Environment, Agriculture, Resources and Energy Committee : Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011

Submissions 1 – 8, tabled paper reference 5312T6230

001 – Queensland Resources Council

002 – Ipswich City Council

003 – Queensland Law Society

004 – Environmental Defenders Office

005 – Local Government Association of Queensland Ltd.

006 – Australian Contaminated Land Consultants Association Inc. (Qld branch)

007 – Logan City Council

008 – Cement Concrete & Aggregates Australia

16 December 2011

QUEENSLAND resources COUNCIL

Mr Rob Hansen
Research Director
Environment, Agriculture, Resources and Energy Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Hansen

I am writing to you to express Queensland Resources Council's (QRC) support for the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011* (the *Greentape Bill*).

As you know, the QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses exploration, production, and processing companies, energy production and associated service companies. The QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

QRC is supportive of the initiatives of the *Greentape Reduction Project* and largely how they are represented in the *Greentape Bill*. In regards to the amendment to remove the duplicative notification process for voluntary Environmental Impact Statement's (EIS), QRC requests a similar streamlined notification process also be considered for non-voluntary EIS.

QRC is supportive of removing environmental management plans, acknowledging their role over time has become meaningless. QRC is equally encouraged by the inclusion of an 'information stage' in the application process, consistent with resources legislation, recognising the potential to cut application and Environmental Authority development process timeframes.

QRC would like to thank the Minister for Environment, Ms Vicki Darling MP, and her Department of Environment and Resource Management for their determination and hard work on the *Greentape Reduction Project* reform agenda. Thank you again for the opportunity to comment on the *Greentape Bill*. If you would like any further information please feel free to contact QRC's Industry Policy Adviser, Ms Katie-Anne Mulder, on 07 3316 2519 or katie-annem@qrc.org.au

Yours sincerely

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Ipswich City Council Submission to the Environment, Agriculture, Resources and Energy Committee on the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011*

(Officer Comments Only)

Introduction

Ipswich City Council appreciates the opportunity to provide a submission to you in regards to this significant legislative change proposal. As you are aware, Local Government shares the responsibility in administering the *Environmental Protection Act 1994* with the State Government (principally with Department of Environment and Resource Management). Considering this, Council has invested significant resource in assisting the review of this legislation to date through the Local Government Working Group and the Local Government Panel processes. Council is appreciative of the cooperative and consultative process that has been undertaken throughout this review activity and looks forward to this arrangement continuing.

Context of this Submission

These comments are a compilation of comments provided by officers of Ipswich City Council that are based on previously endorsed comments and submissions made by Ipswich City Council. Due to the timeframe for review and provide comment on this Bill, it has not been possible to present this document to Council for consideration and decision. Therefore, these views do not necessarily represent the views of the Council. It is intended that these comments will be submitted to Council for consideration. Following this, endorsed comments will be provided to you.

Overall Intentions of the Bill

In general, the following overall intentions / outcomes of the Bill are supported:

- a simplification of licensing processes
- reduction of costs to industry and government from environmental regulation while maintaining or improving environmental standards and community amenity
- streamline, integration and coordination of regulatory requirements relevant to licensing under the *Environmental Protection Act*
- upholding of key principles of transparency, accountability, consistency, proportionality, integration and delivery of appropriate outcomes
- that regulatory effort (assessment, administration and compliance) is based on risk
- that applicants, operators, the community and regulators have consistent understanding and access to information to support the successful achievement of the Act
- the achievement of a level playing field for industry in terms of environmental regulation
- third party reviewer roles (as long as this remains solely within the State jurisdictions and not Local Government jurisdictions).

In general the following overall intentions / outcomes are not supported:

- a move towards additional administrative burden (in both short and longer terms) for the administering authorities
- a reduction in opportunities for cost recovery for regulatory agencies, and

- a return to a licensing framework that involves an increased number of types of regulatory approvals.

It is worth noting that during the review process associated with this Bill, a number of key deficiencies were identified and raised for consideration, including:

- a lack of an identification of options at a strategic level that lead to reducing green tape, a transparent evaluation and analysis of such options, and subsequent justification for the preferred options presented, and
- a heavy focus on assessment processes and not a balanced, whole of life-cycle review of environmental licensing reform opportunities and implications.

Environmentally Relevant Activity Assessment

The review undertaken prior to developing this Bill has involved a consideration of a number of assessment pathways for conditioning environmentally relevant activities (ERAs). The standard approval / conditions and site specific assessment processes are supported. The degradation of the licensing framework for environmentally relevant activities to levels below standard approvals levels of assessment is categorically not supported.

As Bill is not to be retrospectively applied to existing development permits / registrations, nor compulsorily transitioned across from the existing system, there is clear evidence that the licensing framework would return to an earlier era of licensing where there were multiple types of approvals regulating ERA's. The old regulatory framework was changed due to significant concern by industry and regulators about the lack of a level playing field, transparency and consistency. Such a model requires modifications to the administering authority's licensing systems which will incur significant costs to implement. It is not supported to return to this arrangement. For this reason, the retention of the development approval and registration system remains as the preferred approach.

The following table that describes the history of ERA licensing supports these concerns.

Years	**Types of ERA approvals**
1995-1998	Integrated authority; Level 1 licence; Provisional licence; Level 2 approval; Deemed approval (level 2 ERAs).
1998-2004	Integrated authority; Level 1 approval (without DA); Level 1 approval (with DA); Level 1 licence (without DA); Level 1 licence (with DA); Provisional licence; Level 2 approval (without DA); Development approval for level 2 ERA; Deemed approval (level 2 ERAs) **Note: Several ERA levels and definitions changed with the introduction of the 1998 Regulation and Chapter 4 Activities were introduced in 2001 (i.e. renaming of ERA type).*
2004-2010	DA or equivalent of DA (e.g. former licence/approval) and Registration Certificate; Deemed approval. *Note: From 1 January 2009 some ERAs were no longer regulated, thresholds and definitions for several ERAs changed, etc.
2011-current	DA or equivalent of DA (e.g. former licence/approval) and Registration Certificate.

With most of the significant ERA licensing system reforms, there has been a significant cost imposition on Local Government, DEEDI and DERM to implement the changes. So to minimise the costs of change, it is suggested that the existing framework be modified to achieve the flexibility proposed by this Bill, rather than changing the framework. A return to previous eras of the Environmental Protection Act's evolution, where multiple types of licences existed, is considered to be confusing to regulators, industry and the community. This is considered to be a backward step and is not supported.

Standard Conditions

The concept of standard conditions is supported to assist with green tape reduction. It is agreed that standard conditions may be applicable to some ERAs (especially those of a small to medium sized activity and those of a lower environmental risk) resulting in benefits to industry, community and regulators. The allocation of the applicable activities to this assessment track requires further scientific, economic, technological and social research and debate as detailed below. These look and feel very similar to the existing Codes of Environmental Compliance (COEC) and for the reasons of administrative cost effectiveness described above, are suggested to be the framework for standard conditions.

There are some shortcomings with the existing regime that could be easily modified so to achieve the standard conditions. The creation of 'eligibility criteria' that are specific, minimal, definite and not open to debate is supported. Standard conditions should be supported by an administrative process which includes the provision of information to the operator that would include a copy of the conditions that are applicable, guidance material about licensing and compliance with the conditions a registration certificate etc. This will support more effective and efficient compliance actions (should these be necessary). Further consultation with the working groups and panels are required to determine what ERA's may fit in this category.

The variation of standard conditions is generally not supported. For requests to alter all but very minor and small issues, there is a potential that the amendment of some conditions can have effect on other conditions and/or be so significant that the activity requires site specific assessment. Setting a clear point along this continuum at which the assessment is escalated is difficult. This is demonstrated by the Bill (see Chapter 5, Part 7). Considering this, it is suggested that amendments are not permitted to be made to standard approvals and that these are escalated to site specific assessment processes.

Site Specific Assessment

Site specific assessment is supported as the assessment track for many ERAs.

The practical implementation of the integration of ERA's into the Sustainable Planning Act's (SPA) Integrated Development Assessment System (IDAS) process has evolved into an outcome which is not consistent with the intent of the legislation. This has come about from an ineffective transition and regulator training program which, due to the terminology and the process used (i.e. IDAS), has become significantly and inappropriately embedded into land use planning and assessment mindset. The intent of the legislation is that land use planning and ERA assessment (licensing) are separate but integrated processes. Land use planning has a head of power of the SPA and essentially involves assessment of land uses against SPA and the Council's planning scheme provisions. In assessing ERAs, the head of power is the EPA and this provides the criteria for assessing and conditioning these activities / licences. The IDAS provides a mechanism where licensing is addressed through a process consistent with land use approvals an enables (if elected by the applicant) to integrate the approvals to speed the process. The framework is appropriate, however, there is a need for recalibration of regulators (planning and environmental) through education to ensure the legislated outcomes are properly implemented.

Assignment of ERA's to Standard Conditions and Site Specific Assessment

The future assignment of ERA's to the appropriate level of assessment will require an ongoing process of active and open engagement with the Act's co-administrators. In terms of the local government ERAs, local government must have significant input into the assignment process.

It is worthy considering the issue of sites that may include ERAs of both State and Local Government allocation (although would be State regulated). In these situations, there is a potential for different assessment processes applied to activities based on the State and Local Government allocation, which may not be consistent in the big picture. This should be considered before finalisation of the assessment allocations.

