SUBMISSION BY THE EAST END MINE ACTION GROUP Inc (EEMAG) TO THE PRODUCTIVITY COMMISSION

INTRODUCTION

As Secretary of the East End Mine Action Group Inc (EEMAG), I wish to lodge our submission to the Productivity Commission Inquiry on behalf of EEMAG members.

EEMAG currently has about 35 members. There are numerous people in our local rural community who we believe would identify with EEMAG's quest for an effective solution to the curtailing of productivity and potential for diversity of our district's farming enterprises.

We allege this largely is due to long-term agency failure to effectively enforce an open cut limestone mine to adhere to the principles of sustainable development and water reform.

SUMMARY

Impacts of Biodiversity Regulations
Taking into account that water maintains catchments and natural ecosystems that sustain biodiversity and native vegetation, EEMAG members (as landholders adversely affected by QCL's mining operations) respectfully request the Productivity Commission to undertake an assessment impact of environmental decisions and other decisions by the Queensland Government when administering cumulative depletion of the water table (and noise intrusion) resulting from QCL's limestone mining operations at Mt Larcom in Central Queensland.

Note: QCL merged with ACH and is now Cement Australia. For the purposes of our submission we refer to Cement Australia as QCL, since that was their Company name when the issues/ documentation we are submitting to the Productivity Commission Inquiry took place.

EEMAG members are **not** seeking to close down the QCL mine. We are seeking that the Government require the company to sustainably manage its environmental impacts and to rehabilitate/redress damage mining has caused outside of their leases, so that there can be genuine co-existence between mining, farming and other interests in a strong and growing, diversified community.

We allege that Queensland government agencies have abstained from effectively enforcing QCL to sustainably manage their cumulative impacts on the water table, and that this has reduced the districts's productivity and potential, and has damaged the livelihoods of affected landholders. We allege that by failing to require QCL to preserve/reinstate the district's essential natural water resources, regulating agencies have failed to protect biological diversity and maintain ecological

processes and life-support systems, particularly in relation to springs and perennial creek systems.

QCL's Water Monitoring Programme, established in 1977, identifies an area of more than 60 square kilometers of mainly good quality agricultural land in the rural districts of East End, Hut Creek, Machine Creek, Bracewell and parts of Cedar Vale, that are suffering serious decline in water levels of up to and beyond 18 metres, with loss of perennial flows from a number of creeks and reduction of water quality in some supplies. The various experts agree on the extent of water loss but not on the cause.

There is evidence that DNR&M renewed QCL's Mining Leases in March 2003 with environmental regulations framed on a grossly inaccurate and outdated zone of depletion of approx 500 metres from the mine pit. This zone of depletion was evident in Irrigation and Water Supply Commission (IWS) contour maps of 1982.

Mapping produced by QCL's modeling consultant in 2000 conceded to mining having depleted more than 30 sq km of land.

Highly reputed experts, independent of Government and QCL, have supported EEMAG's claims that QCL dewatering their mine pit is the primary cause of depletion of the 60 sq km zone, including draining of Machine, Scrub and Hut Creeks and their tributaries. One such technical report was produced in July 1997, just before QCL's mining leases expired on 31 July 1997. (The listed creeks were documented as perennial in the Water Research Laboratory Technical Report of April 1980 by QCL's Consultant. This report also charted pre-mining water levels and water quality in bores and wells.)

The surface water regime has been changed so that most of the perennial creeks in QCL's Water Monitoring area now flow only for brief periods after exceptionally heavy rain. Prior to the decline in groundwater levels, the perennial surface steams contained abundant fish, tortoises, yabbies, freshwater mussels etc, and in Robertson's Creek, a tributary of Scrub Creek, platypus were seen from time to time. The creeks supported a variety of native aquatic flora as well as a variety of water birds. Flora and fauna that was dependent on permanent water and marshy areas has been lost. Numerous empty mussel shells remain in the creek beds.

The surface streams were also used as a back-up for small scale irrigation and cattle watering at times of drought. This is no longer possible.

The initial reports prepared by consultants on behalf of QCL and DNR suggested that the falls in groundwater levels upstream of the mine were due to the effects of gravity drainage, low rainfall and increased pumping by irrigation.

A subsequent survey of landholder use undertaken by EEMAG, shows that use of irrigation markedly declined over the period of groundwater depletion. The survey shows in 20 years the number of irrigators has fallen to about one-quarter, while the area irrigated has fallen to one-third. This is inadequately acknowledged and is glossed over in consultant reports prepared for EPA.

Long-term local landholders comment the death of some old box and gum trees on parts of the flood plain associated with the lower reaches of Machine Creek, is due to the serious decline in water levels. Some of the remaining trees are very stressed, consistent with water loss. There is a corresponding loss of sub moisture in soils due to the greatly lowered water table so that lucerne growing without irrigation is no longer possible.

QCL's mine is sited at a lower elevation than most bores or wells in the depleted area upstream of the mine. Their mine pit is 45 metres deep (0 m AHD). The mine sump is 5 metres deeper than the pit. There is a significant andesite fault that runs through the mine including the sump.

The effects of pumping at the mine on the surface streams upstream of the mine, and potential deleterious effects on the aquatic environment or environmental flows received no mention in any of the earlier reports prepared by QCL or DNR.

A Water Audit Task is included in the Mt Larcom Community Restoration Project, funded by the Department of Transport and Regional Services under the Regional Solutions Programme. The Restoration Project Report is to determine if the district is salvageable, and if so, to recommend strategies that will assist it to return to viability.

EEMAG will provide the Productivity Commission with a copy of the Mt Larcom Community Restoration Project Report as soon as it is finalized (due for July 2003), and we respectfully request that the full Report be considered.

EEMAG members have learned that the local limestone deposits are karst aquifers, which behave differently to 'normal' aquifers. Karst aquifers are recognized by sink-holes, by conduits or 'pipes' in the limestone, and by sinking streams that disappear into their beds for a distance then reappear etc. These perennial creeks are part of the overall karst aquifer system.

In limestone/karst aquifers when a quarry intersects a conduit, pumping from the quarry is likely to dewater the limestone along the whole length of the conduit, wherever it lies above the level of the quarry floor.

A comprehensive and international bibliography supports comments that <u>standard recognized modeling techniques and assumptions do not apply to karst aquifers with conduit flow</u>. QCL's findings are based on the results from a numerical model based on the assumption of inter-granular Darcian flow.

The findings of QCL's draft model of February 1997 and their new Model (undated) supplied to EEMAG in September 1999, were approved by Queensland regulating agencies and by the hydrogeologist hired by EPA, all of whom omitted to document/properly investigate the extent of local karst development and the implications of groundwater flow in karst aquifers behaving differently to 'normal' aquifers.

In 1998 EEMAG obtained the Mines Minister's agreement to co-operatively log the districts sink-holes with DME so that the function of numerous sink-holes of direct recharge into the

aquifer would not continue to go unrecognized. Our request was motivated by the very inadequate recording of sink-holes in the DNR 1998 Position Paper.

Unfortunately the agreement was terminated by DME and the sink-holes have not been adequately logged.

There is evidence that much of the local karst aquifer system is irreparably damaged and is unable to properly recharge or hold recharge during/after rainfall events; and that loss of water storage levels has resulted in general loss of sub-moisture in soils.

Given the aquifer is a karst system, and since QCL's 1996 bore drilling program demonstrated high permeability at depth, we are alarmed by DNR&M's advice at a meeting on 4 April 2003, that QCL is allowed to mine as deep as they want under their regulatory requirements for mining lease renewal. We believe neither the government agencies nor QCL are prepared to acknowledge high permeability at depth. We understand QCL may intend to deepen their mine pit by up to 70 metres.

Although drilling deeper bores for alternative water supplies is helpful to farmers who have received this assistance, deeper bores extracting water from a severely stressed aquifer is a band-aid solution which does not amount to sustainable management of local water resources so as to avoid degradation.

Water quality in deeper bores tends to have higher conductivity (related to dissolved salts). This can impair sustainability, amenity and productivity, and cause economic loss.

There is factual evidence of omissions/errors/inadequacies in Queensland Government's and QCL's assessments of the mine's impacts on the water table and noise intrusion.

Despite repeated requests from EEMAG, neither QCL or DNR&M or EPA have provided crucial mine pump out discharges for the early years of operation of the mine. These data are either missing or have been withheld. The mine pump-out data are of critical significance in calculating the area dewatered by the mine and for other characteristics like storativity, and for compiling a water balance. Full availability of QCL's mine pit pump out data is crucial to the adequacy and accountability of their overall water monitoring program.

We allege that the Queensland Government agencies and their hydrogeologists consistently disregard factual information that is contrary to the position government has adopted for regulating QCL.

We allege that findings in 1988 that mine-induced depletion [already] extended 2 km from the mine by the Irrigation and Water Supply Commission (now DNR&M) were suppressed, since this information was withheld from affected landholders, and the findings were omitted from QCL's 1995 IAS information base.

There is evidence that grossly inaccurate findings of depletion of approx 500 metres from the mine pit after 15 years' mining, facilitated QCL's 1995/96 IAS and EMOS to be exempt from

meeting the standards for the National Strategy for Ecologically Sustainable Development of 1992; and to be exempt from requirements for water reforms from the 1994 CoAG Agreement to arrest the widespread degradation of Australia's water resources.

We believe QCL's IAS set the parameters for the 8 year old dispute since its Hydrology Segment grossly understated the extent of mine-induced depletion, and the IAS findings remain the benchmark for ongoing regulation of the mine.

The IAS was used for QCL's EMOS which was submitted to DME with QCL's Application for Mining Lease Renewal in December 1996. Alleged inadequacies in the EMOS were not corrected by any subsequent review process.

QCL's 1996 EMOS (framed on depletion of approx 500 metres) remained unchanged for their Environmental Authority of 30 March 2001, due to it being carried forward by enactment of the EPOLA Bill on 1 January 2001.

EMOS Commitment 48 was "The EMOS will be formally reviewed in 2000" but the review was not finalized during the year 2000 and the EMOS was carried forward unchanged, despite the CLG consultant in July 1997 having assessed the mine depleted approx 60 sq km of land, despite the DNR Position Paper determining in February 1998 the mine had depleted 22 sq km of land, and despite mapping by QCL's modeling consultant dated February 2000 conceding to QCL depleting 30 sq km of land.

We believe QCL's EMOS was probably accepted for Lease Renewal by the Minister either when or before QCL lodged their Application in December 1996, and that it was <u>not</u> intended to review nor change the EMOS prior to Lease Renewal or after. (We understand that once the EMOS is accepted it is 'fixed'.) CLG Minutes for 2000 record that QCL delegates stated at the CLG that the EMOS was for the 'life of the mine' and could be reviewed but not changed.

Legal advice states: "The language of paragraphs 286(2)(b) and (c) indicates, in my opinion, that <u>it is quite likely that the "amended plan of operations" and the EMOS must have already been accepted by the Minister before the renewal application was lodged."</u>

We were administratively informed the term "consult" in relation to an EMOS commitment meant QCL was required only to "consult" with EEMAG members, they did not have obtain our agreement. This signals that the consultative process was not intended to ensure equity for landholders.

The question has been raised as to whether there was an agreement struck between government and QCL, when QCL was required to relinquish coral dredging in Moreton Bay, and QCL subsequently expanded their Gladstone operations. EEMAG members believe that sustainable management of our district's environment and the welfare of affected landholders may have been traded off to move QCL out of Moreton Bay.

The Land Court Decision of 28/2/2002 reduced primary industry classified, unimproved land valuations by up to 25% and declared as blighted approx 170 sq km of land due to water loss and district negativities.

EEMAG claims the Land Court Decision amounts to a finding that QCL had caused serious environmental harm (negative socio-economic impacts) to the 30 sq km zone QCL conceded to depleting in 2000 which was identified in the Land Court decision.

In late 2002 DNR&M valuation branch provided an updated map marginally expanding the blighted zone, and on 24 February 2003, formally advised that rural residential and primary industry classification unimproved values had been reduced by 15% for their valuation on 1 October 2002. This amounts to a total of up to 40% reduction for primary industry values for 2002 in the 170 sq km blighted zone. Except for Yarwun-Targinne, this is in a region that is experiencing a property boom due to Gladstone's industrial development.

The loss of land values determined by Land Court findings have been disregarded by environmental regulators, who refuse to recognize that environmental impacts from QCL's mining operations have caused serious environmental harm and negative socioeconomic impacts.

We allege that QCL's Environmental Authority of 30 April 2002 that increased their allowable daily discharges from 6 megalitres per day to 10 megalitres per day is a de facto water allocation, that increased QCL's original overallocation (that they have continually discharged downstream as waste since 1979), while farmers' access to supplies from the depleted water system have been substantially reduced in quantity and quality, and in a number of instances sucked dry.

A letter from EPA stated, quote; "The purpose of an environmental authority is to authorize an activity to occur within a specified range of environmental impacts, it is not to "effectively manage negative, social and economic inputs."

Since QCL's Environmental Authority, where it deals with Groundwater – (CS-1) does not define what impacts are acceptable, we conclude that the EA is granted on the false benchmark that the mine has caused minimal/ negligible impacts on groundwater, or QCL has an arrangement with government regarding allowable impacts on groundwater that is not defined in the EA.

Groundbreaking Special Conditions were set in place when QCL's Mining Leases were granted in 1976. We are alleging that regulating agencies neglected to effectively enforce these Conditions and this resulted in failure to reasonably protect affected landholders and the environment in the way the Conditions intended.

We are alleging that the intent of the original Special Conditions has been neutralized by changes to the wording when QCL's leases were renewed on 20 March 2003 retrospective to 1 August 1997; in the same way the intent of QCL's conditional Environmental Management Plan was neutralized by changes to the wording of EMP Deliverables (eg 'agreed to' became 'consult with') when it was devolved into their EMOS.

We understand in cases where QCL refuses to provide an alternative water supply, landholders may now be required to take their case to the Land and Resources Tribunal, instead of the original process of an Arbitration by DNR&M.

This new arrangement is contrary to the spirit and intention of QCL's original lease conditions and related administrative processes. Letter of 31 August1977 from IWS (now DNR&M) quote: "The Commission would be prepared to act as an arbitrator in the event of disagreement between the Company and landholders.. .. and Machinery would need to be established so that landholders could pursue claims due to interference without undue delay and expense and at the same time protect the Company against claims of a frivolous nature."

It is well recognized as almost impossible for small landholders to compete with the legal power of mining companies.

We allege Queensland's regulatory practices facilitate the costs and inconvenience due to QCL's degradation of the district's essential natural water resources to largely be borne by affected landholders, and that this amounts to an involuntary subsidy to QCL's profits.

These costs are not factored into the cost of QCL's cement production nor recognized by government.

We recognize that QCL has expended considerable financial outlays on their Water Monitoring Programme, drilling deeper bores, providing some alternative water supplies, meeting the costs of hiring the CLG Consultant and hiring a Modelling Consultant to develop 2 groundwater models etc.

We recognize that QCL's consultants have consistently collected water monitoring data since the programme was implemented in 1977. However some crucial historical water monitoring data is still unavailable to us, and we understand most of the stream flow from the Creek weirs is still not analysed. In more recent times there have been failures in the digital recorder on the mine pump out flows and on recorders on Creek weir flows. There is no regulatory requirement for accuracy of recording equipment and correction of errors.

EEMAG members' perspective of environmental outcomes is that QCL has expended a considerable amount of money on the groundwater models etc for the purpose of avoiding/minimizing/delaying their obligations to affected landholders and to the environment, and that this would be consistent with common corporate strategies.

In EEMAG members' view the money QCL spent on minimizing their obligations could have been more productively used to establish and implement a system to sustainably manage the mine's impacts on the water table and to mitigate nuisance from noise. Landholders ask "Why hasn't the government required them to do this?".

Many EEMAG members feel they are generally treated with contempt, and believe government policy is in accord with QCL's conduct and intentions.

Since the Ombudsman refused to continue to investigate our complaint, and the Crime and Misconduct Commission referred us back to the Ombudsman, there is no administrative avenue available to us to that enforces any government agency to abide by their Code of Conduct when assessing environmental impacts and administering environmental regimes.

We allege that we are consistently denied procedural fairness, natural justice and truly independent analysis by agency practices for regulating QCL. We have exhausted all administrative process available to us, and remain in dispute with relevant sections of the Queensland government and QCL. QCL/Cement Australia claim to have done everything the government asked them to do. An EEMAG member has commented "right is what you can get away with".

As persons of rural social origin and property we allege that the State of Queensland has consistently denied us equal protection of the law for the benefit of QCL's mining operations; to the detriment of our environment, our livelihoods and our land values. We allege this constitutes a consistent pattern of discrimination that violates our fundamental human rights under Article 26 of the International Covenant on Civil and Political Rights.

On 11 June 2003, Cement Australia (formerly QCL) advised EEMAG, quote in part: "You refer to issues remaining outstanding with adversely affected stakeholders, namely water drawdown, noise and reduced property values. Cement Australia is unaware of any property owner whose current water supply has reduced due to the mine dewatering works. Cement Australia has assisted many landowners with water supplies, some of whom were not affected by mining activities. Many landholders now have better and more reliable water supplies provided by Cement Australia."

A letter from the Minister for Natural Resources and Mines dated 8 May 2003 advised in part, quote: "In this regard, my Department will soon be addressing the development of a Water Resources Plan for the Calliope River system. As part of this process, my Department will be investigating the option of including the control of groundwater in the Water Resources Plan."

EEMAG members believe the Calliope River WRP would provide an excellent opportunity for an equitable solution to a principal aspect of the QCL dispute, **if** the WRP includes groundwater and **if** government's intention is for the WRP process to regeneratively/sustainably/equitably manage our districts' water resources.

Our optimism is cautioned by our perception government has exempted QCL from compliance with Water Reform and Environmental Sustainability, and by the Minister's letter dated 19 Jun 2003 quote: "My Department has always treated the members of EEMAG with fairness and respect. I cannot accept that the Group has not been afforded natural justice." End of quote.

The statement has been made that QCL has not really caused serious damage since discharging their mine pit downstream has developed artificial wetlands that replace the perennial creeks, springs, marshy areas etc lost upstream of the mine. The area of perennial creek systems and their tributaries lost upstream is very much greater than the area of artificial wetlands

downstream. In addition the depleted land upstream of the mine is mainly Good Quality Agricultural Land, while land downstream is mainly grazing land with lesser population.

At this point, we contend that the way regulatory agencies have administered the mine's impacts, and intend to continue to administer the mine's impacts (as interpreted from QCL's current Environmental Licensing and Special Conditions), amounts to a perverse environmental outcome.

Attached is the detail and evidence supporting our claims.

Efficiency and Effectiveness of Environmental Regimes

A DME representative at an East End Mine Community Liaison Group meeting on 25 May 1998 advised that the operations of the QCL mine would not be required to meet the standards for Ecologically Sustainable Development. He commented the extensive water depletion due to QCL's activities was likely to be viewed as "justifiable – a lawful unavoidable impact of mining", with the mine functioning on the terms of being economically sustainable rather than ecologically sustainable. (The February 1998 DNR Position Paper reported that QCL had depleted 22 sq km of land.)

Our interpretation of QCL's current Environmental Authority M2017, is that EPA does not require QCL's mining operations to sustainably manage/avoid degrading our district's ground and surface water resources outside their mining lease. EPA granted QCL's Environmental Authority on 30 April 2002, before DNR&M granted QCL's Mining Lease Renewal on 20 March 2003. *(Environmental Authority M2017 Attachment* **2**.*)*

Advice is that EMOS' are now essentially a planning document that allows EPA to assess the appropriateness and adequacy of the provisions of an environmental authority. Given the terms of QCL's EA M2017, we believe it was granted on same basis as QCL's IAS/EMOS i.e. depletion of approx 500 metres from the mine pit.

There is evidence that regulatory regimes to minimise environmental degradation, for example, Queensland's Water Act 2000 to "advance sustainable management and efficient use of water" and "protect the biological diversity and health of natural ecosystems" have not been enforced on QCL's mine. QCL's current Environmental Authority increased their allowable daily discharge from 6 megalitres per day to 10 megalitres per day when conductivity is <1500 uS/cm, despite QCL having conceded to depleting 30 sq km in 2000, and despite an independent consultant to the CLG finding in July 1997 (before QCL's mining leases expired) that the mine had depleted 60 sq km including draining perennial creeks.

The Precautionary Principle has not been taken into account for environmental regulation of QCL's mining operations.

There is evidence that Queensland agencies have suppressed recognition of the seriousness of QCL's cumulative depletion of the water table (and noise intrusion) and have a position to protect. We allege that this due in part to agency failure to inform affected landholders of indications depletion was occurring by the early 1980's and that depletion was 2.5 metres for up

to 2 km from the mine by 1988, and by agency failure to require QCL to assess and report the results of QCL's Water Monitoring Programme for the first 15 years of mining.

We allege the regulating agencies have been instrumental in the establishment and imposition of false benchmarks, and that they consistently disregard factual evidence/ technical reports that are contrary to the false benchmarks they have adopted.

Mining Lease Renewal

QCL's original Mining Leases covering approx 1000 hectares of land in the Mt Larcom district expired on 31 July 1997, and were expired for more than $5^1/_2$ years before being renewed by DNR&M on 20 March 2003 retrospective to 1 August 1997.

We are alleging that on the date of their Lease Renewal QCL was in substantial non-compliance with their original Conditions No 9 and No 11 for the 22 sq km Map 10 zone of depletion determined by DNR's February 1998 Position Paper, and for the 30 sq km zone of depletion mapped by QCL's Modeller in February 2000.

Neither government nor QCL have been prepared to recognize the 60 sq km zone determined by independent experts – not even as a social impact.

There is evidence that QCL's Mining Leases were renewed with regulatory requirements based on the 1996 IAS/EMOS zone of depletion of approx 500 metres from the mine pit.

Had DNR&M/EPA found otherwise, we understand the matter would have had to come before the Land & Resources Tribunal, quote from EPA letter of 28 June 2001: " The environmental authority requires the holder of the authority to make an application to amend the environmental authority and submit a new EMOS before 1 April 2002. The *Environmental Protection Act 1994* provides that when this application and EMOS is received, a decision must be made on whether a significant increase in environmental harm will result from the application. Where there is a decision that there is a significant increase in environmental harm, there is a public process involving the submission of objections and review of those objections by the Land and Resources Tribunal. In circumstances where the application is to continue existing operations. It would be unlikely that a decision would be made that there was a significant increase in environmental harm. At this stage, without the application, it is not possible to comment more extensively on this matter." End of quote. *(Copy of letter from EPA of 28 June 2001, Page 2 Attachment* **21**.*)*

We allege the basis on which QCL's Mining Leases were renewed administratively nullified recognition of the extensive and serious decline in water levels caused by QCL.

QCL's Special Conditions were weakened for Mining Lease Renewal, particularly in relation to provision of alternative water supplies and for transparency and accountability of their Water Monitoring Programme. We allege QCL's Special Conditions are now less effective for protecting landholders rights and livelihoods, and access to water monitoring data is more restricted.

Access to the quarterly water monitoring data appears likely to be restricted to QCL's Annual Water Monitoring Report. This would be a retrograde step as landholders are the only ones in a position to identify errors in water monitoring data that occur on a not uncommon basis. If the data is restricted, then there is an effective embargo on information to the detriment of affected stakeholders.

QCL's Application for Mining Lease Renewal was submitted in December 1996. Legal advice is that QCL's EMOS was probably accepted for Lease Renewal by the Minister with or before lodgement of QCL's Application. We believe that once an Application for Mining Lease Renewal is lodged it cannot be changed. (*Copy of QCL's Application for Mining Lease Renewal available.)*

Legal advice, dated 28 Nov 1999 on page 18 states: "The language of paragraphs 286(2)(b) and (c) indicates, in my opinion, that it is quite likely that the "amended plan of operations" and the EMOS must have already been accepted by the Minister before the renewal application was lodged."

Page 17 of the advice states: "I understand that QCL wishes to greatly expand the scale of its operations."

"In that case, subparagraph 286(2)(c)(ii) applies as does, probably, subparagraph 286(2)(b)(ii) which requires the application to the mining registrar to contain an amended EMOS acceptable to the Minister. The renewal application was therefore not **properly** made if the application did not contain both an amended plan of operations and an EMOS both of which in turn were acceptable to the Minister." *(Barrister's Memorandum of Advice dated 28 Nov 1999 Attachment* **114***)*

FOI of a facsimile transmission from DME to the Office of Co-Ordinator General dated 28/09/95 states on page 3, quote EMOS and Environmental Approvals "the EMOS will use the IAS segment on ground water impacts rather than a separate study. This availability of the ground water study data will be a factor in finalizing the EMOS for the expanded activity by 1 December 1995." End of Quote *(Copy of FOI of fax from DME dated 28/09/95 Attachment* **4***.) (Full hydrology report from IAS, or full IAS available, Copy of Page 47 from Hydrology Segment of QCL's 1996 IAS Attachment* **1***)*

Independent Findings That Mine-Induced Water Depletion had Affected Approx 60 sq km of Land in July 1997 – Before QCL's Mining Leases Expired on 31 July 1997.

In cannot be justifiably claimed that, prior to QCL's mining leases expiring on 31 July 1997, DNR/DME had no advice OR expert findings that serious/extensive mine-induced depletion had cumulatively occurred.

The findings of an independent Consultant for the CLG dated July 1997, supported landholders' claims that mine dewatering had depleted approx 60 sq km of land including draining perennial creeks. Costs for the "QCL East End Mine Community Liaison Group Groundwater Review", were paid by QCL. *(QCL East End Mine Community Liaison Group Groundwater Review July 1997 Report Attachment* **5***.)*

(The hiring of the independent Consultant through the CLG was in response to EEMAG's strong dissatisfaction with the findings of QCL's Draft Model of February 1997, that determined mine-induced depletion extended approx 2.5 km from the mine pit and affected approx 7 sq km of land.)

When it was agreed to hire the Consultant through the CLG to undertake the Groundwater Review, DME, DNR and QCL insisted on a commitment from EEMAG that we would accept the expert's findings even if we didn't like them. EEMAG readily made that commitment and the study proceeded under that proviso.

However Government and QCL did not like the independent Consultant's findings, and EEMAG believes he has consistently been treated as a "whistle-blower". Although the QCL East End Mine Community Liaison Group Groundwater Review of July 1997 did trigger extensive new research that went a long way towards proving the independent Consultant's conclusions, this research was terminated prematurely when a change of government occurred.

The CLG Consultant continued to produce reports highlighting various evidence that extensive water depletion had occurred, in an effort to get Government and QCL to recognize the seriousness of the situation – without success.

