

ADDITIONAL INFORMATION TO EEMAG'S SUBMISSION OF 10 FEBRUARY 2005
ON THE NEED FOR A MERITS REVIEW AND APPEALS PROCESS UNDER WATER
REFORM.

Independent Technical Assessment for EPA

Due to an inability to reach arrangements on the proposed Open Technical Forum, (QCL would not supply the complete details of Dr Frans Kalf's modeling work which was a key agreement for the Forum), the Minister for Environment and Heritage and Minister for Natural Resources advised on 9 Aug 2000 'The Government intends to commission an independent assessment of the hydrological impact of the Mine. A consultancy brief is currently being drafted and will be forwarded to the East End Mine Action Group (Inc) for comment. As part of the consultancy brief, the consultant will be required to seek relevant information from the community and to present their report at a public meeting.' (*Letter from Minister for Environment and Heritage and Minister for Natural Resources of -9 Aug 2000 available.*)

A Project Brief for the East End Mine Technical Assessment of Hydrological Impacts was forwarded by EPA under covering letter to EEMAG on 30 August 2000 for consideration. (*Copy of letter of 30 August 2000 and Project Brief available.*)

On 14 September 2000, we wrote to the Queensland Ombudsman to register our trepidation, quote: "EEMAG considers the EPA is not sufficiently independent, and requests that an independent equity body administer and coordinate the study." and "EEMAG is in an awkward position, in that if we refuse to cooperate to the best of our ability with the Consultant/s undertaking the EPA's Assessment, we will seriously disadvantage ourselves. However we do not wish to signal approval for a process that we may find was not comprehensive or genuinely objective." We stated we considered a Consultant briefed and administered by EPA was an Agent of EPA. We had participated in two (2) previous technical meetings conducted by DNR (documented below) where we considered we had been denied fair play and were outweighed by Government/QCL interests. (*Copy of letter to Ombudsman available.*)

On 26 September 2000, EPA wrote advising that they would be inviting Don Armstrong, a Consultant who had been recommended to EEMAG and in whom we had confidence, to respond to the brief. Quote 'He was also nominated by the East End Mine Action Group (Inc) as a person who would be a suitable independent expert in the course of discussions about the previously proposed "Open Technical Forum"'. (*Copy of letter from EPA dated 26 September 2000 available.*)

However Don Armstrong declined the brief citing health reasons, and suggested John Waterhouse who was ultimately hired by EPA.

On 27 October 2000 we faxed EPA, 'Your letter advised that the EPA are proposing to appoint John Waterhouse since Don Armstrong has declined to accept the brief; EEMAG members have no objection to this course of action.'

'We have read John Waterhouse's CV, and we do not oppose his appointment since you intend to move ahead with it. We reserve the right to critically analyse any findings he may recommend.' (*Copy of letter of 27 October 2000 to EPA available*)

On 27 November 2000 EEMAG provided EPA with our response to an invitation to submit comment for the proposed Technical Assessment. We listed Reports we believed should be considered in the Assessment. (*Letter to EPA dated 27 November 2000 Available*)

After responding to EPA's invitation to submit comment on the proposed Technical Assessment to EPA on 27 November 2000, communications between EPA and EEMAG lapsed. EEMAG members began to wonder whether the EPA Technical Assessment would still go ahead. This motivated a Press Release dated 23 January 2001 requesting the Minister to confirm the appointment of the consultant and to announce the timing of the already overdue study.

With hindsight, we believe that EPA was waiting until after enactment of the EPOLA Bill on 1 January 2001 was completed, so that QCL's unchanged 1996 EMOS [framed on mine depletion approx 500 metres from the pit] would be carried forward and legally become QCL's 2001 Transitional Environmental Authority under the EPOLA Bill's enactment processes, before the Technical Assessment was undertaken.

(We interpret from a letter from DNR&M dated 31 July 2003 that under administrative law the commissioning of EPA's "Independent" Technical Assessment Report in itself was sufficient for the EPA to make decisions without relying the findings of the Report.)
(Copy of letter from DRN&M of 31 July 2003 Attached.)

On 28 February 2001, EPA's consultant John Waterhouse visited Mt Larcom during commencement of his work.