ERA Conditions

It is supported that all ERAs have a document containing the conditions of operation (including design and construction conditions and operating conditions) as well as a registration. This sets very clear advice about their obligations and responsibilities as operators. It is supported that the number of documents relevant to the licensing of the activity be minimised for clarity and simplicity. All conditions (design / construction and operation) are all ongoing requirements for an operator and must be regularly monitored to maintain compliance. In establishing a clearer layout and function of development permit conditions, the legislation must be clear that design and construction requirements for an ERA should not be dictated by the land use requirements / standards of the planning scheme. However, IDAS does provide opportunities to work with applicants to ensure conflicting requirements of each system can be resolved through negotiation without compromising either of the required outcomes of the relevant legislation.

It is agreed that the conditions set require greater flexibility for modification / amendment through simplified processes for site specific assessed activities. However, currently, operators of activities wishing to change their operational conditions can do so without necessarily triggering an Material Change of use (MCU) for a new ERA. An MCU for ERA DA is only triggered where the SPA triggers are effected. In many situations, operational activities do not change the scale or intensity of the activity or nature of the business. However, there is a disparity between the practice and legislative intent, and it is supported that the SPA triggers be simplified and specified in more detail to eliminate these risks. In some situations, a change to operational requirements of an activity may trigger further assessment under the land use approval, but this is something determined under the SPA and planning scheme. If this occurs, and is considered in appropriate by the planning requirements, then this is a matter for discussion with Department of Local Government and Planning (DLGP) and Council land use planners.

Land Use vs ERA Conditions

It is worthwhile noting that land use planning has a number of foci that are considered important in decision making. Issues such as built form changes, footprint issues, use of space, aesthetics etc are just some of these. There is some overlap and potential for conflicting outcomes that a particular development must demonstrate. This is the role of the applicant to sort through and resolve with the assistance of the regulatory agencies. In many circumstances, where a minor change to an operation does trigger the need for a change to a land use planning approval, there is scope for these to be addressed though short and simple processes of minor amendments.

Sometimes there are duplicative or potentially inconsistent conditions for land use and ERA approvals. This is considered appropriate as there are likely to be valid and different sets of outcomes that need to be achieved under each head of power. The applicant and regulatory agencies have the capacity to negotiate these issues through for a

balanced and acceptable outcome. It is important that legislative reform does not make one approval any more important than the other. Where there are concerns regarding the actions of the land use planning field on environmental licensing outcomes, then this is a matter for discussion with DLGP and local government land use planners.

In regards to relaxations for operational changes for an ERA DA, these would need to be relevant to changes that do not result in increased environmental harm (including nuisance). If this is the extent of the trigger, then this is generally supported. In other situations, it is suggested that these would require further assessment. In conjunction with this, the land use planning approval would need to be considered under the SPA arrangements. However, these two processes should not drive the other to require a new application so to achieve improved environmental outcomes.

There needs to be clear direction about the differences and relationships between ERA approvals and land use matters that are assessable under a planning scheme. The broad consideration of the suitability of an area for industrial or a business land use is necessary when considering land use applications, whereas the regulatory operation and management of an ERA is a licensing matter.

ERA Registration

In establishing the suitability of a suitable operator, there is a need to set clear and transparent rules around what makes an unsuitable operator. The existing registration process is not a hindrance to transfer of businesses (although the Act requires a new registration to be issued and the old one cancelled). The real problem is the lack of the suitability test information and systems. The Bill does not address this issue with clarity with the term 'environmental record' which is not defined.

Ancillary ERAs

The Bill does not address incidental activities associated with an ERA. If an activity is significant enough to trigger as an ERA (whether it is ancillary or otherwise), then they should be administered equitably. Where incidental activities would be the same as 'ancillary activities', this approach will have a significant impact on revenue to cover the cost of administration for the regulator. There may be a number of related activities being conducted by the operator, with each being of a reasonable component of the business. There is a need to add clarity and transparency to this issue. It is suggested that the current system remain (i.e. some activities are automatically included as a part of the ERA – e.g. asphalt manufacturing and chemical storage) and others require additional arrangements. Another alternative is to establish fees for parent and child activities – i.e. whereby the main activity is charged at full fee and associated activities on the site being charged a proportion of the full fee so to recover administrative costs.

Corporate Authorities

It is generally supported that a single authority for multiple activities be continued to be implemented as long as cost recovery is available for the regulator. The concept of a corporate operator authority (where it is not restricted to one particular property) already exists in the Environmental Protection Act (i.e. multi-registration). The improvements suggested in the original greentape reduction discussion paper were about streamlined processes of monitoring, reporting, management systems etc. These concepts are generally supported and it is suggested that these be included into the current provisions to improve the system. This could be achieved by dividing the approval document into general conditions (which could contain 'standard conditions') for generic issues and another section for site specific requirements. The Bill could then be amended to state that where a corporate licence (or multiple registration) process applies, all general conditions of an ERA Development Permit will be

considered as one for this purpose for reducing administrative burden. This also supports the ease of transfer (and merger) of licences as activities are traded, sometimes in and out of a multiple registration arrangements.

Improving the quality of information

It is strongly held that the current lack of clear, concise and plain language guidance for regulators, industry and the community needs to be addressed and improved. The following initiatives are considered vital in this process so to support the effective implementation of the Bill / Act:

- education of proponents about what information is required to be submitted with their application (including implications of not providing a full application)
- the development of a contemporary and well researched Operators Compliance Guide (or similar) that has been based on contemporary scientific research, practicability, financial and social considerations (note, as previously supported by the Environmental Protection Partnerships Forum, DERM should fund cooperatively with Local Government and DEEDI a review process similar to that undertaken by Brisbane City Council in reviewing some OCG's)
- provision of guidance about the best time for information and level of detail of information to be provided
- templates fact sheets, guidelines, flow charts etc
- advice about selecting consultants and the expectations of such services
- plain language information about the SPA ERA DA triggers
- information and clarification about the land use – environmental licensing relationship.

It is worthwhile noting that there are some activities that cannot, and should not, avoid the provision of detailed and complex information (e.g. noise or odour reports etc). This needs to be made clear to all parties involved.

The Bill does not extend to consider administrative opportunities for reducing green tape. It is supported that the Standard Criteria (and also the Environmental Management Decisions) be reviewed, updated, simplified and clarified so to support their more efficient use and application. The current practicability of these are quite low, but is critical in delivering quality decisions. This should also be consulted through the Local Government Working Group and Panel.

Implementation Impacts on Local Government

As briefly mentioned above, the Bill will result in significant changes to administrative systems, processes, documents, scripting as well as staff training and customer management being borne by the Administering Authorities. This correlates to significant cost implications. It does not appear that these have been considered in the calculations being made throughout the development of this Bill. Although Ipswich City Council is yet to fully determine the costs of these administrative activities, it is expected to be in the tens of thousands of dollars to implement. This is not considered to be appropriate when alternative models could reduce such costs.

The reduction of these costs to the Administering Authorities can be effective where there is a strong commitment by DERM in providing the necessary support, training and resources as part of the implementation of the Bill. This would include, but not be limited to the following: interpretation tools, flow charts, template documents and letters, transitional understandings / fact sheets, identification of likely system changes, officer training etc.

Comments regarding Specific Provisions of the Bill

The following are comments relevant to specific sections of the Bill:

Section Name or number*	Comment	Proposed solution
125	Missing components?	Include minimum requirements of identification of likely emissions and impacts, copy of development plans / layouts, technology details, pollution control equipment etc.
125(1)(k)	Impact of changes on other conditions	There needs to be capacity to amend other conditions (not identified within the scope of the application) for situations where a change to a condition results in the need to modify another. This should be with consent of course.
318G	What if no decision is made? What happens	Need for inclusion of a provision which clarifies this.
318H(a)	Applicant's environmental record is not defined, nor a clear scope of what is to be considered.	Provide a definition or scope of consideration in making this decision is to be included in the legislation
318H	There is a need to be able to extend the assessment and decision timeframes as this can be dependant upon other agency input (see later in Bill)	Include a provision to allow extensions where delays from other agencies who provide information are experienced.
318H(c) and 318K(a)(ii)	The provision "or have been" is very onerous. This should be linked to a cause and effect relationship – i.e. there is evidence (and to be substantiated in a court if required) that there was a direct or indirect influence or relationship of the breaches with the particular XO	Amend provision so that it relates to the proven relationship between the XO and the other company(s).
318J	Commencement of registration is not clear to operator or AA. Many	The date of commencement be date stated on environmental

Section Name or number*	Comment	Proposed solution
	licensing systems do not record the date of entering the data into the system (or not easily found) and this may be difficult to identify if needing to go to court.	authority. This will then be certain.
318R	This section requires timeframes to be included, otherwise S314 will be detrimentally affected. See comments above	Set timeframes for response.
318S	This section requires timeframes to be included, otherwise S314 will be detrimentally affected. See comments above	Set timeframes for response.
318U(2)	This poses significant record keeping issues / risks). Decision makers need to be able to justify their decisions and as such require record keeping. This record keeping needs to be secure. This may be necessary for review in later times	Reconsider this provision and its corporate memory issues.
318U(3)(a)	The term 'second person' is not clear.	Consider rewording for clarity
318V	Destruction of suitability reports is difficult if received electronically due to backup computer systems	Consider the implications of this matter.
343A	The purpose of this is not clear, and is confusing	Reword provision to apply as follows: 1. have an Environmental Authority 2. get a TEP 3. Issue amended Environmental Authority stating TEP now related and in place from xx/xx/xx to xx/xx/xx What this will do is raise the attention of the TEP without excessive administration and confusion. Issuing an amended Environmental Authority is appropriate in this circumstance.
(various)	Terminology is confusing	Generally, many terms used in the Bill are quite complicated and confusing (egg prescribed ERA project, significant project, registered suitable operator, amalgamated authorities etc). It is suggested that simpler terminology be considered so that the community (in particular) will understand the legislation. Considering the evolution of the legislation,

Section Name or number*	Comment	Proposed solution
		there has been so many changes that operators will struggle with the terminology of this legislation. Local Governments deal with a large proportion of small to medium businesses and as such the terminology and changes can lead to confusion, frustration and distrust which results in greater administration by Local Government. Clear communication from DERM to all sectors of the community will assist in setting this clear and reduce the expected significant administrative burden for Local Government.

