East End Mine Action Group (Inc)

(EEMAG INC)
East End, Mt Larcom. Q. 4695

ADDITIONAL INFORMATION TO SUBMISSION TO SENATE INQUIRY INTO THE MANAGEMENT OF THE MURRAY-DARLING BASIN

27 June, 2011

The Committee Secretary
Senate Standing Committee on Rural Affairs and Transport
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir / Madam,

Thank you for accepting this additional information to EEMAG's previous submissions.

As documented in our previous Submissions, EEMAG and its experts has for many years engaged in futile representations and token consultative processes that have never delivered equitable co-existence, administrative justice or empowerment for landholders adversely affected by mining. Arguably the grudgingly conceded "make good" entitlements won for affected landholders' alternative water supplies have come only as a direct consequence of EEMAG's persistence. Without an ongoing drive for accountability by unified landholders, little or nothing would have been done .

There is evidence of widespread lack of trust in processes for developing and operating mining/CSG projects. In our experience this lack of trust is completely justifiable. There is an urgent need for genuine reform of mining/CSG development and regulatory processes if it is intended these industries PROPERLY comply with Water Reforms (Water Act 2007) and other environmental regulations.

On this basis, we advocate that the process of participatory Collaborative Planning be investigated as an effective means for working towards equitable co-existence between farming and mining/CSG; and for properly protecting aquifer systems and good quality agricultural land for future food production in the Murray Darling Basin and other areas.

- EEMAG is NOT advocating Collaborative Planning as a process to permit mining / Coal Seam Gas on Strategic Cropping Land that should be prioritised for future food production and EXEMPTED from resource development, Petroleum and Gas, noxious industry or other incompatible projects. An independent, affordable appeal on the merits would be essential to ensure probity.

A very successful example of participatory Collaborative Planning is documented in Doctoral Thesis "Industry/Community Relationships in Critical Industrial Developments" (Hoppe 2005) undertaken under strict Griffith University protocols. The Thesis is a comparative study between management of the Holcim owned East End mine (entrenched 15 year dispute) and Holcim owned Bundner Cement AG, Untervaz (BCU) in Switzerland. BCU implemented Collaborative Planning for their FEKLHAS quarries project (approved in 1998) as a strategy to prevent social disharmony. The Collaborative Planning process included a limited, project specific power shift as well as project specific voting rights for those affected by the proposed development. This Thesis critically examines the validity of claims of remarkable success and illustrates the very real benefits of genuine Collaborative Planning that resulted in speedy planning and approval processes for the project.

BACKGROUND

In the mid-1980's BCU realised that their "Fenza-Kopf" limestone deposits in Untervaz, were no longer adequate and commenced a search for new deposits. Planners estimated that the exploration, planning, projection and government approval processes could require ten to fifteen years. Driven by time constraints and socio-environmental complexities BCU decided not to limit its project team to the usual clarification of technical and environmental problems. Instead socio-environmental issues were added to the Terms of Reference to prevent social disharmony, and community participation was integrated into BCU's decision-making for the project. In spite of significant socio-political as well as socio-environmental difficulties, the FEKLHAS project via its commitment to collaborative planning passed through the prescribed government approval processes in record time. The project was broadly heralded as "just about exceptional, really exemplary and as a good example for other projects". (Refer Pages 6.1 to 6.3).

BCU began to explore the Calanda mountain range for new limestone deposits in 1984. In the final analysis a combination of sites was expected to hold the most suitable raw deposits. At a public Council meeting in October 1992 BCU informed the local community of its intention to extend the local Fenza quarry. In response the Council decided to establish the official *Calanda Commission* whose local membership was to be publicly elected. The overall function of this commission was to evaluate, advise and control the planning and decision-making process of the BCU development. Deriving its legal basis from a special contract, the Konzessionsvertrag, <u>the first responsibility of the Commission was to protect the interests of the Untervaz Community</u>. This Contractual agreement between the BCU and the Council of Untervaz not only confirmed the Commissions elected representatives, but also assured its participatory role in BCU's project-planning and decision-making structure. (Refer Pages 6.10, 6.13-6.14) (My underline)