We allege there were shortcomings in the ToR for EPA's Technical Assessment and departures from the agreed guidelines. There is evidence of serious errors in the EPA's "Independent" Technical Assessment.

Some alleged procedural shortcomings are listed below;

- (a) On 12 March 2001, EEMAG faxed Hon Liz Cunningham, the member for Gladstone with an extract from Minutes of EEMAG's Meeting of 9 March 2001, stating we were disappointed EPA's Consultant John Waterhouse did not properly discuss Dr Peter James' reports on mine depletion affecting more than 60 sq km when he visited Dr James. We were disturbed that John Waterhouse **had not read** Dr Peter James' reports before he visited him. We interpreted this may indicate that John Waterhouse was not seriously taking Peter James' reports into account. We did not know if he intended to meet with Peter James again. *(Copy of fax to MP for Gladstone dated 12 March 2001 Attached.)*
- (b) On 25/4/2001 an EEMAG representative faxed Liz Cunningham, quote: 'On Tuesday 24th April, I spoke with John Waterhouse about whether the EPA will distribute his Draft Report prior to their assessment or review. He expects his report will go to the EPA and envisages "some cosmetic changes may occur" prior to distribution as a draft.' Yet we believe in view of the history of this dispute no government department has the right to presume upon or ask for EEMAG's trust. In the interest of transparency it is suggested you request the EPA provide you with an unaltered version of John Waterhouse's draft prior to the EPA's assessment or review.' *(Copy of fax of 25/4/2001 to Hon Liz Cunningham available.)*
- (c) John Waterhouse's preliminary draft dated March 2001 stated on the bottom of the pages *"This draft has been prepared solely for the purposes of discussion with EPA and has not been subjected to Golders normal review process."* EEMAG considers that this gave EPA a right of veto which was inappropriate since EPA is a party to the dispute and the report was supposed to be independent. *Copy of cover of John Waterhouse's Draft Report dated March 2001 and 1 page Attached.)*

- (d) On 2 May 2001 we wrote to Liz Cunningham commenting that the rules and format of the proposed workshop as we understood them had been changed considerably without consultation or agreement since EPA referred to 'two technical presentations at the workshop' without having provided full details of the two presentations. We requested to be advised who was the party making the second technical presentation? We were very concerned about the limited time for the Workshop with 2 technical presentations instead of just one from John Waterhouse, since issues would be compressed and not be able to be properly discussed and clarified. (*Copy of letter to Hon Liz Cunningham of 2/5/2001 available.*)
- (e) On Friday 4 May EPA advised EEMAG by phone the other technical presenter was Paul Blake, the DME geologist whose mapping was used at the Technical Meeting of 11 August 1997 in support of QCL's initial 1997 model, and that Paul Blake would not have any documentation to circulate prior to the workshop. Paul Blake's mapping had largely omitted significant limestone deposits at East End covered by terra rosa, and was regarded as understating the extent of the limestone deposits. That is, the second technical presentation was proposed to be by a DME geologist whom EEMAG considers has 'baggage' in the dispute.
- (f) On 4 May 2001 we faxed John Waterhouse regarding the second technical presentation for his workshop and requesting to be advised what was the relationship between his report and the proposed presentation by the DME geologist? We commented that he was obviously unaware of the DME geologist's previous controversial involvement in the dispute. (*Copy of fax to John Waterhouse 4/5/2001 available.*)
- (g) A hard copy and CD of the second generation draft dated May 2001 was received by EEMAG on 8 May 2001 – at least 5 weeks after the initial draft report was provided to EPA, and just 10 days before a proposed workshop and discussion process set for 18 May. This time frame did not allow EEMAG sufficient time to print additional copies of the report from the CD for circulation to members, or to properly consider the Report so that we could effectively participate in the workshop. The workshop was postponed.
- (h) The time delay of at least five (5) weeks between EPA receiving John Waterhouse's preliminary draft some time in March and supplying the second generation draft to EEMAG by 8 May allowed sufficient time for the preliminary draft to be circulated to government agencies and to QCL.
- (i) EEMAG members considered John Waterhouse treated findings by Dr Peter James and Prof Ray Volker that were in dissent with Government/QCL findings differently to the way he treated QCL's and government findings. We considered that John Waterhouse's Draft Report of May 2001 provided very limited acknowledgement of evidence/ findings that dissented with QCL/Government's position.
- (j) On 14 May 2001 Dr Peter James, faxed the MP for Gladstone, as Chairperson for the proposed workshop, quote: 'I am grateful to the EPA for the offer of return airfares from Sydney and overnight accommodation in order to attend the East End Hydrological Workshop. I understand that the workshop is to allow presentation of the findings of the Review Report. I have read the report and do not consider the document to be of sufficient value to provide a basis for meaningful discussion. My reasons for rejection of this review are set out briefly below.' (*Copy of Fax from Dr Peter James to Hon Liz Cunningham Attached*)
- (k) An informal meeting was held between Jon Womersley of EPA, Hon Liz Cunningham Member for Gladstone, John Waterhouse and EEMAG members on 18 May, at which EEMAG requested portions of the draft report of May 2001 to be re-written. John Waterhouse agreed to produce an Addendum to his Draft Report, with both the Reports to be discussed during a proposed workshop, rescheduled by EPA for 1 June 2001.