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Office of the President

Your Ref: Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011

Quote in reply: Planning and Environment Law Committee

16 December 2011

The Research Director
Environment, Agriculture, Resources and Energy Committee
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By e.mail to: earec@parliament.qld.gov.au

Dear Research Director

Submission on the *Environment Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011*

The following submission on the *Environment Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011* has been prepared by the Queensland Law Society's Planning and Environmental Law Committee. The QLS has previously provided a submission to the Greentape Reduction Project team within the Department of Environment and Resource Management, broadly supporting the objectives of the review, while commenting on a series of unintended consequences of particular proposals. The QLS remains broadly supportive of the objectives of the Bill, while noting that there appear to be numerous drafting errors and other unintended consequences of particular provisions.

As this is a very lengthy and complex Bill, this submission is not intended to constitute a thorough review, but merely to point out some examples of the drafting issues and apparent unintended consequences of particular sections. We did this just by selecting a few pages of the Bill for review. A thorough legal review by specialists in the area would be recommended.

Clause 5 Section 51 (Public notification)

The QLS supports the new requirement for website publication by the proponent. However, subsection (4) appears to be incomplete as there is no provision for the EIS to be withdrawn from a website upon withdrawal of the application or the EIS. It could become misleading if the same EIS is still required to be published, even though it has been withdrawn, particularly if it has been replaced.

Clause 8 Section 110 (What is a mining activity)

While the QLS supports simplification of the definitions so as to avoid unnecessary duplication of information set out in the *Mineral Resources Act 1989*, the simplification of the definition of 'mining activity' in Section 110 may appear to revoke a current important rights in the current Section 147, which is the extension of the 'mining activity' under the environmental authority to cover private access land that is not part of the mining tenement itself under Section 147(1)(b). This is important because the use

of that private land for access purposes would be characterised under planning law as a purpose ancillary to the principal use, which is the mining activity. Given that mining activities under the EP Act/MR Act are exempt from planning schemes, current planning schemes obviously do not cover this issue.

Section 113 (Single integrated operations)

The QLS supports the concept of a single approval for single integrated operations (at the option of the proponent), but there are some drafting oddities with this section:

- One of the criteria is: *'(c) the activities are, or will be, carried out at 1 or more places'*. This provision appears to be a pointless waste of space. Logically, it is not possible for any activity to fail to be carried out at either one place or more places. The only other possible option would be for it to be carried out at zero places.

- The QLS questions the practicability of the requirement in paragraph (a) that the activities must be carried out under the management of 'a single responsible individual'. It would be more workable if the requirement referred to a single entity, rather than an individual. Is the intention to prevent flexible working arrangements such as part-time work? If a husband and wife run an operation, do they need to cease being jointly responsible? Carried to its logical conclusion, this requirement is absurd.

- Paragraph (d), referring to 'distances short enough' appears to be an invitation to litigation, as it is open to widely varying interpretations in this modern electronic era. For example, if an integrated mining project contains numerous mining leases, some of which have other land between, involving driving long distances over dirt roads, are the distances short enough? If an industrial project is located partly on one side of a river and partly on the other, with no bridge directly between, is that close enough?

Section 115 Relationship with Planning Act

The following typographical errors appear in this section:

(2) – 'taken to also be' should be 'taken to be also', unless there is a new rule in OQPC encouraging split infinitives.
(3) – 'parts 2' should be 'part 2'; 'other than division 2, to 4' should be 'other than divisions 2 to 4'.

If the new rule is proposed to be that the prescribed ERA component of a development application is to be processed as an environmental authority application, it would be simpler just to make this the rule and not have supporting deeming provisions about the situation where someone forgets to lodge the environmental authority component of the application. The deeming provisions do not entirely work, for example, just because someone has lodged supporting information for the development application does not necessarily mean that it will tick all the boxes as a 'properly made submission' for the non-existent environmental authority application. The community may have some concerns about that backdoor route. Also, for subsection (5), just because an element of the development application is changed, it does not necessarily follow, in practical terms, that this should impact on the ERA component of the application.

Part 1 Division 4 and Part 2 – Some general comments

Leaving aside the drafting errors, the QLS has not been convinced that the reintroduction of environmental authorities for 'prescribed ERAs' is necessarily a reduction in greentape. Back when environmental authorities were abolished for prescribed ERAs, as part of the 'roll-in' to the *Integrated Planning Act 1997* (repealed), that step was supposed to have been a reduction in greentape. Logically, it cannot be a reduction in 'greentape' both ways. We do have a concern that the numerous frequent changes to the names of approvals for prescribed ERAs in recent years have led to widespread confusion. In the experience of our members, it is difficult enough to explain to international or interstate investors the current series of deeming provisions which mean that older approvals for ERAs have one name but are now deemed to have another name and that the descriptions of the ERAs shown on the front cover are now superseded by other descriptions in a regulation; it is going to become one step more difficult with the latest round of changes.

Section 117

The requirement should be for the person to be either the applicant or the holder of the tenement. The application for the environmental authority could be for a replacement environmental authority.

Sections 118 and 119 Single application/environmental authority required

The QLS has never supported a compulsion for a single application for all relevant activities forming a project, but only the option of being able to make a single application. There are many sound commercial reasons why an applicant may prefer to make more than one application, for example, the applicant only proposes to carry on the operation for a short time before splitting it to sell or lease to different parties, or would like to keep that option open.

Similarly, in many cases it may be simpler for activities on one parcel of land to be processed as one application, and for related activities on another parcel of land to be processed separately, for regulatory reasons. For example, while it may be easier in some situations for resources activities and off-site infrastructure activities to be processed together, in other cases, the need for the off-site infrastructure (such as an airstrip with associated ERAs such as fuel storage) only arises later and could be more easily processed separately and in the normal way. If the true aim is 'greentape reduction', the simpler options should be kept open.

Planning law has a better way of dealing with this issue, with principles preventing 'piecemeal and misleading applications' (so as to protect the community from misleading applications), but at the same time allowing considerable flexibility for development applications to be structured in whatever way best suits the commercial context.

Section 120

The QLS has previously made a separate submission to the former Scrutiny Committee about North Stradbroke Island. We remain of the same view.

This concludes our sample of detailed analysis.

In more general terms, the QLS strongly supports:

(a) The inclusion of a formal information stage with timeframes, for resource activity applications as well as prescribed ERAs; and
(b) The proposed deletion of EM Plan requirements.

However, similar to the sampled sections, there are drafting errors and unintended consequences in these sections too.

The QLS would welcome the opportunity in 2012 to advise further on this Bill.

Yours faithfully

Bruce Doyle
President

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16 December 2011

Environment, Agriculture, Environment, Resources and Energy Committee
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Dear Committee,

Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011

This is the submission of the Environmental Defender's Office Queensland ("**EDO**") on the Bill

The EDO is a non-profit community legal centre which specialises in public interest environmental law in Queensland. The primary goal of the EDO is to protect and enhance the environment in the public interest through the use of the law, by and on behalf of the community. We provide non-profit advice to rural and urban clients on a range of matters including access to information, planning vegetation protection, species protection and environmental assessment processes relating to mining and coal seam gas. Within our resources, EDO is active in law reform and we welcome the opportunity to comment on this Bill.

While EDO made detailed submission on the Discussion Paper preceding this Bill, unfortunately we have not had the time to make detailed comments on the Bill, apart from on one very important timeframe issue discussed below. We will try to send more detailed comments in early next year and request a chance to address the Committee orally.

One of the general points we made in relation to this reform at the Discussion Paper stage, is that improving the quality of community rights of access to information, submission and appeal will lead to more efficient processes and improved outcomes for the community and

the environment. http://www.edo.org.au/edoqld/edoqld/lawreform/2011.07.15-Greentape-DP-Submission.pdf. Such improved processes will also save public servants time and therefore public money. The Bill does improve access to information in some ways, for example making more material available online, but misses some opportunities. For public objections to mining leases and environmental authorities the timeframe is shorter under the Bill, see below, which is worse than the current situation.

Quality means clear public notices like the SPA notice as opposed to the coal seam gas notice, see attachment 1, which does not even say where the land is. The EP legislation could mandate elements of a quality public notice. Quality also means improving access to the public notice, application and supporting materials, for members of the community who wish to make a submission or objection. Otherwise people miss their chance to make a submission entirely or are worn out before they have a chance to consider the merits of the proposal.
Its hard and time consuming enough to prepare thoughtful submissions and gain for example expert advice from a water or vegetation expert, or free advice from the EDO.