The Council assembly and the citizenry attending the October meeting, however, requested that prior to electing the Commission strict procedural guidelines be established. These were expected to include an outline of the terms of reference, as well as a listing of the obligations and responsibilities to which the contractual signatories were to be committed. The council assembly and the 140 citizens in attendance voted 62 to 44 that these guidelines be recorded in a "booklet of obligations", the *Pflichtenheft*, which was to be approved at the next council meeting. (Refer Page 6.14)

Listed below are crucial Key Elements of the collaborative planning process employed by Bundner Cement (BCU) in a comparative table with processes used for the East End mine. Note: This Comparative Table is NOT one of the comparative tables from "Industry/ Community Relationships in Critical Industrial Developments" (Hoppe 2005)

Collaborative Planning for development of BCU FEKLHAS Quarries Project Switzerland	**Processes for East End Mine, Queensland 1996 Expansion/operations**
Recognition of interconnectedness of socio-environmental and techno-economic elements of development.	Exclusion of socio-environmental community values from decision-making processes
Legitimization of value of community stakeholders affected by the proposed development	Pseudo-legitimization of value of community stakeholders by mine's 1976 Special Conditions and Environmental Regulations: These safeguards were undermined by a covert 1977 "Minimum Compliance" Strategy for East End mine project that has no sunset clause, and by Queensland's unofficial policy of non-enforcement of environmental regulations for mining that, from EEMAG's evidence, is current and ongoing
Limited project specific power shift towards the affected community	Affected landholders disempowered in fast tracked process for mine expansion and in regulatory processes for operation. Disputed 1996 IAS Hydrology report approved by Regulators despite robust disagreement by landholders that its findings were not consistent with what was occurring on the ground. NO Public Objections process for the 1996 IAS Report on the mine's tripling of production.
Development of Participatory Forums with participation by elected representatives from affected community PRIOR to authoring of FEKLHAS project Report (Calanda Commission and Coordination Team)	Development of East End Mine Community Liaison Group (CLG) AFTER IAS Report compiled by Company consultants / approved by Government. Affected landholders outweighed by Govt/Company in CLG structure. Regulators bound by "Minimum Compliance". NO voting rights, NO intention that CLG would provide genuine resolution of problems for landholders. East End mine withdrew from CLG after October 2000 and the CLG folded East End mine now has community consultation with their East End Mine Community Consultative Forum, with representatives from local Organisations e.g. Show Committee, SES, School, P & C, Bowls Club, Chamber of Commerce / Progress Association etc. The welfare of adversely affected landholders is NOT protected by this Forum which further alienates victims of mine impacts.

Collaborative Planning for development of BCU FEKLHAS Quarries Project	**Processes for East End Mine, Queensland 1996 Expansion/operations**
The first responsibility of the Calanda Commission was to protect the interests of the affected Community	EEMAG's experience is that Shire Council's and Government's main focus was on the benefits from jobs and development, with detriments affecting "the losers" regulated under Special Conditions and Environmental Regulations that were effectively undermined by "Minimum Compliance" and the unofficial policy of non-enforcement of environmental regulations for mining. The Mt Larcom community polarised by the mine project due to its perceived great economic benefit / adverse effects on groundwater. Affected landholders were isolated in their concerns with their rights traded-off
Participatory structures successfully balanced community interests with those of the developer. Calanda Commission and BCU Coordination Team	IAS processes and subsequent related administrative processes strongly skewed in favour of the mining operations. Pretence that affected landholders are properly protected "by a heavily regulated mining industry."
People always had a procedure at their disposal to remedy a situation with a strong element of public control/management of disputes through participation. "This was certainly not merely symbolic and we certainly not just listened symbolically, based on the way we organised it, that would have been impossible,"	Landholders and their independent experts disempowered in EEM CLG and consultative technical meetings regarding disputed technical findings. Their views were disregarded and landholders' interests traded off. Federally funded Mt Larcom CRP Report Exec Summary, Item 12 "There is evidence that on several occasions the consultation process has been abused and has degenerated into an inequitable manipulative farce." • NO process for genuine resolution of affected landholders problems Queensland Ombudsman and Crime & Misconduct Commission refused to investigate or continue to investigate EEMAG's complaints. CJC (now CMC) accepted before 1996/97 Connolly/Ryan Inquiry that a policy of non-enforcement of environmental regulations for mining existed but argued that the policy did not constitute official misconduct because it had been well publicised. (Refer EEMAG Add Info 3)
Development and maintaining of social trust	From EEMAG's experience no preparedness by Government or Company to establish transparent and equitable processes with empowerment of affected stakeholders to engender trust and genuine accountability. Evidence that company is punitive. Affected landholders criticised for being mistrustful