Alleged Gross Inaccuracies in QCL's 1996 Fast Tracked Gladstone Expansion IAS

EEMAG members allege that QCL's 1995/96 IAS is a key document in the dispute. We allege that gross inaccuracies in the IAS Hydrology Segment set false benchmarks that have been carried forward unchanged in QCL's EMOS and used to exempt QCL from any requirement to sustainably manage their impact on our districts' water resource systems.

We are alleging that the IAS approvals process has no requirement for accuracy of technical findings and no quality assurance. We believe the process should be completely overhauled so that IAS/EIS processes are made accountable and ensure duty of care for the environment and for affected individuals.

After EEMAG read the initial draft Terms of Reference for QCL's IAS, we were disconcerted to learn that DPI Water Resources were omitted as an Advisory Body. We acknowledge that the Office of Major Projects (now State Development) consented to EEMAG's requests that water depletion be included in QCL's IAS, and we acknowledge that this was a positive response from the Consultation process for the ToR.

However, despite EEMAG's strenuous protests that QCL's IAS Hydrology Segment was highly inaccurate and that noise effects were inadequately assessed. QCL's Final IAS was signed off in February 1996.

QCL's IAS was signed off on the condition that a detailed Environmental Management Plan (EMP) be developed from the Outline Plan described in Section 15.0 of the IAS report. However QCL's EMP was devolved into their EMOS. *(Copy of letter from Office of Major Projects to QCL dated 2 Feb 1996 available.)*

In our view, QCL's IAS findings of minimal depletion after 15 years of mining facilitated their 1996 IAS and EMOS to be exempt from meeting the standards for the National Strategy for Ecologically Sustainable Development of 1992; and to avoid requirements for water reforms from the 1994 CoAG Agreement to arrest the widespread degradation of Australia's water resources.

The EIS component of QCL's IAS/EIS was waived. *(Copy of FOI documentation re waiving of EIS available.)*

QCL's 1996 IAS information base/approvals process omitted findings that mine-induced depletion was [already] 2 kilometres from the mine by 1988 – 7 years before the IAS was compiled – as advised in an internal memo to the Minister from the Regional Office of the Irrigation and Water Supply Commission (IWS now DNR&M). The Minister's response to a local landholder failed to disclose these findings.

IWS withheld their 1988 knowledge from affected landholders until it was obtained under FOI in April 2000. *(Copy of Ministerial Correspondence from Central Region dated 20.12.88 Attachment* **6***.)*

QCL's 1996 IAS processes also omitted IWS hand drawn contour maps based on water monitoring data, showing depletion of approx 500 metres from the mine pit by 1982 and depletion effects extending 3 kilometres from the mine pit by 1985. We understand IWS ceased producing the contour maps in 1985.

During meetings in the early 1980's IWS omitted to explain the interpretation of the water contour maps to affected landholders, who trusted if IWS considered QCL's water monitoring programme showed depletion was occurring IWS would fully inform them, as was pledged in a letter from the Minister in May 1980 .(C*opies of hand drawn water contour maps by IWS available.)(Copy of letter from Minister for Lands, Forestry & Water Resources of May 1980 Attachment* **11***.)*

Despite the 1988 alert by a Departmental hydrologist, a DPI letter to Office of Major Projects dated 4 December 1995, noted that DPI was not consulted during the preparation of the groundwater components of the draft IAS, but accepted the IAS Hydrology Report, quote Page 2 "The concepts of the flow hydrology as detailed in the report are regarded as being reasonable and the conclusions presented are similar to the Department's conclusions. Assessing the data independently, it is concluded that the demonstrable effects of the present mine are currently limited to an area similar to that depicted in Figure 7.4."

DPI did qualify this by commenting "However our interpretations are that the lowering of the watertable towards the outer boundary of that area could be greater than presented in the IAS." *(Copy of DPI Water Resources letter 4 December 1995 available - included in Appendix 1 of IAS.)*

We are alleging that DPI Water Resources and DME as regulators of the mine and as custodians of ground and surface water systems failed in their duty of care when they <u>knowingly</u> did not

require QCL to ***accurately and comprehensively*** assess their water monitoring data for the hydrological assessment used in QCL's 1996 IAS.

This follows on from agency failure to require QCL to comply with their Special Condition 9 for assessment of water monitoring data until August 1995, as dealt with in **Historical Failure to Enforce QCL's Special Conditions**

We allege that subsequent administrative processes facilitated QCL's environmental requirements to remain unchanged/weakened for their current Environmental Authority and for renewal of their Mining Leases, and that in this way relevant agencies and QCL continue to shirk their responsibilities.

We allege that the conditional Environmental Management Plan was a mechanism to facilitate IAS approvals, and at the same time to sanitise/legitimise gross inadequacies in QCL's IAS while providing the appearance of effective administration of environmental impacts.

Conditional Environmental Management Plan

QCL's IAS was signed off on the condition that a detailed Environmental Management Plan (EMP) be developed from the Outline Plan described in Section 15.0 of the IAS report. We believe that if the Environmental Management Plan had been effectively implemented, adverse environmental and social impacts could have been promptly and equitably managed. *(Copy of relevant segment of Outline Environmental Management Plan from IAS Attachment* **7***.)*

When QCL's EMP was devolved into their EMOS it was done under the Mineral Resources Act not the Environmental Protection Act. The EMP's wording was amended for the EMOS, for example EMP Task 4.4 "Finalise and implement QCL operational guideline on groundwater" Deliverables "Final operational guideline on groundwater agreed to by DME, DPI and Community Liaison Group" became portion of EMOS Commitment 32 quote "The Company in consultation with the Community Liaison Group, DNR and DME will prepare and implement an East End Groundwater Policy."

The difference between the intent of the EMP and the intent of EMOS Commitment 32 is spelled out by EPA's letter dated 9 August 2001, quote: "The EMOS commitment does not require the company to obtain the approval of the named organizations, only to consult. The fact that the East End Mine Action Group Inc may not agree with the policy, does not make the company in breach of its EMOS commitment." End of quote. (In this instance the circulation of QCL's Groundwater Policy to EEMAG through the CLG was administratively deemed to be a Consultation process.)

EPA's letter of 9 August also advised, quote "I have noted your comments about social and economic impacts and in particular the requirement for an Environmental Management Program. I am advised that the 1996 EMOS was accepted as satisfying this latter aspect of the approval conditions for the Impact Assessment Study." *(Copy of letter from EPA dated 9 August 2001 Attachment* **8***)*

In response to an EEMAG claim on 10 February 1999, that QCL's requirement for an EMP had not been complied with, a letter from State Development (formerly Office of Major Projects) on 23 Mar 1999, advised, quote: "You refer to shortcomings in the IAS and approvals process for the QCL expansion and note specifically that an Environmental Management Plan (EMP) is still to be completed for the project. The Department of Mines and Energy advised that the East End mine and ancillary plant operates under an accepted Environmental Management Overview Strategy (EMOS) and Plan of Operations. It is generally accepted that, for mining projects, these two documents taken together are a suitable substitute for an EMP. In that respect the statutory requirement of the *Mineral Resources Act* relating to environmental management documentation for the QCL project have been met." End of quote. Note: EEMAG had sought access to QCL's Plan of Operations and was informed it was commercially confidential. *(Copy of letter from State Development of 23 Mar 1999 Attachment* **9***.)*

We are alleging that the intent of the conditional EMP was nullified by changes to its wording when it was devolved into QCL's EMOS, and by alleged manipulation of the processes for administering QCL's compliance with their 1996 EMOS commitments.

Given State Development's previous statement, quote: " It is generally accepted that, for mining projects, these two documents taken together are a suitable substitute for an EMP."; we believe crucial changes to the EMP's wording when it was devolved into the EMOS, eg changing "agreed" to "consultation" could have been foreseen since it was a "generally accepted" process.

We allege that the conditional EMP was a mechanism to facilitate IAS approvals, and at the same time to sanitise/legitimise gross inadequacies in QCL's IAS while providing the appearance of effective administration of environmental impacts.

There is evidence of failure of other IAS processes, one example is the prolonged problems for landholders at Targinnie adversely affected by odour and toxins alleged to be from the Shale Oil Project and other local industries, that were not considered nor remedied through the IAS.

EEMAG request in February 2001 that QCL's 1996 IAS be reviewed.

After obtaining various evidence over time that confirmed our view the findings of the WRL Technical Report 95/11 were inaccurate, on 15 February 2001 EEMAG requested State Development to undertake a review of QCL's 1996 IAS, since the IAS findings set the basis for QCL's environmental regulations.

In our letter we claimed there were no regulatory strategies to ensure an effective remedy to the mine's adverse impacts on landholders' livelihoods, property values, property potential etc. We claimed that the omission of important information from the Hydrology report was fundamental to the IAS failing to recognise that negative socioeconomic impacts would occur. We requested opportunity to meaningfully and effectively participate in a review.

On 11 Apr 2001 State Development advised the matters were the responsibility of DNR&M.

On 24 April 2001 EEMAG requested DNR&M review QCL's 1996 IAS and related regulatory procedures. We attached copies of important, relevant documents that had been omitted from the

IAS information base, that were available to the Government at the time of compiling the IAS, and which provided evidence QCL's IAS findings [greatly] understated the extent of mine-induced depletion. *(Copy of letter to DNR&M dated 24 April 2001available.)*

Documents that were omitted from the IAS included;

- Gladstone Mining Warden's Recommendations 7th January 1976. Quote "Possible Interference to Underground and Surface Water. There seems little doubt that there will be some interference, to what extent, has not been determined. I would recommend that this question be referred to the relevant Authorities with a view to arriving at a better appreciating of this problem. The Authority could then suggest conditions with a view to minimizing any interference to water supply." (Note: The Warden's Recommendations were withheld from the affected community at the discretion of the Mines Minister and only obtained by EEMAG in late 1995.) *(Copy of Mining Warden's Recommendations 7th January 1976 Attachment* **10.***)*
- Ministerial Correspondence dated 20.12.88 from Central Region Water Resources quote "Data on hand indicates that water levels may have fallen by up to **2.5 metres at distances of 2 km from the mine**….. The obvious conclusion is that the local farming community fears are realistic." This information was withheld from affected landholders until obtained under FOI in 2000 *(FOI Ministerial Correspondence 20.12.88 Attachment* **6.***)*
- Hand drawn contour maps of water levels and conductivity produced quarterly by IWS from 1979 to 1985 show that by 1982 mine-induced depletion was approx 500 metres from the mine pit, and that by 1985 effects had extended approx 3 km from the mine pit. Affected landholders were not briefed about what the contours meant nor shown how to interpret the water contours during meetings with IWS in the early 1980's, or at any other time. *(Maps available.)*
- QCL's Consultant's Technical Report of April 1980 documented Machine, Hut and Scrub creeks as perennial. His report charted water levels and water quality in bores and wells pre-mining, and recommended that streams of better quality mine pit water be segregated for return to affected landholders. (This report was withheld from affected landholders and only supplied to EEMAG on request from DNR mid 1999.) *(WRL Report 80/4 Attachment* **116***)*
- Bore charts from the water monitoring programme show the aquifer in 1995 was some metres lower than in 1988 despite the prolonged recharge from the 1990/91 flood rains. Bore charts show that the fall in levels had migrated additional distances since 1988, and that select bores at East End incurred a rapid loss of recharge in 1991 shortly after flood rains ceased. In 1992/93 these falls migrated. When QCL deepened their mine in 1992/93 to 0 m AHD, bore graphs show that their actions coincided with an extremely high rate of water level decline in much of the water monitoring area including Bracewell. *(Full set of bore charts available: 2Bore charts attached: 1 showing 14 metres loss, 1 showing 26 metres loss, Attachment* **12***.)*
- QCL's Consultant dropped a large number of bores and wells from the water monitoring program in 1987 and 1990, because after recharge they had reached their full level as previously established, and were not affected by mining. Important information from these bores and wells as a control area has been disregarded. EEMAG wrote to the

Minister for Natural Resources and Minister for Environment on 31 May 1999 regarding this matter. *(Copy of Letter to Minister for Environment of 31 May 1999 Attachment* **13***.)*

- Letters from the Irrigation & Water Resources Commission (now DNR&M) dated July and August 1977 advising among other things that "The Commission will ensure that a proper and adequate investigation of the groundwater resources is carried out, that the water supplies are preserved as far as possible, and for those cases where groundwater supplies have been injuriously affected, that adequate replacement supplies are provided."
- The letters from IWS of 1977 also stated that "Machinery would need to be established so that land-holders could pursue claims due to interference without undue delay and expense and at the same time protect the Company against claims of a frivolous nature." and that the Commission would be prepared to act as an arbitrator. *(Copy of letter from the Commissioner of Irrigation & Water Resources 31 August 1977Attachment* **14***.)*

QCL's 1996 IAS also failed to properly investigate or assess the likelihood of environmental nuisance from noise intrusion to the thoroughbred horse spelling yards and breeding stables that were planning to enlarge, adjacent to the site ultimately chosen to build QCL's rail loader, on the following issues:

(1) The noise level
(2) The amount of time the loader was to be in operation during any 4 hour period
(3) The number of diesel engines needed to pull the train
(4) The effects of sudden noise on thoroughbred horses being spelled on unfamiliar territory, and on foaling mares, particularly at night.
(5) The above effects in relation to compatibility with the site for QCL's rail loader.
(6) The effects on the lifestyle and livelihoods of the people involved.

DNR&M advised they had no intention to review any component of QCL's IAS.
DNR&M in a letter dated 26 Jun 2001 declined to review QCL's 1996 IAS, quote: "Such reports are based on the best available information at the time and their purpose is to facilitate a decision on whether or not the proposed project should proceed." *(Copy of letter from DNR&M of 26 Jun 2001 Attachment 17.)*

DNR&M's letter went on to say "The matter of changes to property values was included in the Impact Assessment Study and it was considered that the Gladstone Expansion Project would not affect property values."

With regard to DNR&M's statement, we refer to a letter from DPI Water Resources (now DNR&M) to the consultant for QCL's IAS dated 21 December 1995 regarding their comments on the draft "East End Groundwater Policy"; quote "Item 1 Term 11 refers to injurious effect on a landholder due to a depleted water supply, not injurious effect to a water supply. There is a significant difference." And on Page 2

"As a background principle, injurious effect should be considered in terms of what were reasonable expectations without the existence of the mine. Otherwise there would be implications for land values for which compensation has never been addressed to our knowledge." End of quote. *(Copy of letter from DPI Water Resources to the Consultant for QCL's IAS dated 21 December 1995 Attachment* **15***.)*

DNR&M's letter of 26 Jun 2001 included an inaccurate statement that "As requested by EEMAG in 1998, it is not intended to make any changes to the Special Lease Conditions……"

East End Mine Community Liaison Group Minutes record the DME delegate stated at the CLG meeting in November 1998 he would "Like to get rid of Lease Conditions. Doesn't come under auditing process. Lease Conditions should go into EMOS… EMOS audited through self-regulation".

EEMAG insisted that we wanted QCL's Special Conditions to be retained because their "EMOS was changed without adequate prior community stakeholder consultation. [We had]Doubts about the adequacy of self-regulation." We sought QCL's Conditions to be strengthened for Lease Renewal. During our participation in the CLG we sought to have new Conditions deal with "injurious affection" ie as described in Crown Law advice that included land values (Crown Law advice was supplied by a DME delegate to the CLG – a beneficial contribution by DME.) *(Copy of Crown Law advice on Injurious Affection as supplied through the CLG Attachment* **16***.)*

We had presented a bound submission to the Mines Minister in January 1997. We had written letters in 1997 and 1998 requesting specific amendments to upgrade QCL's Conditions, which DME has consistently ignored even though we have re-submitted the letters from time to time. DME did acknowledge receipt of the 19/6/1997 letter. DME withdrew from the CLG after the November 1998 meeting. (*Copy of letter from DNR&M dated 26 Jun 2001 Attachment***17***.)*

(Note: The accuracy of a number of DNR&M's comments in this letter is disputed by EEMAG, but there is not the space to rebut the alleged misinformation here. This is included on pages 25 to 28 inclusive in EEMAG's response to the Ombudsman of 23 October 2001 regarding alleged misinformation in a DNR&M report to the Ombudsman.. Attachment **100.***)*

On 4 Jun 2001 the Office of Minister for the Environment responded to a c/c of our request for a review of QCL's 1996 IAS, quote: "The Minister has noted your request for a review of the 1996 IAS undertaken by QCL at the time of its expansion of operations in Gladstone. <u>There is no mechanism for undertaking such a review</u>." *(Copy of letter from Office of Minister for Environment Attachment* **18***.)*

QCL's 1996 Environmental Management Overview Strategy (EMOS)

QCL's 1996 EMOS' Commitment No. 48 was "The EMOS will be formally reviewed in 2000". This was not carried out, despite the Agenda in November 1999 and for 2000 for the East End Mine CLG consistently listing it for discussion for example, Item 8 Mining Lease Renewal v) "Review of QCL's EMOS for 2000, what is the process and how can EEMAG be involved?" *(Copy of Commitments from QCL's 1996 EMOS Attachment* **28***.)*

CLG Minutes record QCL delegates' comments were basically that the EMOS is for the whole of the life of the mine and can be reviewed not changed. A DME officer [who had withdrawn from the CLG] advised during a phone call around August 2000 that EEMAG would be provided with copies of QCL's Draft EMOS for input as an advisory body, but this did not occur. *(Relevant CLG Minutes available.)*

CLG Minutes for the Meeting on 25 October 2000 recorded a QCL delegate's comment as "Officially the EMOS has not been reviewed. Have spoken to DME, the renewal of the mining leases was submitted with the existing EMOS. It is three and a half years since the claim was put in and they have changed the rules. The rules keep changing. We do intend to review the EMOS. We would like to review that when the target stops moving. Changeover from DME to EPA. Situation is we are awaiting advice from the DME." End of quote. (i.e. enactment of the EPOLA Bill).

The Minutes also record a QCL delegate stated; quote "----- (former DME delegate to CLG) was involved in drafting the rules and regulations for the new legislation. He was in Brisbane for a long time, it was very frustrating." End of quote. *(Copy of Narrative Minutes from CLG Meeting of 25 October 2000 Attachment* **19***.)*

QCL withdrew from participating in the CLG (with EEMAG) after the CLG meeting of 25 October 2000 and the CLG ceased to function.

Queensland's EPOLA Bill was enacted on 1 January 2001, transferring responsibility for QCL's EMOS and Environmental Authority from DME to EPA. Because the formal review of QCL's EMOS was not carried out during the 12 months of the year 2000, enactment of the EPOLA Bill transferred QCL's unchanged 1996 EMOS and their Plan of Operations to EPA as QCL's lawful Transitional Environmental Authority.

We allege enactment of the EPOLA Bill was used to facilitate QCL avoiding reviewing their 1996 EMOS in consultation with EEMAG, so that QCL's EMOS would remain unchanged for Mining Lease Renewal. Legal advice is that QCL's EMOS was probably accepted for lease renewal when or before their Application for Mining Lease Renewal was lodged in December 1996.

Request for a Review of QCL's Transitional Environmental Licensing.

When we were verbally informed in March 2001 that QCL's Environmental Authority had been approved within the transitional powers of the EPOLA Bill in preparation for Lease Renewal, we wrote to EPA on 30 March 2001 requesting a review of QCL's Transitional Environmental Licenses. *(Copy of letter to EPA of 30 March 2001 Attachment* **20***.)*

We raised our concerns that there were likely to be shortcomings in QCL's Environmental Authority and Licenses that were of crucial importance to affected landholders, due to the errors in QCL's 1996 Gladstone Expansion IAS. We requested that QCL's new Mining Leases not be approved before the backlog of unresolved issues caused by their environmental and socioeconomic impacts were effectively remedied.

We pointed out that QCL's IAS was signed off conditional on an Environmental Management Plan (EMP) being negotiated through the CLG. QCL's EMP was devolved into their EMOS and Plan of Operations. We claimed that the extent of QCL's cumulative environmental and social impacts, that are important to the equity and welfare of the affected community, were not properly assessed or corrected through QCL's IAS, and were not linked into QCL's EMOS as provided for by the EMP. EEMAG had unsuccessfully requested in 1998 that QCL's negative

social and economic impacts be included in their EMOS. We requested QCL's EMP to be reinstated.

Our letter to EPA raised the matter that EMOS Commitment 32, quote: "The Company in consultation with the Community Liaison Group, DNR and DME will prepare and implement an East End Groundwater Policy." had not been discussed and agreed through the CLG. QCL's Draft Water Policy had been circulated after the November 1998 CLG meeting, but no discussions took place at the December 1998 CLG due to the absence of DME and DNR. DME, as the mine regulator was essential to the process, but did not attend a CLG meeting after November 1998. *(Minutes etc for November and December 1998 CLG available.)*

A letter from EPA dated 28 June 2001 confirmed the process for carrying forward QCL's 1996 EMOS, quote "In the normal course of events, all pre-existing mines (those lawfully operating prior to 1 January 2001) were deemed by law to have a transitional authority. A transitional authority includes the approved EMOS and the current environmental authority." *(Copy of letter from EPA of 28 June 2001 Attachment* **21***.)*

In another EPA letter dated 28 June 2001, Quote; "The current EMOS is the document accepted in 1996, and this remains the basis for the environmental regulation of the East End Mine. The earlier work to revise the EMOS referred to in correspondence from the Minister for Mines and Energy dated 15 May 2001, did not proceed to finality because it was overtaken by the overall legislative amendments." - "The East End Mine continues to operate under the EMOS dated July 1996." End of quote. *(Second Letter from EPA dated 28 June 2001 Attachment* **22***.) (Letter from Mines Minister dated 15 May 2001 available.)*

The Office of the Minister for Environment in a letter dated 4 Jun 2001 advised, quote: "The mining provisions in the Act do not require any review of environmental authorities when a mining tenement is renewed. The Environmental Protection Agency has no statutory power to request such a review." *(Copy of Letter from Office of Environment Minister dated 4 Jun 2001 Attachment* **18***.)*

An EPA letter dated 9 August 2001 in response to our letter claiming QCL's had not complied with EMOS Commitment 32 for their East End Groundwater Policy stated " Similarly, I am advised by the company that it has prepared and is implementing a policy with respect to groundwater, which was discussed at meetings of the Community Liaison Group. The EMOS commitment does not require the company to obtain the approval of the named organizations, only to consult. The fact that the East End Mine Action Group Inc may not agree with the policy, does not make the company in breach of its EMOS commitment." *(Copy of EPA letter of 9 August 2001 Attachment* **8***.)*

We interpret EPA administratively accepted QCL circulating its Draft Groundwater Policy to EEMAG through the CLG in preparation for discussions of groundwater policy objectives, (these discussions did not take place due to the continued absence of DME), constituted an acceptable consultation process for QCL's compliance with their EMOS commitment. *(Letter to DME dated 20 January 1999 documenting that the detail of QCL's Groundwater Policy was not discussed at the CLG Attachment* **23***.)*

(CLG Agendas, Whiteboard Notes and Narrative Minutes available for November and December 1998.)

In their letter of 9 August 2001, regarding our claim that Correspondence to the Minister of 20.12.88 from the Regional Engineer, Central region of IWS advising 'water levels may have fallen by up to 2.5 metres at distances of 2 km from the mine due to mine dewatering' should have been included in QCL's 1996 IAS information base, EPA responded, quote: "In relation to the basis on which the groundwater impacts were assessed for the current EMOS, your letter contains a number of observations which I have discussed with the Department of Natural Resources and Mines. I am advised that the 1988 opinion attributed in your letter to the then Irrigation and Water Supply Commission, was a professional comment by an employee of the Commission, and was not the result of any formal assessment of groundwater impacts. As such, it was never part of the Impact Assessment Study or the current EMOS."

Note: The "employee of the Commission" referred to by EPA produced professional reports and provided oral evidence for the Land Court Hearings in Gladstone in August and September 2001 as DNR&M's Expert Hydrologist. *(Hydrologist's evidence from the Land Court available.)*

EPA's letter of 9 August advised in relation to socioeconomic impacts, quote "I have noted your comments about social and economic impacts and in particular the requirement for an Environmental Management Program. I am advised that the 1996 EMOS was accepted as satisfying this latter aspect of the approval conditions for the Impact Assessment Study." *(Copy of letter from EPA dated 9 August 2001 Attachment* **8***)*

EEMAG wrote to EPA on 17 September 2001, detailing evidence that QCL had not complied with their EMOS Commitments Nos, 32, 40 and 48, before QCL's EMOS was carried forward via the EPOLA Bill as a lawful Transitional Environmental Authority, and advising that some people in the DNR February 1998 zone of depletion still had not received an alternative water supply (alleged non-compliance with Commitment 32), and that the EMOS inaccurately stated the train servicing QCL will be pulled by one (1) engine, instead of the two (2) that have always been used, which reduced recognition of likely noise effects. *(Copy of letter to EPA dated 17 September 2001 Attachment* **24***.)*

On 30 January 2002, EEMAG wrote to EPA requesting how could we be involved in the process for determining QCL's commitments in their new EMOS to be submitted by 1 April 2002, requesting opportunity to participate as an advisory body, and listing suggested commitments. Our first dot point suggestion was "Set timelines for effective completion of commitment(s), with a mechanism to ensure timelines are met." Attention was drawn to QCL's 2000 Map conceding to having depleted 30 sq km of land, a copy of the Map was attached. *(Copy of letter to EPA of 30 January 2002 Attachment* **25***.)*

On 2 April 2002 EPA wrote that on expiration of the term that QCL's EMOS was a transitional authority, it was converted to an environmental authority on substantially the same conditions as those contained in the original provisional authority (ie based on IAS findings). EPA advised that

an additional condition required the company to submit a new EMOS on or before 1 April 2002, and that they had done so. *(Copy of letter from EPA of 2 April 2002 Attachment* **26***.)*

EPA's letter also advised QCL's new EMOS was essentially a planning document that allows the EPA to assess the appropriateness and adequacy of the provisions of the environmental authority, and stated EPA guidelines encouraged companies to consult with affected communities but that our reference to a role as "an Advisory Body" was not one which would be available to EEMAG.

With regard to our allegations of 17 September 2001 that QCL was in non-compliance with their Special Condition No 9 and No11, and was in non-compliance with some of their 1996 EMOS commitments before it became their "lawful Transitional Environmental Authority" , EPA responded in their 2 April 2002 letter "As pointed out earlier in this letter many of the matters you raise relate either to the administration of the Special Conditions attached to the mining leases or EMOS conditions which are no longer part of the enforceable environmental authority."