At the time of writing, while officers of DERM advise that "soon" applications for environmental authorities mining and mining leases will be online, to help people make submissions currently they are not. To find out if a proposed mining lease or environmental authority is advertised for public submission/objection it is necessary to constantly ring rural Mining Wardens or to read obscure rural newspapers. This material ought to be online not obscure and hard to find.

For our letter to the Premier on access to information on mining and coal seam gas, see http://www.edo.org.au/edoqld/edoqld/new/2011-06-15%20Ltr%20to%20Premier%20on%20mining%20&%20CSG%20processes.pdf
Since that letter we have received a reply that advises that coal seam gas environmental authority applications and final authorities are now online which is a start but as yet this reform has not occurred for submissions/objections for proposed environmental authorities for mining projects.

We have has a chance to look at one crucial issue in the Bill in detail, the timeframes for public submissions/objections for appeal/objection to the Land Court for proposed mining and petroleum projects' environmental authorities. That detail now follows:

Bill will reduce timeframe for public objection to proposed mining leases

The draft Bill would reduce the period for making an objection to a decision on a mining lease from at least 20 business days after the certificate of public notice is given to the applicant (sections 212(2) of the Environmental Protection Act 1994 and 252A(3) of the Mineral Resources Act 1989) to 10 business days after the decision notice is given (section 180(3)(a) of the draft Bill). The impact of this reduction is slightly softened by the provision of a new submission period however the conditions of approval will not be available during the submission period, making it impossible to assess the degree to which issues may be adequately addressed through conditions until the objection period. 10 business days is insufficient time for a member of the public to evaluate what may be hundreds of conditions, consult experts, determine whether to give an objection notice and draft the required grounds of objection.

Once the conditions of approval are viewed by the submitter, it may be that some issues raised previously by that submitter in the submission are no longer of concern, or the conditions raise fresh issues. Therefore it is important that the objector may raise extra or different issues in the objection compared to the submission. Under the *Sustainable Planning Act* 2009, submitters are not restricted in appeals to only issues raised in in their earlier submissions.

An objection period more consistent with other laws would be 20 business days after the decision notice is given. This would be consistent with the *Sustainable Planning Act* 2009 which, in addition to a submission period for impact assessable development, provides an appeal period for submitters of 20 business days (section 462(4) of the Sustainable Planning Act 2009).

However given the many difficulties faced by poorly resources community members in gaining legal and expert assistance in short timeframes, and given the huge size of many mines (for example the Rio Tinto mine at Weipa that was front page of the courier Mail on 14 October 2011) and the number of new or expanded mines proposed, (over 30 new or expanded coal mines alone are currently proposed and some will be out for public objection around the same time), a minimum objection/appeal period of 30 business days is a much more appropriate timeframe for both mining objections and appeals on decisions on coal seam gas environmental authorities.

Yours faithfully
Environmental Defenders Office (Qld) Inc

Jo-Anne Bragg.

Jo-Anne Bragg
Principal Solicitor
Environmental Defenders Office (Qld) Inc

To provide feedback on EDO services, write to us at the above address.

authority as of the 11th July 2010

Call 1800

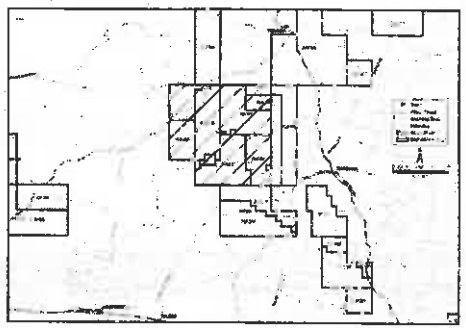
APPLICATION NOTICE

ENVIRONMENTAL PROTECTION ACT 1994 – SECTION 310W for application

(a) It is advised that QGC Pty Limited has lodged an application under the *Environmental Protection Act 1994*.

(b) The application is to amend the existing Level 2 Environmental Authority PEN200030207 to add a petroleum activity carried out on a site containing a high hazard dam or a significant hazard dam, as per Environmental Protection Regulation 2008, Schedule 5, level 6.

(c) The application relates to the area shown below:



(d) Any person can view, make copies and take extracts of the application at

- Customer Service Centre, Department of Environment and Resource Management, Level 3, 400 George Street, BRISBANE QLD 4000 or 173 Hume Street, Toowoomba.
- www.qgc.com.au

(e) Any person may make a submission about the application.

(f) Properly made submissions must —

- be written and signed by or for each person ("signatory") who made the submission; and
- state the name and address of each signatory; and
- be made to the

Gas and Petroleum Unit, Department of Environment and Resource Management, GPO Box 2454, BRISBANE QLD 4001; and

- be received before the end of the submission period, which is 16 November 2010, being 20 business days from 20 October 2010.

SOWN Environment Centre
Have your say

From: Parkland
To: Community-based Environment Centre

By: Save Our Waterways Now Inc
☎ 0438 047 910
Web: www.sown.com.au
At. 98 Yoorala Street The Gap Qld 4061
On: Lot(s) 220 on Registered Plan 95473
Approval sought: Preliminary Approval under s241 Development Permit - Community Facilities
Application No.: A002870400

Comment period: 19 October 2010 to 19 November 2010
Written comments to the assessment manager
Assessment Manager:
Matthew Taylor, Brisbane City Council
Post: GPO Box 1434 Brisbane QLD 4001
☎ 3403 4980
Web: www.brisbane.qld.gov.au/development

Copies of the full application can be viewed or obtained from Brisbane City Council
Public Notification Requirement
Sustainable Planning Act 2009 Form 5 v1

Queensland Government

FR

This is to scale.

LGAQ
LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND

19 December 2011

The Research Director
Environment, Agriculture, Resources and Energy Committee
Parliament House
George Street
Brisbane QLD 4000

Dear Sir/Madam,

Submission on *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011*

The Association appreciates the opportunity to provide a submission on the above Bill on behalf of local government. Since the commencement of the Environmental Protection Act 2004 local government has been involved in regulating environmentally relevant activities and has worked with DERM to improve the quality of these activities to ultimately provide a better environment in Queensland.

Since the commencement of the Greentape Reduction Project earlier this year the Association has worked with DERM on a local government working group to discuss different options that may be available in order to remove greentape for industry. Whilst it is pleasing that some of our comments from this working group have made it as far as the Bill, there is still some concern from local government that DERM is listening closely to industry to make changes but there is limited consideration being given to the administrative burden for local government in making these proposed changes. The potential reduction in opportunities for cost recovery for local government in managing environmental protection is also of concern. Local government also gained the added impact of managing commercial nuisance in 2009 with no option to cost recover for these activities so to consider the changes now, as proposed in the Bill, is of concern to the Association.

Ipswich and Logan City Councils have made submissions to the Committee with extensive comments on the Bill itself in relation to operational issues and the Association supports these submissions.

The Association also takes this opportunity to request to be heard at the Parliamentary Committee hearing in 2012 on this Bill.

Please contact Christine Blanchard, Principal Advisor, Environmental Health, on telephone 3000 2243 or email Christine_blanchard@lgaq.asn.au if you require further information.

Yours faithfully,

Greg Hoffman PSM
General Manager – Advocacy

P 07 3000 2222
F 07 3252 4473
W www.lgaq.asn.au

Local Government House
25 Evelyn Street
Newstead Qld 4006

PO Box 2230
Fortitude Valley BC
Qld 4006

Local Government Association Of Queensland Ltd.
ABN 11 010 883 293 **ACN** 142 783 917

The Research Director

Environment, Agriculture, Resources and Energy Committee

Parliament House

George Street

BRISBANE QLD 4000

Thursday, 22 December 2011

Re: Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011

On behalf of the Queensland Branch of the Australian Contaminated Land Consultants Association Inc. (ACLCA), we have collated a series of responses from our member companies and would like to make the following submission to the research director of the Environment, Agriculture, Resources and Energy Committee.

Background to ACLCA

As background, ACLCA was formed in 1995 to represent our member companies formed from consultancies practising in the area of contaminated land within Australia. This has provided the opportunity to assist decision makers in Australia on matters associated with contaminated land management. The association represents a large portion of the major environmental consulting firms involved in the assessment and management of contaminated sites in Australia. It currently has representative branches in Queensland, New South Wales, Victoria, South Australia, and Western Australia.

Submission on the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011

ACLCA would like to make the following submission in regards to the proposed new legislation Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011.

If possible ACLCA would like to be advised of all operational policies from the Queensland Government Department of Environment and Resource Management (DERM) to be enacted by this Bill and if these operational policies are to be published on DERM website, as stated in s318 (3) “The administering authority must keep a copy of a code of practice made under subsection (1) available on its website”.

Also ACLCA has the following comments on the following sections of the Bill:

- Part 3, Clause 64 Amendment of s 10, ACLCA wishes to request if the current rate of 10% change in material use is still considered a trigger for a change in Material Change in Use (MCU) and if the operational policy to enact the change will be published on the DERM website.
- S122 – Standard Application. ACLCA seeks clarification that activities in Schedule 2 notifiable activities will not fall into a standard application for Environmentally Relevant Activities (ERAs).
- s540 - A registers to be kept by chief executive. ACLCA would like to see suitable qualified persons (SQPs) and Auditors kept on a publicly available register.
- s574 and s564 refer to SQPs and Auditors, both sections refer to levels of competency; 'qualifications and experience relevant to performing the function' (SQPs) or 'state the functions proposed to be performed by the Applicant' (Auditors application); ACLCA wish to seek clarification on the operational policy in defining the levels of competency of both SQPs and Auditors.