Collaborative Planning for development of BCU FEKLHAS Quarries Project	**Processes for East End Mine, Queensland 1996 Expansion/operations**
Prior to electing the Calanda Commission strict procedural guidelines established. These included an outline of the terms of reference, as well as a listing of obligations and responsibilities to which the contractural signatories were to be committed. Guidelines recorded in a "booklet of obligations", the *Pflichtenheft*,	FOI shows company sought and obtained commitment in 1995 that expansion would be approved on unchanged environmental approvals. (DPI Water Resources advised in May 1995 that water monitoring data had not been processed for 15 years: No recognition of off-lease mine impacts in 1995). The 1996 IAS Hydrology Report (that zone of water depletion extended approx 500 metres from mine pit - minimal off lease impacts) was robustly contested by landholders, but approved by Regulators. NO public objection process against disputed IAS findings NO process for accountability. Evidence that the Hydrology Report for 1996 IAS shaped to fit commitment for unchanged environmental approvals. The East End mine remains exempt from environmental regulations requiring a remedy and Water Reforms. Extensive off-lease serious environmental harm due to dewatering not recognised by DERM processes
Legal contract *(Konzessionsvertrag)* committing signatories to work collaboratively throughout the proposal phase of the project	No protective legal framework other than Special Conditions (including a quarterly Water Monitoring Programme) that were abused and inadequately enforced.
Legitimization of local knowledge by actively seeking the accumulated wisdom of various community stakeholders, and integrating their observations, insights and experiences into the planning and decision-making process. <u>Acceptance of local knowledge resulted in rejection of planned transport technology. BCU and community developed an alternative, including local knowledge in decision-making</u>. • **Inclusion of local knowledge into scientific inquiry significantly increases the accuracy of assessing and interpreting local conditions thereby providing a more solid information baseline (Harding 1998)**	Official rejection of application to include Local Knowledge of affected landholders by Government. EEMAG delegates (and 3 independent hydrologists) NOT empowered in technical Consultations with DERM regarding ongoing dispute over assessments of the extent of the mine's impacts – consulted but views basically disregarded. • The fact there is NO process to effectively appeal on the merits of technical/other findings by Departments facilitates decisions being shaped to suit political policies, instead of using the best available science.

