories first hand, assuming we are not all totally distracted by the impacts on our State from one or more cyclones?

The tools are available to Government to move decisively to assist the coal industry. All that is seemingly lacking is the political will.

Have a good weekend, no doubt doing what I will be doing: watching the path of TC Anthony.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

On 28/01/2011, at 6:14 PM, "Nicole Scurrah" [REDACTED] wrote:

Michael,

Thank you for your email, so that I am able to provide a full picture of current status for consideration, can you please provide full details; including correspondence that confirms information from companies involved, on what you believe to be outstanding or not approved Transitional Environmental Programs.

Thanks

Nicole

From: Michael Roche [REDACTED]
Sent: Friday, 28 January 2011 4:48 PM
To: Ken Smith; Bradley John [REDACTED]; Nicole Scurrah; [REDACTED]
[REDACTED];
Subject: QRC letter to Premier

Please find attached letter emailed this afternoon to the Premier (and cc'd Treasurer Fraser and Ministers Jones and Robertson) re the predicament of the Qld coal industry from water inundation, especially with looming threat of further cyclones..

Michael Roche

Chief Executive

Queensland Resources Council

<image001.jpg>

t: [REDACTED]

f: [REDACTED]

Level 13 133 Mary Street Brisbane Queensland 4000

www.qrc.org.au

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25 January 2011

Michael Roche
Chief Executive
Queensland Resources Council
Level 13
133 Mary Street
Brisbane QLD 4000

Dear Michael

Flood preparation and response issues

A. BACKGROUND

The context for this advice is that, as a result of the recent Queensland flooding, only about 15% of the State's 57 coal mines are fully operational, with the remainder either completely unoperational or partly operational.¹ Although this situation is partly related to access issues, the vast majority of the problem is due to flooding of pits and other mine infrastructure.²

Just as homes and businesses in flooded areas around the State have experienced an urgent need to dispose of dirty water and sediment from their premises, mines are in the same position. However, for mines there is the additional critical concern that if there is further heavy rainfall (or even possible cyclones) during February and March 2011, as currently forecast by the Bureau of Meteorology, there is a risk of uncontrolled releases at that time, unless water has been previously released in a controlled and staged way during the current 'window of opportunity'.

Current environmental authority conditions for these mines (particularly those mines restricted by the 'Fitzroy conditions') do not provide for controlled releases during periods of lesser flow for the receiving watercourses, but only in high flow.³ The reason why the conditions allow for releases during periods of high flow is to ensure greater dilution.⁴ However, the obvious practical difficulty with this approach is that storing large quantities of water until nearby watercourses are already in flood tends only to add to the overall flood problem and increases the risk of uncontrolled releases. Also, on average, the longer that water is stored, the greater the deterioration in water quality. The Queensland Resources Council explained this issue to DERM in a series of correspondence and meetings during the second half of 2010 and ultimately DERM impliedly recognised that the conditions did not address this issue, by inviting mines to submit 'transitional environmental programs' (TEPs) overriding their conditions.⁵

These TEPs were not proposed to be assessed on the basis of the normal content requirements and assessment criteria under the *Environmental Protection Act 1994*, but rather there was an additional informal set of contents and criteria advised. Experience has shown that the TEPs which have been approved most quickly have tended to relate to mines which are able to discharge directly to major rivers, so that there is a very high

¹ As reported in the Courier-Mail January 22-23 2011, p14, 'Coal loss to hammer royalties'.

² Information collated by QRC.

³ Model condition W8, Table 4 and condition W9.

⁴ Explanatory notes, p6 of the model conditions.

⁵ E.mail from Terry Wall, DERM, to a group-list of mines dated 6 December 2010.
Advice to QRC on flood preparation and response issues

dilution rate, particularly given that the flow rates in those rivers are already high.⁶ DERM has also been reluctant to approve TEPs for mines which are for a period of greater than 6 months, notwithstanding that the normal maximum period for a TEP that is not subject to public notification is 3 years.⁷

For mines which are located near the top of a catchment and which discharge to creeks, the practical difficulty is that waiting for high flow (in order to increase dilution) creates a risk of adding to flash flooding of the creeks. High flows in creeks may be brief but severe. In some cases, these mines have relatively good quality water.

In summary, QRC has a critical concern about the increased hazard if water is required to accumulate and probably deteriorate in quality until the next period of high flow in February or March, at which time there would be a risk of uncontrolled release.⁸ Additionally, QRC is concerned to ensure that mines are able to recover their operations, in the same way as other businesses around Queensland.

In the meantime, QRC is, of course, aware of the misinformed media pressure on the Government not to permit releases on the basis that: *'These companies are asking the Government to allow the biggest single release of toxic material in the state's history and to make it legal'*, according to Friends of the Earth spokesman [REDACTED], as reported in the article *'Miners push to pump toxins in rivers'*.⁹ This type of reporting shows a remarkable lack of understanding of the chemistry of the actual releases. Essentially, the reasons why the releases exceed normal conditions are elevated levels of 'electrical conductivity' (EC) which is a measure for salinity and 'total suspended solids' (TSS). Background levels of ECs and TSS already tend to be very high during the current conditions. This type of misinformation should not be left unchecked as it may tend to cause the public to have undue concern that the government is approving pumping of poisons into watercourses.

B. QRC'S QUESTIONS AND SUMMARY OF RESPONSES

(a) Is the TEP procedure the only mechanism or the most appropriate mechanism to address releases of mine water so as to avoid or mitigate emergency hazards?

The TEP procedure is DERM's current preferred mechanism, which makes it difficult to avoid, in practical terms. However, it is not a procedure which is well adapted to address natural disasters (or urgent steps to prevent or mitigate the consequences of natural disasters).

Obviously, the most prudent approach would have been for **environmental conditions** (or emergency plans approved under environmental conditions) to have spelled out in advance the steps authorised in various emergency scenarios, or in anticipation of imminent emergencies. However, realistically, this has not been achieved by the 'Fitzroy conditions', as implicitly recognised by DERM in proposing to address releases through TEPs. The current Fitzroy conditions simply do not provide for releases of mine water during lower flow conditions for receiving waters, prior to flood events, so as to avoid increasing the overall impacts of anticipated flood events; instead, they directly encourage mines to release the most water during the maximum flood conditions of receiving waters. (The *pro forma* TEPs provided by DERM also continue to focus on high flow and maximum dilution, rather than encouraging mine water release prior to maximum flow, to avoid increasing flooding.)

⁶ The *pro forma* guide for preparing TEPs provided by DERM in December 2010 headed '**DRAFT TRANSITIONAL ENVIRONMENTAL PROGRAM UNDER SECTION 333 OF THE ENVIRONMENTAL PROTECTION ACT 1994**' includes model conditions requiring minimum flow rates, similar to the Fitzroy conditions themselves.

⁷ The 'simplified version' of the TEP provided by DERM to QRC on 6 January 2011 stipulates an end date of 30 June 2011.

⁸ Rob Vertessy, deputy director of the bureau's water division, said yesterday that, with many dams in Queensland at capacity and the ground sodden, further heavy rain expected to fall before La Nina lost strength would cause large run-offs. La Ninas typically begin in the middle of the year and last until the following autumn. *"Certainly, the conditions are ripe for more run-offs in the coming couple of months because we still have the influence of this strong La Nina,"* Dr Vertessy said. *"The odds are favouring well above average rainfall."* His predictions were backed up by bureau climatologist Blair Trewin. *"In Brisbane, February-March is still the peak of the wet season, so even in a normal season you can expect quite a bit of rain,"* Dr Trewin said. *"Obviously, you would need more heavy rain to cause more flooding and the risk of further heavy rain, particularly in the tropics, is still with us."* (The Australian 27 January 2011, 'Rain to come as La Nina hangs around').