In addition to the above points, ACLCA has the following general comments on the legislation:

- ACLCA would like to see in the Act a section on Performance of SQP's Function, in a similar manner as Auditors.
- Currently the legislation for third party certification only applies to site investigations and not ERA applications. Given the streamlining (relaxing) of some prescribed ERA applications (standard or site specific), ACLCA would like to suggest that ERA applications of activities on schedule 2 notifiable activities are signed off by a SQP and/or an Auditor.
- We would suggest the schedule 2 activities are ranked into medium and high risk activities depending on the activity and the size of the operation.
- ACLCA suggest that ERA applications for the medium activities require a sign off by an SQP and high risk activities also require third party certification by Auditors, as well as a sign off by SQPs.

Furthermore, we have the following points, which would like to to seek clarification and consideration in the development of operational policies for the Act.

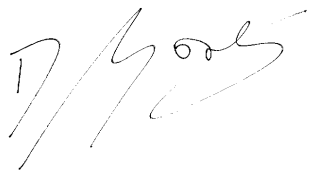
- “SQPs will not need to be approved”. How will this work?
- That Third Party Certifiers will work under a code of conduct. Who is to develop this code?
- The bill is specific to the state of QLD and not uniform with or complimentary to Commonwealth or another state. How does this work with NEPM etc.
- References guidelines. Are any of these planned for contaminated land

operations and if so when? Are the Draft 1998 Guidelines to be revised?

- SQP – Are the "appropriate qualifications and experience" to be defined? Are the "appropriate organisation" to be defined? What are the changes to "the regulatory functions" that can be performed by a SQP?
- Statutory Declarations – Have the SQP stat decs formats to change?
- Guidelines for type of Auditor and criteria – When will these be issued and in what format?
- Term of approval. It is assumed there will now be a panel of Auditors for certain functions? It is assumed that this panel will run for a period of time, how long will this be? It is assumed that the current appointment of TPRs on a site specific basis will cease? Will the current panel of TPRs automatically qualify for the panel of Auditors or will they need to reapply?
- Conditions of approval for an Auditor - Is it known what these may be?
- Code of practice – Are any codes planned to be developed by DERM in the near future and if so when?
- Clauses relating to "business days" - Is this from receipt by PALM and not DERM. If by DERM, how many days are allowed for internal processing and how will the applicant know when the time period commences?
- How is "best practice environmental management" to be defined?

We would like to thank you for the opportunity of assisting in the development of new legislation, guidelines and policies and hope the above comments are both self explantory and helpful in the process. However, if the committee wishes to discuss any of the above,please do not hesitate to contact us via the current ACLCA Queensland email qldaclca@yahoo.com.au or phone me directly on 0400 823 993, thank you.

Yours sincerely,



President, ACLCA Inc. Queensland

For and on behalf the Queensland ACLCA.

Your Ref:
Enquiry Phone: 3412 3412
Please Quote File: 142679-4
Document Reference: 7454154/DAVIESB

LOGAN
CITY COUNCIL

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Logan Central QLD 4114
PO Box 3226 Logan City DC QLD 4114

Council enquiries **07 3412 3412**
Council fax **07 3412 3444**
Email **council@logan.qld.gov.au**
Web **www.logan.qld.gov.au**
ABN 21 627 796 435

20 December 2011

Environment, Agriculture, Resources and Energy Committee
Parliament House
George St
BRISBANE QLD 4000

Attention: The Research Director

Dear Sir/Madam

SUBMISSION REGARDING THE ENVIRONMENTAL PROTECTION (GREENTAPE REDUCTION) AND OTHER LEGISLATION AMENDMENT BILL 2011

Thank you for the opportunity to make a submission on the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011* (the Greentape Reduction Bill).

This submission has been formulated for Council adoption and should be accepted as Council's formal response.

Please contact Steve Keks, Principal Environmental Health Officer, on 3412 5458 if you have any queries regarding Council's submission.

Yours faithfully

Nishu Ellawala
A/City Standards Manager
(on behalf of Chris Rose, Chief Executive Officer)

Policy objectives of the Bill

Logan City Council is committed to supporting local businesses in a way that protects the environment whilst minimising the regulatory burden on business. Consequently Council supports the following objectives of the Bill:

- Developing a licensing model proportionate to the environmental risk of an activity; and
- Reducing 'greentape' associated with the environmental protection legislation while maintaining environmental outcomes.

However, it is critical that any amendments to the environmental protection legislation enable local government to achieve full cost recovery (which is consistent with the user pays principle), and does not create an additional administrative burden on local government.

History of ERA regulation

Since Environmentally Relevant Activities (ERAs) were first regulated in 1995, the environmental protection legislation has been amended numerous times. Each substantive change has impacted on industry as they have had to learn about the changes and what each set of changes means to their business. Over time this has created an inordinate burden on industry, which will be repeated if this Bill proceeds in its current format.

To put this information in context, an overview of the changes to the regulation of devolved ERAs is shown below. Many of these changes were quite complex to implement and for industry to understand.

Years	Types of ERA approvals
1995-1998	• Types of Environmental Authorities: o Integrated authority (i.e. used for multiple ERAs and/or ERA/s on multiple sites); o Level 1 licence; o Provisional licence; and o Level 2 approval. • Deemed approval (level 2 ERAs).
1998-2004	• Types of Environmental Authorities: o Integrated authority; o Level 1 approval (without DA); o Level 1 approval (with DA); o Level 1 licence (without DA); o Level 1 licence (with DA); o Provisional licence; and o Level 2 approval (without DA). • Development approval for level 2 ERA. • Deemed approval (level 2 ERAs) Note: Several ERA levels and definitions changed with the introduction of the 1998 Regulation. Note: Chapter 4 Activities were introduced in 2001 (i.e. renaming of ERA type).
2004-2010	• DA or equivalent of DA (e.g. former licence/approval) and Registration Certificate. • Deemed approval. Note: From 1 January 2009 some ERAs were no longer regulated, thresholds and definitions for several ERAs changed, etc.
2011-current	• DA or equivalent of DA (e.g. former licence/approval) and Registration Certificate. Note: former 'deemed approvals' required a development approval from 1 January 2011.

Proposed for commencement in 2012	• Environmental authority obtained through:
	  ○ Standard application;
	  ○ Variation application;
	  ○ Site-specific application; or
	  ○ Conversion application.
	• Environmental authority that is a 'transitional authority' still operating under the former development permit conditions.
	• Amalgamated environmental authority (note: due to the limited scope of activities regulated by local government, local government would only be involved in the issuing of an 'amalgamated corporate authority').
	• All operators of Environmental Authorities are also required to be a 'registered suitable operator'.
	Note: these changes would mean the regulation of ERAs is reverting back to a process similar to the one that existed between 1998 and 2004 (i.e. conditions on environmental authority, operator requires separate licence/registration, integrated authorities now in for the form of 'ERA projects', 'amalgamated environmental authority', etc).

As you can see from the above table, there have been numerous reforms to the way devolved ERAs are regulated, with many changes designed to 'streamline' the process and reduce 'regulatory burden'. However, subsequent reforms have been needed as each amended process has had flaws. The system proposed in the Greentape Reduction Bill is similar to the process that existed between 1998 and 2004, which was replaced with the current system for a variety of reasons.

When the current system was introduced environmental authority conditions became development conditions. Now under the proposed s.677 of the Bill, the development conditions will revert back to being environmental authority conditions. So an ERA business that existed before 2004 was issued an environmental authority with conditions, was then advised in late-2004 their conditions are now development conditions, and will potentially be told in 2012 that they are returning to 'environmental authority' conditions. This type of change is not beneficial to industry.

In the explanatory notes that were released prior to the current system being implemented (available via http://www.legislation.qld.gov.au/Bills/50PDF/2003/EnvProtLAB03Exp.pdf) the following statements were made (emphasis added in places):

> ***Reasons for the Bill***
> The Bill incorporates legislative changes necessary to improve the integration of the EP Act and the IPA. The amendments will **reduce red tape for industry** through streamlined approval processes, provide for consistent regulation and administration of all ERAs and provide for significant administrative efficiencies for administering authorities.
>
> ***Achieving the Objective***
> The objective of the Bill will be achieved by enacting amendments to the Acts that provide the following—
> - A single approval type for ERAs: transitioning conditions of environmental authorities as development conditions of development approvals.
> - A single approval process for ERAs: changing IPA so that mobile and temporary ERAs are assessed and conditioned in the integrated development assessment system (IDAS) and amending the EP Act so that all conditioning powers associated with the ERAs are linked to the development approval.
> - A single approval requirement: replacing the requirement for the person carrying out an ERA to hold an environmental authority with the requirement for the operator to be a registered operator. ...
>
> ***Alternatives to the Bill***
> ... The proposed amendments significantly reduce the number of approval types and processes in relation to environmentally relevant activities and provides for one approval type and approval

process to be consistently applied to all activities. This will achieve greater efficiencies and environmental outcomes for administering authorities and their customers. ...