Collaborative Planning for development of BCU FEKLHAS Quarries Project Switzerland	**Processes for East End Mine, Queensland 1996 Expansion/operations**
Appointment of an independent expert to advise the Commission: The firm and independent ecological expert chosen was suggested by the environmental group Pro Natura in their participatory role. This nomination was confirmed by the Untervaz council and the FEKLHAS Commission. <u>Independent expert holds one formal vote in Commission</u>.	EEMAG's Independent Hydrologists are disempowered in Consultative discussions with DERM on disputed assessment of mine's impacts. The hydrologists views are basically disregarded. In 2007 the three (3) Independent experts co-authored a letter to the Minister, distancing themselves from DERM's work. (See EEMAG's 1st submission. Page 7 - 11.) DERM in their Feb 2011 Final Report continue to use inappropriate Darcian flow methodology for assessing groundwater in the karst limestone aquifer, and continue to misrepresent key elements of findings by EEMAG /our Independent Experts. • DERM's Consultation Processes are hollow and designed to give the appearance of collaboration so as to disarm protesters.
Stakeholders collaboratively co-authored the project proposal under the umbrella of the coordination team. That is local community representatives, Kantonal (State) and local agencies, environmentalists as well as BCU experts co-jointly developed the project proposal solving problems as they emerged	NO co-authorship with affected landholders/ Independent Hydrologists on anything. Fast tracked IAS Report compiled without consultation or informing affected landholders it was occurring. 1996 IAS Report evaluates that there are basically NO adversely affected landholders. EEMAG members lodged submissions robustly disputing 1996 IAS Hydrology findings. Dr James submitted a dissenting Report in 1995, included in IAS as an Appendix but that did NOT result in correction of the gross inaccuracies in the IAS Hydrology Report on which the mine's environmental approvals remain FIXED <u>exempting the mine from compliance with Water Reforms and other environmental legislations</u>. 1996 IAS Hydrology findings discredited by DNR's findings that in 1991 there was a 20 sq km off-lease mine depleted zone (DNR 1997) (and by other reports). In 2010 DERM refused to update environmental approvals based on the current recognized zone of mine depletion – assessed by DERM in 2008 as approx 50 sq km.

Collaborative Planning for development of BCU FEKLHAS Quarries Project Switzerland	**Processes for East End Mine, Queensland 1996 Expansion/operations**
A non-negotiable prerequisite for approval was election of a new commission to monitor the mining operation from its commencement to closure and assure the full implementation of all preconditions The FEKLHAS Project Commission	Covert Minimum Compliance commitment for EEM Project and Qld's unofficial policy of non-enforcement of environmental regulations for mining saw at best only token compliance as a result of EEMAG's efforts. *"Injuriously affected"* term included in EEM's 1976 Original Condition 11 NEVER administratively enforced prior to lease renewal in 2003 nor after. Provision of alternative water supplies unreasonably delayed/ deferred needing repeated representations to unenthusiastic regulators/ mine representatives. Landholders outside the 'depletion zone' recognised by Regulators (disputed by EEMAG as being understated) are in "no man's land" with NO scope to appeal the science. Regulating Agencies are bound by Government policies that can flow into technical assessments / exemption from compliance with Water Reforms etc.
Genuine community participation, Hanna (1995) argues, provides a powerful counter to traditional egocentric management paradigm, thereby significantly reducing the danger of irresponsible industrial development.	Affected landholders are powerless in the face of proposed mining/CSG development and in the project's ongoing operations, with the Company / regulators reluctant to act promptly to recognise / remedy problems. In EEMAG's experience, without an ongoing robust drive for accountability by unified landholders little or nothing would have been done. It is clear that genuine participation/ empowerment by affected landholders would be essential to transparent and equitable decisions on science and land and water use

Various quotes of from "Industry/ Community Relationships in Critical Industrial Developments" are included below to confirm the information used in the segment for Collaborative Planning for development of BCU FEKLHAS Quarries Project.

QUOTES/REFERENCE PAGES

10.3.1 Balancing community and industry goals (Summary and Conclusions)

The effective and enduring Industry/Community relationship in the FEKLHAS development rests on three primary pillars.

- Firstly, FEKLHAS decision-makers employed a holistic and synergistic strategy, which recognised the interconnectedness of the socio-environmental and techno-economic elements of the FEKLHAS development.

- Secondly, these opposing elements, generally deemed to be irreconcilable, were integrated into the planning and decision-making process.
- Thirdly the FEKLHAS developer established participatory forums such as the *Coordination Team* and the *FEKLHAS Project Commission*.