⁹ p16, Courier-Mail, January 22-23, 2011.

Advice to QRC on flood preparation and response issues

In the absence of conditions authorising emergency steps, the original intention of the EP Act was that emergency releases would be authorised by 'emergency direction' under Section 468. 'Relevant acts' (such as discharging contaminants) are not unlawful if authorised by emergency direction, under Section 493A(2)(g). The main downside of emergency directions from the perspective of industry is that they are at the discretion of DERM, which would be a problem if the conditions turn out to be miscalculated; the main downside from DERM's perspective is also that these directions are in the discretion of DERM so they would be the responsibility of DERM, which would be a problem (particularly for downstream owners) if the conditions turn out to be miscalculated. The original intention was that informal cooperation would address this concern.

Another mechanism is for the company to lodge a **program notice** and then simply go ahead with the release without waiting for a TEP to be approved. There are significant legal risks with this approach (discussed in this advice), but it is the best available fallback if DERM fails to authorise the discharge by any other mechanism in sufficient time.

In the absence of conditions which address authorised releases for the purpose of prevention and mitigation of emergencies, we are not suggesting that there is a single perfect mechanism to address all scenarios, but rather, different mechanisms should be considered for different individual circumstances, rather than sticking to the TEP mechanism as the sole option.

(b) Leaving aside political and media risk, are there legal reasons for DERM to give priority to environmental considerations above health and safety considerations, in emergency circumstances?

It is obvious from Section 23 that there was originally an intention to give priority to public safety over environmental concerns. This is the section that lists various emergency legislation as being given priority, eg, the *Disaster Management Act 2003*, the *Public Safety Preservation Act 1986* etc. In our experience, the difficulty faced by many district DERM officers, who find themselves placed 'on the spot' in considering individual safety versus environment questions, is that this section did not simply say that health and safety is to be given priority, but rather the drafting provides that this limited range of statutes prevail '*only to the extent of the conflict*'. The normal position is that statutes should be interpreted to try to avoid concluding that there is any conflict, that is, they should be interpreted as requiring full compliance with both safety and environmental requirements. It is particularly unhelpful that Section 23 fails to mention either mine safety legislation or other workplace health and safety legislation. This is why it is understandable for DERM officers to feel that their statutory duty is to give priority to protecting environmental values, unless expressly directed otherwise. DERM's operational policy and information sheet on these issues also place the onus on companies to comply with both environmental requirements and safety requirements, without the need for DERM officers to ensure that a conflict is avoided.

Nevertheless, the term 'environmental value' itself is defined so as to include human safety (in Section 9). The definition of 'environment' also includes reference to social and economic considerations (Section 8). The 'standard criteria' include human issues such as the public interest and financial considerations. We do not consider that the EP Act legally prevents priority from being given to one environmental value (such as human health and safety) over another environmental value, depending on the particular circumstances.

(c) If DERM continues to experience difficulty with taking the responsibility for authorising discharges which are necessary in the broader public interest, what steps would assist?

The difficulty for DERM, as a line agency, is to be able to 'make the call' to give priority in an emergency or possible impending emergency to human considerations above ecological considerations, because this is just not their particular role or function. DERM can deal itself with the cases where the impact of temporarily overriding environmental conditions is environmentally negligible. However, it would be helpful if there is a 'whole-of-government' direction for priority to be given to human considerations in the circumstances of a natural disaster, in the harder circumstances where this does cause temporary environmental impact. There should still be a reasoned justification for overriding priority to the environment in the particular circumstances, but not at the expense of acting quickly to avoid hazards.

C. ADVICE

1. Comparison of TEP mechanism with other mechanisms under the EP Act for the purpose of addressing emergency issues

2.1 TEPs

In summary, a transitional environmental program (TEP) is a document which, when approved by DERM, sets out a series of actions over a timetable, which will, at the end of the TEP ensure that the activity is in compliance with the relevant environmental conditions or other applicable environmental standards, while in the meantime those specified conditions or standards are overridden temporarily.¹⁰ Normally, a TEP may be approved for up to 3 years, without the need for public notification.¹¹ However, for mines dealing with the current severe wet season, DERM has indicated that it will only approve TEPs up to 6 months.

From the perspective of industry, the key advantage of a TEP is that it provides transitional protection from prosecution for non-compliance with an EA condition (or other environmental standard), for the period of the TEP, provided that it is fully implemented.

The key difficulties with this approach are:

- The statutory purpose of a TEP should be to ensure that the program of works specified would bring the business into compliance with the normal conditions at the end, whereas it is unrealistic to expect that a 6 months TEP for a flooded mine would be capable of making any difference to what would happen if a similar event occurs next wet season. In the unlikely event that capital works could even be carried out on a flooded mine during that short period, the fundamental issue remains that the conditions do not provide for releases of water to mitigate risk prior to periods of high flow, rather than during the periods of high flow.
- Content requirements for a TEP require an analysis of the receiving environment and the impacts. In the case of relatively new mines, this data may be available, but generally it would not be readily to hand in the case of older mines. If a snap decision needs to be made to mitigate an impending risk, there is not time to undertake a couple of years of data collection first.
- TEPs require time to assess. There is also the risk of refusal. DERM has a wide discretion to refuse draft TEPs. One of the points made by the Hart report into the Ensham incident was that the discretion is not in accordance with a set of sufficiently detailed and relevant statutory criteria.
- The protection of the TEP is lost if there is any non-compliance at all, however minor, meaning that the company then becomes liable not only for the breach of the TEP but also for the underlying conditions that were otherwise overridden by the TEP;
- It is difficult to amend a TEP once approved, because DERM does not have power to approve an amendment if this would lead to an increase in environmental harm.¹² For example, there is a reasonable argument that any extension of timeframe constitutes an increase in the underlying environmental harm, in that the harm continues for longer.
- In the past, DERM has often reported on TEPs as if they were evidence of poor environmental performance by a company, even if the situation was actually caused by DERM imposing a set of new requirements without a transitional period, as has occurred with the Fitzroy conditions.

1.2 Emergency directions

The relevant provision is as follows:

¹⁰ Sections 330 and 331 EP Act.

¹¹ Section 335 EP Act.

¹² Section 344 EP Act.

'468 Authorised person may direct emergency release of contaminant

*(1) An authorised person may give a written direction (an **emergency direction**) to a person to release a contaminant into the environment if the authorised person is satisfied—*

- (a) it is necessary and reasonable to release the contaminant because of an emergency; and*
- (b) there is no other practicable alternative to the release.*

(2) The authorised person may impose reasonable conditions on the direction.'

Originally (in 1994), the intention was that this would be the appropriate mechanism for dealing with natural disasters and similar emergencies. However, as the Act has expanded, it has 'fallen through the cracks', that the provisions dealing with contraventions of conditions do not expressly refer to an exemption for authorisation by emergency direction. Notwithstanding this drafting gap, we consider that sufficient authorisation would reasonably be implied by Section 493A, which provides for 'relevant acts' to be not unlawful if they are covered by an emergency direction. It would logically follow that they are not unlawful whether or not they involve a contravention of condition in passing. However, if there is any concern about this, it could be covered by an agreement to amend conditions which acknowledges the overriding nature of the emergency direction.

The key advantages of an emergency direction are:

- There are no detailed content requirements relying on data which might not exist;
- There is no artificial presumption that, if the same emergency arose again, the same set of steps would not have to be taken which would otherwise be unauthorised under the Act.

The key disadvantages are:

- It can only be issued 'because of an emergency', probably not to prevent or mitigate a possible or likely emergency;
- It is not controlled by the company, so if the conditions are impractical or miscalculated, there is not much that can be done about this within the timeframe, unless there is good informal consultation about the drafting in advance.