Administrative costs and savings to Government

Removing the need to maintain multiple approval processes and approval types will provide **significant administrative savings** to administering authorities, and to **industry**. Savings include removing the need to maintain multiple administrative systems, processes and forms. These changes will consequently reduce training requirements for new and existing administering authority officers.

The replacement of the environmental authority with the system of operator registration will provide significant cost savings to administering authorities. The registration system is simple and requires reduced assessment considerations.

The codes of environmental compliance will provide administrative savings through:

- application of a standard set of conditions for each ERA outlined in the code; and
- reduced individual assessment of development applications for these standard activities.

This will provide cost savings for both industry and administering authorities and enable more time to be devoted to compliance programs and assessment of applications for higher risk activities. ...

The current system was introduced to overcome issues associated with multiple approval processes, conditions being split onto 2 documents (which confused operators), etc. The model proposed in the Greentape Reduction Bill incorporates characteristics that have been problematic in the past. This indicates that implementing the proposed model is likely to reintroduce a complexity that will add to the burden on industry and reintroduce problems that the current system has addressed. Consequently, the introduction of the Greentape Reduction reforms in their current format is likely to result in further amendments being needed in the future. It is critical that we learn from history and do not subject industry to changes that are likely to fail.

The objectives of the Greentape Reduction Bill could be implemented through amendments to the existing process for ERA approvals. For example, the introduction of 'Codes of Environmental Compliance' under the current system for specific ERAs would achieve the same outcomes (e.g. reduced approval times, consistent conditions, etc) as 'standard applications' with 'standard conditions'.

Several Logan City Council staff have worked in the environmental protection area since the introduction of the EPAct. Consequently we are aware that some historical licence/approval options were beneficial to industry, Council and the environment. Based on this extensive experience of the strengths and weaknesses of each of the historical ERA approval processes, the officers recommend the existing system be retained with minor amendments (as detailed below) and Codes of Environmental Compliance are developed for the majority of Chapter 4 Activities.

The minor amendments to the existing system that would be supported are the inclusion of:

- A process equivalent to 'Level 1 approvals' which were issued to ERA operators who were compliant with the EP legislation and their conditions. These approvals spanned several years, so good operators who posed a low risk to the environment were inspected less often and paid lower fees. Consequently the financial burden was reduced based on the risk of the operator. Level 1 approvals also provided a strong incentive for non-compliant businesses to improve their standards (so they could pay lower fees and have less disruption to their business from Council inspections). It is requested that s.308 contained in the Bill is amended to enable Administering Authorities to issue renewals for multiple years to environmentally responsible operators. This would further reduce the 'Greentape' for good operators, which is consistent with purpose of the Bill.
- Authorities issued to a single company for operating multiple ERAs and/or operating on multiple sites. These were historically known as 'integrated authorities'. The inclusion of 'amalgamated environmental authorities' and 'ERA projects' in the Greentape Reduction Bill serves the same purpose as the historical integrated authorities. LCC supports the inclusion of these provisions that reduce the 'Greentape' burden on industry.

As a result of the frequent changes to ERA definitions, thresholds, approval types, etc, there has been a significant administrative burden on local government. There has also been a significant regulatory and administrative burden imposed on industry. One of the most effective ways to reduce the burden on

industry is to prevent future changes to approval/registration/licence types. This can only be achieved by taking the time to get the system right and maintaining that system through good communication and legislative standards.

Terminology introduced by the Bill

One of the greatest challenges for industry is to understand the jargon used in legislation. The environmental protection legislation already contains many terms that are not readily understood. The Bill will introduce a lot of new jargon that industry will have to learn. Examples of new jargon relevant to devolved ERAs are:

- Standard application;
- Variation application;
- Site-specific application;
- Conversion application;
- Amalgamated environmental authority;
- Eligibility criteria;
- Standard conditions;
- ERA project;
- Significant project;
- Registered suitable operator.

While some of the terminology is necessary to implement the proposed changes, others appear to have no benefit, for example, changing the 'holder of a registration certificate' to a 'registered suitable operator'.

To genuinely reduce the regulatory burden on industry we should try to use readily understood terms. For example, people understand that a car has to be registered to be driven on public roads and that the driver has to be licensed. It would therefore be easier for industry to understand the need to hold two types of ERA approvals (currently a development permit and a registration certificate, proposed in the Bill to be an environmental authority and registration as a suitable registered operator) if the activity was registered for the land and the operator was licensed, i.e. terms used in other common contexts.

Regulation development

A significant amount of detail associated with the regulation of devolved ERAs is contained within the Regulations. It is therefore critical that any new regulations are developed through extensive and meaningful consultation with local government. Key issues that local government needs to be consulted on are ERA definitions and inclusions/exclusions; the ability for local governments to set their own fees, etc.

Cost reduction

Significant emphasis has been placed on reducing costs to industry and regulators through the Greentape Reduction reforms. However, how the projected savings have been calculated is not clear. For example, many local government set annual fees for devolved ERAs that are lower than those in the regulation, so if the fees in the regulation have been used to project industry savings, the projections will not be accurate. Also, do the time savings projected through the 'standard approval' process take into account that the operator still has to wait to become a 'registered suitable operator' and in many instances will also have to wait for a development permit to be issued?

The costs and benefits of the initiatives should also encompass officer training, industry advice and guidance, changes to local government computer systems, forms and procedures, etc.

Comments regarding specific provisions in the Bill

LCC would like to highlight the following concerns and recommended solutions if the reforms do go ahead in a similar format to the Bill.

Section	Comment / Concern	Recommended solution
s.120	In the past the EP legislation has not given Administering Authorities the power to refuse an ERA application if a development approval for the land use has not been granted (this has since been rectified). The inclusion of s.120 prevents this issue reoccurring and is a practical inclusion that will reduce industry confusion.	n/a
s.140(2)	This subsection includes information that must be included in an information request. It relates to the content of s.141. Separating notice requirements across two sections increases the likelihood omissions will be made.	Move the content of s.140(2) into s.141.
s.204	This section requires that the Administering Authority place a condition on specific Environmental Authorities that the holder of the authority takes 'all reasonable steps' to ensure the activity complies with the eligibility criteria for the activity. The term 'reasonable steps' is very ambiguous. To ensure environmental standards are maintained and fair regulation, operators of ERAs should be required to comply with the eligibility criteria for standard or variation applications, or lodge a site-specific application, i.e. it should be a requirement to comply, not a requirement to take 'all reasonable steps'. The current provision provides little/no disincentive for operators who aren't complying with the eligibility criteria to do the right thing and apply for a site-specific Environmental Authority.	Remove the wording 'to take all reasonable steps' from s.204(2). Include an offence for ERA operators that are operating under an Environmental Authority obtained through a standard or variation application and that do not comply with the eligibility criteria (unless operating under an approved Transitional Environmental Program (TEP) and the only non-compliance/s with the eligibility criteria are covered by the TEP). Also include this offence in the State Penalty Enforcement Regulation so a Penalty Infringement Notice can be issued for this offence.
s.201	This section states that the term of an Environmental Authority will lapse after a stated period.	As indicated previously, Council would like this section and s.308 to be amended to enable local government to issue fully compliant ERA operators with environmental authorities for multiple years. This would create an incentive to comply with environmental standards and reduces the burden on compliant businesses.
s.253 and s.262	The requirements for a transfer application are detailed in s.253. The requirements for a surrender application are detailed in s.262. There is no information regarding what action is to be taken if a transfer or surrender application does not comply with s.253 or s.262 (i.e. no section similar to s.128).	The inclusion of a section similar to s.128 for transfer and surrender applications. If necessary a section regarding lapsed applications should also be included. The provisions should enable the Administering Authority to charge an additional fee to cover the cost of reassessing the application. This would enable full cost recovery and lower fees for applicants who lodge a 'properly made application' the first time.
s.256	After an Environmental Authority is	Amend s.256 to require the operator to send

Section	Comment / Concern	Recommended solution
	transferred, the *new operator* is required to send the land owner/s a copy of the Environmental Authority. This places a burden on the new operator at a time when they are moving into a new business and have numerous other tasks to complete. A more streamlined approach would be for the Administering Authority to send a copy of the Environmental Authority at the time it is issued.	a copy of the Environmental Authority to the property owner/s if the Administering Authority has not already done so. Require the Administering Authority to advise the new operator if they are required to send the property owner/s a copy of the Environmental Authority. (Note: this allows Administering Authorities to adopt a process that is appropriate for the industry, etc).
s.269	s.269 places restrictions on when an Administering Authority may approve a surrender application. In some instances (e.g. a surrender application for ERA8 Chemical Storage for a service station) the local government will require information from DERM to be able to assess the requirements of s.269(c). To ensure compliance with the relevant timeframes, DERM would have to provide this information quickly. This will require a streamlined process with strict timeframes for DERM (e.g. 10 business days).	No amendment to the legislation recommended. Require DERM to develop a streamlined process in which they will provide LG the information required to be considered under s.269(c) within 10 business days free of charge.
s.278(e)	s.278 details when an Administering Authority may cancel or suspend an Environmental Authority. s.278(e) includes the grounds that the environmental authority holder's registration as a suitable operator '... is proposed to be cancelled or suspended' (i.e. under ss.318K-318Q). In its current form this provision appears to lack natural justice, i.e. another decision can be made based on the *proposed* cancellation/suspension of the registration. It is believed that the intent of this provision is to enable both the Environmental Authority and the Registration to be cancelled/suspended at the same time.	Amend s.278(e) to: • remove the wording 'is proposed to be cancelled or suspended' from; and • insert provisions that state notices of proposed suspension/cancellation can be issued under s.280 and s.318L at the same time.
s.311(2)	s.311(2) allows the Administering Authority to change the anniversary day for an Environmental Authority if the holder agrees in writing. Currently ERA renewals are scattered throughout the year, resulting in numerous batches of renewals having to be processed. This decreases efficiency, resulting in increased administration costs to local government. These costs are usually incorporated in the annual fees paid by ERA operators.	To increase efficiency and therefore decrease costs to industry, there should be a provision that enables local government to amend the anniversary date to a consistent date for all ERAs in that local government area, without the need for written consent. To ensure fairness the local government should be required to give the ERA operator 40 business days notice of the proposed change and charge pro-rata fees.
s.314	This section requires the ERA operator to replace an environmental authority through a site-specific application if they do not comply with the eligibility criteria. This provision essentially gives someone	Refer to recommended solution for s.204.