We believe EPA stalled our allegations of QCL's non-compliance with some EMOS Commitments and with its Special Conditions raised in our letters of 30 March 2001 and 17 September 2001, so that they were overtaken by administrative changes due to enactment of the EPOLA Bill and were "no longer part of the enforceable environmental authority", in the same way delays in finalizing the review of QCL's EMOS in 2000 facilitated the unchanged EMOS being carried forward by the EPOLA Bill on 1 January 2001.

EPA's letter of 2 April 2002 advised that "the company intends to continue at its present level of operations. As such it is expected that the EMOS will not identify any changes that will be needed or required to their Environmental Authority." EPA's letter stated it is satisfied the mine is operating in an environmentally responsible manner. We interpret from EPA's statement that there would have to be changes to the mine's level of operations for any changes to be required for their Environmental Authority.

EPA's letter further advised, quote "In conclusion I have to say that on the basis of a joint audit of the East End Mine with the then Department of Mines and Energy and more recently, an audit of all mines subject in part or in whole to Special Agreement Acts, the Environmental Protection Agency is satisfied that the Mine is operating in an environmentally responsible manner." *(Copy of letter from EPA dated 2 April 2002 Attachment* **26***)*

The above audit results were recorded on Page 24 of the audit document quote: "Objective evidence of this commitment was collected by telephoning a sample of seven landholders in the zone identified as having potentially impacted groundwater using a list of Landholder Assistance Dec 99 provided by QCL." *(Full audit available. Copy of Page 24 of Environmental Compliance Audit Attachment* **27***.)*

There were more than 20 affected landholders in the DNR February 1998 Map 10, 22 sq km zone of depletion. Clearly DME/EPA omitted to consult those landholders in the DNR Map 10 zone who had lost their water supplies and had not received an alternative water supply. **Refer Alleged agency failure to require QCl to comply with Condition 11.**

On the basis of consulting 7 out of the more than 20 affected landholders, the audit determined "The company has taken all reasonable measures to provide alternate water supplies to landholders whose groundwater supplies are considered by Department of Natural Resources to have been affected to some degree by the drainage effects of the mine pit."

Note: The Environmental Compliance Assessment of December 1999 for the East End Limestone Mine by DME and EPA. Results of Compliance Assessment 2 Water Management Issues item (d) stated, quote "The policy on groundwater needs to be finalized."

QCL's EMOS Commitments of 1996 are not reflected in their EMOS commitments of 2002. (*Copy of EMOS commitments for 1996 Attachment* **28***; and EMOS commitments of 2002 Attachment* **29**.*)*

Land Court Decision of 28/02/2002 in the Matter of an Appeal against a Valuation.

The Land Court Decision of 28/02/2002 in the matter of an appeal against a valuation for three (3) properties stated, quote: "The grounds of each appeal, although somewhat different, have a high degree of commonality, which may be summarized as:"

- "the adverse effect of the Queensland Cement Limited East End Mine on the community and on land values;"
- "the general deterioration of the area from lack of services and amenities which has adversely affected the saleability of land."

The Land Court Decision reduced primary industry classified land values by up to 25% due to water loss and district negativities, and declared as blighted an area of approx 170 sq km. *(Copy of Land court Decision of 28/02/2002 Attachment* **30**.*)*

On Page 2, last paragraph The East End Mine, the President of the Land Court named QCL in the summarized grounds of appeal and stated, quote from page 3 "There is no dispute the dewatering activities have had an adverse impact and depleted water on properties within an area of about 30 square kilometers in the East End aquifer. That area was identified by modeling by [QCL's Consultant] and which for convenience will be referred to as the [QCL's Consultant's] "zone of water depletion"."

The Court determined a reduction in unimproved value of 25% for the [QCL's Consultant's] "zone of water depletion" contained in the overall zone of approx 170 sq km declared as blighted by the Land Court.

For the remainder of blighted zone of approx 170 sq km, the Court determined a reduction of $12^1/_2$% for district negativities, with an additional reduction of up to $12^1/_2$% due to unspecified cause of water loss where applicable.

On Page 18 of the Land Court Decision under Findings in relation to Sales, quote "In my view, the lands in the Mt Larcom area cannot be regarded as grazing land. They have been traditional dairy farming and agricultural lands, but the circumstances experienced by the area have forced most dairy farmers to quit dairying and the lack of water has forced most agricultural properties

to abandon agriculture in any significant way. Several of the witnesses spoke of the dilemma as to the highest and best use of the subject lands in the longer term. Their traditional industries were no longer profitable, there was no real interest by purchasers for use a rural residential or for larger scale grazing. As one witness said of his property, it is just a place to live and run a few cattle."

On the bottom of page 18 re values determined from analysis of three different named sales, quote "showed either negative or minimal unimproved values." That is, when the sales were analysed and the value of improvements was subtracted from the sale price, there was only a either negative or minimal value left for the land itself. These sales, detailed below, were rejected as a sale by an over-anxious vendor and therefore did not fulfill the Spencer case test of market value.

Page 16 The Appellants' Valuation Evidence quote "He also analysed the sale of a property from -- to -- - . His analysis of that sale showed that the value of improvements exceeded the sale price,"

In reference to another property quote "The properties sold by ---- comprise two parts of an aggregation which sold to separate purchasers in January and February 2001. The property sold to ----- has an area of 72.51 ha and the sale price was $50,000. [The Valuer's] analysis of that sale resulted in the value of the improvements exceeding the sale price by $10,284. In other words the sale showed a negative unimproved value. The property sold to ---- has an area of 168.33 ha and the sale price was $60,000. [The Valuer's] analysis of that sale showed an unimproved value of $11,893."

"[The Valuer's] other sale, ---- to ---, has an area of 101 ha and sold in January 2001 for $163,000. He commenced to analyse that sale but abandoned the analysis when it became clear that the value of improvements exceeded the sale price." Note: There have been about 8 sales since then on a similar basis to those listed above. *(Copy of Land Court Decision of 28/02/2002 Attachment* **30***)*

On receipt of the Land Court Decision, EEMAG faxed EPA on 4 March 2002, requesting the Land Court decision be taken into full account with regard to QCL's new EMOS, as recognition of loss of land values due to QCL's mining impacts. *(Copy of faxes to EPA dated 4 March and 15 March 2002 Attachments* **31** *and* **32 .***)*

EPA's letter of 2 April 2002 responded, quote; "<u>The purpose of an environmental authority is to authorize an activity to occur within a specified range of environmental impacts,</u> it is not to "effectively manage negative, social and economic inputs." I note that the Land Court reviewed much of the "evidence" you have put to the EPA and contrary to your assertion in your letter dated 4 March 2002 that:"

> "*the Land Court judgement be taken into full account as recognition of loss of land values due to QCL's mining imparts."*

"I draw your attention to the comments of [----], President of the Land Court – page 7:"

> *"It is sufficient to say that it is common ground that there has been water depletion on the three subject properties, <u>whatever the cause.</u>"*

"----- [President of the Land Court] did not attribute any loss of land value to QCL." End of quote. *(Copy of letter from EPA dated 2 April 2002 Attachment* **26***.)*

On 8 April 2002, EEMAG responded to EPA stating that "EPA's selective quote of ------ [President of the Land Court's] comment (Page 7) does not provide an accurate interpretation of the context and scope of the Land Court decision." We requested EPA to properly evaluate the Land Court Decision which we attached, and requested the Land Court findings be fully taken into account regarding our allegations that QCL has caused serious environmental harm to at least 30 sq km of the water table (including perennial creeks) in our district, resulting in negative socioeconomic impacts.

We attached a professional valuation dated October 1998 of a former irrigation property in the DNR February 1998 22 sq km zone of depletion that had lost its irrigation supplies in 1995, but that has not been provided with an alternative water supply.

(a) Property valuation immediately before water loss	$283,350
(b) Property valuation immediately after water loss	$184,440

The valuation determined a $98,910.00 loss of value due to water loss caused by depletion.
(Copy of letter to EPA dated 8 April 2002 Attachment **33)**
(C*opy of property valuation Attachment* **34** *)*

On 15 May 2002, EPA responded, quote "You are concerned that the environmental Protection Agency (EPA) has not correctly interpreted the Land Court decision of ---- [President of the Land Court]. It serves no purpose to enter into a debate over the interpretation of ---- [President of the Land Court's] comments. The EPA relies on the expertise of the Department of Natural Resources and Mines (NR&M) when we make decisions with regards to groundwater. The advice of NR&M and advice of the consultant ------ is that East End Mine does not effect ground water levels outside of the depletion zone."

"As ------ explained to you the EPA cannot take any action against East End Mine unless we are satisfied that there is <u>sufficient evidence to prove beyond reasonable doubt that environmental harm is being caused. On the evidence presented to the EPA as of this time this is not the case</u>."

At the end of the letter EPA advised "Firstly, I note that your group is involved in commissioning further research into groundwater issues in your community. If, at some time in the future, you obtain new and definitive evidence of environmental harm being caused by the mine, we will consider that new evidence. However, at this point in time our file is closed on this issue."
(Copy of letter from EPA dated 15 May 2002 Attachment **35***.)*

EPA's position that mine-induced depletion has not caused [serious] environmental harm nor loss of land values and EPA's statement "The EPA relies on the expertise of the Department of

Natural Resources and Mines (NR&M) when we make decisions with regards to groundwater." reinforces our view that the "depletion zone" decided by DNR&M experts and referred to by EPA is approx 500 metres from the mine pit determined by QCL's IAS and used for QCL's EMOS.

DNR&M's statement quote: "The matter of changes to property values was included in the Impact Assessment Study and it was considered that the Gladstone Expansion Project would not affect property values." in their letter dated 26 Jun 2001, also reinforces this view.

Quote from a letter from the Ombudsman of 27 September 2002 stating DNR&M's position "In contrast, the Departments contend that district ground water depletion was caused by drought and intense agriculture (excepting for an area skirting the mine), and accordingly the administrative actions pursuant to Special Condition 9 should not be called into question." End of quote. *(Copy of letter from Ombudsman dated 27 September 2002 Attachment* **106***.)*

We interpret that the only way that Special Condition 9 "should not be called into question" is for the zone of depletion being used to administer their Conditions to be "approx 500 metres from the mine pit." since this is the zone that would have minimal affect on landholders.

Our view is supported by Page 18 of the Barrister's advice dated 28 Nov 1999 that states: "The language of paragraphs 286(2)(b) and (c) indicates, in my opinion, that it is quite likely that the "amended plan of operations" and the EMOS must have already been accepted by the Minister before the renewal application was lodged." That is, we interpret the zone of depletion was 'fixed' when the EMOS was accepted. *(Barrister's Memorandum of Advice dated 28 Nov 1999 Attachment* **114***.)*

We wrote to DNR&M on 28 March 2003, and requested to be advised in writing whether QCL's Application for Mining Lease Renewal submitted in 1996 together with their EMOS had been granted. If this was the case we requested a statement of the reasons for DNR&M's decisions to renew QCL's mining leases on the basis of their 1996 Application and EMOS, recognizing that QCL's 1996 EMOS is based on depletion of approx 500 metres from the mine pit. We also requested to be provided with a map depicting the zone affected by mine-induced water depletion that DNR&M has used for the purposes of renewal of QCL's mining leases. We have not received a reply. *(Copy of letter to DNR&M dated 28 March 2003 Attachment* **36***.)*

- **EEMAG members respectfully request the Productivity Commission to establish what is the true area of the "depletion zone" used by EPA and DNR&M to determine the environmental regulations for QCL's Environmental Authority and Mining Lease Renewal.**

QCL's Environmental Authority M2017 of 30 April 2002

Quote "This environmental authority is granted under the Environmental Protection Act 1994 and includes conditions to minimize environmental harm caused, or likely to be caused, by the authorized mining activities." *(QCL's Environmental Authority No M2017 dated 30 April 2002 Attachment* **2***.)*

QCL's Environmental Authority (EA) No M2017 of 30 April 2002 increased their maximum allowable daily discharge from 6 megalitres per day to 10 megalitres per day while conductivity is <1500 uS/cm. We do not believe monitoring requirements have adequate transparency and accountability.

QCL's EA does not define what impacts on the water table are acceptable. QCL's EA does not require an appropriate balance between mining, farming and ecosystem needs, nor require flows for environmental purposes. It does not recognize, nor require rehabilitation of degraded groundwater aquifers and surface waters upstream of the mine.

QCL's EA does not require that surface waters or any recognized groundwater aquifers not be damaged by mining. Once more, we have to question what is the zone of depletion QCL's EA is based on?

On 31 March 2003 EEMAG wrote to EPA requesting amendments to Environmental Authority No M2017 dated 30 April 2002 so that Queensland Cement Limited/Darra Exploration Pty Ltd are required to adhere to the standards of sustainable development, and in accordance with the Council of Australian Governments (CoAG) agreement on water reform to ensure water resources are sustainably managed, and for reducing withdrawals of overallocated systems. *(Copy of letter to EPA of 31 March 2003 Attachment* **3.***)*

We requested that QCL's Environmental Authority (EMOS and Special Mining Lease Conditions) ensure protection for, and repair of damage to groundwater and [interconnected] surface waters.

Our letter sought clarification and amendment of the EA.

We requested to be informed what was EPA's view of the meaning of Maintenance of measures, plant and equipment clause? We understand this clause can be used to ensure compliance with world's best practice. We requested all water monitoring records and assessments to be retained and available to all parties.

We alleged that QCL's original discharge allowance of 6 megalitres per day was an overallocation [given the extent of conceded depletion and alleged depletion], and that to raise it to 10 megalitres per day compounded that overallocation.

We requested the EA clearly specify what impacts on groundwater were acceptable, since the EA did not define what impacts are acceptable. We requested that the EA ensure sustainable management of water and protection of water quality. We requested that the EA require no damage to surface waters of any recognized groundwater aquifers to be extended to include current mining operations, not just the final void.

We requested EPA to attend a meeting with EEMAG members to discuss these matters. To date we have not received a reply. *(Copy of letter to EPA of 31 March 2003 Attachment* **3**.*)*

EPA's letter of 2 April 2002 stated, quote; "The purpose of an environmental authority is to authorize an activity to occur within a specified range of environmental impacts, it is not to "effectively manage negative, social and economic inputs." Since QCL's Environmental Authority, Groundwater – (CS-1) does not define what impacts are acceptable, we conclude that the EA is granted on the basis of minimal/negligible impacts or that QCL has an arrangement with government about allowable impacts that is not defined in the EA. *(Copy of EPA letter of 2 April 2002 Attachment* **26***.)*

Community Consultation

We acknowledged that the Office of Major Projects acted on EEMAG's requests for water depletion to be included in the ToR for QCL's IAS, although it took two attempts, which was a positive outcome from the Consultation process for the ToR.

When QCL's Fast Tracked IAS was signed off in February 1996 landholders strenuously raised their concerns about water issues, noise issues and the inadequate road surfaces. Wilmot Road was broadened and bitumened to carry the additional heavy traffic which was a positive outcome.

The property(ies) of some of the people affected by noise and by water depletion close to the mine were purchased by QCL and this is a positive outcome.

The IAS' Outline Environmental Management Plan also contained an Environmental Management Objective for a Community Liaison Group as a forum for East End Mine issues. This was included as part of EMOS commitment 40 as "The Company will facilitate the establishment of a Community Liaison Group as a forum for East End Mine issues."

The meeting to form the East End Mine Community Liaison Group was held on 14 February 1996. Initially QCL insisted that EEMAG have only two (2) delegates, but ultimately agreed to EEMAG having five (5) delegates, two (2 from the East End mining lease where the mine is sited, and one (1) from each of QCL's other three leases). The CLG also included QCL delegates, DNR delegates and DME delegates. Initially the Chair for the CLG was to be shared between a QCL delegate and the EEMAG Chair.

EEMAG members initially believed the concept of the CLG could provide opportunity for arriving at equitable negotiated outcomes, and looked forward to the process.

There were no guidelines for the CLG. EEMAG delegates participated in a process where equitable and effective outcomes from the CLG were dependent on the sincerity of intent of the regulating agencies and QCL.

The early meetings were largely taken up with QCL's expansion approvals and consultations regarding QCL's EMOS. Once this process was completed, the CLG broke down. EEMAG members were swamped by the weight of technical data and unfamiliar administrative documentation that we had to digest and respond to in a short space of time.

At the CLG of December 1996 a State Development representative agreed to a suggestion by EEMAG that it would be useful if the Dispute Resolution Centre provided facilitation and guidance to get the process back on track.

On 4 March 1997 the Rockhampton Dispute Resolution Centre confirmed facilitation meetings would commence on 1 May 1997. Four (4) facilitation meetings were held with the CLG and the DRC. The DRC provided meeting rules (a code of conduct), but no guidelines were developed. Through the facilitation meetings an Independent Chair was appointed.

- We must mention the generous efforts of the people who undertook the challenging role of independent Chair. One travelled 80 km from Rockhampton on a monthly basis to Chair the 7.00 pm to 10.00 pm meetings for 18 months, one travelled 120 km from Emu Park for over 12 months, and one travelled 30 km from Gladstone for one meeting.

The CLG was used for two (2) Technical Meetings that EEMAG readily participated in.

Technical Meeting of 11 August 1997

The first Technical Meeting on 11 August 1997 was for the purpose of discussing differences of opinion between QCL's modelling consultant, whose draft model findings of February 1997 were that the mine had depleted approx 7 sq km, and the CLG consultant whose findings were that the mine had depleted approx 60 sq km. DNR, DME, QCL, the Member for Gladstone and EEMAG also 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 landholders' 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 in support of the QCL modelers' 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 outweighed by Government/QCL. How the meeting was managed made us aware that we needed to be sure the intended process for such meetings would clearly ensure fair play before we participated.

A further technical meeting was held in Brisbane on 15 August 1997 between QCL's modeling Consultant, the CLG Consultant and government officers, and EEMAG delegate attended to participate in determining areas for drilling bores for extensive new research that went a long way towards proving the independent Consultant's conclusions.

There is evidence that this research was terminated prematurely.

Technical Meeting of 19 December 1997 – Rockhampton

There was consideration 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 the CLG consultant 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.)*

Due to the ongoing disagreement between the parties, the Department of Natural Resources called a Technical Workshop for 19 December 1997.

EEMAG was advised on Monday 15 December 1997 by DNR Rockhampton a Technical Workshop was proposed for Friday 19 December 1997. (A QCL delegate at the CLG Meeting on 2 December 1997 had mentioned a proposed DNR meeting but his comment was not confirmed by the DNR delegate nor by the DME delegate.)

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 day. *(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 Agenda Groundwater Technical Mediation Workshop available.)*

On request from EEMAG, DNR/DME agreed to include an EEMAG delegate in the Technical Panel Session as well as the Policy Advisor from a rural industry Association from Toowoomba. Although we felt outweighed in the structure, there had been concessions made.

On 16/12/97 the CLG consultant 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, 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 CLG Consultant dated 16/12/97 Attachment* **37***.)*

In response DNR faxed the CLG Consultant 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 to CLG Consultant dated 16/12/97 Attachment* **38***.)*

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

EEMAG did not favour Mediation. The Policy Advisor from the rural industry Association from Toowoomba, 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, and swamped the meeting.

In EEMAG's view, the structure of the Technical Meeting professionally isolated the CLG Consultant in an environment that was hostile to his findings and participation. We were disillusioned by the meeting and felt we had been conned. The CLG consultant was at a disadvantage due to the meeting coming up at such short notice while he was away from home on holiday.

Inputs from the Reference Panel were effectively squashed, contrary to the pre-meeting arrangements and the meeting ended abruptly.

Towards the end of the Technical Meeting of 19/12/97 the CLG Consultant and EEMAG announced an intention to conduct further research at Weir 2 in an attempt to demonstrate that considerable flow to the mine was occurring through the Weir 2 area.

The very short notice to the CLG consultant that the Technical Meeting of 19 December 1997 was planned with the result that he could not prepare, the manner in which he was briefed for the meeting, and how the meeting was managed, destroyed our confidence in the DNR's procedures, intentions and findings.

EEMAG later wrote a letter of complaint on to DNR , C/c DME and the CLG on 29 January 1998 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 to DNR, c/cDME and CLG 29 January 1998 Attachment* **39***.)*

EEMAG was so disillusioned by the process that on the same afternoon we hired a very prominent Modelling Consultant to conduct a study on Weir 2. The study was agreed to be completed before the release of the Final DNR Position Paper in February 1998.

Excavation at Weir 2

On 24 January 1998 an excavation of about 9.5 metres was undertaken by a 25 ton kato at Weir 2. The CLG Consultant volunteered his professional services and expenses for traveling to and from Brisbane. EEMAG met the costs of hiring the kato. The first trench did not locate alluvium and was abandoned, but the second was excavated to 9.5 metres. Water was struck at approx five (5) metres and was observed to flow strongly from the alluvium. The CLG consultant calculated inflow of water into the pit was in the order of 4000 to 5000 litres per hour.

These findings were documented in "East End Mine – Groundwater Review Summary Document January 1998" *(East End Mine – Groundwater Review Summary Document available.)*

The findings from the excavation were largely disregarded by DNR and DME, and were dismissed in page 3 of the Addendum of the DNR Position Paper of February 1998 eg quote: "One small area of deeper alluvium was discovered but it may be only an isolated pocket in a relict stream channel." etc. End of Quote.

Shortcomings in the CLG process and function

On 12 December 1997 EEMAG had learned from a property search that QCL/Darra Explorations had applied for Minerals Exploration Permit EPM11365 on 27 August 1996, and the Minister had granted the EPM on 29 October 1996. EPM11365 covered about 10 sq km of privately owned land and fourteen properties were directly involved. This occurred just before DNR sprung their 19 December 1997 Groundwater Technical Mediation Workshop on us.

The Application for EPM11365 appeared to be concurrent with planning QCL's groundwater Model which QCL announced at the CLG on 28 August 1996 – the day after the EPM was applied for. The exploration permit covered much of an area affected by depletion on private property.

In the 1996 bore drilling program for the QCL Model, approx half of the 44 bores were drilled on or near the privately owned land covered by the EPM. QCL readily gained property access under the guise of drilling for the model.

EEMAG could have expected that QCL would have informed our delegates through the CLG that the Minerals Exploration Permit had been applied for and granted. EEMAG members felt rebuffed. Since we had regularly met with QCL, DNR and DME delegates for over fourteen months at the CLG (about 12 CLG meetings) after the EPM had been applied for, and all the other delegates had chosen for the landholders not to be informed about the EPM, we believed it signalled a lack of sincerity of intent on their part.

On 15 December 1997, we wrote to the Mines Minister about QCL's/Darra Explorations EPM, advising that this recently acquired knowledge had collapsed EEMAG members' confidence in the sincerity of intent of the Groundwater Model and in the procedure leading to its conception.

We acknowledged that it was not the role of DME to advise us of the EMP, but by not having insisted on transparency on the matter, we felt DME had given tacit support to QCL.

In the same letter we advised that EEMAG's President had received overtures that morning from the Rockhampton Office of DNR for a Technical Meeting on Friday 19 December 1997, but that we had not received the details of the procedures in relation to the Technical Meeting and the proposed Commercial Arbitration Act. *(Copy of letter to Mines Minister dated 15 December 1997 available.)*

Issues that undermined our confidence in the CLG continued, to the extent that on 18 September 1998 we wrote to the Independent Chair, C/c'd to all CLG parties, relevant Departments and the Mines Minister, listing our grievances.

We stated we always felt the concept of the CLG was worthy of support and participation, and believed it had potential for genuine respectful exchange of ideas. We acknowledged that procedures had improved since mediation by the Dispute Resolution Center and appointment of the independent Chair.

A dot point summary of grievances is listed below:

- We raised the matter of QCL's Minerals Exploration Permit EMP11365 as previously mentioned.
- QCL altered its working hours in the EMOS, but DME and QCL neglected to inform community stakeholders through the CLG (or by any other means) for 13 weeks (3 CLG meetings) until EEMAG made inquiries about any proposed changes to the EMOS for Lease Renewal. By the time landholders were aware of the EMOS changes, planning for the new timetable was largely in place.
- The Technical Meeting held on 19/12/97 (as a function of the CLG) was mentioned by a QCL delegate at the CLG meeting on 2 December 1997, but was not verified by departmental delegates, who then delayed informing EEMAG until Monday 15 in preparation for the meeting on Friday 19. We were disturbed and disappointed by the structure, composition and conduct of the Meeting. It fuelled a perception the intention of government was to defend the QCL Model and close down the groundwater issue prematurely, and motivated us to hire a Modelling consultant.
- A letter from DME [dated 25-6-98] indicated DME proposed to use the CLG as the mechanism to resolve Social Impacts for people seeking relief due to negative impacts from mining. This was in response to EEMAG's written request for negative social and economic impacts to be included in QCL's EMOS, which DME refused.
- We found no reason to believe the CLG was empowered to deliver equitable outcomes, since EEMAG delegates participated from a position of inequality. We also felt there was no intention to deliver equitable outcomes.
- Concerns with errors/inaccuracies in the Minutes [at the time recorded by DME] so the Minutes varied from our recollections of the meeting, including
  (1) An intention by DME to abandon Ecologically Sustainable Development in favour of Economical Sustainability (for QCL) and declare depletion as a lawful unavoidable impact of mining [omitted from the Minutes].

(2) EEMAG's concerns about potential errors in data of the Groundwater Model being wrongly recorded as "the view of a need for re calibration".
(3) Inadequate recording of EEMAG concerns about enforcement of Mining Lease Terms and Conditions and ease of changes to EMOS.