1.3 Program notices

In summary, a program notice is a type of notice to DERM which advises that there has either been an event causing environmental harm or that this is about to occur, and which provides a degree of protection from prosecution for the information contained in the notice and for the continuation of the event after the notice is given. It triggers a requirement for a compulsory TEP to be lodged,¹³ but does not guarantee that the TEP will then be approved.

Although a program notice is often a useful way to carry out a release without waiting for DERM to process a TEP, we suggest that not every notification of a non-compliance with EA conditions or environmental harm should be under cover of a program notice. The mining industry appears to be more prone to issuing unnecessary program notices than other industries, in our experience.

A program notice can only be validly lodged if:

- (a) It relates to environmental harm, which has either already occurred or is about to occur (not to other types of non-compliances, such as failure to install or maintain monitoring equipment); and
- (b) The act or omission needs to be lawful apart from the EP Act (ie, it cannot be unlawful under other legislation as well).¹⁴

The privilege available from lodging a program notice is very restricted, so care needs to be taken in working out whether this privilege will be worth anything in the particular circumstances:

¹³ Section 352 EP Act.

¹⁴ Section 350 EP Act.

- (a) The information provided under cover of the program notice is privileged from being used against the company in a prosecution for the event, but this does not stop the regulator from acquiring the same evidence some other way, eg, from carrying out its own sampling.¹⁵ It also does not prevent the regulator from issuing a different type of enforcement proceeding, such as a penalty infringement notice (PIN) or environmental evaluation. This means it is worth thinking about whether a non-compliance is so minor that it would only attract a PIN anyway.
- (b) The company cannot be prosecuted for a continuation of the original offence after the program notice is received, but only if a TEP is then lodged and approved (not refused), it is fully implemented and the regulator has not applied to the court to set aside the program notice.¹⁶ There have been instances where the regulator has made this application to the court. There is little point in lodging a program notice unless the company is prepared to do whatever is necessary to achieve approval of a TEP, including committing to adequate measures to prevent a recurrence of the event and being willing to take any refusal on appeal to court. Having said that, at the time that most companies lodge their program notices, it is unusual for them to know upfront which measures they will commit to in their TEPs. If the subsequent TEP is only for a very short period, it may be impractical for the TEP to set out measures which would actually prevent the same type of discharge from occurring if there is a similar natural disaster in the future.
- (c) If there is any non-compliance with the subsequent TEP (even if this is very minor), nothing stops the regulator from prosecuting for the continuation of the underlying offence, that is, a non-compliance with a TEP is an offence in itself, but also leaves the company open to prosecution for non-compliances with the EA or other offences from which the TEP was intended to protect the company.¹⁷

Another possible disadvantage is that the period covered by a program notice is unknown, at the time of lodging the program notice. The statutory requirements are maximum only, not minimum. DERM has a duty to give its notice of receipt 'within 10 business days', but nothing stops DERM from giving this notice immediately. The notice must require a draft TEP to be lodged within a maximum of 3 months,¹⁸ but nothing stops DERM from requiring the TEP to be lodged more quickly.

2. Priority to environmental protection over human considerations, under the EP Act

Section 23 of the EP Act provides:

'23 Relationship with other Acts

- (1) This Act is in addition to, and does not limit, any other Act.
- (2) If this Act conflicts with an Act as follows, that Act prevails, but only to the extent of the conflict—
 - *Ambulance Service Act 1991*
 - *Disaster Management Act 2003*
 - *Exotic Diseases in Animals Act 1981*
 - *Fire and Rescue Service Act 1990*
 - *Public Safety Preservation Act 1986*, part 3
 - *Radiation Safety Act 1999*
 - *Transport Operations (Marine Pollution) Act 1995*.'

It is clear from this section that there was a general intention to give priority to health and safety issues, particularly in emergency situations. The twin difficulties with achieving this intention are:

- (a) That the list is limited and in particular does not include mine safety legislation or general workplace health and safety legislation.
- (b) This list of safety Acts only prevails to the extent of a conflict with the EP Act. There may be many situations when a human safety issue conflicts with an ecological issue in practical terms, but that does

¹⁵ Section 351 EP Act.

¹⁶ Sections 353 and 355 EP Act.

¹⁷ Section 354 EP Act.

¹⁸ Section 352(2) EP Act.

not mean that the conflict is spelled out in the Act. The general principle of statutory interpretation is that, if there is argued to be any inconsistency between statutes, the courts will try to read both statutes together so that it is necessary to comply with both, rather than to give priority to one over the other.¹⁹

- (c) The section only refers to conflict with an 'Act', not with instruments issued under the Act, such as directions and notices.

Consequently, the various correspondence from DERM to QRC inviting TEPs has been careful to restrict this to situations where the environmental impacts would be 'acceptable' (particularly in the context of overall dilution). The situation is more difficult for DERM where ecological impacts may not be negligible, but where there are obvious human considerations which should be relevant from a whole-of-government perspective.

While these situations would be more difficult for DERM as a line agency with a function focussing on environmental protection, we do not consider that the EP Act prevents priority from being given to human considerations, particularly taking into account the references to human issues in the definitions of 'environmental values' and 'environment'. The 'standard criteria' for various types of decisions, defined in Schedule 4, also includes some human items, such as 'the public interest' and 'financial implications'.

Interestingly, DERM has just updated and re-issued its operational policy on 'Ensuring orders/notices/directions do not result in unsafe conditions or a breach of other legislation',²⁰ and its information sheet, 'Workplace health and safety in relation to the Environmental Protection Act 1994'.²¹ Both are dated 17 September 2010 and approved by Jon Womersley. As might be expected, these documents place the onus on the person receiving directions, notices or orders from DERM to ensure compliance with both the DERM requirement and also any health and safety requirements, rather than requiring DERM to ensure that its notices, directions and orders do not infringe health and safety requirements in the first place, for example, the information sheet says:

'It is critical that, when complying with any verbal direction from DERM officers, the person or persons receiving the verbal direction do not contravene other legislation. In particular, the person or persons receiving the verbal direction should ensure that they maintain safe work practices and do not place themselves, their employees, or any other persons at any risk whilst carrying out the direction.'

There are also lengthy legal disclaimers. Presumably, the idea is that if there would be a direct conflict in complying with both the environmental requirement and the health and safety requirement, the company should go out of business.

However, the policy does at least contain the somewhat helpful statement:

'Other issues to consider

Some people who receive an order, notice or direction from DERM, particularly if the circumstances involve some imminent and potentially serious impact on the environment, may perceive they are at risk of enforcement action which could result in them acting hastily with sole focus on the environmental issues and without due care for safety.

It is critical that all our interactions with the recipients of orders, notices and directions emphasise that safety of people comes before protecting the environment, i.e. no actions should be commenced to protect the environment before the persons taking that action have determined that their methods will be safe.'

Similarly, the information sheet includes the statement:

¹⁹ Eg: NSW Aboriginal Land Council v Minister Administering the Crown Lands Act (2007) 157 LGERA 18.

²⁰ http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=201209. Our recollection is that the original version of this document was issued after an incident some years ago when a man died trying to comply with environmental requirements on a boat, but we no longer have a record of the details.

²¹ http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=200608. Advice to QRC on flood preparation and response issues

'DERM believes that ensuring the safety of people comes before protecting the environment, even when there may be serious environmental impacts.'

It may be worth drawing attention to these statements in future correspondence with DERM.

However, in summary, the former EPA component of DERM, as a line agency, is focussed on minimising environmental impacts and not recognising that this may in some emergency preparation scenarios directly conflict with best practice risk minimisation for health and safety purposes, which DERM sees as the problem of the companies, rather than its own delegates. The EP Act does not prevent human considerations from being given priority, but we do not consider it likely that DERM would take this initiative itself, without a 'whole-of-government' decision in this regard.