Within these participatory structures a limited power shift towards the community assured the continuous and effective alignment and integration of the socio-environmental and techno-economic elements of the development. This means that the empowerment of the local community allowed its representatives, together with other participants in these community engagement forums, to balance the socio-environmental community concerns with the techno-economic goals of the FEKLHAS developer. This is most prominently demonstrated in the co-authorship of the FEKLHAS project proposal, the agreement to build the transportation tunnel and the establishment of the monitoring body of the *FEKLHAS Project Commission.* The inclusion of the local community into the planning and decision-making process also provided a favourable social climate; thereby a participatory context in which community stakeholder[s] established and maintained an effective dialogue. Consequently this participatory and integrative process resulted in the continuous development of social trust as a matter of routine." (My restructure/dot points, my underline) Refer Page 10.10

- Genuine community participation, Hanna (1995) argues, provides a powerful counter to the traditional egocentric management paradigm, thereby significantly reducing the danger of irresponsible industrial development. Refer Page 10.3

Thirdly, extending Hanna's (1995) argument on community engagement, the participatory managerial approach in the FEKLHAS case demonstrates that the traditional managerial paradigm is broad enough to accommodate and fully absorb a limited, project specific power shift towards those affected by development. This thesis found that project specific power sharing and project specific voting rights are consistent with the traditional management and risk management paradigms as well as with the socio-environmental goals of local communities and local interest groups. Refer Page 10.4

As experienced in the FEKLHAS case, participatory structures such as the *Coordination Team* and the *FEKLHAS Project Commission* successfully balanced community interest with those of the developer. This led to a special industry/community relationship in which social trust is developed as a matter of routine, while the continuous exclusion of community stakeholders in the EEM (East End mine) case contributes to community distrust. This lack of community trust increasingly frustrates the industrial developer and government agencies, because it reduces the effectiveness of their contingency responses, which in turn increases public distrust. Ruckelshaus (1996:2) called this cycle of mutual distrust a "vicious and descending dread spiral", which prevents the development of social trust relationships and lasting mutually beneficial agreements. (Refer Page 10.7)

10.3 FEKLHAS vs. East End Mine: A comparative analysis

The previous Chapters of this Thesis demonstrate that the collaborative approach chosen by the FEKLHAS decision-makers significantly surpasses the community participation efforts of the EEM developer. The FEKLHAS development therefore, serves as an analytical and practical guide in the following comparative analysis and as a benchmark for future participatory models. (Refer Page 10.9)

Appointment of an independent expert to advise the Commission: (Refer Page 6.24) In the FEKLHAS case the firm *(Atragene)* and in particular the independent ecological expert was suggested by the environmental group Pro Natura in their participatory role. This nomination was confirmed by the Untervaz council and the FEKLHAS Commission. In his role as an

independent ecologist, *Atragene's* consultant advises the commission throughout the deforestation, operation and rehabilitation phase of the FEKLHAS project and holds one formal vote in the Commission. (Refer Pages 6.32 and 6.33)

The primary task assigned to the (Calanda) Commission was to collaboratively decide with BCU management, consultants, Kantonal (State) representatives and other authorities on the most suitable quarry and mining method. Within this collaborative framework the commissioners were also asked to plan and prepare the overall development proposal in compliance with government approval processes…….Consequently, the BCU established a project team in July 1992, and appointed a coordination team in December 1992 which also included the Calanda-commissioners. (Refer Pages 6.13-6.14)

Similarly, the locally elected representatives at the coordination team maintained a close contact with their constituency. They continually informed the Untervaz council assembly and the local community about the latest developments in the project planning process. The BCU also in close communication with the community and the local media held regular public information meetings…… "any new information was open to public input and consequently referred back to BCU's project teams" for consideration. …This Participatory approach maintained by the BCU was extended in February 1996 when five environmental groups, among them the Swiss section of the WWF, were invited to actively participate in the development of the project. (Refer Page 6.16, 6.17)

Most participants involved in the process agreed that "the speedy development of the project proposal and its fast approval was largely a result of BCU's consultative and participatory strategy". <u>It was particularly helpful, a local official said, "that stakeholders collaboratively co-authored the project proposal under the umbrella of the coordination team.</u>" That is, local community representatives, Kantonal and local agencies, environmentalists as well as BCU experts co-jointly developed the project proposal solving problems as they emerged. Primary authors were drawn from BCU's management and its external experts, the local community as well as from selected government experts. This led to increased social trust. (Refer Pages 6.17, 6.18)