- (l) EEMAG had become very nervous about the process to Workshop John Waterhouse's Technical Assessment and sought the participation of Ted Christie, a government facilitator/mediator as a technical assistant to the Chair Hon Liz Cunningham who is a lay person regarding water resources.
- (m) On 28 May 2001 EEMAG faxed EPA advising that we had not received John Waterhouse's Addendum to his Draft Report, and that we required access to the Report for at least a week before the Workshop. We informed EPA that we were only a few days outside the proposed workshop date of June 1. (*Copy of fax to EPA dated 28 May 2001 available.*)
- (n) On 29 May 2001 EPA faxed EEMAG advising as soon as a copy of John Waterhouse's Addendum Report was available, EPA would arrange for multiple copies to be delivered to assist in its circulation. EPA commented that the workshop should now proceed as arranged. (*EPA fax dated 29 May 2001 available.*)
- (o) On the night of 29 May 2001 after consultation with members, EEMAG faxed EPA advising that we regretted we were unable to attend the Workshop scheduled for Friday 1 June since we would not have time to properly digest, consider and prepare our responses to the Addendum Report. We also advised that when the Format and Structure for the Workshop was agreed, we would be prepared to sign a commitment that we would attend the Workshop on a scheduled date. (*Copy of fax to EPA dated 29 May 2001 available.*)
- (p) On 31 May 2001, we wrote to EPA and sought access to QCL's historical mine-pit discharge data, which EEMAG had consistently been unable to obtain. John Waterhouse had selectively quoted mine-pit discharges of 1.7 megalitres per day from a severely depleted aquifer as a reasonable estimate in his Addendum Report. We did not believe using this selective quote as a conclusive 'reasonable estimate' after more than 21 years continuous discharges was appropriate. (*Copy of letter to EPA dated 30 May 2001 available.*)
- (q) On 5 June 2001 EPA responded advising that QCL had no objection to making the mine pit discharge records available. (Discharges for the first 17 years of mining are still not fully disclosed). EPA's letter stated, quote 'In the addendum to his report, EPA's Consultant has made it clear that he does not consider that the inclusion of this material in his report is necessary to the findings he has proposed. Such work would also be outside the terms of the brief given to the consultant.' (*Copy of letter from EPA of 5 June 2001 Attached.*)
- (r) We came to understand that John Waterhouse's Technical Assessment was really an Arbitration when we realized from discussions that the workshop process was for John Waterhouse to audit/present his own work as a fait accompli. We did not accept John Waterhouse's work as suitable for Arbitration.
- (s) It was ultimately agreed that EEMAG would enter into a process with the MP for Gladstone Hon Liz Cunningham and Dr Ted Christie, a government facilitator/mediator to determine a mechanism to settle the dispute, with the meeting set for Monday 23 July 2001 at 4.00 pm at Mt Larcom.
- (t) However, Liz Cunningham rang on the morning of Monday 23 July and advised that Ted Christie had had a heart attack and was quite unwell, and that the meeting would have to be postponed.
- (u) A letter from the Office of the Minister for Environment dated 3 Sep 2001 in the last paragraph stated; quote 'The Minister has noted the arrangements made by EPA for discussions between EEMAG, Ted Christie and the local member. He trusts that those discussions will result in a simple and inexpensive process for holding a public workshop at which John Waterhouse will present his independent technical assessment.' We interpreted that the Minister foresaw the discussions with Ted Christie as facilitating the