Yours faithfully

Principal

Michael Roche

From: [REDACTED]
Sent: Sunday, 30 January 2011 1:25 PM
To: Michael Roche; [REDACTED]
Subject: Fw: Water Discharges from BMA and BMC mines

For information. Michael, I am chatting to [REDACTED] right now at the cricket about next steps.

Regards
[REDACTED]

From: [REDACTED]
Sent: Saturday, January 29, 2011 07:16 PM
To: [REDACTED]; [REDACTED]
Cc: [REDACTED]
Subject: FW: Water Discharges from BMA and BMC mines

YI. Thank you for your various inputs on this. The note below has been sent to the Premier's office and copied to the heads of her Department.

Regards
[REDACTED]

From: [REDACTED]
Sent: Sunday, 30 January 2011 11:14 AM
To: [REDACTED]
Cc: [REDACTED]; 'Ken Smith'
Subject: Water Discharges from BMA and BMC mines

David

Thank you for our discussion yesterday following the letter from Michael Roche seeking use of emergency direction powers under the Environment Protection Act given the very large water volumes on coal mine sites and difficult production outlook for mines.

You asked me for a summary of TEPs held by BHP Billiton Mitsubishi Alliance (BMA) and BHP Mitsui Coal (BMC) mines. The former has six open cut mines and two underground mines, and the latter has two open cut mines.

In brief all but two of the BMA open cut mines hold TEPs, while the remaining two are proposing to submit applications. Both BMC mines hold TEPs.

While TEPs provide for relaxed discharge limits beyond those provided in Environmental Approvals (EAs), none of our mines with TEPs are currently discharging because of the restriction from current low or no flows in creeks into which they discharge, or the creeks into which these creeks flow. So the TEPS are only of benefit when there is a major rainfall event leading to flow in creeks, but are of very limited value in being able to remove the large water volumes in our mines that are left behind when the rain stops and creeks stop flowing. These water volumes are significantly hampering our efforts to return our mines to full production. Hence our support for the proposal in Michael Roche's letter.

We also need to be mindful that the production hit taken by the industry from the extended rain periods and floods is much greater than what I understand is shown in Government estimates and the outlook is

considerably more subdued. This is because we are still relying on mining coal in most instances where overburden had been removed before the substantial rain impacts, particularly in December and January. The impact of lost overburden mining in this period will be increasingly felt through the remainder of Q1 2011 as volumes of coal available for mining decrease. The significant water volumes retained in our mining areas are continuing to frustrate our efforts to get overburden mining rates back to normal which, as mentioned, will in turn impact availability of coal to mine in the months to come. The industry therefore needs immediate assistance with its recovery through water discharge relief beyond what the TEPs can provide – in the interests of both the industry and the State.

Our CEO, [REDACTED], has asked me to specifically mention that he supports the proposal in Michael's, subject to reasonable salinity levels for discharges being agreed.

The unfortunate fact David is that under current arrangements sites are accumulating more water than they can possibly use or discharge in the foreseeable future. Of great concern also is that the situation will get considerably worse if one or both cyclones off the Qld coast impact the Bowen Basin. Even if the first cyclone is low intensity it could bring large rainfall with it. Under current arrangements, the TEPs can be used when creeks flow again, but will then have to be quickly deactivated when flows quickly ease off.

So three things are required as discussed:

1. Immediate relief through use of the EPA emergency provision
2. Extend the effective use of TEPs e.g. extend the period for discharges under them (within salinity limits) and relax dilution requirements further in receiving waters
3. A plan be developed between industry and the Qld Govt to deal with longer term issues and arrangements. Notwithstanding what the industry can do, it is going to need active support from the Govt to find practical, cost effective, environmentally responsible and sustainable water management solutions for the long term

As also discussed, [REDACTED] would be pleased to discuss the above with the Premier on the phone. His mobile number is [REDACTED].

Ken, I have copied you on this note in the event we also have the opportunity to discuss this critical issue.

Regards

[REDACTED]

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Michael Roche

From: Nicole Scurrah [REDACTED]
Sent: Sunday, 30 January 2011 3:44 PM
To: Michael Roche
Subject: RE: QRC letter to Premier

Michael, thanks for the email.

Nicole

From: Michael Roche [REDACTED]
Sent: Sunday, 30 January 2011 3:40 PM
To: Nicole Scurrah
Subject: RE: QRC letter to Premier
Importance: High

Nicole

Given your obvious doubts about the veracity of what was said in my letter to the Premier, I trust you have been appraised of what BHP Billiton [REDACTED] have told David Shankey and put it in writing to him today: that their TEPs are of little use, that the situation in terms of loss of production is more serious than the government imagines and that industry supports use of the emergency direction powers of the EP Act.

Nicole. I have been raising these points with government - with your office (in person 19/1 and email 20/1), DERM DG (in person 18/1), Minister Jones (by phone 20/1), DERM/DEEDI/Premier's DGs (in person 25/1), via QRC State of the Sector report (emailed to you 27/1) and with Minister Robertson (in person 28/1).

I feel I have been treated as "the boy who cried wolf" when in fact what I am doing is reflecting the feedback from members I have been getting constantly. I had spent an hour with the head of BMA, [REDACTED], as recently as Thursday.

You may be interested in aspects of the legal advice on which I have been relying - from [REDACTED] until recently a Minter's partner, expert in the EP Act. She now has her own law practice. I have provided lengthy extracts from this advice which was formally received on 27/1 but which was the subject of extensive email traffic between [REDACTED] and QRC throughout January while she was travelling in Europe.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

From: Nicole Scurrah [REDACTED]
Sent: Friday, 28 January 2011 9:47 PM
To: Michael Roche
Cc: john.bradley [REDACTED] Ken.Smith [REDACTED]
Subject: Re: QRC letter to Premier

Hi Michael, Thanks for your response. Our office has contacted some of the companies direct, who, i am advised, have not detailed the issues that you outline, so wanted to receive the information you have to see why the story is different to that we are hearing direct.

Yes, I can get a list from the agency but also have an obligation to test the information and service with the industry.

Happy to go back to the companies direct again, and get further views in writing, company by company if QRC do not have the information.

I will organize that and come back to you asap.

Thanks again

Nicole

Sent from my iPad

On 28/01/2011, at 9:29 PM, "Michael Roche" [REDACTED] > wrote:

Nicole

In relation to TEPs, DERM can assist you with the list of outstanding applications. They provided me this afternoon with the latest list of approved TEPs and that they have 13 applications before them. They will not tell me who is on the application list. In response I asked DERM for an update on Anglo Coal's Dawson North application, submitted two weeks ago today. I also asked about Jellinbah Resources' Lake Vermont mine application, also about two weeks old. The Peabody Millenium mine's application of nearly three weeks was approved today. The totally inundated small Baralaba mine has no TEP as yet. Companies that have TEPs tell me that what they are being allowed to discharge in current low flow situations is well below their needs and in some cases is negligible.

Most of my information is by talking to the company CEOs, which I do by phone and face to face every day. I would encourage you or your delgate to do the same. Our biggest coal company, BMA is already on the record that their December qtr was down 30% and I know that they told DEEDI that the March qtr would be at least as bad. Wesfarmers Curragh are on the public record as saying production will be down 17% in 2010-11. Macarthur Coal announced yesterday Dec qtr production was down 24%. Their Coppabella mine mined their first coal in over a month yesterday. They did so by pumping water out of a mine pit into another active pit - their dams are 97% full. Their coal pits are under 6 metres of water. Apart from water issues, the three mines west of Toowoomba and Rolleston mine have no rail for three months or more. And on it goes. It is not a pretty picture.