- We stated that identifying issues was the only power EEMAG participants had in the function of the CLG.
- Lack of response to the Report prepared by EEMAG's modelling consultant [a copy was provided to each party involved in the CLG] and no recognition of the modeling consultant's Report's points of agreement with the findings of the CLG consultant and local knowledge.
- We requested a Technical Meeting involving all parties including the CLG consultant, EEMAG's modelling consultant and EEMAG delegates in a balanced and transparent process as an example of good faith and fair play. We reiterated we feared the groundwater investigation may be prematurely closed down.
- We felt discussions about issues affecting our welfare were held between QCL and Government and we were not informed. This left us feeling quite isolated and threatened.
- A reply from QCL's modelling consultant when EEMAG requested to be provided with data on the Model so that we could undertake an independent audit of the model findings, drew his response that the model data was unavailable due to the model presently being calibrated and completely revised.
- In the absence of any consultation [with EEMAG through the CLG] we presumed this calibration/revision would not have been undertaken by QCL without some discussion with Government. We also assumed we would not have been informed if we had not written to QCL's modelling consultant. (Refer to inaccuracies in the Minutes Item (2).)
- The Model calibration/revision appeared to be motivated by the findings of EEMAG's modelling consultant, and his points of agreement with the CLG consultant's findings.
- We were not reassured that perceived shortcomings/errors in the Model data and assumptions would be transparently and consultatively examined and adjusted in QCL's revised model. We felt the concerns we had brought forward had been ignored.
- We requested excavation of a trench at Weir 2 to bedrock for the width of the alluvium be undertaken and the findings incorporated in the Model.
- We had hoped if we contributed patience and commitment the East End Mine CLG could succeed.
- It was our understanding that CLG's generally have no clear guidelines for operation. The East End Mine CLG did not. For EEMAG this magnified the inequality of power in the process and resulted in feelings of manipulation and entrapment for community stakeholders.
- We felt QCL had shown only superficial commitment to acknowledging and addressing issues through the CLG. We did not feel that QCL's discussions with affected landholders in the DNR Map 10 area [22 sq km] offered equitable outcomes nor any real intention to settle the conflict.
- We felt that, given appropriate process and intentions the CLG had potential to replace conflict with cooperation. However EEMAG was at a loss as to how to bring about changes to Government/Corporate attitudes and procedures so that fair play was enshrined in CLG function. *(Copy of letter to Chairman East End Mine CLG of 18 September 1998 Attachment* **40**.*)*

A QCL Officer subsequently attended the CLG meeting of 9 November 1998. The Minutes record that he spoke on EEMAG's letter about problems with the CLG. He acknowledged problems in relation to communication about the Model, changes to the EMOS and the Minerals Exploration Permit. He said there were problems in the relationship with historical lack of trust and credibility, and concerns with environmental matters. He expressed the view that issues even though explained and dealt with are often brought up many times over, particularly with outside parties [by EEMAG]. He claimed that EEMAG has repeatedly cast aspersions on QCL and its employees indicating deliberate withholding of information and deception. He stated EEMAG always believe QCL operates in a deceptive manner and that this has to change. He advised QCL want to see a solution to this issue and invited EEMAG members to find solutions. *(Copy of CLG Minutes for 9 November 1998 available.)*

EEMAG's notes from the meeting record that the QCL Officer stated, quote: "QCL have not got a good name in this district and deservedly so. We have not always been truthful or honest in what we have said or done." *(Copy of EEMAG's notes of meeting available)*

The Mines Minister responded to our letter on 30 Sep 1998, quote "I understand that the Community Liaison Group has achieved some progress in recent times and I have the impression that there are quite a number of issues and possible misunderstandings on which little or no progress is being made. We could discuss these matters when we meet next month." End of quote. Note: The Mines Minister offered $30,000 for a Mediator at our meeting with him in Gladstone on 4 November 1998. The Mediation proposal is dealt with separately. (*Copy of letter from Mines Minister of 30 Sep 1998 Attachment* **41**.*)*

DME responded that the CLG issue would be raised with us by the Minister during our proposed meeting with him. *(Copy of letter from DME available)*

<u>Proposed Water Reticulation Scheme/ Proposed Water Injection Trial negotiated at CLG</u>
The issue of maintaining water quality halted any attempts to remedy water depletion by the installation of a water reticulation scheme, or by a trial of water injection into the aquifer in an attempt to form a mound so water from the north of the mine might be held back from migrating to the mine pit.

At a community meeting on 21 February 1996 attended by a representative of Office of Major Projects, a QCL Manager and a representative of QCL's IAS Consultancy firm, notes from the meeting record the OMP Officer stated "Groundwater supplement options in detail in Environmental Management Plan. A clear obligation by Queensland Cement Limited to provide water to parties. A condition of the Lease and of EMP. QCL has a responsibility to investigate with DME, DPI and Liaison Group. Should be reticulating water by May 1996, before construction takes place."

When asked to confirm that May 1996 was the timeframe he had stated, he confirmed that it was. *(Copy of Notes from meeting available.)*

Unfortunately at later CLG meetings, QCL made it explicitly clear they were prepared only to reticulate mine pit water. QCL refused to accommodate EEMAG's requests to blend the mine pit water with Awoonga Dam water for reticulation, so as to provide reasonable quality water.

Mine pit water is generally higher than 3,000 conductivity (related to dissolved salts) except after rainfall. It is of inferior quality to water most people had access to in their bores and wells. It is not suitable for many horticultural pursuits or household use and is not as palatable or wholesome for livestock. As a comparison, the water supply for the city of Gladstone has conductivity of 300. QCL do not use mine pit water on their gardens or tree plots and do not use it for washing their trucks, and apart from dust mitigation, have always discharged it downstream as waste.

In QCL's "Proposal for Groundwater Recharge Trial" of August 5th 1999 Item 2. Measure of Success of Trial, QCL's document states "Recharge should not cause any increase in conductivity of groundwater, as the source water is similar quality as the receiving groundwater. (ie 3000 to 35000 MicroSiemens/cm)."

In QCL's document under Item 12. Safeguards, 12.3 Water Quality. QCL affirmed "Recharge should not cause any increase in conductivity of groundwater , as the source water is of similar quality as the receiving groundwater. (ie 3000 to 3500 MicroSiemens/cm)." *(Full document available. Copy of 2 pages of QCL's Proposal for Groundwater Recharge Trial of August 5th 1999 Attachment* **42***.)*

QCL's statement about water quality is <u>not</u> correct. *(Groundwater levels and quality pre-mining are documented in QCL's WRL Report of April 1980 Attachment* **116***.)*

On 2 August 1999 EEMAG wrote to the Chairman of the CLG, c/c'd to all CLG participants, EPA and the Member for Gladstone. We advised we remained committed to the proposed Groundwater Recharge Trial in principle, but we were unable to approve the Recharge Trial being undertaken under the jurisdiction of the MRA. We believed regulation by EPA would be better suited to meet needs and obligations for the environmental sustainability of the recharge, including safeguards for landholders' water quality; and for EEMAG's duty of care to landholders and the environment. We requested CSIRO information be used in establishing guidelines with data to be supplied to the National Groundwater Data Base. *(Copy of letter to Chairman CLG of 2 August 1999 Attachment* **43***.)*

A DME letter dated 17 September 1998 had previously advised in part, quote: "Another matter presently under consideration is the regulatory implications of the proposed recharge trial. The minimum requirement will be for the company to obtain the permission of the relevant landholders. I have yet to confer with DNR on this matter but will do so next week." End of quote. *(Copy of letter from DME dated 17 September 1998 Attachment* **44***.)*

FOI of a fax from DME Brisbane to DME Rockhampton dated 4/8/99 is quoted in full: "Regarding your fax of 3 August 1999 asking if the recharge trial can be regulated under the EP Act, I believe it could for the following reasons."

"The water is a waste from the mine as it is an unwanted by-product from an industrial activity (EP Act s13(1). Note that a waste can be a liquid (s13(2))."

"The question is whether it is a regulated waste or not. The definition of regulated waste in Schedule 9 of the EP Regulation requires it to be non-domestic and be listed in Schedule 7. Saline effluent might apply (by comparison with other groundwater). It is hardly a lime sludge and I would be reluctant to use its antimony, arsenic, barium….zinc content to class it as a regulated waste."

"If we assume it is a regulated waste and this is a disposal process then you could regulate it under a license for ERA 75(b). If it is only a general waste then it could be ERA 75(a)."

"I doubt that you can use an EM Program because that has to reduce environmental harm or transition to an environmental standard (EP Act s80)."

"I doubt that the emergency powers (s156) can be used without admitting the present situation is causing harm to an extent that urgent action is required (after 20 years). Similarly, an Environmental Protection Order would require evidence of non-compliance with an EM Program or the general environmental duty or evidence from an environmental evaluation (s109)."

"The EPP (Water) only applies directly through s20 if there is to be decision about an environmental authority, EM Program or EPO (an "Environmental management decision"). If you decided on one of these, I doubt it is waste water recycling (EPP(Waters16) because of the definition of recycling in Schedule 2 of the EPP which only comes close in (c) if the waste water is used."

"I don't see any use in EPP (Water)s44 (environmental water provisions) or s45 (protection of groundwater). Either of these would bring in DNR and the latter would require a major planning study."

"On the other hand the MRA grants mining leases with a condition (s276(1)(a)) that the holder shall use the land comprised in the mining lease. The EMOS (246(1)(p)) is a little more generous as it requires strategies to protect the environment on and in the vicinity of the lease (but doesn't give access outside the lease for these purposes). Section 245(1)(d) or (h) would require the Registrar to say the access was need from the injection point, which would have to be on a public road I suspect."

"I haven't chased up any options in the Water Resources Act."

"Going back to the EP Act licensing option as a preferred option, DME still has a delegation for this mine related ERA."

"As an aside, what is the CSIRO information?" End of quote. *(Copy of FOI fax to DME Rockhampton from DME Brisbane of 4/8/99 Attachment* **45***.)*

EEMAG's formal acceptance of Water Injection Trial of water with 1840 conductivity
A fax from EEMAG to the QCL delegate for the CLG dated 11 September 2000 gave formal support by landholders adjacent to the injection site for the proposed two-week trial. The support was given for the proposal to blend Howse Dam water and pit water to give a maximum of 1840 electrical conductivity (uS/cm). EEMAG advised they accepted no liability for any adverse impacts caused by the trial water injection. *(Copy of fax to QCL of 11 September 2000 Attachment* **46***.)*

Opportunity for discussions on this matter ceased after QCL withdrew from the East End Mine CLG subsequent to the Meeting of 25 October 2000 and this trial has not eventuated.

We recognize that QCL purchased some kilometres of plastic hose for the purpose of the water injection trial. While we appreciate that QCL may have acted in this way to signal their good faith in proceeding with the project, we believe it was premature to purchase and lay the hose when EEMAG had consistently stated that the safeguards proposed by QCL and DME were not adequate.

QCL's purchasing the hose prior to adequate safeguards being agreed could also be seen as a strategy to pressure EEMAG's acceptance of the water injection trial on QCL's terms that the source water (mine pit water) is of similar quality as the receiving groundwater. (ie 3000 to 3500 MicroSiemens/cm).

CLG Meeting of 25 October 2000
The CLG of 25 October 2000 was the first meeting for a new independent Chair. He was approached to undertake the role of Chair by QCL on agreement between QCL and EEMAG. The new independent Chair was highly experienced and highly qualified in administrative work and went to a good deal of trouble prior to the meeting to draw up a 'housekeeping' process to assist to develop an effective and meaningful working relationship between all parties.

Narrative Minutes for the CLG meeting record the Chair as stating, quote :"This is one of the strangest experiences I've had. I tried to define my role, I am not a conciliator, a mediator or an arbitrator. I see my role in this Group as a facilitator. I regard my agreement to Chair the meetings as provisional, and if I find the process fruitless, I will withdraw. If the other participants feel that my participation is fruitless I feel the same applies. If I felt the situation was hopeless I would not have agreed to do it."

In response to a question from EEMAG as to whether the CLG had any scope for settling the dispute, the Chair responded, quote: "The CLG can't resolve anything. There is no power and no authority. The CLG does not have mediation power." And later quote; "I agree entirely. There is no authority invested in the CLG. If you want resolve the matter, use the law. The other remedy is a political remedy. There is Arbitration power, Judicial Review. There is a blurring of responsibilities. It needs the political will to resolve it. There are matters of law and we are not involved in that."

Chair, quote: “I do not mean that the Group has no function, but we cannot resolve issues. This is no accident. The Government has an Arbitration power and it decides whether or not to use it.” End of quote.

The next morning the Chair advised EEMAG and QCL that he believed the process was fruitless and resigned. *(Minutes from CLG of 25 October 2000 Attachment* **19***.)*

Despite numerous attempts by EEMAG to set a date for the next CLG meeting, QCL did not respond and withdrew from participation in the East End Mine CLG after the meeting on Wednesday 25 October 2000.

An informed comment in 1997 was “Unless the Community Liaison Group has proper guidelines it is likely to be a process to legitimize QCL’s defaults.

With the benefit of hindsight we believe this is what largely occurred.

We are alleging that;

- DME administratively misrepresented discussions during the CLG to suit their intentions not to strengthen QCL’s Special Conditions for Lease Renewal even though DME’s claims were inaccurate and were not consistent with CLG Minutes;
- circulation of QCL’s Draft Groundwater Policy to CLG participants was administratively accepted as a consultation process despite consultation with EEMAG through the CLG not occurring because of the absence of DME and DNR;
- (weakening of the terms in QCL’s conditional EMP when it was devolved into QCL’s EMOS facilitated the above action, due to changing the EMP term “agreed to” to “in consultation with” for QCL’s EMOS commitment 32)
- failure to discuss EEMAG’s submission to the CLG regarding QCL’s Annual Water Monitoring Report – there was no consultation process for input by EEMAG;
- continually stalling reviewing QCL’s 1996 EMOS through the CLG during the year 2000 so that it remained unchanged until it was administratively carried forward as QCL’s transitional environmental authority on 1 January 2001 by enactment of the EPOLA Bill;
- QCL only being prepared to use poorer quality mine-pit water for water reticulation/water injection, inaccurately claiming it is “of similar quality as the receiving groundwater” is seen as strategy to benchmark mine-pit water as the norm for local groundwater;
- regulating agencies and QCL had a habit of neglecting to inform EEMAG of important information during CLG meetings.

Despite all of the above, EEMAG members generally saw the CLG as more beneficial than no CLG, in that it at least provided some communication between QCL and EEMAG, including opportunity for raising and correcting errors in water monitoring data.

On 19 May 2003, EEMAG wrote to the Complaints Register of the East End Mine, quote in full “We refer to the recent renewal of QCL’s mining leases. EEMAG Inc opposed the lease renewal subject to QCL addressing the residual impacts of water depletion, noise and reduced property values etc.”

"Elsewhere mining companies in conflict with their community provide a forum to address those issues threatening harmony and co-existence. Since these residual issues remain outstanding and the dispute with adversely affected stakeholders remains unresolved, what sort of forum will QCL provide to address with these concerns?"

"When the Community Liaison Group functioned EEMAG provided delegates and was still routinely participating when other parties withdrew, causing the process to collapse. We understand QCL has meetings with members of the community considered not adversely affected by QCL's operations."

"What type of meaningful forum or dialogue process does QCL now propose to offer to adversely affected stakeholders?" End of quote. *(Copy of letter to QCL dated 19 May 2003 Attachment* **47***.)*

On 11 June 2003, Cement Australia (formerly QCL) responded, quote in part "Thank you for your letter of 19 May 2003. You refer to issues remaining outstanding with adversely affected stakeholders, namely water drawdown, noise and reduced property values. Cement Australia is unaware of any property owner whose current water supply has reduced due to the mine dewatering works. Cement Australia has assisted many landowners with water supplies, some of whom were not affected by mining activities. Many landholders now have better and more reliable water supplies provided by Cement Australia." And

"Cement Australia is unaware of any information that suggests that its operations have caused property values in the district to decline." And

"Cement Australia had great expectations on the commencement of the CLG and it was hoped the community and the company could exchange information and co-operatively proceed forward. Considerable resources and time were expended with the CLG however positive achievements were meager. The company now communicates directly with landowners within the defined drawdown area and elsewhere in the district as and when required. The company also communicates with EEMCCF which covers the local community. The mine has an open door policy. Anyone interested in visiting the mine or who wishes to raise issues is most welcome to make contact." *(Copy of letter from Cement Australia dated 11/06/2003 Attachment* **48.***)*

<u>Independent Technical Assessment for EPA</u>

Due to the inability to reach an arrangement on the proposed Open Technical Forum, on 9 Aug 2000 the Minister for Environment and Heritage and Minister for Natural Resources wrote advising "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." End of Quote *(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. *(Copy of letter to Ombudsman dated 14 September 2000 available.)*

On 26 September 2000, EPA wrote advising that they would be inviting 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 this Consultant declined the brief citing health reasons and suggested the Consultant ultimately hired by EPA.

On 27 October 2000 we faxed EPA, quote "Thank you for your letter of 24 October 2000 relating to EPA's Technical Assessment of the degree and extent of the hydrological impact of the East End Mine."

"Your letter advised that the EPA are proposing to appoint [the Consultant] since ------ has declined to accept the brief; EEMAG members have no objection to this course of action."

"We have read [the Consultant'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. *(Copy of letter to EPA dated 27 November 2000 Attachment* **49***.)*

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 2001was completed, so that QCL's unchanged 1996 EMOS was legally QCL's Transitional Environmental Authority, before the Technical Assessment was undertaken.

On 28 February 2001, EPA's Consultant for their Technical Assessment visited Mt Larcom during commencement of his work.

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

Some alleged procedural shortcomings are listed below;

(a) On 12 March 2001, EEMAG faxed the MP for Gladstone with an extract from our Minutes of our Meeting held on 9 March 2001, that we were disappointed EPA's Consultant did not properly discuss the reports undertaken by the CLG Consultant when he visited the CLG Consultant. We were disturbed that EPA's Consultant had not read the CLG Consultant's reports before he visited him. EEMAG members interpreted this could indicate that EPA's Consultant was not properly taking the CLG Consultant's reports into account, and we did not know if he intended to meet with the CLG Consultant again. *(Copy of fax to MP for Gladstone dated 12 March 2001 Attachment* **50***.)*

(b) On 25/4/2001 an EEMAG representative faxed MP for Gladstone, quote: "On Tuesday 24th April, I spoke with EPA consultant 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 the EPA Consultant's draft prior to the EPA's assessment or review." *(Copy of fax of 25/4/2001 to MP for Gladstone Attachment* **51***.)*

(c) The EPA Consultant's preliminary draft dated March 2001 stated *"This draft has been prepared solely for the purposes of discussion with EPA and has not been subjected to [the Company name of EPA Consultant] normal review process."* EEMAG alleges this was inappropriate, particularly since the report was supposed to be "independent" and EPA is a party to the dispute. *(Copy of full document available. Copy of Cover of Draft EPA Consultant's Report dated March 2001 and 1 page Attachment* **52***.)*

(d) On 2 May 2001 we wrote to the local member about concerns about the proposed workshop and queried EPA's reference to "two technical presentations at the workshop" without having provided full details. We requested circulation of a draft of the second proposed technical presentation two weeks in advance of the workshop. Our letter commented that the rules and format of the proposed workshop as we understood them had been changed considerably without consultation or agreement. We requested to be advised who was the party making the second technical presentation. We were concerned about the limited time for the Workshop with 2 technical presentations instead of just one from EPA's Consultant, since issues would be compressed and not be able to be properly discussed and clarified. *(Copy of letter to local member of 2/5/2001 Attachment* **53***.)*

(e) On Friday 4 May EPA advised EEMAG by phone the other technical presenter was the DME geologist whose mapping was used at the Technical Meeting of 11 August 1997 in support of QCL's model and that the DME geologist would not have any documentation to circulate prior to the workshop. The geologist'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 who EEMAG believe has 'baggage' in the dispute.

(f) On 4 May 2001 we faxed EPA's Consultant 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 EPA Consultant 4/5/2001 Attachment* **54***.)*

(g) 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 members sufficient time to properly consider the Report so that we could effectively participate in the workshop. The workshop was postponed. *(Copy of full report available Copy of Cover of Draft EPA Consultant's Report dated May 2001 Attachment* **55***.)*

(h) The time delay of at least five (5) weeks between EPA receiving the consultant'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) After considering EPA consultant's Draft Report of May 2001, EEMAG members considered EPA's Consultant treated findings by the CLG Consultant and EEMAG's modelling Consultant differently to the way he treated QCL's modelling Consultant's and government findings. From EEMAG's perception, EPA's Consultant's Draft Report of May 2001 provided very limited acknowledgement of evidence/ findings that dissented with QCL/Government findings.

(j) On 14 May 2001 the CLG Consultant, 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 the CLG consultant to the MP for Gladstone Attachment* **56***.)*

(k) An informal meeting was held between EPA, MP for Gladstone, EPA Consultant and EEMAG members on 18 May, at which EEMAG requested portions of his draft report of May 2001 to be re-written. EPA's Consultant 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 EPA's Technical Assessments and sought the participation of a government facilitator/mediator as a technical assistant to the Chair who is a lay person regarding water resources.

(m) On 28 May 2001 EEMAG faxed EPA advising that we had not received EPA Consultant'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. *(Refer Page 2 of copy of fax to EPA dated 28 May 2001 Attachment* **57***.)*

(n) On 29 May 2001 EPA faxed EEMAG advising as soon as a copy of EPA consultant'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. *(Copy of fax from EPA dated 29 May 2001 Attachment* **58***.)*

(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 2001Attachment* **59***.)*

(p) On 31 May 2001, we wrote to EPA and sought access to QCL's historical mine-pit discharge data, which still have not been fully disclosed. EPA's Consultant 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 a selective quote after more than 21 years continuous discharges was appropriate when determining a conclusive finding on the mine's effects on the water table. *(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. (The historical mine pit discharges are still not fully disclosed). EPA's letter stated, quote "<u>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.</u> *(Copy of letter from EPA of 5 June 2001 Attachment* **60***.)*

(r) We came to regard EPA's Technical Assessment as a de facto Arbitration when we realised the workshop process was for EPA's Consultant to audit/present his own work as a fait accompli. We did not accept EPA's Consultant as suitable for the role of Arbitrator.

(s) It was ultimately agreed that EEMAG would enter into a process with the MP for Gladstone and the 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, the MP for Gladstone rang on the morning of Monday 23 July and advised that the government facilitator/mediator was quite unwell, and that the meeting would have to be postponed. *(Copy of fax from MP for Gladstone dated 23 July 2001 available.)*

(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 the EEMAG, [the government facilitator/mediator] and the local member. He trusts that those discussions will result in a simple and inexpensive process for holding a public workshop at which [EPA's Consultant] will present his independent technical assessment." End of Quote. EEMAG interpreted from the Minister's letter that the Minister planned quite different outcomes from the proposed discussions to the ones we sought, and our confidence was shaken. *(Copy of letter from the Minister for the Environment dated3 Sep 2001 Attachment* **61***.)*

(v) In response to a telephone call from the Office of the MP for Gladstone requesting EEMAG to provide two (2) dates for a meeting with the government facilitator/mediator, we advised by fax on 29 October 2001 that EEMAG would provide two suitable dates for a meeting <u>after the Land Court had delivered its findings</u>, which we understood could be in November 2001. <u>We considered the Land Court judgement may provide important guidance to assist us in preparing our case.</u> We advised of our concern about a fax from QCL's solicitors to the Land Court of 23 October 2001, C C to an EEMAG member, quote: "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 thar (sic) any decline in surrounding groundwater is due to natural weather fluctuations." Given these issues, we questioned whether the basis for our discussions would be set by QCL's EMOS' zone of depletion of 500 metres from the mine pit. (That is we sought clarity about any common ground with government and QCL.) The Land Court decision was not handed down until 28 February 2002, and the public workshop proposal lapsed. (*Copy of fax to MP for Gladstone dated 29 October 2001 Attachment* **62**.*)*

Pressures on Consultants

Quote from "Chemistry" by Steven S Zumdahl, Page 4, Chapter 1 Chemical foundations

"The scientific method:"

"However, it is important to understand that science does not always progress smoothly and efficiently. Scientists are human; they have prejudices; they misinterpret data; they become emotionally attached to their theories and thus non-objective; and they play politics. Science is affected by profit motives, budgets, fads, wars, and religious beliefs. …….. The progress of science is often affected more by the frailties of humans and their institutions than by the limitations of scientific measuring devices. The scientific method is only as effective as the human using it. It does not automatically lead to progress." End of quote.

Quote from "Australian Judicial Perspectives on Expert Evidence: An Empirical Study" by Dr Ian Freckelton, Dr Prasuna Reddy and Mr Hugh Selby:

"For example, the fact that it is now apparent that many judges are so troubled about the quality of medical, accounting, scientific and engineering evidence that they are prepared to give serious consideration to such aids to expert evidence assessment as the appointment of referees and assessors…" and

"However, the forensic reality is that experts, especially in the civil and family litigation, are retained by one party which is intent upon winning the case, or, if that is not feasible, upon minimising the extent of their loss." End of quote.

EEMAG members have learned that 'the establishment' can and does wield enormous power, and when government/mining/industry are aligned on a policy it could be difficult if their wishes are not met.

We believe this can result in "good science" being replaced by consultants adopting "good public relations" but questionable ethics, due to their need to provide client satisfaction and secure ongoing employment opportunities.

We recognize and appreciate there are scientists that are fearless in their research and findings, and that this can result in a personal cost.

In 2002 EEMAG contacted a very well reputed and well connected groundwater body and sought their interest in our submitting a case study as a community contribution to hydrology. We subsequently submitted EEMAG's internally generated "Weir 2 Case Study" complete with

supporting data and findings from other consultants. (EEMAG has produced 4 hydrology studies since 1999.)

With EEMAG's endorsement, the hydrology body approached EPA and EPA's consultant about the case study so that the hydrology body obtained a balanced representation of views.

Unfortunately, when the "Weir 2 Case Study" proposal was returned to EEMAG for comment prior to a proposed workshop, the document's title was changed to "[the Company name of the EPA consultant] East End Case Study". From the nature of the replacement report it is logical to assume it was authored by EPA's consultant.

To EEMAG's dismay we interpreted that the "- East End Case study" shifted the emphasis from Weir 2 to the East End aquifer and was a ringing endorsement of the official position, with very limited mention of dissenting technical or practical views, or dissenting evidence. The existence of the Water Monitoring Programme was not mentioned.

We learned when the "--East End Case Study" was scheduled for a workshop the advertised Course Leader was a Queensland DNR&M Officer who had an involvement in the QCL dispute.

It was EEMAG's worst nightmare. We interpreted the "—East End Case study" gave unquestioning endorsement to the interests of EPA, DNR&M and QCL. We believed it was intended to be presented as a co-operative and impartial report under the auspices of the hydrology body with the participation of aligned Course Leaders.

We feared the "—East End Case study" might be used by Queensland agencies as a comprehensive, candid and impartial peer review, and be used to justify EPA's acceptance of their Consultant's Final Report of April 2002.

We raised our grave disappointments with the hydrology body and listed alleged shortcomings in the "—East End Case study" for the hydrology body's consideration.

EEMAG remained in disagreement with the hydrology body's second report due to the alleged shift in the material's focus and failure to document dissenting views. Ultimately the hydrology body informed us that it had all become too difficult and the arrangement was cancelled.

From our perspective, the arrangements proposed for presenting the "—East End Case study" were a clear indication of the very strong inter-relationships and the considerable scope of influence exercised by government and industry - right across Australia! *(Copy of "---East End Case study" email dated 12 September 2002 Attachment* **63***.)*
(Copy of EEMAG's response 16 September 2002 Attachment **64***.)*

<u>Open Technical Forum</u>
From our experiences during the dispute, regulating agencies only offer processes where they control the information base and /or allow the withholding of important relevant information, and where they control the structure and process. In our experience Agencies can choose not to honour agreement they have reached on the process to be followed. We allege that these

strategies curtail opportunity for truly independent analysis, for procedural fairness and for natural justice, and facilitates for findings/outcomes to be pre-determined.