Section	Comment / Concern	Recommended solution
	additional time to comply when they have falsely stated their business complies with the eligibility criteria or they have failed to ensure the business continues to comply with the eligibility criteria. In the absence of a penalty for failing to comply with the eligibility criteria (refer to comments on s.204) there is little disincentive to apply for a site-specific application. A business who wants an approval quickly can obtain an authority through a standard application and then if they are caught, apply for a site-specific application after they are given a notice under s.314(4). These provisions in their current form protect non-compliant businesses.	
s.318C(4)	s.318C requires the Chief Executive (i.e. DERM) to give a notice of proposed standard conditions. s.318C(4) requires that the Chief Executive must give a written notice of the proposed standard conditions to the holder of a relevant existing authority. This implies one of four things: • DERM is not intending to develop standard conditions for devolved ERAs which would be ill-advised and would prevent Greentape achieving its purpose; • DERM is going to deregulate devolved ERAs which is definitely not supported as the regulation of devolved ERAs has resulted in improved environmental standards; • DERM is going to require the postal addresses of all ERA operators regulated by local government and then undertake massive mail-outs; or • DERM is going to require local government do the mail-out on their behalf, which will create an additional administrative burden on local government.	Genuine engagement with local government regarding devolved ERAs. A realistic process is developed to comply with s.318C that does not create an additional administrative burden on local government unless DERM funds this work.
s.318E	This provision is broad in nature allowing the creation of a code of practice '... for an activity that causes, or is likely to cause, environmental harm'. This could potentially include activities regulated by local government (e.g. roof cleaning businesses that regularly discharge wastewater to stormwater). s.318E(3) requires the Administering Authority to keep a copy of the code of practice available on its website. If the code of practice is for an activity regulated by local government, this section requires every local	s.318E(3) be amended to require that all codes of practice made under subsection (1) are made available on the DERM website (i.e. replace 'Administering Authority' with the State agency primarily responsible for environmental protection.

Section	Comment / Concern	Recommended solution
	government to keep the same document on their website which is a logistical nightmare, particularly if the code is updated.	
s.318K(b)	s.318K identifies when an Administering Authority may cancel or suspend a registration. s.318K(b) states the Administering Authority may cancel of suspend a registration if it '... is satisfied the operator is not a suitable person to be registered as a suitable operator having regard to the applicant's environmental record'. This provision mirrors several existing provisions that are vague in nature. Greater guidance is required in relation to this provision.	Clear guidelines are developed to ensure all Administering Authorities interpret and implement this provision in a consistent manner. Inclusion of explanatory notes under s.318K(b) to guide the interpretation of the provision.
s.318R	This section allows Administering Authorities to investigate applicant suitability by requesting information from other relevant agencies. This section allows information to be obtained from other State environmental protection agencies, etc, but does not make any provision for local government to request relevant information from DERM. DERM could also not request information from other State agencies (e.g. DPI&F) that also regulate ERAs.	s.318R be amended to allow an Administering Authority to obtain information from another Administering Authority within Queensland.
s.318T	This section requires the Administering Authority issue a notice to the applicant before using information in a suitability report. This provides natural justice which is supported. However, this adds a step in the process without extending the timeframes (which is only 20 business days) to make the decision.	s.318G be amended to extend the timeframe to make a decision if a notice under s.318T is issued.
s.318U	This section deals with confidentiality in relation to suitability reports. Currently the provisions cover public service employees and employees of a local government. Several local governments and State agencies use contractors to implement legislation and process applications. There is no definition of 'employee' and contractors are generally not considered employees of the relevant Administering Authority. Therefore the implementation of this provision would be problematic if contractors are not included in this section.	Amend s.318U(1) and (3)(b) to include contractors employed by an Administering Authority.
ss.321-326I	These sections detail the provisions for environmental evaluations. Most of these provisions replicate existing provisions of the EPAct. These sections will continue the current approach of having two types of environmental evaluations – environmental	Consolidate these provisions to create one type of environmental authority. Include the ability for the Administering Authority to specify the minimum qualifications of the person completing the environmental evaluation (e.g. an auditor approved under the EPAct) in the

Section	Comment / Concern	Recommended solution
	audits and environmental investigations. Both types of environmental evaluations are designed to achieve similar outcomes. The primary difference is that an environmental auditor must conduct an environmental audit. There are several situations in which an environmental audit or environmental investigation could be issued. The Greentape Bill presents an opportunity for the two types of environmental evaluations to be consolidated which would reduce the regulatory burden on Administering Authorities and industry.	consolidated provisions.
s.323	s.323 details some of the circumstances in which and Administering Authority may require an environmental audit including: • Non-compliance with a Direction Notice (used to regulate nuisances, illegal discharges to stormwater systems, etc); • Contravening a noise standard; and • Depositing prescribed water contaminants into a stormwater system or in place where they could move into a water body. These provisions deal with some of the non-compliances that have a smaller or shorter-term impact on the environment. Therefore requiring an environmental auditor undertake the environmental evaluation is unnecessary and increases the cost to comply. In some instances another type of professional (e.g. acoustic engineer) may be better qualified than an environmental auditor to provide expert advice to achieve the desired outcome.	If the above recommendation is not implemented, move the content of s.323(1)(b) into s.326B, i.e. move the 'nuisance' type provisions to be included under the environmental investigation provisions.
s.326G(2)	This provision states that the Administering Authority must accept the report submitted by the environmental auditor. This doesn't take into account that auditors may make errors (not deliberately), etc.	Amend this provision so that Administering Authorities can require the report be amended if there are errors or omissions. Also include a provision that the report can be disallowed/refused if the Administering Authority if the report is seriously flawed and action is taken under s.574H (Who may make complaint about an auditor).
Clause 12 and 13 of the Bill	These clauses will amend ss.330-331 in relation to Transitional Environmental Programs (used to support a business transition to an appropriate standard, becoming compliant over a fixed period of time). These clauses do not currently include standard conditions. Consequently, an ERA operator who intends to transition to comply with the standard conditions must obtain a site-specific approval in the meantime. This doesn't appear consistent with the intent of	Clauses 12 and 13 be amended to include 'standard conditions'.

Section	Comment / Concern	Recommended solution
	the Act to encourage improved environmental performance or the intent of the Bill to decrease Greentape for industry.	
s.334A	This section enables the Administering Authority to require information relevant to a submitted Transitional Environmental Program. There are currently not details to identify what action should be taken if the information is not provided by the person/public authority. There is also no maximum time period set before the process lapses.	Inclusion of more process requirements including the maximum time period the person/public authority has to submit the information, that the process lapses if the person/public authority fails to provide the required information during that time period, etc.
Clause 24	This clause will amend s.347 which relates to the disposal (e.g. sale) of a business that is not covered by an environmental authority and that has an approved Transitional Environmental Program (TEP). It is unclear why a business operating under an Environmental Authority that has a TEP is not subject to the same requirements.	Do not amend s.347 so all holders of a TEP have to tell potential purchasers of the TEP.
Clause 36	These amendments to s.452 are very similar to the existing provisions regarding an authorised person's power to enter places. These provisions do not provide suitable powers of entry when a business is operating, but is not 'open' for business (e.g. noisy work conducted after hours).	s.452(2)(c)-(f) should be amended to include powers of entry when the activity is being conducted (even if the business is not 'open' for trade or to the public). These powers of entry should apply to places where ERAs and other regulated activities are occurring, and where ERAs are being conducted without the necessary approvals (i.e. don't have reduced powers of entry for illegally operating ERAs). However, these powers of entry should not apply to residential premises or parts of a building lawfully used as residential premises.
s.540(1)(c)	The proposed changes in clause 47 are similar to the existing content of these sections. There is no definition of 'monitoring programs' which can lead to different interpretations of this requirement.	Include a definition of 'monitoring program' in Schedule 4 (Dictionary).
s.677	This section provides transitional arrangements for Chapter 4 Activities, including devolved ERAs. s.677(4) states that 'the anniversary day for the environmental authority is the anniversary day of the day the development permit was given'. In accordance with s.316 of the current EPAct, local government has to issue an annual notice (i.e. renewal) prior to the anniversary day for the *registration certificate*. The proposed requirements relate to the anniversary day of the *development permit*. This date is often different to the anniversary of the registration certificate. To implement the proposed provision would require each Administering Authority of Chapter 4 Activities	Amend s.677(4) to state that the anniversary day for the environmental authority is the anniversary day for the registration certificate. This will ensure ERA renewal dates remain unchanged.