I note your obvious scepticism. That scepticism and defensiveness seems to have infused the government. I visited Minister Robertson today, outlined our take on the situation and in response to my suggestion re use of EP Act emergency direction powers he told me that the government needed to protect the GBR from mine water releases. Every independent study (including Hart) and reputable conservation groups say the only industry threatening the GBR is agriculture. I have said nothing publicly about flooding runoff from chemically infused cotton crops, from feedlots and damaged sewerage plants flowing into the Fitzroy system. Sewage is ok'd to to be pumped into Oxley Creek and then the Brisbane River and Moreton Bay, but not some moderately saline water from mines that fell out of the sky.

Can I suggest therefore that I arrange a delegation of coal company representatives to meet with the Premier and relevant Ministers next week, to hear their stories first hand, assuming we are not all totally distracted by the impacts on our State from one or more cyclones?

The tools are available to Government to move decisively to assist the coal industry. All that is seemingly lacking is the political will.

Have a good weekend, no doubt doing what I will be doing: watching the path of TC Anthony.

Regards

Michael

Michael Roche
Chief Executive
Queensland Resources Council

On 28/01/2011, at 6:14 PM, "Nicole Scurrah" [REDACTED] wrote:

Michael,

Thank you for your email, so that I am able to provide a full picture of current status for consideration, can you please provide full details; including correspondence that confirms information from companies involved, on what you believe to be outstanding or not approved Transitional Environmental Programs.

Thanks

Nicole

From: Michael Roche [REDACTED]
Sent: Friday, 28 January 2011 4:48 PM
To: Ken Smith; Bradley John [REDACTED]; Nicole Scurrah; [REDACTED]
[REDACTED]; [terry.wa](#)
Subject: QRC letter to Premier

Please find attached letter emailed this afternoon to the Premier (and cc'd Treasurer Fraser and Ministers Jones and Robertson) re the predicament of the Qld coal industry from water inundation, especially with looming threat of further cyclones..

Michael Roche

Chief Executive

Queensland Resources Council

<image001.jpg>

t: [REDACTED]

f: [REDACTED]

Level 13 133 Mary Street Brisbane Queensland 4000

www.qrc.org.au

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She said they are reviewing their position over the next couple of days. I said I was not sure we had that time as two cyclones bear down on Qld.

If you support those QRC sentiments, I urge you to contact NicoleScurrah directly asap (preferably today) and explain to her your situation.

Her mobile number is [REDACTED]

Regards

Michael
Michael Roche
Chief Executive
Queensland Resources Council

From: Michael Roche
Sent: Friday, 28 January 2011 4:55 PM
To: Michael Roche
Subject: FW: Letter to Premier

Michael Roche
Chief Executive
Queensland Resources Council



t: [REDACTED]

Level 13 133 Mary Street Brisbane Queensland 4000
www.qrc.org.au

Working together for a **shared future**

Update- TEPs

QRC Consultations with Coal members 31 January- 2February re Water/TEPs

Frances Hayter and Greg Lane

Background

QRC sought Fitzroy model condition changes dating back as early as Feb 2010 and throughout 2010

Industry left with TEP as mechanism to deal with EA condition constraints as major change not achieved.

At 8 December meeting called by Ken Smith, QRC predicted that DERM would have applications from at least half of Fitzroy mines – that estimate has actually now shown to be conservative

TEPs granted for high flow situations and amendments have had to be sought for low / no flows – update from DERM re program notices and TEP applications

DERM delivered on 8 December promise of staff availability

Based on quality legal advice QRC has asked whether TEPs are suited to industry wide emergency and the Government's thinking on use of emergency direction power in EP Act (section 493A(2)(g)?

How will DERM handle a further series of major rainfall events this wet season? More of the same ie case by case TEPs?

Is DERM satisfied that environmental harm won't ensue from mines that have dangerously high levels of water in dams and pits?

Who in Government is looking at broader considerations beyond "environmental values" eg section 9 of EP Act talks about "human safety" and section 8 definition of environment includes reference to social and economic considerations?

So far the government's response is that they would not change their TEP process and if they had their time all over again would do it the same way.

Over the last month QRC has sent various pieces of correspondence (emails and letters) to Premiers and DERM advocating a one-off discharge for all companies to get all pits back to zero water holdings, even more critical in light of Cyclone Anthony, and now Yasi's imminent arrival.

Current Position

This culminated in government holding a series of one-on-one meetings with companies on Monday 31 January 2010, and feedback to QRC from companies thereafter.

QRC (FH and GL) was provided with feedback from companies who attended these meetings that DERM asked each company whether they were interested in a 'cookie cutter' approach to discharge. The universal feedback was that despite some complications and time issues a tailored site-by site approach utilising TEPs is preferred.

This would appear to effectively undermine QRC's fundamental position.

However, on Tuesday an email from FH was sent to Fitzroy environmental contacts asking for clarification on their responses to DERM from Monday's meeting, specifically whether companies wanted QRC to pull back from its focused lobbying for a universal release.

Several responses were received from companies who both attended and didn't attend the 31 January meetings.

In summary (feedback received in the last two days):

BMA – happy with the site-by-site approach but appreciate QRC's calls for a mass release as it would be a 'real relief' for operations but not so aggressively that it causes a reaction and retraction of current mood for relaxations on such matters as low flow / no flow releases and downstream dilution measurements. Ie continue the collective Industry approach and the companies can continue site by site negotiations. Executive management believes QRC has opened the door and site by site approach is now the best.

They strongly support a process to review the Fitzroy model conditions to establish a baseline set of rules so that companies can't be played off against each other.

Ensham – generally happy with TEP turnaround and hearings with DERM, noting that the QRC CE letter to Premier had had the desired effect. Also well positioned through their previous flood experience to better handle TEPs and DERM this time.

Macarthur – DERM approach was to understand implications for return to full production if a full release authorised. Maccoal pumping from pit to pit and see no potential to speedup discharge, 4 weeks at least, depending on further weather developments. Prefer individual solutions with DERM, dependent on timing of this vs an industry wide release authorisation. Nothing discussed that was inconsistent with their advice to QRC i.e. want quick turnaround on TEPs, discharge without creek flows, and some relief in terms of water quality

RTCA – were unprepared to be asked the 'cookie cutter' question (██████████ was unable to attend the meeting) – apparently did not know that QRC had been asking for a universal release – but would support it. Hail Creek TEP had taken from 18/12 to 29/1 to approve requiring constant followup from RTCA, while Kestrel TEP submitted on 23/12 and approved on 24/12! Gave good feedback to DERM about the need for better regional staff understanding of the issues and that DERM should investigate the HVSTS. Premiers officer queried "reputational" issues for RTCA of an industry-wide release. RTCA told Govt to work with QRC. Govt wants a company contact for direct liaison on production outputs.

Minerva Coal (did not meet with government – feedback to QRC's email) – strongly supports a one off release – as even though DERM efficiently processed their TEP application, it did not result in any conditions of real benefit. They are currently asking for TEP amendments for a range of reasons.

Peabody – endorse universal discharge, but not sure they have enough infrastructure (on all of their sites) to permit this and are going to be pumping long after flows have receded. They have also questioned whether there will be ramifications if it is allowed – eg even worse model conditions? Examples of DERM inflexibilities that hamper outcomes that DERM requires of company.

Anglo – while they have not been 'happy' with the government's response, because there are significant issues for Dawson North and Callide mine, their position is that each mine does need to

be treated on a case by case basis, as the issues are different depending on location and other factors. That doesn't necessarily mean case by case with DERM alone, recognising the discussion with Premiers. Brisbane meeting followed by meeting in Gladstone next day. They still 'appreciate' the efforts of QRC on an industry level.