When EEMAG's modelling consultant produced his report in August 1998, it was suggested that if Government and QCL did not accept the report that it would be appropriate to request an "Open Technical Meeting" where all the consultants put all their cards on the table at the same time.

We requested a Technical Meeting through the CLG. The narrative Minutes record that in October 1998 DME responded "Won't be taking additional actions to follow up on that. No point in [EEMAG's modeling consultant] coming to address a public meeting without other experts. Does [EEMAG's modeling consultant] data tell what is effect of mine's operations on Bracewell? I see no additional information or value in the Report."

EEMAG lobbied the relevant Ministers for a balanced Open Technical Forum to be held, with participation by representatives of all parties including the CLG Consultant, EEMAG's Modelling Consultant and landholder representatives.

On 31 May 1999 the Minister for Natural Resources again agreed to an "Open Technical Meeting or Forum", and affirmed his decision at a country Cabinet Meeting in Gladstone on 11 July 1999. This is recorded in the notes of the meeting. *(Notes for Ministerial Meeting of 31 May and 11 July 1999 available.)*

EEMAG members were elated after the Minister agreed to the proposed Open Technical Forum. We had confidence that, if the process was fair and balanced, it would provide the first step towards equitably settling the dispute.

EEMAG's main plank was for QCL's new Model to be completed, fully disclosed and circulated to all parties at least four (4) weeks before the Forum, so all parties could properly consider the modeling work, and other information, and effectively prepare for the Forum. Since QCL's Model set the basis for the extent of impacts they were prepared to accept, we considered it essential for the Modelling data/work to be collectively and impartially evaluated. We sought for the Precautionary Principle of ESD to be taken into account.

On 19 August 1999 EPA faxed all parties involved in the proposed Open Technical Forum, and attached "a proposed approach to the Scientific/Technical Round Table to be held in Rockhampton on Thursday 23 September-Friday 24 September 1999". *(Copy of full fax available. Copy of Page 1 of fax from EPA of 19 August 1999 Attachment* **65**.*)*

EEMAG members interpreted the proposed "Scientific/Technical Round Table" to be a form of Mediation, which was not consistent with our agreement with the Minister.

We sought the Open Technical Forum to be undertaken before any Mediation, to take the first step of technical discussions to establish common ground before taking the next step of entering into Mediation. We obtained legal advice as to what we could expect from the "Scientific/ Technical Round Table".

On 23 August 1999, we responded, quote "At EEMAG meeting tonight we agreed it is not appropriate for EEMAG to enter into Mediation at this stage. We feel your proposal would compress Technical issues with Mediation and the technical discussion would be overtaken by the Mediation process. Such a procedure would work to disadvantage this community."

"We wish to abide by our agreement with Minister [EPA] for an Open Technical Forum so groundwater (and creek flow) issues are considered by all parties, with opportunity for informed comment. In this way we would hope agreement can be reached and the respective responses determined."

"This would be quite productive to the process as both parties would then be aware of their circumstances and thus be in a better position to more forward in steps. These steps would then involve the other outstanding issues."

"Full disclosure of [QCL's Modelling consultant's] Model findings is essential to the knowledge, transparency and accountability of the Open Technical Forum, and would demonstrate QCL's sincerity of intentions to resolve/manage the dispute." End of quote *(Copy of letter to EPA dated 23 August 1999 Attachment* **66***.)*

On 25 August 1999, EPA responded, quote: "I note your concerns in relation to the methodology and approach of the proposed Scientific/Technical Round-Table."

"I am happy to proceed with an Open Technical Forum. Accordingly, I look forward to your responses on what format and matters the Forum may address." End of quote. (*Copy of fax from EPA of 25 August 1999 Attachment* **67***.)*

EEMAG drafted and supplied a full format for a process that we believed was acceptable. Negotiations continued and on 15 November 1999, we met with the Minister for Environment in Gladstone for further discussions.

On 29 November 1999 EEMAG's letter confirmed the details of our meeting with the Minister which is summarized in dot points below:

- There was agreement QCL's Groundwater Model is to be completed and fully disclosed in advance of the proposed Open Technical Forum.
- It was agreed the OTF would need to run longer than two and a half days, that the OTF should be allowed sufficient time, for example four days.
- There was agreement the 3 EEMAG delegates would fully participate and have proper input.
- It was agreed a technical auditor could provide assistance as a technical umpire.
- Concern was expressed by EEMAG about experts consulting in seclusion away from the remainder of the Forum. We saw this as a Closed Forum.
- There was agreement the existence of socio-economic impacts would be acknowledged towards the end of the Forum.
- The issue of noise impacts was raised, how would they be dealt with?
- It was agreed the OTF would be a decision making process.

- The Minister recognized EEMAG needed to be able to place trust in the Format and have confidence the Agenda will be followed through.
- The Minister advised Government will provide a process to establish the extent of depletion, but will not allow Lease Renewal and Government processes to be used against the Company. EEMAG can revert to common law if they feel they have a case.
- EEMAG requested QCL's mining leases not be renewed before the extent of the mine's residual impacts are properly assessed or before any resolution/mediation process to address the mine's cumulative impacts. *(Copy of letter to Minister for Natural Resources dated 29 November 1999 available).*

The Minister responded in writing on 5 Jan 2000, summarised in part below:

- Queensland Cement Limited will be providing the complete details of [QCL's modeling consultant's] groundwater modeling work as part of its documentation for the Open Technical Forum.
- I understand that the proposed program for the OTF will provide one day for field inspections and two days for presentations and discussions. This should, under the guidance of [government nominated mediator], be sufficient for the identification and exploration of the issues involved.
- On the matter of the involvement of a technical auditor, I have considered your request and my belief is that [government nominated mediator] will be able to appropriately facilitate and report on the outcome of the OTF.
- The OTF will not be closed and members of EEMAG will be welcome to observe proceedings. Participation in the Forum will, however, be limited to your Group's formal representatives and two advisors.
- I understand the issue of socioeconomic impacts has been clarified in settling the guidelines for the OTF, and that appropriate reference to this issue has been made in the guidelines.
- In relation to noise impacts, this issue is the subject of a separate investigation by EPA and will not be considered during the OTF which will focus on groundwater issues.

(Copy of letter from Minister for Natural Resources of 5 Jan 2000 Attachment **68***.)*

A protracted period of negotiations between EPA and EEMAG followed, due to differing views/aims regarding the details of the Forum's procedures, and due to QCL not providing the full details of their Modelling Consultant's modeling work. We recognize these negotiations would have been very frustrating for the EPA Officer involved.

The prolonged negotiations were very frustrating to EEMAG members, and EPA's negotiation techniques eroded confidence in EPA's intentions. We had a responsibility to ourselves to ensure our equity and rights were safeguarded and that our reasonable needs were met.

EPA continued to set a date to hold the Forum when QCL's modeling work was not fully disclosed and when details relating to procedural fairness were still not established.

EEMAG's key issue was our agreement with the Minister that QCL's completed modeling work would be supplied to us at least four weeks prior to the Forum.

QCL's undated draft Summary Document of their second model did not disclose the data/details that QCL's modelling consultant used to arrive at his findings. The Summary Document was supplied to EEMAG in September 1999.

QCL consistently advised during CLG meetings that there was no additional modeling work to be provided for the Forum.

In EEMAG's fax to EPA dated 12 January 2000, when dealing with the issue of QCL's Groundwater Flow Model Summary Document we stated, quote: "Whilst we recognize there is useful information in the brief Summary Document report, it obviously does not provide all of the details of parameter values, precise areal details of recharge and pump rates; and other parameters used in the Model."

"It might be useful to have a discussion of such issues, and opportunities to perform other consequential model runs and have the results available prior to the Technical Forum." End of quote. There was no response from EPA to this overture. *(Fax to EPA dated 12 January 2000 available.)*

QCL's advice to our President by phone that there was NO complete Model by QCL's Modeller and that he was not preparing one was confirmed by an EEMAG fax to QCL dated 25 February 2000, cc'[d] to EPA. *(Copy of fax to QCL, c/c EPA of 25 February 2000 Attachment* **69***)*

On 6 April 2000 EEMAG obtained FOI documents showing in 1988 IWS (DNR) advised the Minister that QCL's impacts were "up to 2.5 metres at distances of 2 km from the mine due to mine dewatering". The FOI confirmed our belief QCL's IAS [greatly] understated the mine's impacts, and confirmed our perception government had a position to protect, heightening our insecurity about EPA's intentions for the OTF. *(FOI of Ministerial Correspondence from Rockhampton IWS of 20.12.88 Attachment* **6***)*

On 20 April 2000, EPA faxed the parties to the proposed OTF and advised, quote:

"Dear Participants"

"I have received the additional material which supplements and completes the groundwater modeling work undertaken by [QCL's modeling consultant] on the East End Mine. This document should be read in conjunction with the QCL Groundwater Flow Model (Summary Document) published by QCL on 16 September 1999."

"…… I therefore propose that the Open Technical Forum be held 24 to 26 May 2000, …" end of quote. *(Full document available. Copy of page 1 of EPA fax of 20 April 2000 Attachment* **70***.)*

EEMAG circulated EPA's fax to our Forum delegates and to the CLG consultant and EEMAG's modeling consultant.

QCL's complete modeling data was not fully disclosed by "the additional material" supplied by EPA. We verbally advised EPA of this, and requested a meeting be arranged with the OTF chairman. This was declined by EPA.

EEMAG faxed EPA on 22 May 2000 advising that we were unable to participate in the Forum on 24 to 26 May date due to unresolved issues of procedural fairness. We reiterated that we wished to continue negotiations.

Our fax stated, quote: "EEMAG has consistently requested that QCL provide the complete details of [QCL's modeling consultant's] groundwater modeling work at least four weeks before the Forum, as part of its documentation for the Forum. We need access to the Model's information within this timeframe to enable us to properly prepare for and effectively participate in the Forum."

"Attached is [EEMAG's modeling consultant's] list of additional information required on QCL groundwater model."

Quoted in full "**Additional information required on QCL groundwater model**"

"1. Actual layer depths, hydraulic conductivities or transmissivities, and storativities.

"Some information on elevations of top and bottom of layers is given in Table 1 of (QCL's modeling consultants) [1].
Similarly ranges for permeability are given in section 4.1 of [1] as are values of storativity for different rock types. However, the boundaries in both the horizontal and vertical directions of the rock types are not given. In order to appreciate more precisely how the model represents the system, actual parameters for each cell of each layer are required. For example, these details are required for strata in the vicinity of Weir 2 in order to understand exactly what has been modeled. While it is appreciated that the authors consider the model to be sufficiently calibrated, it needs to be appreciated that calibration does not result in exact solutions for model parameters and it is possible that a different set of parameters may give adequate agreement with measured results. In order to ascertain whether there are reasonable alternative configurations, details of what has been adopted are required."

"2. Actual recharge values in space and time"

"Again the recharge has been given in a general way in section 4.4 of [1] but then in section 4.5 on evapotranspiration it is stated that:
'This component removes a large proportion of rainfall recharge over the monitoring area, …'
Hence, the information provided does not allow detailed consideration of how net recharge to the groundwater system has been assumed to vary in space and time. Full details of the net recharge values are required for a proper appreciation and analysis of the consequences of the assumptions made in developing the model."

"3. Pumping rates and durations for bores and wells"

"There are no values given in [1] for discharges assumed for bores or wells in the area of the model. It is impossible to assess the implications for groundwater behaviour is no values are given."

"4. Values of pit discharge indirectly simulated"

"It is recognized that, as discussed in section 4.3 of [1], the pit was not represented as a pumping well with pumping assigned. However comparison of actual pump discharge from the mine pit with what is effectively predicted by the model is a valuable tool for judging the performance of the model in this area. Presumably mine pit discharges consistent with the simulated mining sequence can be ascertained from the model and these should be provided."

"5. Transmissivity and storativity values used in sensitivity runs and the corresponding results obtained"

"The full import of the results of the sensitivity runs cannot be appreciated without more complete information on the model parameters for these runs."

Reference

1. (QCL's modeling consultant) QCL Groundwater Flow Model: Background, Hydrogeology, Model Description and Current Findings – Summary Document, (undated).

(EEMAG's modeling consultant)
Queensland *(Copy of 2 page Fax to EPA dated 22 May 2000 and C/c to all Forum participants including list of "Additional information required on QCL groundwater model Attachment* **71**.*)*

On 22 May 2000 EPA faxed all parties, and postponed the Open Technical Forum.

There has been no response by DNR, DME, EPA, QCL or QCL's modelling consultant to "Additional information required on QCL groundwater model". (In 2001 EEMAG provided it to EPA's Consultant for EPA's Independent Technical Assessment who also ignored it.)

On 21 Jun 2000 the Minister for Natural Resources wrote to EEMAG , quote: "It is regrettable that after a great deal of effort it has not been possible to make arrangement for the Forum."

"To be confident about the basis on which future determinations are made, I have decided that the most useful thing that I can now do, is ask the EPA to commission an independent technical assessment….." *(Copy of letter from Minister for Natural Resources of 21 Jun 2000 available.) (Copies of all correspondence to and from EPA re Open Technical Forum available.)*

We later learned that the Chairman the Minister nominated for the OTF had sudden a life-threatening illness that meant he was unavailable for the set date or subsequently due to convalescence. This factor in the decision to abort the OTF was not conveyed to us.

We were very disappointed that the OTF did not go ahead, because we saw the need for technical discussions outside of mediation or litigation. QCL did not fully disclose their Modelling work, and this was seen as a strategy to neutralize the input of our modeling consultant.

We ultimately feared that the strategy of EPA (of continually setting a date for the meeting when QCL had not provided their modeling information) may propel us into a process where the agreed information base was not provided and that was not procedurally fair.

Alleged Agency Failure to Enforce QCL's Special Conditions for 15 years from commencement of mining

QCL's mining leases were granted in 1976 after a dispute about the initial project that divided the local community. The basis of the dispute was farmers' fears the mine would deplete the water table that their livelihoods depended on, and at that time under Miners Homestead Lease (MHL) no compensation was required to be paid for MHL land. The Warden's Recommendations from a 5 day hearing in Gladstone were withheld from the community at the discretion of the Mines Minister, and only obtained by EEMAG as a favour in late 1995.

People noticed changes to the creeks as far back as 1987.Two perennial creeks went dry shortly after the 1990/91 flood rains ceased. Some people lost water levels/water supplies in their bores and wells in 1991/1992/93. Although people were anxious about the signs that all was not well with the water table, at that time we trusted that DPI Water Resources (formerly IWS) was policing QCL's Special Conditions, and genuinely believed that if the mine was depleting the water table the government would require the mine to curb their impacts.
By mid 1995 concerned landholders encouraged a farmer to write to DPI Water Resources on 8th May 1995 requesting the most recent assessment of QCL's Water Monitoring data, so that they could be informed of the state of the water table including the mine's cumulative effects. *(Copy of letter to DPI Water Resources of 8th May 1995 available.)*

On 15 May 1995, DPI Water Resources responded, quote: "As you would be aware, the mine has been monitoring water resources in the area for a considerable period of time. We have only ever received one formal review and that was in 1980 prepared by the mine relating to review of the hydrology of impacts on districts resources. In response, I have requested (by 30th June 1995) such assessment from the mine through the DME and will investigate the need and frequency for these assessments and their distribution." *(Copy of letter from DPI of 15 May 1995 Attachment* **72***.)*

That is DPI Water Resources (formerly IWS) and DME had not required QCL to produce an assessment of their water monitoring data since mining had commenced – fifteen years previously!

FOI documentation of a DPI Water Resources Office Memo dated 5 July 1995 from the Brisbane Office to the Rockhampton Office, re Bracewell/East End Groundwater Monitoring states, quote: "The groundwater situation in this area has been monitored for some twenty years by the DPI Water Resources, in Rockhampton and Brisbane and the [QCL's Consultant]. DPI Water Resources has recorded all information on the groundwater database. The focus of this work has been in your office with Senior Hydrologist [officer] maintaining the control over the DPI's interest in the monitoring system."

"In recent discussions with Senior Hydrologist ---, it was decided that it was no longer necessary for Water Resources Division in Brisbane to be involved in this matter, as your office is more than capable of auditing the reports. Therefore I am sending all of the information held in this office (list attached) to you to integrate into your records, update your database, and dispose of any redundant records. I shall write to the [QCL's Consultant] to advise them of the new

arrangements." End of Quote. *(Copy of FOI DPI Water Resources Office Memo of 5 July 1995 Attachment* **73***.)*

Given the history of the dispute, EEMAG is curious just what "redundant records' might have been "disposed of"?

QCL's Consultant produced his Interim Report of August 1995 during a meeting at the mine on 14 August 1995 with representatives from DPI Water Resources, DME, QCL and local landholders. The consultant began his presentation by apologising for the undue delay and the "interim" nature of his report because of illness.

In his Summary, the Consultant's findings were quote; "The East End mine has produced a steep local drawdown cone limited to a distance of the order of half a kilometer from the pit. Water table levels have fallen significantly in this zone and are controlled mainly by the mine. Outside this zone water table levels are controlled more by the balance between recharge and depletion of the aquifer by natural drainage and mine de-watering." End of quote. *Copy of QCL's Consultant August 1995 Report available.)*

It is documented that at that time none of the charts/rolls for mine pit discharges at Weir 6 had been analysed and were not used for the IAS findings.

Given the serious and extensive local water loss being experienced, long-term landholders did not believe that QCL's assessment of the water monitoring data was accurate. In the terms of one farmer, quote: "You don't have to be a hydrologist to know the water is going down when you have to keep lengthening the pipes in your bore."

About ten days after the August 14 meeting, QCL began to visit people on neighbouring farms and advise them of QCL's proposed tripling of production and intended railway line.

A DME Officer chaired and minuted the meeting at the mine on 14 August 1996. The Minutes were subsequently disputed by EEMAG, and a letter of complaint was written on 11-9-95, quote: "Since that meeting QCL have announced their expansion project and land holders have seen fit to form a group to further their goals and objectives. After obtaining and perusing the draft Terms of Reference of the IAS, the Group have been disconcerted to learn that the Water Resources have not been included as an Advisory Body and that the EMOS is quoted as presently in place and that there appears to be a concerted effort to ensure that water depletion and consideration of any remedial solutions are omitted from the IAS. Similarly your summary of minutes makes no mention of water depletion and remedial considerations as discussed and distinctly conveys the impression that this issue is solely a matter for inclusion in the EMOS." End of quote. *(Copy of letter to DME dated 11-9-95 available.)*

We recognise that the Office of Major Projects (now State Development) consented to EEMAG's requests that water depletion be included in QCL's IAS, and acknowledge that this was a positive response from the Consultation process for the ToR.

However, despite EEMAG members' strenuous protests that QCL's draft IAS Hydrology Segment was highly inaccurate, QCL's Final IAS was signed off in February 1996.

Alleged suppression of 1988 IWS finding that mine-induced depletion was 2.5 metres for 2 km from the mine pit.

FOI obtained in April 2000 of Ministerial Correspondence from the IWS (now DNR&M) Rockhampton Office dated 20.12.88 states, quote: "At present, groundwater levels are extremely low in the Mt Larcom/Bracewell area. The effects of limestone mining and the associated pit de-watering is applying additional pressure to the groundwater resource. Data on hand indicates that water levels may have fallen by up to 2.5 metres at distances of 2 km from the mine due to mine dewatering. The obvious conclusions is that the local farming community fears are realistic." End of quote. *(Copy of FOI of Ministerial Correspondence of 20.12.88 Attachment* **6***.)*

The FOI of internal advice provided to the Minister was ignored and not quoted in the Minister's correspondence to a Mt Larcom landholder. We do not believe this information was taken into account for the granting of QCL's application for Mining Lease 808 in 1988.

It is now well recognized that water loss equates with significant loss of land value, yet the regulating agencies refuse to recognize that negative socio-economic impacts due to mine-induced water loss and noise intrusion have occurred. DNR&M on 26 Jun 2001 referred our claim of loss of land values due to water loss to QCL's 1996 IAS findings that the mine's expansion would have no effect on land values.

QCL's Special Conditions for Water Monitoring 1976-1997

QCL's original Condition 9 for each of their leases was:

(a) "Within two months of the Lease being granted the Lessee shall – (a) Provide to the satisfaction of the Commissioner of Irrigation and Water Supply herinafter called the Commissioner a proposal for the detailed investigation of the behaviour of groundwater levels and quality under the conditions existing in and adjacent to the Lease prior to commencement of mining operations. Upon approval of the proposal, with such modifications as the Commissioner considers necessary, the Lessee shall forthwith arrange to carry out the investigation in a professional manner to the satisfaction of the Commissioner. The results and interpretation of the investigation are to be provided to the Minister, the Commissioner and landholders in the area who may, in the opinion of the Commissioner, be affected by subsequent mining under the terms of the Lease;

(b) Provide to the satisfaction of the Commissioner a proposal to regularly monitor changes in water levels and quality within and adjacent to the lease. Upon approval of the proposal, with such modifications as the Commissioner considers necessary, the Lessee shall forthwith institute and maintain the monitoring programme. The results of the monitoring programme are to be made available to

the Minister, the commissioner and landholders in the area who in the opinion of the Commissioner may be affected by the mining operation.

Without in any way limiting the obligation of the Lessee, the programmes described in (a) and (b) may require the collection, storage and interpretation of data relating to rainfall, evaporation, existing bores, wells and springs, the carrying out of surveys and pumping tests, the drilling and casing of observation bores, the measurement of water levels, the chemical analysis of water quality and the installation and operation of equipment to record rainfall, evaporation and water level variations.

11. *(Copy of Special Covenants and Conditions that apply to Mining Leases 698,699, 700, 701 and 808 for* **1976-1997** *Attachment* **74** *.)*

QCL's Special Conditions for their Water Monitoring Programme for their New Mining Leases No's 3629, 3630, 3631 and 3632 for **1997 to 2028** are;

2. The holder shall maintain a monitoring programme to regularly monitor changes in water levels and water quality within and adjacent to the Lease. The monitoring programme shall be to the satisfaction of the Chief Executive and may require the collection, storage and interpretation of data relating to rainfall, evaporation, existing bores, wells and springs, the carrying out of surveys and pumping tests, the instillation of observation bores, the measurement of water levels, the chemical analysis of water quality and the installation and operation of equipment to record rainfall, evaporation and water level variations.

5 The holder shall, within two months after 1 August in each year of the term of the lease, provide, to the Chief Executive, a report, to the satisfaction of the Chief Executive, detailing the results of the monitoring programme and providing details of any rectification of reduced ground water supply. A copy of the report shall be provided to the Mining Registrar and shall, at the direction of the Chief Executive, be made available to any landholder who may be affected by the mining operation.

(Copy of QCL's new Special Conditions for Mining Lease No's 3629, 3630, 3631, 3632 for **1997 to 2028** *Attachment* **75***.)*

We interpret that QCL's new Conditions for their Water Monitoring Programme do not require QCL to provide their quarterly water monitoring results to affected landholders or potentially affected landholders. We interpret affected landholders only will have access to QCL's annual report at the direction of the Chief Executive of DNR&M after it has been provided "to the satisfaction of the Chief Executive" - that is after QCL's Annual Water Monitoring Report is a fait accompli.

There is no quality control requirement. There does not seem to be any requirement for correction of errors/scrutiny of QCL's Water Monitoring data to ensure that the process is accountable and the data is accurate.

There does not seem to be any requirement for regular and accurate assessment of the water monitoring data so that migration of mine-induces depletion is recognized.

On 5 Feb 1998, the Mines Minister had advised quote: "With regard to not providing information about groundwater, while the timing and nature of reporting and the avenue for reporting were not clearly specified in the Special Conditions, the Department's assessment is that the company has generally not complied with the intent of this provisions." *(Copy of letter of 5 Feb 1998 Attachment* **76***.)*

Despite the Minister's letter of Feb 1998, we interpret the water monitoring requirements in QCL's new Conditions as being even less specific and less transparent than the original Conditions.

With regard to taking alleged errors in QCL's Water Monitoring data to the Chief Executive of DNR&M seeking correction to be required; during the 8 year term of the QCL dispute each time EEMAG has approached DME and DNR&M with evidence of inaccuracies and failure of process, DNR&M have either declined to review their decision, ignored the issue(s) our letters dealt with, or ignored our letters. We believe an approach to DNR&M requesting inaccuracies to be corrected would be futile.

This view is confirmed by the Minister's letter of 19 Jun 2003 to our local member regarding her representations that we had not been afforded natural justice, quote: "As you are aware, the East End Mine issue has been on going for a number of years and EEMAG have openly aired their concerns and the issues have been the subject of two reports by the Ombudsman. My Department has always treated the members of EEMAG with fairness and respect. I cannot accept that the Group has not been afforded natural justice." *(Copy of Mines Minister's letter of 19 Jun 2003 attached.)*

QCL's Special Condition requiring provision of "an alternative water supply" 1976-1997

QCL's original Special Condition No 11 from 1976 - 1997 was, quote:

12. "If in the opinion of the Commissioner of Irrigation and Water Supply the operations of the Lessee cause depletion of any groundwater supply, other than a supply belonging to the Lessee, so as to affect injuriously the owner of such supply, the Lessee shall, at his own expense, provide an alternative supply of water to the satisfaction of the Commissioner." *(Copy of Special Covenants and Conditions that apply to Mining Lease No 701, Gladstone, and to Mining Leases 698,699, 700, 701 and 808 for* **1976-1997** *attachment* **74***.)*

QCL's Special Condition for 'an alternative water supply' for their New Mining Leases No's 3629, 3630, 3631 and 3632, for **1997 – 2028** is; quote:

4. "If in the opinion of the Chief Executive the operations of the holder cause a reduction of any groundwater supply, other than a supply belonging to the holder, so as to cause a diminution of the use made of the land of the owner of such supply, the holder shall, at his own expense, rectify such reduction in supply. Rectification shall be by provision of an alternative supply of water, or by such other method, to the satisfaction of the Chief Executive." End of Quote. *(Copy of QCL's new Special Conditions for Mining Lease No's 3629, 3630, 3631, 3632 for* **1997-2028** *Attachment* **75.***)*

We interpret Condition 4 (formerly 11), including "or by such other method" is a 'loophole' in QCL's requirement to provide a proper alternative water supply – that is to drill a bore, equip and commission it. For example, for loss of an irrigation supply in 1995, QCL drilled a bore in 1998 and offered the landholder $1000 to assist to equip it. The landholder estimated the cost would be around $7000 and since there was some sedimentation in the water and he could not afford to equip the bore it has not been equipped. Although QCL advised 6 months ago they would equip it, it still has not been done nearly 8 years after the irrigation bore lost its supply. An Arbitration by DNR/DME supported QCL's offer of $1000 to equip the bore as satisfactory. *(Copy of Arbitration in 1998 re loss of irrigation supply available.)*

The above change appears to legitimise QCL's alleged non-compliance with their original Condition 11 requirement to provide an alternative supply to some people in their DNR's February 1998 zone of depletion and QCL's 2000 30 sq km zone of depletion. Some examples;

- QCL's dumping two (2) loads of limestone fill in a dam so cattle could gain access in boggy conditions instead of providing an alternative water supply for loss of supplies in two (2) bores in DNR 1998 zone;
- QCL's providing only an unequipped bore to replace an irrigation supply lost in 1995 in DNR 1998 zone;
- QCL providing only one (1) alternative supply when there was a number of water supplies lost on a large property in DNR 1998 zone;
- Two (2) Arbitrations were sought from DNR in October 1998 by 2 different landholders in QCL's 2000 zone, after QCL refused to provide an alternative water supply. After a four (4) year wait, the Arbitrations were deemed as finalized/invalid by DNR&M and QCL just prior to renewing QCL's leases on 20 March 2003, without notifying the people concerned. This was despite the 84 year-old landholder visiting DNR&M in December 2002, seeking to be informed of the outcome of his Arbitration.