Governments position to be maintained and our confidence was shaken. (*Copy of letter from the Minister for the Environment dated 3 Sep 2001 Attached.*)

- (v) In response to a telephone call from Liz Cunningham's Office requesting EEMAG to provide two (2) dates for a meeting with Ted Christie, we advised by fax on 29 October 2001 that EEMAG would provide two suitable dates for a meeting after the Land Court had delivered its findings, which we understood could be in November 2001. We considered the Land Court judgement may provide important findings to assist us in presenting our case as strongly as possible. We advised of our concern about a fax from QCL's solicitors to the Land Court of 23 October 2001, that stated: 'Firstly, our client views very seriously the allegations regarding the alleged damage to groundwater in the vicinity of its operations. Our client is unaware of any evidence to support this and, to the contrary, has provided the EEMAG member with abundant evidence showing that any decline in surrounding groundwater is due to natural weather fluctuations.' Given these disturbing issues, we questioned whether the basis for our discussions would be set by QCL's 2001 EMOS being framed on the zone of depletion of 500 metres from the mine pit. (That is, we sought clarity about QCL's/government's position - we had always made ours clear with regards to the mine's negative impacts.) The Land Court decision was not handed down until 28 February 2002 – it reduced unimproved primary industry land values by 25% in the QCL/Dr Kalf (2000) approx 30 sq km mine impacted area and caused an area of approx 170 sq km in the mine project area to be declared as blighted by water loss and district negativities - and the public workshop proposal lapsed. (*Copy of fax to MP for Gladstone dated 29 October 2001 available.*)

We had consistently raised with EPA that we did not want John Waterhouse's Workshop to be a repeat of the two technical meetings we had participated in 1997, particularly DNR's 19 December 1997 Workshop.

Technical Meeting of 11 August 1997

The Technical Meeting on 11 August 1997 was held for the purpose of discussing differences of opinion between QCL's modelling consultant Dr Frans Kalf, whose draft model findings of February 1997 were that the mine had depleted approx 7 sq km, and the CLG consultant Dr Peter James whose findings were that the mine had depleted approx 60 sq km. Representatives from DNR, DME, QCL, the Member for Gladstone and EEMAG attended the technical meeting.

EEMAG had worked hard for the concept of the Technical Meeting and attended in the expectation they would have input as promised. Although landholders behaved in an orderly manner, the meeting was prematurely closed down, and opportunity for our effective participation was largely denied. A number of verbal complaints were made to the Chair.

(At this meeting a DME officer brought forward mapping by a DME geologist Paul Blake in support of the Dr Frans Kalf's findings. The DME mapping largely omitted significant limestone deposits at East End that were covered by terra rosa (red soil). Local Knowledge shows the areas of limestone deposits in the DME geological maps to be incorrect and to understate the extent of the deposits.)

Landholders felt the process was rigidly controlled while their participation was outweighed by Government/QCL. How the meeting was managed made us aware that we needed to be sure the format for such meetings was clearly defined and acceptable before committing to participate.

A further technical meeting was held in Brisbane on 15 August 1997 between Dr Frans Kalf, Dr Peter James, government officers and EEMAG's President Peter Brady to determine areas for drilling bores for extensive new research that went a long way towards proving Dr Peter James conclusions.

However this research was terminated prematurely without following through to clarify some remaining issues of uncertainty.

Technical Meeting of 19 December 1997 – Rockhampton

There were obvious signs DNR might undertake a district Arbitration if the dissenting views of the experts remained unchanged. EEMAG wrote to the Minister for Natural Resources on 27 October 1997 requesting that if a district Arbitration by DNR became necessary for the Arbitration to be conducted as an Open Hearing, and requested that landholders be able to put their views forward. We requested Dr Peter James be involved, and that the process be transparent and support fair play and natural justice. (*Copy of Letter to Minister for Natural Resources of 27 October 1997 available.*)

DNR called a Technical Workshop for 19 December 1997.