There is clearly a need to settle on a terms of reference and timing for a fundamental review of the Fitzroy model conditions (focus on discharge volumes) - previous discussions with government in December 2010 was for the first quarter of 2011.

Notes of meeting with John Bradley, Level 13, 400 George Street, 4 Feb 2011

Met again with John Bradley . Ran through attached points with JB. Expressed concern about misrepresentation in DERM media release and in Government media comments re what QRC was actually asking for re emergency directions.

MR also outlined concerns re the delays in TEP approvals and lack of consistency being experienced by QRC members.

MR raised timetable for review of model conditions and QRC proposal for study of Hunter salinity trading scheme.

Agreed to meet in week's time.

Key points for meeting with John Bradley, 4 February 2011

1. Based on QRC member feedback and quality legal advice, QRC has questioned whether the TEP process could handle an industry wide emergency (28 mines with TEPs, 14 applications pending).
2. QRC wrote to the Premier on 28/1 asking the Government to utilise the emergency direction power as part of DERM's armoury particularly to deal with discharge into low flow creeks – subject to specified EC levels.
3. DERM (in its media release of 28/1) and government spokespeople have misrepresented QRC position as seeking an unconditional blanket exemption. This was then misrepresented to companies on Monday 31/1 as a "cookie cutter" approach.
4. QRC member feedback this week is that they support the QRC letter of 28/1 but accept that the government has said no.
5. QRC members appreciated the opportunity to meet with government reps on Monday and the interest shown by the Premier's office.
6. DERM willingness to sit down with companies, eg with BMA, on a holistic basis is also welcome.
7. Government seems to have underestimated the economic impact of the situation facing the coal industry – estimating a loss of 15 million tonnes as opposed to QRC estimate that 30 million tonnes is the low estimate. That 15 million tonnes difference is \$200 million in royalties.
8. Key messages QRC members have asked us to provide to DERM today:
 - a. There seems to be inconsistency in regional capability in DERM to handle TEPs
 - b. In turn some regional offices are reporting that the hold-up is with DERM in Brisbane
 - c. Irrespective of where the hold-ups lie, companies want consistency in turnaround times. Some have waited 2, 3 and even 4 weeks.
 - d. Many of the 28 TEPs granted are of little benefit in low flow situations
 - e. DERM needs to recognise and be understanding of the fact that companies are in many instances infrastructure constrained – relevant for example to the life of TEPs
 - f. The model conditions review remains a top priority for members as they focus on their ability to manage water on site beyond the immediate crisis.
 - g. While it is recognised that companies will continue to seek appropriate site conditions, the model conditions set a baseline for DERM and company negotiations. If the model conditions themselves are not agreed then this does not lay a beneficial framework for DERM's approach to negotiations.
9. QRC was hoping model conditions review could be agreed end-Feb but end-March a desirable revised target.
10. QRC will be commissioning work on whether the Hunter Valley Salinity Trading Scheme model might have applicability in Fitzroy Basin. Would DERM be interested in jointly sponsoring this work?



Premier of Queensland

For reply please quote: ECU/MW – TF/11/4196 – DOC/11/18187

Mr Michael Roche
Chief Executive
Queensland Resources Council
Level 13
133 Mary Street
BRISBANE QLD 4000

Executive Building
100 George Street Brisbane
PO Box 15185 City East
Queensland 4002 Australia
Telephone +61 7 3224 4500
Facsimile +61 7 3221 3631
Email ThePremier@premiers.qld.gov.au
Website www.thepremier.qld.gov.au

Michael,

Thank you for your letter dated 28 January 2011 regarding impacts to the State's coal mining industry from recent unprecedented rainfall and flooding events throughout central and southern Queensland.

My Government remains strongly committed to the successful recovery of the State's coal sector from the impact of recent floods and all agencies have been instructed to facilitate a return to full production capacity at the earliest opportunity.

Government agencies have worked closely with individual companies and the Queensland Resources Council (QRC) to achieve urgent and pragmatic solutions which remain defensible to the communities in which our mines operate.

I share the concerns of companies about current and potential further inundation. Clearly onsite water management now represents one of the most significant challenges for mines as they manage their environmental risk. You will be aware that the Department of Environment and Resource Management (DERM) has allocated significant resources to the task of accelerating water discharge while protecting environmental values and the interests of downstream water users.

To ensure that this work was on track, senior officials of my department, DERM, and the Department of Employment, Economic Development and Innovation met with senior executives of key resource companies in Queensland.



Queensland
Government

I understand that executives of these companies confirmed that they were not seeking 'blanket' exemptions from the assessment of mine-affected water discharge. Nor did any of those companies agree that a standardised assessment based on a single standard for salinity would provide any benefits. In all cases a 'site-by-site' approach was identified as the best way to get optimal outcomes.

This approach provides the opportunity for mines to be able to negotiate site-specific arrangements that take account of local conditions, both internal and external to the mine site.

These discussions also confirmed that all companies want to ensure that the fastest possible turnaround is achieved by ensuring DERM is adequately resourced and that companies work closely with DERM to anticipate key issues to be addressed in their application. Direct discussions on specific assessment issues are now being undertaken and receiving executive attention.

I would like to also address two apparent misunderstandings in your letter. Firstly, the emergency direction powers of the Environmental Protection Act 1994 do not necessarily provide an appropriate solution. These powers provide for a direction, should it be necessary to prevent a specific risk of greater environmental harm from occurring. This would not be consistent with the suggested use of these powers which you envisage, which would appear intended to effectively provide a general exemption for the mining sector from certain environmental authority conditions for a category of environmental authority holders for a specific period.

Secondly, DERM has been advised by some companies that rainfall conditions in the past week have, for some mines, provided for increased receiving water flows without significant pit inundation and that this is allowing higher levels of discharge for those companies with existing approvals and pumping infrastructure in place.

You will appreciate that further approvals can only be approved if the applicant can demonstrate that the risks to the environment can be adequately managed. A number of mines have now demonstrated their ability to safely discharge mine-affected water into ephemeral streams and tributaries with little or no receiving flows and have, therefore, had their applications for water discharges approved. DERM will continue to work closely with companies to seek innovative solutions for the challenges which they face.

The Government acknowledges that it is imperative for its regulatory processes to be as responsive as possible to urgent situations and understands that some companies may believe this has been tested in recent times. I would, therefore, encourage mine operators to act early in preparation for likely future weather events rather than wait until the situation reaches a crucial point.

It is also appreciated that, once the immediate situation has been resolved, longer term solutions to water management issues on mine sites will need to be investigated. My

Government is quite prepared to consider reasonable and soundly based proposals for the amendment of EAs. In addition, DERM has undertaken to review the model conditions for the Fitzroy Catchment.

I trust this information is of assistance and look forward to a collaborative approach from the QRC to the significant challenges we face.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anna Bligh', with a long, sweeping vertical line extending downwards from the end of the signature.

ANNA BLIGH MP
PREMIER OF QUEENSLAND

Michael Roche

From: Michael Roche
Sent: Friday, 4 February 2011 6:21 PM
To: David Shankey
Cc: Ken Smith; Bradley John; [REDACTED]; Nicole Scurrah; [REDACTED]; terry.wal [REDACTED]
Subject: RE: QRC letter to Premier
Attachments: Key points for meeting with John Bradley[1].doc

David

Thanks for the response. It reads remarkably like the DERM media release of last Friday in that it misrepresents what I actually asked of the Premier. What I asked for was not a "blanket exemption" - the term used in the DERM release and now in the Premier's letter. What I actually said in my letter of last Friday was the following:

"QRC believes that use of the emergency direction power should be immediately added to their armoury of options to deal with the current crisis and the looming threat of further cyclones."