We are alleging that QCL's new Condition 4 amounts to a defacto water allocation that provides for a reduction in the landholders' allocation since the aquifer is depleted/overallocated. While QCL's Environmental Authority M2017 has increased their allocation of water from 6 megalitres per day to 10 megalitres per day that they pump downstream as waste.

We are alleging that changes to the wording of QCL's new Special Conditions have neutralized the intent of the original Conditions; in the same way intent of QCL's EMP was neutralized by changing the wording in QCL's conditional Environmental Management Plan Deliverables from "agreed" to "consult" when their EMP was devolved into their EMOS.

A letter from DPI Water Resources (now DNR&M) to QCL's IAS Consultant dated 21 December 1995 regarding the draft "East End Groundwater Policy" quote "Item 1 Term 11 refers to injurious effect on a landholder due to a depleted water supply, not injurious effect to a water supply. There is a significant difference." And

"As a background principle, injurious effect should be considered in terms of what were reasonable expectations without the existence of the mine. Otherwise there would be implications for land values for which compensation has never been addressed to our knowledge." End of quote. *(Copy of letter from DPI Water Resources to QCL's IAS Consultant of 21 December 1995 Attachment* **15**.*)*

Advice from the Ombudsman in 2002 is that anyone who purchased [cheap] land at Mt Larcom has no claim regarding their water supply because they have [knowingly] purchased 'damaged goods'. Conversely it must be recognized that the seller of the "damaged goods" has a compensation claim, although there is no mechanism to administer this aspect.

We believe government practices provide for QCL/Cement Australia to continue to willfully degrade local water resource systems.

EEMAG's requests for amendments to Mining Lease Conditions

In 1997 and 1998 EEMAG wrote a number of letters to DME and the Mines Minister requesting specific amendments to QCL's Special Lease Terms and Conditions for Lease Renewal. A request for funding as part of Lease Renewal was included in a submission document presented to the Mines Minister 28 January 1997.

Key issues were:

- Bound submission to Minister of 28 January 1997 included amendments sought to Lease Terms and Conditions.
- Letter of 19/6/1997 – A substantial list of suggestions that included grout curtaining, ending wastage of water associated with mine dewatering, provide status for local knowledge, further research, develop procedures for redress for landholders etc.
- Letter of 27.2.1998 – Request for funding to EEMAG for research independent of QCL [and Government].
- Letter of 27.4.1998 – Request that social and economic stresses resulting from environmental impacts from QCL's mine be included in their EMOS.
- Letter of 30.4.1998 – Request for requirement for QCL to adhere to ecologically sustainable practices including the Precautionary Principle; a date to be set for QCL to cease discharging groundwater downstream in excess of pre-mining gravitational flow, with QCL required to preserve/repair the aquifer [or the equivalent]; and for water quality to be maintained.
- Letter of 1.6.1998 – Request that digital pump meter be used solely for mine pit inflow.
- Letter of 1.6.1998 – Request QCL be required to ensure continuity of water supplies on land they own.
- Letter of 6.7.1998 – Request QCL's bond be raised so that if reflects the damage they cause. Issues of social and economic impacts.

(Copies of 7 letters to DME requesting amendments to QCL's Special Conditions and an amendment to their EMOS for Lease Renewal available. DME acknowledged our letter of 19/6/1997, declined our request re socio-economic impacts of 27.4.1998, and ignored all the other letters, even though we have resubmitted them on a number of occasions.)

FOI of correspondence to the Mines Minister from DME dated 1/5/98 states, quote:

"Conditions for Lease Renewal"

"Members of EEMAG are also directing their interests towards the conditions that might apply after the leases are renewed. Their letter of 30 April 1998 requested that conditions include;

- compliance audits;
- ecologically sustainable practices (which include the "Precautionary Principle")
- imposing a date when the mine water management is changed to reduce depletion of the district's groundwater. (This might involve recharge of aquifers with mine discharge and a tighter restriction of how much water the mine may discharge towards Larcom Creek);
- maintaining water quality." End of quote.

(Copy of FOI to Mines Minister from DME of 1/5/98 Attachment **77***.)*

Alleged shortcomings in QCL's water monitoring programme.

On 6 June 2003 EEMAG wrote to QCL's Water Monitoring consultant regarding inaccurate water monitoring data. An EEMAG member had previously contacted QCL's Water monitoring consultant about obviously faulty weir flow charts on the Creeks for June to September 2002. The charts registered flows where none occurred and monitoring data indicates these weirs were only recalibrated in early March 2003 – a month after the heavy rain of early February 2003. For this period of time valuable data has been lost/inaccurately recorded.

Our letter raised concerns about the low priority and long lead time taken to correct faults in the mine's digital recorder on the pump discharge from the mine pit to the settlement ponds. In May 2002 it was obvious the digital recorder was not functioning properly when QCL supplied mine pump out figures for inclusion in the first dye tracing report. EEMAG was unable to use the pump out data supplied as over a 35 day period since the mine pump out figures amounted to only 20% of the Weir 6 graph flows out of the settlement ponds.

In December 2002 during a meeting at the mine, a QCL officer admitted that the digital recorder on the pump from the mine pit was not working properly. We requested QCL's water monitoring consultant to advise us whether the digital recorder on the mine pump has been repaired or replaced.

It is our understanding that a Weir plate at Jacques Lane has been loose for some years, allowing water to escape without being properly recorded. The proximity of run-off water diverted around the mine swamps the weir at Jacques Lane during flooding.

Pump out figures are presented in graph form in water monitoring data making it unsuitable for mathematical analysis. *(Copy of letter to QCL's Water Monitoring consultant of 6 June 2003 Attachment* **78***.)*

On 28 May 2003 EEMAG wrote to QCL's Water Monitoring consultant querying the accuracy of QCL rainfall figures recorded by the mine in 2003, since QCL's rainfall record seemed excessive. We calculated 930 mm rainfall from QCL's rainfall graph for February to March 2003 over a 30 day period. Other local records for the same time were 520 mm at the property adjacent to the mine, 613 mm at East End, 584 mm at Bracewell, 625 mm at Hut Creek and 650 mm at Cedar Vale. *(Copy of letter to QCL's Water Monitoring consultant of 28 May 2003 Attachment* **79***.)*

During the time QCL participated in the East End Mine community Liaison Group (CLG) with EEMAG, our delegates were able to raise any errors in the quarterly monitoring data, which provided an opportunity for errors to be corrected in consultation with QCL's Water Monitoring consultant before they were logged into the data base. There has been no opportunity for this activity since QCL withdrew from participating in the CLG with EEMAG in October 2000. Although the loose weir plate at Jacques Lane was raised as an issue at the CLG, we understand that it has not been repaired.

On 11 May 2002, EEMAG wrote to EPA to lodge our objections to QCL's water monitoring programme winding down the number of bores and reducing the area required to be monitored; and ceasing to monitor conductivity on unequipped bores and wells without the agreement of, or informing local stakeholders. We have received no response. *(Copy of letter to EPA of 11 May 2002 Attachment* **80***.)*

Obviously it is not possible to avoid all mistakes and errors. However, given the history of the dispute, there should be a clear requirement for 'quality assurance' for water monitoring in QCL's new conditions.

QCL's compliance with Condition 11

EEMAG members recognize and appreciate that QCL has drilled and equipped deeper bores to provide an alternative water supply to nine (9) landholders in the 22 sq km DNR Map 10 zone of depletion of 1998. It took three (3) years for QCL to equip 1 of the bores, and five (5) years to equip another.

We recognize that QCL provided a reticulated water supply from Howse Dam for a landholder.

We recognize that QCL equipped two (2) bores for two different landholders who already had their own bores drilled. This exercise also took some years.

Alleged agency failure to require QCL to comply with Condition 11.

In a letter dated 5 Feb 1998 the Mines Minister stated, quote: "Your documents give a clear impression of ineffective consultation and slowness in response to QCL's consideration of providing alternative water supplies to affected parties. Based on the considerable amount of information made available to my Department and considering the evidence of misinterpretation of the requirements of Special Condition No 11 by QCL, the assessment concludes that QCL has not complied with the requirement of that Special Condition."

"With regard to not providing information about groundwater, while the timing and nature of reporting and the avenue for reporting were not clearly specified in the Special Conditions, the Department's assessment is that the company has generally not complied with the intent of this provision." End of quote. *(Copy of letter from Mines Minister of 5 Feb 1998 Attachment* **76**.*)*

We are professionally advised that "an unequipped bore is not an alternative water supply".

Note: this is not a complete list.
(1) A landholder lost his irrigation supplies in 1995, but it was not until the DNR February 1998 Position Paper that he was officially recognized as suffering from water loss due to mining. Machine Creek in his property went dry. It had been perennial and historically provided a natural boundary between his and his neighbour's property. Ultimately 2 km of new fence had to be erected.

In 1998 QCL drilled him a bore with sedimentation in its flow. The bore was gravel packed as a means to control sedimentation. QCL offered the landholder $1000 towards equipping his bore although the cost at the time was quoted as $7000. QCL had drilled and equipped bores for his adjacent neighbours.

The landholder purchased the productive irrigation property in 1994 and had a substantial overdraft. He could not afford to pay the additional $6000 and since there was sedimentation in the bore he felt it was an unacceptable risk . (He had burned out two pumps allegedly due to sucking air and sedimentation in the flow after the aquifer lost 13 metres and water was drawn from the aquifer instead of from the "head".)

QCL ultimately trucked water for him when his dam became empty in late 2002 until it rained in February 2003. QCL promised to provide a pump for the bore more than 6 months ago. However the Contractor is the only one in the region doing this type of work and is heavily committed with pressures of priority work. The pump has not been installed but is promised shortly.

(2) In the case of another landholder in the DNR February 1998 22 sq km zone of depletion, QCL refused to provide him with an alternative water supply when he had supply difficulties from his two (2) bores, since they were negotiating to purchase his land. In November 1999 CLG Minutes record the mine dumped two truckloads of limestone fill in his dam as a solution to his water loss to control bogginess in his dam for his cattle to get access to the water. This person suffered considerable distress. QCL excised the landholder from their mining leases and he has since died.

(3) Another landholder lost supplies from 2 bores and Machine Creek went dry on his property. It had historically provided a fence line. QCL provided an alternative water supply for the loss of 1 bore. They trucked water to the block that had lost the other bore, but limited the supply to 1 truck per week. A letter from QCL states that the landholder should run piping from his alternative supply to service his other block more than a kilometer away.

(4) QCL drilled a bore with an unacceptably high conductivity level, that the landholder concerned declined to accept as an alternative water supply. QCL continued to truck water to the landholder.

(5) People with a young family of 5 children purchased a block of land at East End in 1995. They used solicitors for the purchase and believed everything was clear. Originally the East End farming district was known to have good water supplies. After finding out their daughter had a disability they were advised it would not be good for her to be isolated and they put their block on the market. They then found out QCL was causing water depletion at East End and that they are in the DNR February 1998 zone of depletion. Had they been aware of the 1998 IWS assessment that mine-induced depletion was 2 km from the mine they would not have purchased their land. They have had their property listed with real estate agents for 7 years and have been unable to sell their land, except at a greatly reduced price. This whole issue has caused them considerable economic hardship and distress.

(6) People who purchased land in about 1993 drilled a deep bore attempting to find water but were unsuccessful. They are in the DNR February 1998 Map 10 zone of depletion and have not been provided with an alternative water supply.

(7 and 8) Two (2) Arbitrations were sought from DNR in October 1998 by landholders on 2 different properties (that are now in QCL's 22/2/2000 depleted zone) after QCL refused to provide an alternative water supply, were deemed as finalised/invalid by DNR&M and QCL (after a four (4) year wait) just prior to QCL's leases being renewed on 20 March 2003, without notifying the people involved. This was despite an 84 year-old landholder visiting DNR&M in December 2002, seeking the outcome of his Arbitration.

Socio-economic Impacts

EEMAG members recognize and acknowledge that QCL's East End Mine brings economic and social benefits to the local community and to the broader regional community through direct and flow on employment and business opportunities, through their funding of infrastructure and through their financial support to community organizations. We recognize that the QCL mine is important to the Queensland and Australian economy overall.

However, landholders in and around QCL's mining leases are experiencing negative socioeconomic impacts (direct, indirect and cumulative) that have not been fully examined or addressed. We allege these are due to government failure to regulate QCL to comply with sustainable development and water reform.

Prior to the 1950's Mt Larcom was a dairying and fodder-growing area, with some amount of small cropping. In the 1950's the district converted to mechanized agriculture with the purchase of tractors, and peanut growing became a key industry. The peanuts were grown very successfully and in such quantity as to glut the market and exceed the capacity of the Peanut Marketing Board to handle the merchandise. The collapse of the marketing structure and poor seasonal conditions caused the ultimate demise of the industry in the late 1950's.

In the 1960's there were 83 dairy farms in the whole of the districts. Now there are 3. We recognize that there has been a decline in rural profitability and a collapse of the dairy industry. However our district was broadly brushed as Good Quality Agricultural Land in by the CSIRO in 1968, and had potential for a diverse range of rural activities prior to the loss of water supplies.

On 2nd July 1975, the Chairman of the Mt Larcom and District Mining Protest Group wrote to the Minister for Primary Industries detailing the results of a survey from 32 farmers affected by QCL's mining leases, and the productivity of those 32 those farms at that time. *(Copy of letter to Minister for Primary Industries of 2nd July 1975 Attachment* **81***.)*

Attached is a copy of "Detailed District Irrigation Usage vs Mine Pumpout Figures and Revised More Informative Table A" prepared by EEMAG in response to the EPA Consultant's assessment of irrigation in his "Addendum to Review of Hydrological Impacts of East End Mine. It was provided to EPA's consultant, EPA, DNR&M, QCL's modeling consultant and others as an inclusion in EEMAG's Triology Report of December 2001. *(Detailed District Irrigation Usage vs Mine Pumpout Figures and Revised More Informative Table A Attachment* **82***.)*

Table A, District Irrigation documents irrigation use of available district water supplies in 1980 and reduction in water use by 2000 due to reduction/loss of local water supplies and thus a corresponding reduction of productivity. Table A is listed below:

Table A

District Irrigation

	20 YEARS AGO	Min. Area Acres	Max. Area Acres	Max. pump Litres per second	% Use cycle	NOW	Min. Area Acres	Max. Area Acres	Volume Litres per second	% Use cycle
Cedar Vale										
Landholder	✓	3	5	1.5	20%	X	-	-	-	-
Landholder	✓	5	8	3	60%	✓	5	8	3	60%
Landholder	✓	5	20	5	60%	½	3	10	5	30%
Landholder	✓	5	10	4	60%	✓	5	10	4	60%
Landholder	X	-	-	-	-	½	5	10	5	10%
Total	4	18	43	13.5	55%	3	18	38	17	50%

Lower Scrub Creek										
Landholder	✓	**6**	**20**	**6**	**40%**	**½**	**3**	**10**	**2.8**	**30%**
Landholder	✓	**20**	**30**	**10**	**60%**	**X**	**-**	**-**	**-**	**-**
Landholder	**½**	**2**	**2**	**1.5**	**5%**	✓	**5**	**13**	**4**	**60%**
Total	**2½**	**28**	**52**	**17.5**	**50%**	**1½**	**8**	**23**	**6.8**	**45%**
Bracewell										
Landholder	✓	**5**	**8**	**3**	**40%**	**X**	**-**	**-**	**-**	**-**
Landholder	**X**	**-**	**-**	**-**	**-**	**½**	**4**	**8**	**3**	**60%**
Landholder	✓	**8**	**15**	**5**	**40%**	**½**	**8**	**15**	**3**	**40%**
Landholder	✓	**4**	**10**	**5**	**40%**	**X**	**-**	**-**	**-**	**-**
Landholder	✓	**10**	**20**	**6**	**60%**	**X**	**-**	**-**	**-**	**-**
Landholder	✓	**3**	**8**	**3**	**30%**	**X**	**-**	**-**	**-**	**-**
Landholder	**X**	**-**	**-**	**-**	**-**	**X**	**-**	**-**	**-**	**-**
Landholder	✓	**-**	**-**	**5**	**40%**	✓	**-**	**-**	**10**	**20%**
Total	**6**	**30**	**61**	**27**	**40%**	**2**	**12**	**23**	**16**	**40%**
East End Catchments to Mine										
Landholder	✓	**4**	**8**	**3**	**40%**	**X**	**-**	**-**	**-**	**-**
Landholder	✓	**4**	**8**	**3**	**60%**	**X**	**-**	**-**	**-**	**-**
Landholder	✓	**5**	**10**	**3**	**60%**	**X**	**-**	**-**	**-**	**-**
Landholder	✓	**2**	**4**	**2**	**20%**	**X**	**-**	**-**	**-**	**-**
Landholder	✓	**10**	**20**	**6**	**60%**	**X**	**-**	**-**	**-**	**-**
Landholder	✓	**5**	**10**	**5**	**60%**	**X**	**-**	**-**	**-**	**-**
Landholder	✓	**10**	**20**	**8**	**40%**	**X**	**-**	**-**	**-**	**-**
Landholder	✓	**4**	**8**	**8**	**40%**	**X**	**-**	**-**	**-**	**-**
Total	**8**	**44**	**88**	**38**	**50%**	**0**	**-**	**-**	**-**	**-**
Grand Total	**20½**	**120**	**244**	**96**	**50%**	**6½**	**38**	**84**	**39.8**	**45%**

Note: - A Landholder in Bracewell was not irrigating in 1980 nor in 2000. However, for 2½ years mid 1990's, 12 litres per second was available and used at approx. 10% of possible time to pump. The amount of water used was minimal.

In QCL's April 1980 WRL Technical Report Bracewell – East End Groundwater Monitoring Review of First Three Years' Results, charts landholders' bores and wells and water levels and water quality. *(Copy of WRL Report 80/4 Attachment* **116***.)*

On 27 April 1998, EEMAG wrote to the Mines Minister and commented, quote: "Some social and economic stresses damaging to the wellbeing of individuals and threatening to the long term survival of our rural community and its services, have their origins in environmental impacts of the QCL mine."

"Taking these circumstances into account EEMAG members now believe Social Impact needs to be included in QCL's Environmental Mine Overview Strategy as a function of the Mining Lease renewal process." *(Copy of letter to the Mines Minister of 27 April 1998 available.)*

On 25 June 1998, DME responded, quote in part: "Social Impact was included in the Impact Assessment Study for the QCL Gladstone Expansion Project (1996). Because this project involved significant change to the mining operations at East End, a new EMOS for the mine project was developed. Your Group responded to both documents through the public consultation process. In addition, this Department formally appointed EEMAG as an advisory body for consideration of the draft EMOS. The purpose of the EMOS is to identify potential environmental impacts and to address how they will be managed. The final EMOS for the project addresses social issues in Section 10 where there is a commitment to facilitating "the establishment of a Community Liaison Group (CLG) as a forum for [management of] East End Mine issues"."

"Impact on local communities is subjective and complex. It is also highly variable from one community to an other, and from time to time. In order to address impacts, they must first be closely specified. If such specific details were incorporated in the EMOS, they would be fixed at the time of acceptance of the EMOS. Consequently, it is considered more appropriate to facilitate a forum for community consultation and for management of issues as they arise. The CLG provides this forum." *(Copy of letter from DME of 25-6-98 Attachment* **83***.)*

On 6 July 1998 we responded to DME quote: "It is our interpretation of your letter that the DME intend to enforce us to use the CLG as an alternative judicial type mechanism. We can find no reason to believe the CLG is in any way empowered to equitably fulfil that role." and

"….Under present circumstances outcomes would be dependent solely on QCL's goodwill to the affected party/ies." And

"In the interests of the welfare of our members EEMAG formally requests the undertaking of a comprehensive Social Impact Assessment …." *(Letter to DME dated 6th July 1998 available.)(Additional correspondence from and to DME available)*

At the August 1998 meeting of the CLG EEMAG lodged a formal request for an independent Social Impact Assessment to be undertaken and provided a draft Terms of Reference. *(Copy of letter and draft Terms of Reference available.)*

This is recorded in the CLG Minutes for 24 August 1998 under Item 9, Emerging Issues. Social Impact: quote "EEMAG referred to draft terms of reference for a social impact study and the problems of getting recognition of concerns outside the area identified. Examples were the problems of selling land and feelings that ESD and the precautionary principle had not been properly taken into account. [EEMAG President] provided maps showing that the area identified as affected by the mining has increased progressively."

"EEMAG pointed out that there are winners and losers. Those who have been disadvantaged are seen as troublemakers. Reference was made to assistance for [Mrs] identified in the IAS. It was pointed out that social impacts have their origins in environmental impacts."

"The chairman summarized by noting that EEMAG had expectations that are not being met and that change generally was inevitable. [DME] stated that he would drawn the issue to the attention of the Minister." End of quote. *(Minutes for CLG 24 August 1998 available.)*

Although Social Impact was consistently placed on the CLG Agenda there were no meaningful discussions. CLG Minutes record QCL commented that by complaining about the water problems we were talking our district down.

On 27 September 1999, we wrote the Queensland Premier, quote: "EEMAG members wish to lodge a submission for a Legislative Base to be formulated to require audits and provide for equitable administration of Social and Economic impacts that arise after mining (and industrial) projects are operational." And

" The difficulty in gaining acknowledgement of social and economic impacts has not worked to progress resolution/management of the dispute or produce a win/win situation for QCL and the community." We attached a list of some social and economic impacts affecting our members. We did not receive a reply. *(Copy of letter to the Premier of 27 September 1999 Attachment* **84***.)*

Interviews with local landholders regarding the economic impacts from loss of water were undertaken in late 1998/early 1999. Copies of some of these are attached for your information. *(Copies of interviews Attachment* **115***.)*

In 1999 EEMAG funded an Accountancy firm to undertake a valuation of economic loss due to water loss from a property that was an irrigation property in 1999. The results showed a total economic loss of $83,938 from 1995 to 1998 inclusive. Capital loss from devaluation of the farm, and additional capital expenditure required from having to fence 2 km was not factored into the economic loss. *(Copy of Economic Loss assessment by an Accountant Attachment* **85***.)*

On 16 November 1999, we wrote to DME requesting that DME regulate that diminution of earning ability of land and diminution of value of land due to injurious effect from QCL's mining activities be equitably resolved for landholders outside of QCL's mining leases prior to lease renewal. *(Copy of letter to DME of 16 November 1999 available.)*

On 21 February 2000 DME responded, advising "Additionally, pursuant to Section 363 of the Act, the Wardens Court has jurisdiction to hear and determine actions, suits and proceedings with respect to any matter and any assessment of damage, injury or loss arising between mining lease holders and owners of land from activities purported to be carried on under the authority of the Act. Section 363 applies regardless of whether the land is within or outside the mining lease. *(Letter from DME of 21 February 2000 available.)*

Excising landholders from leases – a negative economic impact.

EEMAG alleges that the carrying forward of QCL's unchanged EMOS by enactment of the EPOLA Bill that facilitated QCL to continue to be regulated on the basis of their IAS findings, also facilitated DNR&M's approval of QCL's application to excise the land of four elderly landholders [that had been covered by mining leases since 1976] from their mining leases in 1999, two years after their mining leases expired on 31 July 1997.

Our view is substantiated by DME's letter of 26 Jun 2001, quote: "The matter of changes to property values was included in the Impact Assessment Study and it was considered that the Gladstone Expansion Project would not affect property values. With regard to landholders whose land is subject to Mining Leases the Mineral Resources Act 1989 provides for compensation to landholders and arrangements satisfactory to both parties must be agreed before the Governor-in-Council will grant or renew the leases. In recent times the company was unable to negotiate agreements for several areas causing it re-evaluate its need for access to mineral resources in those areas. The result was that these areas were surrendered from the mining leases." *(Copy of letter from DNR&M of 26 Jun 2001 Attachment* **17**.*)*

In the case of one of the landholders who was in the February 1998 22 sq km zone of depletion, QCL refused to provide him with an alternative water supply when he lost supplies from his two (2) bores, since they were negotiating to purchase his land. In November 1999 CLG Minutes record the mine dumped two truckloads of limestone fill in his dam as a solution to his water loss so his cattle could get access to water. QCL then excised the landholder from their mining leases.

We allege that this is a clear example of non-compliance with Special condition 11. After injuring this land, how could QCL be permitted to excise the property from the lease area without any remdiation?

The occupational financial base/superannuation fund of rural people is usually invested in their farms and the Land Court decision of 28/2/2002 determined loss of local land values due to water loss and district negativities.

People, including the elderly, are deprived of being able to realise on the undamaged value of their properties, and are trapped in their situation since they are not confident they can sell at a price that would allow them to reasonably relocate. There has been problems with Centrelink not being prepared to adjust their valuations, and some elderly people are unable to get support. These problems have resulted in district stagnation.

A Human Rights article in the American Journal of International Law Volume 89 of 1995, stated that virtually every kind of negative effect caused by environmental nuisance could greatly affect the value and saleability of property. The article stated such interference could be assimilated to a partial de facto confiscation of property.

We allege our situation amounts to a "partial defacto confiscation of property". *(Copy of Journal of International Law Volume 89 of 1995 available.)*

<u>Negative Socio-economic Impacts caused by Noise</u>

The thoroughbred horse spelling yards and breeding stables on land adjacent to QCL's Rail Loader has unavoidably had to wind down its business.