Section	Comment / Concern	Recommended solution
	to go through every relevant development permit and amend the anniversary day of each ERA. In many cases this will result in changed periods covered by the fee which is unfair to industry and an unbeneficial administrative burden on local government.	
ss.694-695	s.694 defines 'transitional authority' and includes development permits for Chapter 4 activities devolved to local government that exist before the commencement of the Greentape Reduction provisions. s.695 states that the holder of a transitional authority may apply to convert the conditions to the standard conditions for the relevant activity. To do this the ERA operator would have to pay a fee. Consequently most ERA operators will not apply to convert the conditions. This will result in varying minimum standards existing within each industry. Current development permits which become an Environmental Authority under s.677 will remain in effect for the lifetime of the activity occurring on the site. Therefore multiple standards could exist for decades. This reduces some of the regulatory efficiency the Greentape Reforms intended to achieve. However, it is recognised that changing the requirements of existing ERAs is problematic. However, a better balance is needed and the bulk of devolved ERAs will operate in a similar way and therefore are likely to comply with the eligibility criteria to be developed in the future.	Include provisions that: • Require the Administering Authority give the holder of each 'transitional authority' a notice within 1 year of relevant standard conditions being developed. • State the conditions will automatically change to the standard conditions 1 year after the notice is served, unless the operator advises the Administering Authority they want to retain their existing conditions. • If the holder of the transitional authority advises the Administering Authority that they want to retain their existing conditions, the Administering Authority cannot change their conditions unless specifically permitted by the EPAct (e.g. the provisions to amend conditions if the holder is convicted of an environmental offence). This would be consistent with s.213 that states that the holder of an environmental authority has one year to comply with any new standard conditions that apply to existing authorities.

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22 December 2011

Mr Rob Hansen - Research Director
Environment, Agriculture, Environment, Resources and Energy Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Rob

Review of the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011 – CCAA Submission

Cement Concrete & Aggregates Australia (CCAA) is the peak industry body for the $7 billion-a-year heavy construction materials industry in Australia. Our members are involved in the extraction and processing of quarry products, as well as the production and supply of cement, pre-mixed concrete and supplementary materials. A list of members in Queensland is provided at Annexure 1.

We welcome the opportunity to make a submission to the Environment, Agriculture, Resources and Energy Committee (EAREC) inquiry into this Bill.

Overall comments on the Bill

We are very supportive of the Bill's objective to simplify and improve the licensing processes under the *Environmental Protection Act 1994*, whilst maintaining environmental outcomes.

In particular:

- We strongly support the introduction of a **licensing model that clearly reflects the environmental risk** of a particular Environmentally Relevant Activity (ERA), and are very supportive of increased efficiency for the operational approvals process.

- We agree with the flexibility of being able to **amend operational approvals without the need to change the development approval,** and the ability for an operator licence to cover multiple sites.

- CCAA is also supportive of a system which will reduce the number of annual returns and payments. With regards to the **transfer of an operator license**, in general, industry supports a licence which is attached to the operator rather than the land on which the business is based. The industry believes that this initiative could provide greater efficiency in transferring licences, and takes into account businesses with complex and varying ownership structures. However, any changes should be accompanied by clear guidance and high levels of support and resources for business to transfer current licenses to the new arrangements, including any clear articulation of any transitional arrangements. There also must be a clear understanding of what standard conditions will apply to operator licence.

- With regards to the initiative to **amend operational approvals without having to amend development approvals**, CCAA members are supportive of this change, provided there are effective and efficient ways to amend any conditions attached to the approval.

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- In relation to the introduction of an **amalgamated corporate authority**, CCAA believes that the initiative is positive in relation to the ability to make a single annual return in relation to multiple sites, and the potential to significantly reduce the overall number of licences and registrations.

- CCAA strongly endorses the initiative to **streamline and clarify information requirements**, including the provision of clear guidance on the information required and a reduction in the amount of information to be assessed. CCAA members note that clear information requests would be especially beneficial where the approval process has been delayed.

- In relation to use of **third party certifiers** to assess development applications, CCAA in general supports the use of independent and suitability qualified third parties in appropriate situations, provided there are suitable processes for the determination of certifiers. This appears to be addressed in the Bill. However, potentially, third party certifiers may result in additional costs for industry, especially the costs of retaining third party consultants where a development approval is delayed. Additional issues associated with use of third party certifiers include a possible loss of corporate knowledge at DERM if third party certifiers undertake the majority of assessments and increased conditions being imposed due to third party certifier liability responsibilities. CCAA members also note that reduced application costs should apply where third party certifiers are engaged as DERM is not providing resources to undertake the assessment.

- In relation to the **prioritisation of information required with the application**. CCAA is very supportive of technical and supporting information (which is not critical to the application decision) being supplied after approval has been granted. CCAA members note that such prioritisation of information would assist in reducing application processing delays and would like to see this initiative also implemented by local governments.

Additional Comments

As outlined above, CCAA strongly supports the Bill.

However, we also strongly urge that sufficient resources and planning is devoted to the implementation of the Bill, and to be complemented by other improvements in DERM's business processes and customer interfaces so that there is a greater "one-stop-shop" approach in relation to DERM-business interactions.

We would strongly urge that there is continued **close involvement and engagement of DERM regional staff and local government authorities** (as well as industry) in the further development and roll-out of the reforms. This is vital in ensuring that the reforms are practically designed, properly communicated and have broad stakeholder support.

We would also urge that close attention be given to the structure and design of **reform guidance material** to ensure license holders can clearly understand the implications of the proposed changes and can properly plan for any changes.

In summary, we welcome the opportunity to comment on the Bill, and would welcome the opportunity to elaborate on our comments at a public hearing.

To discuss further, please contact me on 3227 5210 or email aaron.johnstone@ccaa.com.au

Yours sincerely

Aaron Johnstone
State Director – Queensland

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MEMBERSHIP (at November 2011)

FOUNDATION MEMBERS

Adelaide Brighton Ltd	Boral Construction Materials	Boral Cement Limited
Cement Australia Pty Ltd	Hanson Australia Pty Ltd	Holcim (Aust) Pty Ltd

ORDINARY MEMBERS

Aidan J Graham Pty Ltd	Eziway Concrete (T/as T & M Lynch Pty Ltd)	Parkes Ready Mixed Concrete Pty Ltd
Alsafe Pre-Mix Concrete Pty Ltd	Fulton Hogan Construction Pty Ltd	Penrice Soda Products
Axedale Sands & Gravel	Gaspersic Contracting Pty Ltd	Permian Resources Pty Ltd
Barossa Quarries Pty Ltd	Glenella Quarry Pty Ltd	Premier Resources T/A Hy-Tec Industries Pty Ltd
Barro Group	Handycrete Concrete Pty Ltd	Ransberg Pty Ltd T/a WA Premix and WA Bluemetal
Benedict Sand & Gravel	HBMI Pty Ltd	RNB Trading Pty Ltd
Besmaw Pty Ltd	H B Resources Pty Ltd	Riverside Industrial Sands Pty Ltd
BIS Industries Limited T/A BIS Industrial Logistics	Hillview Quarries Pty Ltd	Rocla Pty Ltd
Bowen Tug & Barge Pty Ltd	Hymix Australia Pty Ltd	Santos Ready Mixed Concrete Pty Ltd
Brisbane City Council T/A Bracalba Quarries	Lime Industries Pty Ltd	Sloans Sands Pty Ltd
Broadway & Frame Premix Concrete Pty Ltd	Independent Cement & Lime Pty Ltd	Southern Pacific Sands Pty L td
Byrne Bros Pty Ltd	Lloyd's North Pty Ltd	Southern Quarries Pty Ltd
Clare Quarry Pty Ltd	Mackay Sand and Gravel Sales	Stornoway Quarrying
Clay & Mineral Sales Pty Ltd	Mantina Quarries	Stornoway Hewitt Pty Ltd
Cleary Bros (Bombo) Pty Ltd	Metromix Concrete Pty Ltd	Sunstate Cement Ltd
Concrete 4 Goulburn	MSD Construction Pty Ltd	Techcon Resources Pty Ltd
Concrete Taxi Pty Ltd	MSP Group Pty Ltd	The Concrete Yard Pty Ltd T/as Queanbeyan Pre-Mix Concrete
Concrite Pty Ltd	Mount Marrow Blue Metal Quarries Pty Ltd	Treloar Transport
CSR PGH Bricks	Neilsen's Quality Gravels Pty Ltd	Urban Resources Pty Ltd
Davalan Concrete Pty Ltd	Nucrush Pty Ltd	Wagner Investments Pty Ltd
D K Quarries Pty Ltd	Ostwald Quarries Pty Ltd	Western Suburbs Concrete
Elvin Group Pty Ltd	Premix Concrete Pty Ltd	Zanows Sand and Gravel
Entire Concrete Pty Ltd		

ASSOCIATE MEMBERS

Astec Australia Pty Ltd	Manufacturing Pty Ltd T/a Xypex Australia	WAM Australia
BASF Construction Chemicals Australia Pty Ltd	Fieldwicks Crushing & Screening Grace Construction Products	Westrac
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