EEMAG was advised on Monday 15 December 1997 by DNR Rockhampton that a Technical Workshop was proposed for Friday 19 December 1997. (QCL's Consultant David Kershaw during discussions at the Community Liaison Group Meeting on 2 December 1997 mentioned a proposed DNR meeting but his comment was not confirmed by the DNR delegate Jeff Lloyd nor by the DME delegate and we ignored the comment)

We faxed the Minister on 15.12.97 advising EEMAG's President had received overtures that morning a Technical Meeting on the 19th, but that we had not received the details of the procedures for the Meeting. We requested to be supplied with the intended process so that we could discuss it at our meeting the next evening. (*Copy of letter to Mines Minister dated 15 December 1997 available.*)

On 16 December DNR Rockhampton faxed the Agenda and process for the "Groundwater Technical Mediation Workshop". (*Copy of fax from DNR of 16-12-97 re Groundwater Technical Mediation Workshop available.*)

On request from EEMAG, DNR/DME agreed to include Peter Brady as an EEMAG delegate in the Technical Panel Session as well as the Policy Advisor from the Queensland Grain Growers Association, Ross Dunn. Although we felt we were still outweighed in the structure, there had been concessions made.

On 16/12/97 the Dr Peter James faxed DNR from Pt Lookout where he was on holiday, requesting information about the format for the proposed East End Groundwater Review meeting. He requested to be advised whether there was to be presentations by various parties, and advised if there was, it barely left time for him to prepare for the meeting.

He asked DNR if the meeting intended to clear up areas of contention concerning the groundwater depletions postulated by QCL's Consultant Dr Kalf, and commented if that was the case, one day might be insufficient for the purpose. He commented the time could be reduced if QCL or its Consultants first made a reasoned/integrated response to the mass of data now available on the topic.

For his last dot point, he raised the matter of the additional submissions on new data he had made to the CLG since September, outlining obvious implications between the East End mine

and groundwater depletions – with consequent surface water depletions – in the East End, Machine Ck and Hut Ck catchments, and even the Scrubby Ck [should have read Scrub Ck] catchment, south of the mine. He commented that he had received no response to these serious matters, and found it surprising that there was now such urgency for a meeting. (*Copy of fax from Dr Peter James dated 16/12/97 Attached.*)

DNR faxed CLG Consultant Dr Peter James on 16 December 1997 quote “You would be there in the capacity of independent consultant to CLG.” ... “I don’t think you would need to do a presentation. We will have copies of your comments for your reference.” DNR’s fax also advised that their draft position paper would be available on the day. (*Copy of fax from DNR of 16/12/97 Attached.*)

When EEMAG arrived at the meeting on 19 December there was a sign saying it was a Mediation Meeting.

EEMAG did not favour Mediation. Ross Dunn from Graingrowers, who had come to assist EEMAG, asked if the meeting was to be a Mediation process. He was eventually informed that it was not.

DNR produced their Draft Position Paper for East End Mine and Environs – a sizeable technical document - at the meeting when it started at 10.00 am - to be discussed and evaluated during the meeting. This swamped the meeting.

In EEMAG’s view, the structure of the Technical Meeting professionally isolated Dr Peter James in an environment that was hostile to his findings and participation. We were disillusioned by the meeting and felt we had been conned. Dr Peter James was disadvantaged due to the meeting coming up at such short notice while he was away from home.

EEMAG’s inputs from the Reference Panel were effectively squashed, contrary to the pre-meeting arrangements and the meeting was abruptly terminated.

The very short notice to the Dr Peter James (when QCL apparently knew on 2 December) that the Technical Meeting was planned for 19 December 1997 with the result that he could not prepare, the manner in which he was briefed for the meeting, and how the meeting was conducted, destroyed our confidence in the DNR’s procedures, intentions and findings.

On 29 January 1998 EEMAG wrote a letter of complaint on to DNR , C/c DME and the CLG Chairman advising of our “disappointment in the structure, composition and conduct of that meeting.EEMAG delegates and observers felt the tenor of the Meeting did not deliver fair play. We were not reassured by the procedure which stifled opportunity for genuine input by landholders.” We stated that we appreciated the concept of the Technical Meeting and requested the process continue in a more consultative form. (*Copy of letter of 29 January 1998 Attached.*)

Our disillusion with the meeting was the trigger for the same day hiring of Professor Ray Volker whose report basically supported Dr James’ findings and the views of the community.

Heather Lucke
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