The local community of Untervaz is represented in the FEKLHAS Commission by publicly elected councillors. During their official term of office, these councillors can be re-elected or replaced by public vote in local council elections, but are required by law to vacate their mandate after their official period of office expires. According to one council representative, the recurring succession of newly elected community representatives,

> Not only pre-empts the formation of long-term factional alliances within the Commission but also assures transparency and the development of trust. This applies similarly to the Kantonal (State) representatives who are frequently replaced or rotated which also contributes greatly to the independence and integrity of the Commission.

As discussed in Chapter 3, the inclusion of local knowledge into scientific inquiry significantly increases the accuracy of assessing and interpreting local conditions, thereby providing a more solid information baseline (Harding 1998). Moreover, Harding argues that incorporating local wisdom into expert knowledge structures would provide a better grounding for abstract information, as well as significantly reducing scientific uncertainty. (Refer Page 8.20)

In contrast, the BCU legitimized local knowledge by actively seeking the accumulated wisdom of various community stakeholders, systematically integrating their observations, insights and experiences into the planning and decision-making process. For example, when

consulted, local forest owners and in particular the local hunting fraternity reported that a variety of species of local wildlife traditionally migrate at certain times during the day from a nearby mountain range to drink at specific points from the River Rhine. The acceptance of local experience and knowledge by the company resulted in the rejection of a planned transport technology, which, if built, would have blocked the path of the local wildlife. The BCU and the community, therefore, developed an alternative, again including local knowledge and insight in the planning and decision-making process. This approach to local knowledge was shared by the local council authorities, Kantonal agencies, and by the members of the *FEKLHAS Project Commission*. (Refer Page 8.20, 8.21)

Underlying value commitments: The Mutual legitimization and Alignment of Different Stakeholder Value Positions: It was argued in Chapter 3, that the primary reason for tensions in environmental planning and decision-making is the incongruity between community value positions and those of industry practitioners, (Schein, 1996: Hoffman, 1993). This incongruity derives from the widely held belief by industry managers, particularly at the substructure and sub-unit level, that socio-environmental problems are driven by disputes over techno-economic, financial and ecological facts, rather than competing socio-environmental value positions (White, 1970). Without consistency between cognitive elements, as for example, the industrial development and the socio-environmental values and belief systems of the local community, cognitive dissonance would be the consequence.(Refer Page 7.2)

The process of considering stakeholder concerns in official reports and government approvals is rather common and by no means unusual. The decisive difference in relation to the FEKLHAS case, however, is that the project proposal which precedes the government prescribed approval process, was collaboratively co-authored by all stakeholders. The inclusion of stakeholders into the project proposal planning process indicates the alignment of different value and belief systems and thereby their mutual legitimization. (Refer Page 7.4)

For example, through their publicly elected representatives local people were able to influence the FEKLHAS development at all times as pointed out by a local councillor.

> The people in the village always had a procedure at their disposal to remedy the situation. They were at all times able to use the information meetings to discuss issues and they were able to incorporate their concerns into the process. <u>This was certainly not merely symbolic and we certainly not just listened symbolically, based on the way we organised it, that would have been impossible</u>, we really had to convince the people again and again. (Refer Page 7.21) (My underline)

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Hard copies of the various extracts that contain the above quotes will be posted to the Senate together with a CD of Industry/Community Relations in Critical Industrial Developments" (Hoppe 2005) in 2 parts. All EEMAG documents available on request.

Finally, it is EEMAG's experience that community stakeholders are fundamental to process and that without their proper participation little gets done. Their inclusion drives accountability and would bring to the fore a level of probity that cannot otherwise be achieved.

Thank you for accepting EEMAG's additional information,

Yours sincerely,

Heather Lucke, Secretary