The scenario I outlined where such a power may be used was to *"direct the release of larger quantities of mines, irrespective of flows in streams, provided that water does not exceed some agreed level of salinity (the EC level)."*

I attach the notes I tabled at my meeting with John Bradley which outlines the feedback from QRC member companies this week. I note that I have members whose TEP applications are 2, 3 and 4 weeks old and are desperate to have those applications approved. I am very clear what my members think and want. I am also aware that several more TEP applications are being prepared.

On the legality of the use of emergency direction powers, I am relying on quality legal advice which I provided to Nicole Scurrah last weekend.

I will take up John's kind offer to meet again next week. I will also provide occasional direct feedback to your office.

I realise that this has been a desperately busy and stressful week for the Premier, her advisers and government officials, so we do appreciate your taking the trouble to respond even if I do believe the letter has some inaccuracies.

Regards

Michael
Michael Roche
Chief Executive
Queensland Resources Council

From: David Shankey [REDACTED]
Sent: Friday, 4 February 2011 5:03 PM
To: Michael Roche
Cc: Ken Smith; Bradley John; [REDACTED]; Nicole Scurrah; [REDACTED]; terry.wal [REDACTED]
Subject: Re: QRC letter to Premier

Please find attached the response from the Premier of Queensland to your letter sent last Friday.

David Shankey
Office of the Premier

From: Michael Roche [REDACTED]
Sent: Friday, 28 January 2011 4:48 PM
To: Ken Smith; Bradley John; [REDACTED]; Nicole Scurrah; [REDACTED]; terry.wal [REDACTED]
Subject: QRC letter to Premier

Please find attached letter emailed this afternoon to the Premier (and cc'd Treasurer Fraser and Ministers Jones and Robertson) re the predicament of the Qld coal industry from water inundation, especially with looming threat of further cyclones..

Michael Roche
Chief Executive
Queensland Resources Council

From: Michael Roche [REDACTED]

Sent: Friday, 28 January 2011 4:48 PM

To: Ken Smith; Bradley John; [REDACTED]; [REDACTED];
[REDACTED]; Nicole Scurrah; [REDACTED];
[REDACTED]; terry.wal [REDACTED]

Subject: QRC letter to Premier

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Michael Roche
Chief Executive
Queensland Resources Council



t. [REDACTED]
Level 13 133 Mary Street Brisbane Queensland 4000
www.qrc.org.au

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Key points for meeting with John Bradley, 4 February 2011

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Annexure 3 to the Statement of Michael Anthony Roche

Item 1

Notes of meeting with Minister Kate Jones 11 March 2010 at Parliament House Annexe.

Raised with Minister QRC proposal that there be an early post implementation review in May of the new Fitzroy model water conditions which came into effect at start of recent wet season.

MR expressed concern that the conditions set up both industry and government/ regulator "to fail" as conditions result in company breaches where there is in fact no risk of environment harm - such an outcome not good for reputation of regulator nor the companies.

Minister said she thought the review was a good idea. She wanted to keep a co- operative approach between DERM and the companies and start talking about the lessons learned. She also pointed out the companies were free to talk to DERM.

She said she would talk to DERM about working with QRC on the proposed review.

Item 2

Notes of luncheon discussion: QRC Board (13 August) and with Minister Kate Jones, DG of DERM John Bradley

Several board members raised concerns that the Fitzroy model conditions were impacting mines' ability to manage water and to prepare for the wet season.

MR said he would come and see the Minister to follow up on industry concerns.

Item 3

Notes of meeting with Minister Kate Jones at Lvl 13, 400 George Street on 8 September 2010. Senior Adviser Josh Cooney and ADG from DERM Dean Ellwood in attendance.

MR said further to discussion at board luncheon and discussion earlier in the year, QRC not getting satisfaction from DERM re kickstarting the proposed model conditions review.

Minister invited QRC to provide a prioritized list of issues industry had about the model conditions..

Item 4

Michael Roche

From: Bradley John [REDACTED]
Sent: Thursday, 14 October 2010 8:19 AM
To: Michael Roche
Cc: Wall Terry; Brown Damien
Subject: Re: Our recent lunch catch-up

Thanks Michael

I've signed the workshop letter (tuesday) amended as per our discussion, so that should be on its way to you

I asked for a status update on the proposed ERA policy fix discussion paper just last night

** Terry, while I am in t'ville today, can you pls

* get your office to send Michael our file copy of the workshop letter via email.

* confirm timing to Michael of our policy paper - which needs to be today or tomorrow at latest

* propose a way forward to evaluate annual returns for exploration

Thanks alot
John B

----- Original Message -----

From: Michael Roche [REDACTED]
To: Bradley John
Sent: Thu Oct 14 07:46:14 2010
Subject: Our recent lunch catch-up

John

Further to our lunch catch-up on Friday, I have not yet seen come through from you:

Outline of a possible solution on invoicing for EAs or

. A letter you foreshadowed re Fitzroy conditions and a workshop. We would need to have details quickly so we can get the right people there.

I also mentioned the concern re annual returns. The issue with the annual return is that it's an instrument largely intended to track progress against the five-year work program for mining leases. The application to exploration tenures has been largely ignored by the industry and DERM have never shown much enthusiasm for enforcing it. So the fact that the form is overly long and complicated hasn't mattered too much. Until now.

The problem is that as part of DERM's new invoicing system, their computer automatically issues reminders when the annual return is not logged as received. So, having enraged all the explorers with a fee, they are now automatically harassing them to complete complex paperwork.

The solution seems to be either do away with the annual return for exploration leases entirely, or else to trim it back so that it's a simple tick-the-box one-page form which is more consistent with the code-compliant nature of the EA. That might be a useful way of keeping DERM's database current by either allowing the returns to be lodged electronically or else pre-populating the form with the data from their database.

Regards

Michael

Michael Roche

Chief Executive

Queensland Resources Council

t: [REDACTED]

f: [REDACTED]

Level 13 133 Mary Street Brisbane Queensland 4000

www.qrc.org.au <<http://www.qrc.org.au>>

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Item 5

Michael Roche

From: [REDACTED] on behalf of Wall Terry
Sent: Thursday, 14 October 2010 10:32 AM
To: Michael Roche
Cc: Bradley John; [REDACTED]
Subject: RE: Our recent lunch catch-up
Attachments: QRC Michael Roche .pdf

Michael, please find attached electronic copy of letter that was posted on Tuesday 12th October.

Please be advised that the policy paper will be provided by close of business tomorrow.

Regards,

Terry Wall

-----Original Message-----

From: Michael Roche [REDACTED]
Sent: Thursday, 14 October 2010 8:38 AM
To: Bradley John
Cc: Wall Terry; Brown Damien
Subject: Re: Our recent lunch catch-up

Thanks John. Snail mail living up to its name. Would be good to get it emailed this morning.

Would welcome DERM comments re our annual return suggestions.