Only six of the planned thirty spelling yards were built before QCL announced their intention to expand, since the potential risk due to noise from the loader for up to two hours at a time, twice a night did not allow for good and safe spelling conditions for nervous racehorses on unfamiliar surroundings. The horses at the spelling yards are there to be "de-stressed".

The present site for the Rail Loader was not included in the original Impact Assessment Study. The site for the loader requested by the spelling yards owners was rejected because of the additional cost to Queensland Rail and QCL.

The affected landholders believe that the present site of the rail loader was always the planned site as it would have been more cost effective to QCL than any of the other options offered in the IAS.

The Ombudsman refused to fully investigate their complaint. *(Attached copy of letter by owners of the Spelling Yards and Breeding Stables plus a copy of their Business Plan. Attachment* **118.***)*

Alleged failure of DNR&M, QCL's Modelling Consultant and EPA's Consultant to properly investigate/consider the extent of karst development in local limestone deposits.

On 16 August 2002 we wrote to the Minister for Natural Resources and Mines claiming that the results of a fluorescein pulse dye injection trial at Bracewell provided evidence of a direct conduit linking the dye injection site with the QCL mine pit. *(Copy of dye tracing trial available.)*

The Minister's letter of 7 Oct 2002 stated quote "The hydrogeology of the area is well known. The intervening geology has a very low permeability such that even if a link exists, it would take a number of years for a tracer to arrive at the mine. This assessment is based on calculation from the wealth of existing groundwater data."

Page 2 of the Minister's letter stated, quote: "When the more realistic and well-tested information from the many bores and the computer analysis are considered, it is more likely that the dye would take over seven years to arrive." *(Copy of Letter from Minister for Natural Resources and Minister for Mines dated 7 Oct 2002 Attachment* **86***.)*

A response by a highly experienced karst aquifer expert on 18 October 2002 provided comments in relation to limestone groundwater movement.

The expert commented that the Minister's observation "The intervening geology has a very low permeability such that even if a link exists, it would take a number of years for a tracer to arrive at the mine" was completely at variance with published literature worldwide that concern movement in karstic limestone aquifers. The expert commented that the limestones in question are acknowledged to exhibit karstic features, such as sink holes, streams leaking through their beds into the groundwater system etc. The expert offered to produce a comprehensive and international bibliography to support his comments. *(Copy of karst expert's letter of 18 October 2002 to the Minister for Natural Resources and Mines Attachment* **87***.).*

On 25 October 2002 the CLG consultant wrote to the Minister for Natural Resources and Mines regarding channels which are interconnected by the very nature of karst formation. *(Copy of letter from CLG consultant to Mines Minister dated 25 October 2002 Attached* **88***.)*

The Mines Minister provided a copy of his response to the karst aquifer expert to EEMAG on 25 Nov 2002, quote: "It is acknowledged that there are karstic limestones in the East End and Bracewell areas. In addition it is acknowledged that there may be two forms of groundwater flow in the limestone. While there are karstic limestones in the Bracewell and East End area they are not regarded as being particularly cavernous. Most of the sinkholes in the area are choked off by silt and clay deposits a short distance from ground level. The evidence to date indicates that large conduit systems do not exist. There are no significant cave systems developed in this area."

On page 3 of the Minister's letter it stated, quote: "Having regard for the geology and the hydrology of the area in question it is unlikely that dye testing will add value to the weight of evidence that currently prevails. Therefore your kind suggestion for my Department to participate in a co-operative tracer experiment which includes the East End Mine Action Group, Queensland Cement Limited and yourself is declined." *(Copy of Mines Minister's letter dated 25 Nov 2002 Attached* **89***.)*

On 29 November 2002, we wrote to DNR&M regarding serious inadequacies in their information base regarding on karst features in local limestone deposits, which was reflected in misinformation in the Minister's letter.

We advised DNR&M we were shocked by their lack of comprehension about the district's cavitous areas and sink holes where permeability is extremely high. There are a number of substantial cave systems which the Department ignored or was unaware of. A substantial cave system described in QCL's 1975 EIS was recently researched and is more extensive than was previously understood.

In relation to DME's claim local sinkholes are choked off by silt and clay deposits, EEMAG members responded that we were not aware that there had been any research by any party whatsoever into the incidence and status of local sinkholes. Observations by landowners confirm that sinkholes deliver large quantities of run-off water directly into the aquifer during recharge events.

An example of the function of local sink-holes was documented and photographed during heavy rainfall of 428 mm in February 2003 when approx 50,000 litres of water per hour was observed/ documented continually flowing into the sink-hole used for dye tracing. This flow occurred from 10.30 am Wednesday 5 February until 12.00 noon Friday 7 February 2003. Thus over a period of almost 50 hours approaching 3 megalitres of rainfall runoff was absorbed by this one sink-hole. The sink-hole did not appear to lose any capacity to accept this quantity of flow.

Alleged Refusal by DME to log sinkholes in 1998

In our letter to DNR&M on 29 November 2002 regarding local karst development, we pointed out that on 6th April 1998 EEMAG had written to the Mines Minister advising, quote: "Local knowledge contends limestone deposits are more extensive than presently recognized,

particularly in areas vital to research of groundwater flows, some of which are presently classed as volcaniclastic."

"Locations of the many limestone-based sink holes with potential to deliver large quantities of rainfall runoff directly to groundwater recharge are very important and should be officially recorded."

"We request a DME geologist in company with [DME delegate to CLG] of Rockhampton be allocated adequate time to visit our district, and together with landholders examine and log these additional limestone deposits and sinkholes, so their existence and function does not continue to go unrecognized." End of quote. *(Copy of letter to Mines Minister of 6th April 1998 Attachment* **90**.*)*

Note: Our letter above was motivated by serious inadequacies in DME's limestone mapping used to support QCL's Modelling Consultant's findings, and by serious inadequacies in DNR's record of local sink-holes in mapping included in DNR's Position Paper.

On 13 May 1998, the Mines Minister responded; quote "In regard to your request, I am pleased to advise that [Officer}, Regional Environmental Manager and [Officer] of the Queensland Geological Survey will visit the area in mid to late May. [DME Officer] will liaise with you regarding the exact time of the visit. As you would be aware, [Officer] has commenced a series of visits for this purpose."

"It is proposed that the discussions on the detailed geology and hydrogeology will take place prior to the May meeting of the Community Liaison Group." End of quote. *(Copy of letter from Mines Minister dated 13 May 1998 Attachment* **91**.*)*

CLG Minutes for 13 July 1998 Item 3(i) – Water Management - Result of [DME geologist's] visit – DME; quote: "EEMAG had requested that geologist --- visit the area. DME advised that [the geologist] would be available following submission of [EEMAG's Modelling Consultant's] report to EEMAG Item 3(ii) <u>if still required.</u>"

The DME Officer involved had not investigated any sink-holes at that point. After the change of government he did not support the geologist's participation, commenting he was "a resource geologist" and terminated the arrangement after EEMAG's modeling consultant provided his report in August 1998, despite EEMAG's modeling consultant reporting the distinct possibility of <u>confined flow conduits</u> linking the Bracewell aquifer to East End.

The visit by the geologist to log sink-holes and additional limestone deposits did not occur.

<u>EEMAG's Modelling Consultant's Report of August 1998</u>

EEMAG's Modelling Consultant's Interim Conclusion of his report, stated; quote: "On the basis of the available evidence, it cannot be concluded that there is no effect of mine dewatering on the Bracewell aquifer, for the following reasons."

"1. Some connectivity between the aquifers in the vicinity of Weir 2 appears likely as indicated

by the permeable material exposed by the excavation in early 1998.
2. In such a complicated aquifer system there is a distinct possibility of channels of relatively more permeable material linking the aquifers and acting as confined flow conduits."

"The evidence on amounts and timing of drawdown in the Bracewell aquifer, in spite of the prolonged drought, are consistent with the possibility of mine dewatering effects reaching the Bracewell." End of quote. *(Copy of EEMAG's Moedlling Consultant's Report August 1998 Attachment* **92***.)*

(After we learned that the local limestone deposits were a karst aquifer, an EEMAG member queried our Modelling Consultant as to what he meant precisely by his use of the term "confined flow conduits". The Consultant responded that he meant conduits or 'pipes' in the limestone.)

In his letter on 28 September 1998, DME responded to the findings in EEMAG's Modelling Consultant's report; quote: "However I take the opportunity to reiterate or point out the following:"

- "The [EEMAG's Modelling Consultant's] report does not add information on which to base a change to the presently recognized area of impacts."

(Copy of letter from DME dated 28 September 1998 Attachment **44***.)*

Since our local aquifer is a karst aquifer with sink-holes and conduits, we strongly disagree with DME's view. When EEMAG's modelling consultant raised the issue of confined flow conduits linking Bracewell with East End he was flagging the distinct possibility there were conduit flows in the karst aquifer that had not been properly investigated by DNR, DME or QCL's Modelling consultant, ie important additional information omitted when evaluating the mine's impacts.

We believe, EEMAG's modelling consultant's report justified our request for the district's sink-holes to be cooperatively logged with DME, so that the evidence of karst systems was properly investigated and groundwater flow was better understood. However, DME terminated the arrangement to log the sink-holes and limestone deposits.

We allege that government adopted a position they did not intend to change well before EEMAG's modelling consultant's report was produced in August 1998.

Our view is reinforced by the letter from the Mines Minister of 25 Nov 2002, where it stated that evidence indicated large conduit systems do not exist, and advised that DNR&M declined to co-operate in any further dye tracing activities. We believe that DNR&M do not want to know about any hard evidence on conduit flow.

Evidence that conduit flow into the East End mine pit is known to have occurred, is included in "The Effect of Geological Structure on Groundwater Flow in a Mine in a Limestone Aquifer" Spring Semester 1988 by the son of QCL's groundwater consultant. We refer to page 94 and in particular Plate 5.4 on page 95: Groundwater Inflow through a Solution Channel quote: "View from East End Mine Grid Ref. 4900N, 9570E looking east. Limestone bedding plane; Strike 315^{o}, Dip 85^{o} Inflow point at R.L. 20 metres A.H.D.

Plate 5.4 shows water flowing from a conduit/solution channel into the East End mine pit around 1988. Note: This document was provided to EEMAG by DNR. *(Copy of cover of The Effect of Geological Structure on Groundwater Flow in a Limestone Aquifer plus pages 94 and 95 Attachment* **93***.)*

We allege that government is in denial about conduits being intersected by mining at East End.

Alleged improper use of Mt Larcom Chamber of Commerce letter of 1960 as a de facto pre-mining benchmark by government agencies

In response to representations made on our behalf, the Minister for Environment stated in a letter dated 12 Nov 2001,

quote: "The matters raised in the correspondence are not new. As long ago as September 1960, the then Honorary Secretary of the Mount Larcom and District Chamber of Commerce wrote to the Irrigation and Water Supply Commission, seeking advice concerning underground supplies in this area (copy enclosed). The letter said in part:"

" "This area, as you probably know, is subject to long dry spells during which surface water supplies become almost non-existent. Existing underground supplies do little to overcome this recurring problem as the water from these shallow level bores is unsuitable for general use, irrigation purposes and in some parts for stock watering."

"This local description of the water issues in this area was given well before the beginning of the East End Mine operations."

"EEMAG has sought to focus attention on the impact of the East End Mine as the significant contributing factor in depletion of water in the regional groundwater system. ….." End of quote. *(Copy of letter from Minister for Environment dated 12 Nov 2001and copy of letter from Mt Larcom Chamber of Commerce to IWS dated 14th September, 1960 Attachment* **94***.)*

We interpret the Environment Minister is using the letter as an authoritative pre-mining benchmark for the rural districts of East End, Machine Creek, Hut Creek, Bracewell and Cedar Vale in the QCL project area.

The purpose of the Mt Larcom Chamber of Commerce' letter to the Irrigation and Water Supply Commission was to scope a reticulated water supply for the Mt Larcom township only - outlying farming districts that extend from Mt Larcom township area to the south-west for approx twenty (20) kilometers were not included in the scope for reticulated town water supply.

Mt Larcom township had no right of access to the privately held water resources (Wilmot lagoon, perennial creeks, bores and wells) in the outlying farming districts. Nor did the Chamber of Commerce have the financial resources necessary to establish a reticulation scheme.

Water from Wilmot Lagoon (at the farming district of East End approx 3 kms from the town) was ultimately sourced for town water. This access was secured only after resumptions by Calliope

Shire Council which resulted in litigation, and compensation awarded to the two different (2) families of landholders involved.

In the 1960's there were approx eighty-three (83) dairy farms in the combined farming districts of East End, Machine Creek, Hut Creek, Bracewell and Cedar Vale.

Obviously, it would have been impossible to sustain production of 83 dairy farms on water resources described by the Mt Larcom & District Chamber of Commerce letter of 1960.

The Mt Larcom Chamber of Commerce letter of 1960 letter did not represent rural water supplies in QCL's Water Monitoring Area in 1960.

Prior to our receiving the letter from the Environment Minister, DNR&M and EPA had not advised that they were using the Mt Larcom Chamber of Commerce letter of 1960 as an authoritative pre-mining benchmark. If the letter from the Environment Minister of 12 Nov 2001 had not been forwarded to us, we probably still would not be informed.

When we received the Minister for Environment's letter of 12 Nov 2001, we responded to the Ombudsman since EEMAG had a complaint before his Office. 3 EEMAG members met with the Ombudsman on 24 November 2001 and discussed the matter with him in detail. (The Ombudsman advised EEMAG on 27 September 2002 that he refused to fully investigate our case.)

On 22 April 2002, we wrote to EPA, explaining the purpose of the Mt Larcom Chamber of Commerce letter it detail, and stating that it did not constitute a pre-mining benchmark for water supplies in QCL's Water Monitoring area. *(Copy of letter to EPA dated 22 April 2002 available.)*

On 15 May 2002, EPA responded, quote "With respect to the issues raised in your letter of the 22nd of April with regards to the benchmarking of pre-mining groundwater supplies. The EPA relies on the information provided in the audits and the report of [the EPA's consultant] and the letter you refer to has been placed in perspective." End of quote. Copy of letter from EPA of 15 May 2002 *Attachment* **35***.)*

We learned the letter from Mt Larcom Chamber of Commerce of 1960 was supplied to the EPA's consultant for his Technical Assessment that began in February 2001. EPA's consultant did not advise EEMAG members about the letter, nor discuss it with us.

We wrote to DNR&M on 4 December 2002 about the use of the Mt Larcom Chamber of Commerce letter of September 1960 as a pre-mining benchmark. The matter was raised in a letter to the Mines Minister on 22 April 2003. Neither have responded. *(Copies of letters to DNR&M 4.12.2002 and Mines Minister 22.4.2003 available.)*

Furthermore we understand the purpose of the Mt Larcom Chamber of Commerce' letter means it is legally regarded as unsubstantiated and an ambit claim, and to administratively use it as an authoritative finding is improper.

We allege that the Mt Larcom Chamber of Commerce letter has been improperly used to overrule QCL's consultant's April 1980 Report that documented Machine, Hut and Scrub Creeks as perennial, and charted water levels and water quality in bores and wells pre-mining, and was omitted from QCL's 1996 IAS information base. We allege that omission of the April 1980 Report facilitated QCL's claim that the mine pit water "is of similar quality as the receiving groundwater. (ie 3000 to 3500 MicroSiemens/cm)".

Alleged inaccurate benchmark that drought has cumulatively occurred over the life of the mine - due to omission of 1990/1991 flood rainfall.

In August 2001 EEMAG received from the Ombudsman a copy of DNR&M's Report to the Ombudsman, "Special Lease Conditions – the Department's historical perspective" with Attachment 4, a graph of Mount Larcom – Yearly Rainfall Analysis Cummulative Difference from the mean.

The Graph states "Drought phase commences at about 1979", and later "This line shows the deepening drought conditions." with an arrow indicating that drought conditions deepened in 1991. *(Attachment 4 Rainfall Graph Attachment* **95***.)*

The way the graph is presented, depicts DNR&M's decision is that drought has cumulatively occurred over the life of the mine.

This interpretation can only be arrived at by disregarding the prolonged 1990/91 local (and regional) flood rains (Dec 1990- 412 mm, Jan 1991- 291 mm and Feb 1991- 182 mm) which resulted in prolonged and widespread flooding that the Bureau of Meteorology recorded as "the third highest flood on record since readings began in about 1860." *(Rainfall records and Bureau of Meteorology report Attachment* **96** *and* **97***.)*

The 1990/91 flood rains were basically a year's rainfall in three months, which fully recharged the Bracewell aquifer. 1988 and 1989 were above average rainfall years.

We believe the structure of the 'Cummulative Difference from the mean' rainfall graph, as presented to the Ombudsman misrepresents the effect of rainfall patterns in relation to aquifer recharge, and facilitated DNR&M to claim drought effects over the life of the mine..

EPA's consultant in his draft Addendum Report of May 2001, on pages 6 and 7 interpreted an uninterrupted cumulative rainfall deficit of nearly 2,000 mm, equivalent to more than 2 years of average annual rainfall. His finding could only have been arrived at by disregarding the 1990/91 flood rains.

EEMAG alleges that agency failure to take into account the 1990/91 flood rains that fully recharged the Bracewell aquifer in 1991 is a strategy to explain the progressive loss of water levels in Bracewell that started in 1991 and within a few years depleted the Bracewell aquifer. Prior to mining this loss of water levels was unprecedented within this short timeframe. Bore graphs show that when QCL deepened their mine to 0 m AHD in 1992/93 their actions coincided with an extremely high rate of water level decline in much of the water monitoring area including Bracewell. (*Bore charts available*)

We allege it is being used to explain the extraordinary events of Robertson Creek (a tributary of Scrub Creek) at a landholder's property going dry a couple of weeks after the flood rains stopped in early 1991, and Hut Creek at a landholder's property going dry in mid 1991 a number of months after the flood rains ceased. Both of these creeks had been perennial until 1991.

The EPA Consultant's finding that these formerly perennial creeks lost their flow in early 1991 due to drought and landholder usage cannot be justified when the recharge of 1990/91 wet season is properly taken into account.

Landholders would not have irrigated for a number of months after the flood rains ceased since the ground was saturated by the prolonged rainfall.

Alleged withholding of important, relevant information

On 5 Feb 1998, the Mines Minister had advised quote: "With regard to not providing information about groundwater, while the timing and nature of reporting and the avenue for reporting were not clearly specified in the Special Conditions, the Department's assessment is that the company has generally not complied with the intent of this provisions." *(Copy of letter of 5 Feb 1998 Attachment* **76***.)*

Crucial water monitoring data, reports of assessments of water monitoring data prior to 1995, and geological data from drilling logs have been omitted from evaluation of QCL's depletion of the water table.

We allege that crucial, relevant information has not been supplied to affected landholders or to our consultants as required by QCL's original Condition No 9. Our requests to QCL, DNR&M and EPA have achieved very limited success.

Since 1995 EEMAG has sought full and frank disclosure of QCL's mine pit inflow discharges since dewatering commenced, on numerous occasions without success. For example on 22 October 1996, EEMAG wrote to QCL, Re Data Information, quote: "We requested the daily volume readings of Weirs One and Six since mining commenced: Reading of the daily flow rate creek weirs since monitoring began: and, The proposed modeling planning and data." *(Copy of letter to QCL dated 22 October 1996 available.)*

The proposed modeling plan, and some data from Weir 2 at Machine Creek was subsequently provided by QCL.

Weir 6 flows were provided to EEMAG in mid 2001. However the records are fragmented and inadequate: for example,

(dewatering commenced in November 1979)

Weir 6 Flow Rate (m^3/day)

3-Nov-78 until 10-Nov-83 blank
20-Jul-94 until 26-Feb-96 blank

7-Dec-87 until 20-July-89 showed 0 discharges
1-Oct-89 until 1-Oct-90 showed 0 discharges
13-Aug-91 until 17-Nov-91 showed 0 discharges
(We understand that when water overtopped the Weir plate it was recorded as 0, that is when discharges were above 6 megalitres per day. If this is correct then obviously the real status of zero is incomprehensible. 1988 and 1989 were above average rainfall years
In Dec1990 Jan 1991 and Feb 1991 there were 3 months rains resulting in the third highest floods on record since about 1860)

11-Nov-83 until 6-Dec-87 largely recorded
21-Jul-89 until 30-Sep-89 largely recorded
1-Oct-90 until 12-Aug-91 recorded
18-Nov-91 until 19-Jul-94 largely recorded
27-Feb-96 until 8/Mar/01 recorded *(Copy of QCL's Weir 6 mine pit discharges available.)*

On 31 May 1999, EEMAG wrote to the Minister for Natural Resources regarding QCL's Consultant having dropped a large number of bores and well from the water monitoring programme in 1987 and 1990, because after recharge they had reached their full level as previously established and were not affected by mining. Important information from these bores and wells as a control area has been disregarded. *(Copy of letter to Minister for Natural Resources of 31 May 1999 Attachment* **13***.)*

5 metres of reports by QCL's consultant withheld
EEMAG always believed that QCL's Consultant during his twenty (20) years' contract to QCL would have produced more than three (3) reports on the results of assessment of their water monitoring data that he collected quarterly since 1977. Requests to QCL through the CLG that all their consultants reports be provided to EEMAG under Condition 9 were unsuccessful, with QCL delegates claiming there were no additional reports on the water monitoring by their consultant.

We obtained a five (5) page list of his published work, but the names of documents listed on three (3) of the pages were blacked out. *(List of publications and reports by QCL's Consultant available.)*

When assembling evidence for the Land Court it was considered QCL's Consultant's Reports of assessments of water monitoring data to QCL during the term of his 20 year contract were relevant to attempting to prove our claims.

We also believed that the drill logs from Darra Exploration's/QCL's extensive 1974 drilling program would provide geological information that was valuable to presenting our case. Letters from the Irrigation & Water Supply Commission of July and August 1977 on Page 3 stated, quote

"Geological reconnaisance and interpretation of data from the drilling programme already carried out to enable a geological framework to be determined. Boundaries between limestone and country rock and the occurrence of alluvial aquifers would be indicated."

The data from QCL's exploration drilling program of 1974 referred to in IWS (now DNR&M) letters were not included in the hydrogeological information base.

Since EEMAG had been unable to obtain this documentation through administrative processes, we decided to subpoena QCL to obtain this evidence to assist our case for the Land Court.

QCL contested the subpoena, and we received an Affidavit on 24 August 2001 of a QCL Officer. Page 4 of the Affidavit stated, quote: "The alleged "*hydrology reports, letters and advice prepared by [QCL's consultant] in his role as consultant to QCL mine during the term of the QCL mining leases"* are not complete. They comprise a variety of smaller documents provided by [QCL's consultant] during his consultancy to Queensland Cement Limited."

"[QCL's consultant] retired in 1997. One set of the documents prepared by [QCL's consultant] is held in our archived files and set was sent to Queensland Cement Limited's head office in Brisbane."

"I have asked my staff to prepare a summary of records held in our archived files as well as a summary of records produced by [QCL's consultant] and now held at our Brisbane office. I anticipate this review will take some time to complete and in my opinion consider that it would not be finalized before 3 September 2001. The time and cost of identifying, locating and reviewing these documents will be considerable."

"The documents include maps, charts, reports and other documents. A number of the maps and charts will not readily photocopy."

"It is difficult to quantify the number of these documents, however, I am informed by [QCL's water monitoring consultant] and do verily believe that they are contained in our archives and when stacked together will reach a height of five metres."

"I am also informed and verily believe that a number of these documents are also held on the Department of Natural Resources and Mines' files and are available to the public." End of quote.

EEMAG members were stunned! We had expected there were more than three (3) reports, but we had not expected five (5) metres of reports etc.

Page 2 of the affidavit by QCL Officer states, quote: "The alleged "*standing water levels and original drill logs and analysis of drill results of QCL 1974 bore drilling program"* have never been sighted by me. In the late 1980's enquiries were made into the location of the drill logs and reports. The enquiry found no reports could be located and it was presumed that the reports had been misplaced or lost."

"I have supervised a further review of our files and the files held by [QCL's water monitoring consultant] . [QCL's water monitoring consultant] have located drill hole records for a drilling campaign dated 1974. I anticipate that these are the documents sought by the Appellant."

"The documents are highly confidential in nature and relate to the initial exploration of the site for mining purposes. The documents include detailed accounts of the deposits of resources on the site. The drilling logs are in A3 size and comprise approximately one large folder."

"(b) In relation to the second bullet point:-"

"The alleged "*drill logs from 46 diamond drill holes withstanding water levels and a total footage of 15,334 feet, drilled at an angle of 45% to horizontal"* is presumed to relate to the original authority to prospect drilling campaign in 1974 and therefore, my comments in paragraph 3(a) above apply."

"The purpose of the drilling was to assess the economic viability, geology and geochemistry of the limestone deposits. It is unusual for drill holes angled at 45^{o} to contain standing water level tests due to the likelihood that the measuring instruments will become snagged."

"Further, the alleged "*drilling logs for a further 58 shallow percussion holes drilled to determine the subsoil content of the limestone"* is presumed to relate to the original authority to prospect and therefore my comments in 3 (a) above apply"

The third paragraph on Page 3 of the Affidavit states, quote: "I have supervised a brief examination of the drilling logs and I note that Queensland Cement Limited holds at least seven large ring binder lever arch folders containing drilling logs. Standing water levels were rarely measured during the drilling campaign. The purpose of the drilling was to assess geochemistry, lithology and structure."

"The information contained in the drill logs is private and commercially sensitive. It would be a major concern to Queensland Cement Limited if such information was disclosed generally and more particularly, to competitors within the market place." End of quote.

The next paragraph contained an inaccurate statement that "the Appellant has a relationship with one of Queensland Cement Limited's competitors". This is not correct. We do not wish to use the space to rebut the matter here, but we would happy to rebut the statement. *(Copy of Affidavit by QCL Officer available.)*

We are legally advised that given the length of time (28 years) since the exploration drilling work was done for QCL , their claim of the drilling logs being "private and commercially sensitive" is not legitimate, particularly since QCL have Mining Leases covering most of the land where drilling was carried out.

There has been **no** ground truthing carried out to by DNR&M to prove or disprove their position that limestone deposits are not continuous between East End and Bracewell. Yet there is evidence that limestone deposits extend well beyond areas recognised in DME's mapping. The

2002 dye tracing results demonstrate that limestone deposits are connected between the sink hole site at Bracewell and the East End mine.

Obviously QCL's 1974 drilling logs could assist in proving or disproving the existence of limestone deposits outside the zone in DME's mapping, as well as subterranean conduits and cavities etc.

The data from QCL's exploration drilling program of 1974 (28 years ago) is still withheld from the hydrogeological information base.