Michael Roche
Chief Executive
Queensland Resources Council

On 14/10/2010, at 8:17 AM, "Bradley John"
[REDACTED] wrote:

> Thanks Michael
>
> I've signed the workshop letter (tuesday) amended as per our
> discussion, so that should be on its way to you
>
> I asked for a status update on the proposed ERA policy fix discussion
> paper just last night
>
> ** Terry, while I am in t'ville today, can you pls
>
> * get your office to send Michael our file copy of the workshop
> letter via email.
>
> * confirm timing to Michael of our policy paper - which needs to be
> today or tomorrow at latest
>
> * propose a way forward to evaluate annual returns for exploration
>
> Thanks alot
> John B

>
> ----- Original Message -----
> From: Michael Roche [REDACTED]
> To: Bradley John
> Sent: Thu Oct 14 07:46:14 2010
> Subject: Our recent lunch catch-up
>
> John
>
> Further to our lunch catch-up on Friday, I have not yet seen come
> through from you:
>
> * Outline of a possible solution on invoicing for EAs or
>
> * A letter you foreshadowed re Fitzroy conditions and a work
> shop. We would need to have details quickly so we can get the right
> people there.
>
>
>
> I also mentioned the concern re annual returns. The issue with the
> annual return is that it's an instrument largely intended to track p
> rogress against the five-year work program for mining leases. The a
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> they are now automatically harassing them to complete complex pape
> rwork.
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> exploration leases entirely, or else to trim it back so that it's a
> simple tick-the-box one-page form which is more consistent with the
> code-compliant nature of the EA. That might be a useful way of keep
> ing DERM's database current by either allowing the returns to be lod
> ged electronically or else pre-populating the form with the data fro m
> their database.
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> Regards
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> Michael
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>
> Michael Roche
>
> Chief Executive

>
> Queensland Resources Council
>
> t: [REDACTED]
>
> f: [REDACTED]
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> www.qrc.org.au <<http://www.qrc.org.au>>
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13 OCT 2010



Ref CTS 18099/10

Department of
Environment and Resource
Management

Mr Michael Roche
Chief Executive Officer
Queensland Resources Council
Level 13
133 Mary Street
BRISBANE QLD 4000

Dear Michael

I refer to the Queensland Resource Council's (QRC) submission, raising a number of concerns with the Implementation of the Fitzroy environmental authority amendments for all coal mines operating in the Fitzroy Basin, and our meeting of 8 October 2010.

As you would be aware, the Fitzroy model conditions were developed and implemented from mid to late 2009, based on the negotiated amendment of those conditions of coal mine environmental authorities (EAs) dealing with the discharge of mine water to streams in the Fitzroy Basin. I understand the model conditions were developed jointly by a working group comprising DERM staff and technical representatives from a number of the mines, and that these were then adapted and applied according to the circumstances facing individual mines. The co-operation by industry in this process is acknowledged and I also appreciate the facilitative role of the QRC during this time.

When the new conditions were implemented, it was foreshadowed that they would be reviewed in detail for all mines in October 2011 – based on consideration of the new monitoring data for each of the coal mines, as well as the outcomes of DERM's Mine Water Management Project.

Whilst the detailed review in October 2011 remains the Department's preferred approach, I have reviewed the list of issues raised by QRC and I have asked my Department to convene a workshop at a mutually convenient time during the week of 25-29 October to work through QRC's concerns with QRC and its members. Topics for consideration as tabled by QRC could include:

- Notification timeframes
- Dilutions and flow rates
- Suspended solid limits
- End of pipe quality requirements
- Passive and controlled releases of wastewater
- Progressing minor amendments to Environmental Authorities

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ABN 46 640 284 485

It is also proposed that this workshop serve as a forum for discussion of proposed amendments to s320 of the *Environmental Protection Act 1994*, relating to duty to notify environmental harm.

Should you or your members wish to meet with DERM to progress the proposed workshop, please call Mr Lindsay Delzoppo, General Manager Operations on [REDACTED] to arrange a mutually convenient time.

Yours sincerely

[REDACTED]

John Bradley
Director-General

Item 6

25 February 2011

The Hon Kate Jones MP
Minister for Environment and Resource Management
PO Box 15155
CITY EAST QLD 4002



Email: sustainability@ministerial.qld.gov.au
cc: [REDACTED]

Dear Minister

On behalf of the President and Board of the Queensland Resources Council (QRC), the peak industry body for the state's \$50 billion minerals and energy sector, I extend my congratulations on your appointment as Minister for Environment and Resource Management.

It is with some sense of anticipation that my members acknowledge your appointment. The potential to almost double the size of our industry by 2020 is achievable, but only with the underpinning of sustainable practices by industry and good government policy. It is the win-win balance and achievement of both the environmental and the economic imperatives for the state which I respectfully submit is a golden opportunity to be grasped during your stewardship of this portfolio.

The policy framework of the Bligh Government towards our industry, with its strong regulatory focus, has many of my members believing the industry is 'unloved' by the Government. This belief arises from a number of significant issues now gathered into your sole remit in this new portfolio, including a poorly constructed Strategic Cropping Land Framework, mine water regulation, and Wild Rivers declarations threatening sterilisation of minerals and gas resources.

Alarming news now emerging around the Government's consideration of the early termination of active production leases for Sibelco's sand mining operations on North Stradbroke Island further raises the spectre of sovereign risk over business investment. The QRC Board has asked me to make urgent representations to clarify the Government's real intent given that there is no precedent we can find for the cancellation by a Queensland Government of production leases for a currently active mine operating within its lease conditions. Indeed, this is a mine that won the then EPA's 2008 Sustainable Industries Award in recognition of its rehabilitation performance and practices. I recognise the constructive and open working relationship which QRC enjoyed with you in your previous portfolio, and notwithstanding the issues above, I look forward to establishing a similar working relationship with you and your advisers in your new expanded portfolio.

I will be in contact with your office to arrange a meeting in the near future to learn of your ambitions for the portfolio, and to begin to work through some of these vexed policy issues.

In closing, please accept my personal best wishes for your appointment in this new portfolio, and for the remainder of this parliamentary term.

Yours sincerely

[REDACTED]
Michael Roche
Chief Executive

Item 7

Michael Roche

From: Michael Roche
Sent: Thursday, 27 January 2011 12:34 PM
To: Ken Smith; [REDACTED] Bradley John; [REDACTED]
Subject: QRC State of the Sector Report - Floods edition

All
See below link to QRC's latest quarterly State of the Sector report just released. It focuses on floods and the impact in particular on coal sector. We have produced our first whole of 2010-11 estimates of impacts on value of production and GSP.
Regards
Michael

Michael Roche
Chief Executive
Queensland Resources Council



Level 13 133 Mary Street Brisbane Queensland 4000
www.qrc.org.au

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From: Queensland Resources Council [mailto:info@qrc.org.au]
Sent: Thursday, 27 January 2011 12:21 PM
To: Michael Roche
Subject: QRC Media - 27 January 2011



<p>QRC Media - 27 January 2011</p> <p>Dear Michael</p> <p>Flood coal losses ramp up</p> <p>The first industry-wide analysis of lost coal production resulting from severe flooding in Queensland has reinforced the gravity of the blow to the economy, Queensland Resources Council chief executive Michael Roche said today.</p> <p>Releasing the QRC's quarterly <i>State of the Sector</i> report in Brisbane, Mr Roche said the extent of losses to the industry and Queensland in the form of foregone coal royalties would be determined by the speed at which normal production can resume.</p>	<p>Printable version</p>
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Click HERE for the full release and *State of the Sector* report

QUEENSLAND RESOURCES COUNCIL (QRC)

ABN 59 050 486 952

Level 13, 133 Mary Street
Brisbane, Queensland 4000, Australia
Contact Queensland Resources Council
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Item 8

Michael Roche

From: Michael Roche
Sent: Friday, 28 January 2011 4:48 PM
To: Ken Smith; Bradley John; [REDACTED] Nicole Scurrah;
[REDACTED] terry.wall [REDACTED]
Subject: QRC letter to Premier
Attachments: Hon Anna Bligh -Premier - Re Floods - 28 Jan 11.pdf

Please find attached letter emailed this afternoon to the Premier (and cc'd Treasurer Fraser and Ministers Jones and Robertson) re the predicament of the Qld coal industry from water inundation, especially with looming threat of further cyclones..

Michael Roche
Chief Executive
Queensland Resources Council



t:

[REDACTED] Street Brisbane Queensland 4000
www.qrc.org.au

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