On 22 January 2002, EEMAG requested the Ombudsman to recommend DNR&M to require QCL to provide the information mentioned in their Affidavit and their Mine Pit discharges, under Special Condition 9. *(Copy of letter to the Ombudsman dated 22 January 2002 available.)*

Despite EEMAG providing the Ombudsman with year 2000 map by QCL's modelling consultant that conceded to QCL depleting 30 sq km of land, (the map also extrapolated DNR's 1997 findings of a 22 sq km depletion zone) our request that QCL be required to comply with Condition 9 responsibilities was dismissed by the Ombudsman in his letter of 27 September 2002, page 4, quote: "In contrast, the Departments contend that district ground water depletion was caused by drought and intense agriculture (excepting for an area skirting the mine), and accordingly the administrative actions pursuant to Special Condition 9 should not be called into question. Further, the Departments reject the claim that they have not taken suitable steps towards remediation." End of quote. *(Copy of letter from the Ombudsman dated 27 September 2002 Attachment* **106.***)*

From our interpretation, the only way QCL's "Special Condition 9 should not be called into question" is for the depletion zone "skirting the mine" for administering Condition 9 by DNR&M to be "approx 500 metres from the mine pit" as determined by QCL's 1995/96 IAS, and used for QCL's EMOS, since all the technical findings subsequent to November 1995 determined an enlarged zone that incorporates "affected landholders" under Condition 9 .

Case in Land Court for setting aside the Subpoena to QCL

QCL's Application to set aside EEMAG's subpoena was heard by the Land Court on 30 August 2001. The Court determined that the subpoena be set aside on the basis of lack of relevance and oppressiveness.

Counsel for QCL applied for costs. In view of the ongoing dispute between the respondents and the applicant, the matter of costs was adjourned with the application for costs to be in writing which would give the respondents the opportunity to provide a written reply.

Page 2 of the Land Court document states, quote: "It also became clear that the appeals against the valuations in that area were not simply to have the valuations reduced to lessen the potential impacts of Council rates and, possibly, land tax on the landowners. There was a wider agenda as demonstrated by the following extract from the present respondents' grounds of appeal: "

> "If the valuation increases stand then the community believe they will be seen officially to have no valid case for compensation or claim against QCL. Valuation increases sought

> to be imposed upon the already disadvantaged community within the QCL project area are therefore considered unjust, discriminatory and a shameful corruption of the valuation process." End of quote.

QCL's solicitors had made a written submission that the applicant was entitled to costs of and incidental to the application that was documented in detail on Page 4 of the Land Court decision. As part of the claim they alleged quote: "the respondents have a long history of seeking information from QCL in a manner which has now become frivolous and vexatious."

The EEMAG member's response was documented on page 6 of the Land Court decision, quote: "[The respondent] took exception to the accusation that he had a long history of seeking similar information from QCL in a manner which has now become frivolous and vexatious. He considered the statement absurd and to smack of "aggravation and ulterior motive", the ulterior motive being the intimidation of his community and the reinforcement of QCL's dominating power." end of quote.

On page 10 of the Land Court decision of 10/04/2002, it stated quote: "Could it be said that this method of seeking of information from QCL by the respondents was frivolous and vexatious. Certainly the subpoena was misconceived and it was set aside for reasons previously stated. However, in my view, it could not be said to be frivolous or vexatious. It was issued in an attempt to obtain information which the respondents considered they needed to prove their case in the valuation appeals." End of quote.

On 10/04/2002 the Land Court decision was "In respect of this application, each of the parties should bear their own costs." *(Copy of Land Court decision of 10/04/2002 Attachment* **98***.)*

There is no administrative appeals process for landholders who allege consistently unfair treatment and denial of natural justice by government agencies regarding technical assessments and when administering environmental regimes.

Ombudsman

Although we had written a number of letters from time to time, EEMAG's initial formal complaint to the Queensland Ombudsman was made on 7 July 2000, and submissions regarding numerous issues followed. When our complaint did not seem to be progressing, EEMAG took two submissions to the CJC who declined to act and referred us back to the Ombudsman.

Most, if not all of the issues we are submitting to the Productivity Commission have been taken to the Queensland Ombudsman, except for matters that occurred after the Ombudsman refused to fully investigate our complaint in September 2002.

When it was agreed the Ombudsman would investigate QCL's lease renewal process, a fresh submission to the Ombudsman was written on 15 February 2001. In April 2001 EEMAG requested the Ombudsman to require QCL's Mining Leases not be renewed nor new Mining Leases granted before unresolved issues were redressed. On 23 May 2001 the Ombudsman confirmed his acceptance of EEMAG's complaint and stated he had recommended DNR not to renew QCL's Leases until his investigation was completed.

During a visit to Brisbane for the Land Court hearing on 30 August 2001, three EEMAG members visited the Ombudsman's Office and were handed DNR&M's report to the Ombudsman, "Special Lease Conditions – the Department's historical perspective." *(Copy of Report by DNR&M to Ombudsman – Special Lease Conditions – the Department's Historical Perspective Attachment* **99**.*)*

On 23 October 2001 EEMAG forwarded the Ombudsman our 37 page response to alleged inaccuracies/ misrepresentations in DNR&M's report, together with relevant documentation. *(Supporting documents available. Copy of EEMAG report to Ombudsman in response to DNR&M's dated 23 October 2001 Attachment* **100.***)*

A letter from the Ombudsman dated 18 February 2002 advised, quote "under section 23(1) of the Ombudsman Act, the Ombudsman may refuse to investigate or, having started to investigate a complaint, may refuse to continue the investigation where it is considered that the person lodging the complaint has a right of appeal, reference or review or another remedy that the person had not exhausted and that it would be reasonable in the circumstances to require the person to exhaust the right or remedy before continuing with the investigation."

The Ombudsman advised , quote "….I consider that the Land and Resources Tribunal (the tribunal) has jurisdiction to deal with most, if not all, the issues you have raised." And

"By reference to the application to the Land Court concerning the unimproved valuation of properties affected by the mining operations, EEMAG officers have demonstrated an ability to raise complicated matters for determination by a tribunal."

Page 2 of the Ombudsman's letter of 18 February 2002 documented, and therefore appeared to accept DNR&M's statement "at EEMAG's insistence, there is no intention to recommend any changes to the special covenants and conditions in the renewal of the leases." Documentation showing DNR&M's statement to be false on pages 25 to 28 inclusive, in EEMAG's submission to the Ombudsman of 23 October, together with copies of Minutes and FOI were not acknowledged. *(Letter from the Ombudsman dated 18 February 2002 Attachment* **101**.*)*

On 4 March 2002 EEMAG responded, after having received a barrister's pro bono advice regarding the Ombudsman's suggestion we represent ourselves in an action against QCL (a multinational) and Government agencies in the Land and Resources Tribunal :

Quote from our letter to the Ombudsman: "The barrister's advice was:

- "We should only proceed if we can obtain the pro bono services of lawyers, valuers, hydrologists, resource consultants, accountants, etc.
- We would be most unwise to represent ourselves in the Land and Resources Tribunal. He commented that most lawyers have learned a great deal from their mistakes, and irrespective of how well EEMAG officers managed in the Land Court, since they have no legal skills they would be naïve to believe they would not make legal mistakes that would

sound the death knell on our case, and elsewhere EEMAG officers would be totally out of their depth.

- The Land and Resources Tribunal is a special government Tribunal which may only have power over certain things, and would limit our scope. (i.e. given the costs needed to participate effectively, other legal avenues may provide a better and more comprehensive remedy.)
- If QCL's Mining Leases are renewed or granted prior to the dispute being effectively resolved, it would sound a death knell on any hopes for adversely affected landholders being able to obtain adequate and fair compensation."

We attached two (2) Statutory Declarations regarding previous advice from a Solicitor who advised against taking an action against QCL in the Land & Resources Tribunal, and had stated his belief QCL-Holderbank (the world's largest cement company) would throw their full weight against any action by EEMAG members. The solicitor stated he believed QCL's legal advisers would use legal arguments to take the case in all sorts of directions that would use up time and money. He said he had experience of people who had gone into similar legal actions and had been financially ruined as a result. The Solicitor advised we would need around $500,000 to meet the costs including hiring the necessary professional people. He said that just because you have a good case it does not automatically mean that you win in Court, and recommended EEMAG continue to pursue a political solution.

Our letter to the Ombudsman stated, quote: "EEMAG members respectfully request a further opportunity to prove to you what we thought we had proven regarding our allegations against the DNR & M, (and the EPA)." That is we requested the Ombudsman for a review his decision. *(Letter to the Ombudsman of 4 March 2002 together with Statutory Declarations available.)*

In a letter to an EEMAG member on 28 February 2002 the Ombudsman also advised the landholder to take his case to the Land and Resources Tribunal, and attached an outdated report from the Department of Mines and Energy, Annexure A "Background and Historical Perspective."

This report was an adverse report about EEMAG and had not been supplied to the EEMAG member prior to the Ombudsman's decision, nor had it been provided to EEMAG prior to the Ombudsman's letter of 18 February 2002. We allege that the report by the DME officer contain statements that are false and prejudiced. *(Copy of Annexure A "Background and Historical Perspective" from Department of Mines and Energy Attachment* **102.***)*

On 18 March 2001, EEMAG wrote to the Ombudsman advising our member had given us DME's Annexure A. We advised we intended to respond to DME's report and that we were disconcerted the report may have been accepted as objective/legitimate by the Ombudsman when considering EEMAG's complaint. *(Letter to the Ombudsman of 18 March 2001 available)*

On 21 March 2002 EEMAG's response to DME's Annexure A "Background and Historical Perspective" was supplied to the Ombudsman. We requested the Ombudsman fully include our response to Annexure A in our complaint. Our letter stated "We interpret that DME has largely placed the blame on EEMAG. We believe DME has set out to discredit EEMAG using a

background of inaccuracies and misleading statements that we have refuted in our attached response." *(Relevant letters/reports available Submission to Ombudsman dated 21 March 2002 Attachment* **103***.)*

When we considered the attitude in the Ombudsman's letters we believed it would be helpful to list our grievances with the government agencies so that they were separated from grievances against QCL and related technical reports.

On 3 May 2002 we wrote to the Ombudsman, quote "With the intention of providing structure and clarification of the administrative details of our complaint, and of separating administrative issues from the various water reports, EEMAG members have compiled a dot point list of issues that we allege amount to cumulative maladministration of QCL's mining operations." End of quote.

In our letter we requested an Officer from the Ombudsman's Office to visit our members, or for our Secretary to visit the Ombudsman. We mentioned the attached six (6) page list did not represent the full total of alleged administrative shortcomings. *(Letter to the Ombudsman dated 3 May 2002 Attachment* **104***.)*

On 4 July 2002, 2 EEMAG delegates met with 2 representatives of the Ombudsman's office in Brisbane. EEMAG provided additional legal advice to the Ombudsman in the days preceding the deputation. During the deputation a broad range of issues was discussed, including EEMAG having sought a number of amendments to QCL's Special Mining Lease Terms and Conditions for Lease Renewal, discussions about QCL's 30 sq km map zone of depletion and our fear the mine was to continue to be administered on the 500 m zone of depletion, government use of the 1960 Mt Larcom Chamber of Commerce letter as a pre-mining benchmark and other issues.

A list of targets for settling the dispute was discussed if the Ombudsman had jurisdiction and agreed to handle the dispute. EEMAG agreed for the Ombudsman to manage a process to settle the dispute that included re-establishing the proposed Open Technical Forum. We were informed that EEMAG would be advised of the Ombudsman's decision in writing.

On 15/7/2002 EEMAG faxed a summary of our meeting with the Ombudsman. On 25 July 2002 the Ombudsman's office advised "Your minutes, provided with your letter of 15 July, appear to mirror the business of the day." *(Copy of fax15/7/2002 to the Ombudsman with Minutes of meeting available and Copy of letter from the Ombudsman dated 25 July 2002 available.)*

On 27 September 2002, the Ombudsman's Office advised on page 8 of the letter, quote: "As delegate of the Ombudsman, I refuse to continue the investigation, pursuant to s.23(1)(d) and (f) of the *Ombudsman Act* for the reasons previously set out." [in his letter]

Page 4 of the Ombudsman's letter in Dispute arising under the Special Conditions states, quote: "The driver for EEMAG's complaint appears to be a concern that the Departments allowed district mine-caused ground water depletion to go largely undetected because it did not comply with its Special Condition 9 responsibilities, and that inadequate Special Condition 11 remedial action was taken."

"In contrast, the Departments contend that district ground water depletion was caused by drought and intense agriculture (excepting for an area skirting the mine), and accordingly the administrative actions pursuant to Special Condition 9 should not be called into question. Further, the Departments reject the claim that they have not taken suitable steps towards remediation."

Note: We interpret the only way "administrative actions pursuant to Special Condition 9 should not be called into question." is for the "(…..an area skirting the mine)" not to be affecting any landholders, that is QCL's 1996 IAS/EMOS zone of depletion of approx 500 metres from the mine pit.

The Ombudsman's letter goes on to say "The essential distinction between these respective positions appears to turn on the extent of mine-caused ground water depletion. Both EEMAG and DNRM have assembled significant bodies of scientific evidence to support their respective positions, and contributions to the debate have also made by the EPA and QCL. To date the following eminently qualified scientists have expressed opinions on the matter: QCL's experts: (QCL's consultant, QCL's modeling consultant), EEMAG's experts (the CLG consultant and EEMAG's modeling consultant) the EPA's experts (EPA consultant), and DNR&M hydrologists, but notwithstanding that abundant assistance no consensus has yet been reached about the extent of mine-caused depletion."

Note: The Ombudsman'e letter omitted to acknowledge that DNR&M hydrologists determined in DNR's February 1998 Position Paper for East End Mine and Environs that mine-induced depletion affected an area of 22 square kilometers (and more than 20 landholders), known as the "Map 10 zone". This map had been supplied to the Ombudsman's Office with correspondence. *(Copy of DNR Map 10 included in QCL's 22/2/2000 Map of 39 sq km zone.)*

The Ombudsman's letter also omitted to acknowledge that QCL's consultant modeler produced a map dated 22/2/2000 that conceded mine-induced depletion to be affecting an area of 30 square kilometers (and around 30 landholders) and that this map was provided to the Ombudsman's Office and details had been discussed during our visit on 4/7/2002. *(Copy of Map 22/2/2000 by QCL's modeling consultant Attachment* **105***.)*

Both DNR's February 1998 Position Paper and Map 10 of 22 sq km, and QCL's Map dated 22/2/2000 negate the validity of DNR&M's claim [apparently accepted by the Ombudsman] that "administrative actions pursuant to Special Condition 9 should not be called into question".

The Ombudsman's letter goes on to say "To a non-scientist the information supplied in those reports is largely impenetrable and I am unable to assess meaningfully the comprehensiveness of the supplied reports, their soundness or relevance. I am also unable to critically compare one report with another."

"Therefore, due to the scientific and technical complexity of that evidence it is not possible to form a view as to the unreasonableness of the Commissioner's satisfaction within the context of the Special Conditions." Later

"As delegate of the Ombudsman, I consider that in the circumstances because of the highly technical nature of the issues in question there is no justification for the expenditure of resources when it is unlikely to resolve the principal issues underlying this complaint. Accordingly, I consider in the circumstances that the investigation, or the continuation of the investigation, of the action complained of, is unjustifiable within the meaning of s.23(1)(f) of the *Ombudsman Act."*

The Ombudsman's letter says "Pursuant to s.363 of the MRA, EEMAG has rights to pursue claims before the Land and Resources Tribunal (Tribunal)…." Later

"In conducting proceedings the Tribunal is required to act quickly, with as little technicality as possible, and without being bound by the rules of evidence (s.49). A party may appear in person or be represented by a lawyer or other person (s.47). Each party bears its own costs, unless in the special circumstances of the case another order should be made (s.50) Appeals are allowable on points of law (s.68)." *(Copy of Ombudsman's letter dated 27 September 2002 Attachment* **106***.)*

The Ombudsman claimed "due to the scientific and technical complexity of that evidence it is not possible to form a view." , and later "In conducting proceedings the Tribunal is required to act quickly with as little technicality as possible, and without being bound by the rules of evidence." We interpret these statements by the Ombudsman as being both contradictory and a misinformation in relation to the way the Tribunal would handle a case brought before it by an EEMAG member.

We reliably informed that although it is intended for the Tribunal to be conducted with as little formality and technicality as possible, since EEMAG's case **is** complicated and technical, the Tribunal would hire its own technical experts who would be contracted to government (ie government experts), and that the costs could be prohibitive.

We believe the Ombudsman's advice to EEMAG to take our case to the Tribunal is inappropriate.

We believe there is potential for conflict of interest if an EEMAG case is heard by a government tribunal with technical advice from experts contracted to the government, given that EEMAG is involved in long-standing technical dispute with government and QCL, and government has a position to protect. Particularly in view of our experiences with EPA's "Independent" Technical Assessment.

We believe the Ombudsman has acted in accord with government policy and has disregarded the evidence supporting our long list of allegations against government agencies.

We believe the Ombudsman deflected our complaint alleging long-term neglect and mal-administration against the regulating agencies to become a complaint against QCL.

When the Ombudsman refused to continue to investigate our complaint DNR&M were able to move ahead with QCL's mining lease renewal process. (We had consistently sought that QCL's

leases not be renewed or granted until outstanding issues were redressed as we felt lease renewal offered leverage to encourage QCL to fulfill their obligations.)

We believe the Ombudsman's refusal to complete his investigation set a precedent for affected landholders inside and outside the recognized zones of depletion when QCL refuses to provide an alternative water supply or other compensation.

During our meeting on 4 April 2003 with DNR&M, their verbal advice regarding QCL's new Conditions is that EEMAG members have exhausted all administrative avenues and if they want to pursue any claims their only avenue is the Land & Resources Tribunal.

We understand affected landholders are now required to take costly legal action in the Tribunal against a multinational company for an alternative water supply, if QCL/Cement Australia does not agree to landholders' claims. In 2 previous cases involving EEMAG members (one case was an objection to QCL obtaining additional leases in 1989, and one case was for contesting the subpoena for information in 2001), on both occasions QCL applied for costs. (*Copy of Minutes of Meeting with DNR&M on 4 April 2003 available.)*

The policy for affected landholders to take their case to the Land & Resources Tribunal if QCL/Cement Australia is not prepared to provide an alternative water supply is contrary to the spirit and intent of QCL's original Special Conditions, and contrary to the written commitments to landholders from the Irrigation and Water Supply Commission in 1977, quote: "The Commission would be prepared to act as an arbitrator in the event of disagreement between the Company and landholders" and "Machinery would need to be established so that landholders could purse claims due to interference without undue delay and expense and at the same time protect the Company against claims of a frivolous nature."

Instead of efficient and effective administration environmental regimes to reduce resource degradation, we understand government policy is for the technical proof, the risk and associated expenses to be placed on adversely affected landholders who have to compete against the legal power of a multinational mining company/government in the courts.

We believe government policy prices landholders' rights to water supplies beyond their reach when they are affected by QCL's mining operations.

We sought government funding to take the matter to court, since the costs would be considerable. Our request was declined.

Although we re-presented various issues to both DNR&M and the Minister's Office about strengthening QCL's Special Conditions for lease renewal, inaccuracies in QCL's IAS, and other related matters, and have claimed the DNR&M has consistently denied us procedural fairness and natural justice, the issues we raised have been ignored to date. *(Copies of letters available.)*

On 17 Feb 2003, the Minister for Natural Resources and Mines advised, quote: "As I have previously advised, the normal renewal of the mining lease process will not be further delayed and as the lease conditions relating to the provision of alternate water supply to landholders affected by the East End Mine have been maintained, I consider the matter closed."

Legal Constitutional and Administrative Review Committee

After the Ombudsman refused to continue to investigate EEMAG's complaint, EEMAG advised the Legal, Constitutional and Administrative Review Committee (LCARC) we did not accept the Ombudsman's decision, and sought their intervention on the basis we had been denied natural justice.

LCARC advised they only have a monitor, review and report function, with wider responsibility to consider legislation about administrative processes and law.

They also agreed that there was no review process beyond the Ombudsman, but since the Ombudsman was a review process they considered the mechanisms satisfactory.

EEMAG persisted asking for new legislation to correct the deficiencies, but LCARC shed us, saying they, "do not consider there is evidence to justify pursuing this matter further."
(Letters to and from LCARC available.)

The Criminal Justice Commission (CJC) now Crime and Misconduct Commission (CMC)

The CJC declined on two (2) occasions to investigate our case and referred us back to the Ombudsman.

We understand government use of the Mt Larcom Chamber of Commerce letter to the Irrigation and Water Supply Commission of 14th September 1960 as an authoritative pre-mining benchmark for farming supplies in QCL's Water Monitoring area is improper and a matter relevant to investigation by the Crime and Misconduct Commission.

We understand since the purpose of the letter was to scope a reticulated town water supply (for a township area that is not representative of the farming area in QCL's Water Monitoring zone), the legal position regarding the letter is that it is unsubstantiated and an ambit claim.

After the Ombudsman refused to complete his investigation of our complaint, an EEMAG representative rang the CMC. The CMC representative advised they would not investigate any aspect of our case because the Ombudsman would have referred any agency actions he determined as improper to CMC, and the Ombudsman had not done this.
(Copies of letters to and from the CJC available.)

The Land and Resources Tribunal

EEMAG members believe the Ombudsman's advice for us to take our case to the Land & Resources Tribunal is inappropriate, and that it would be naïve and foolish for EEMAG to represent ourselves against the legal weight of QCL in a legal and technical Tribunal.

We understand the Tribunal has no power to deal with the administrative complaints EEMAG presented to the Ombudsman.

We allege we have a case against the government, that government is a party to the dispute and has a position to protect. This provides potential for conflict of interest. We understand the Tribunal is a special government Tribunal that would hire experts, contracted to and paid by

government, to assist in judgements on complicated technical matters that are related to government agency decisions.

Our legal advice is that EEMAG has no standing to take an action in the Land & Resources Tribunal (the Tribunal) against QCL.

As previously mentioned an EEMAG member was quoted $500,000 to take a case against QCL to the Tribunal. This case was located in Bracewell, and if the water supplies of the landholder involved were determined by the Tribunal as being affected, such a case could result in most or all of Bracewell being determined as affected. Obviously QCL would throw their full weight against the case, and the solicitor recommended against it.

We are reliably informed that although it is intended for the Tribunal to be conducted with as little formality and technicality as possible, EEMAG's case is complicated and technical. If an EEMAG member took a case to the Tribunal, the Tribunal would hire its own technical experts who would be under contract to the government, and the costs could be prohibitive.

Mediation Proposal by Minister for Mines and Energy in 1998

On 4 November 1998, the Mines Minister verbally offered $30,000 for costs for a Mediator to resolve the dispute between EEMAG and QCL. This offer was formalized in April 1999. *(Copy of Minister's offer for Mediation Attachment* **107***.)*

In offering the proposal, the Minister advised that before he moved forward with it, EEMAG would have to accept the findings of the Mediator in writing. We were expected to sign agreement to a Mediation without access to the terms of reference, the process, or the information base the proposed Mediator would work from. The Minister verbally acknowledged EEMAG had limitations to our resources that would hamper us technically and legally, but was he not prepared/able to fund us so that we could participate in Mediation against a transnational mining company from a position of equality.

The Minister advised the Mediation proposal would not include issues relating to administrative/ regulatory practices and mining policy in Queensland. He terminated an agreement we had with the Minister for Natural Resources for an Open Technical Meeting.

Given the history of the dispute, we needed time to consider the Minister's proposal. As one member said to the Minister, "We have been burned, we have burned and we have been burned."

An EEMAG member later raised the issue we needed to be workshopped in Mediation to properly understand the process. A submission was made to the Attorney General and Justice Minister and Mines Minister conjointly at the Country Cabinet in Gladstone on 11 July 1999, seeking funding for the Mediation workshop.

The Ministers approved our request. Both Ministers also accepted that by participating in the Mediation workshop EEMAG was not automatically agreeing to go into mediation, but that we wanted to be fully informed so we could make a decision. *(Letter to Mines Minister and Justice Minister confirming notes from the deputation are available.)*

The DRC Officer who conducted the workshop stated discussions at the workshop were confidential between the participants.

We appreciate the positive outcome of the Ministers approving the funding for the workshop.

Our case was not sufficiently prepared to enable us to accept the Minister's offer and enter into Mediation with confidence Mediation would be successful. We were concerned that if the process was not successful it might only serve to legitimize QCL's defaults. We sought an Open Technical Forum to take place as the first step prior to any Mediation.

In mid 1999 we requested the Mines Minister for the funding allocation for Mediation to be carried forward into the next financial year. The Minister agreed. *(Copies of letters available.)*

Mediation did not proceed since the Open Technical Forum did not proceed. We understand that in Mediation, the weaker party is often bullied.

Water Resources Plan for Calliope River system

On 8 May 2003 the Minister for Natural Resources and Mines advised, quote in part: "The discharge of mine pit water is regulated under the Environmental Authority issued by the Environmental Protection Agency for the East End Mine. I have been advised that you have written direct to the Environmental Protection Agency in Gladstone regarding the conditions of the Environmental Authority that regulate the discharge of pit water."

"I understand that the East End Mine Action Group has raised the issue of sustainable water usage with the National Competition Council. In this regard, my Department will soon be addressing the development of a Water Resources Plan for the Calliope River System. As part of this process, my Department will be investigating the option of including the control of groundwater in the Water Resources Plan."

"The mining leases in question were renewed by the Governor in Council on 20 March 2003 and are subject to special conditions relating to the provision of alternate water supply to landholders affected by the East End Mine." End of quote. *(Copy of Letter from Minister for Natural and Resources and Mines on 8 May 2003 Attachment* **108.***)*

On 15 May 2003, we responded to DNR&M, c/c the Minister quote: "EEMAG requests that DNR&M use [QCL's Consultant's] East End Groundwater Monitoring Review of First Three Years' Results Technical Report No 80/4, as the pre-mining benchmark for water resources in the QCL water monitoring area, for the proposed WRP for Calliope River."

"Attached is a copy of "Detailed District Irrigation Usage vs Mine Pumpout Figures and Revised More Informative Table A" prepared by [Officer] on behalf of EEMAG, which was supplied to [Officer] DNR&M, EPA's Consultant, [QCL's Modelling Consultant] and others in December 2001, as an inclusion in EEMAG's Triology Report.

"Together these reports provide pre-mining benchmarks, documenting perennial creeks, water levels, water quality and landholders usage in the year 1980, which was 10 years prior to the

recharge from the prolonged 1990/91 flood rains (Dec 1990 – 412 mm, Jan 1991 – 291 mm and Feb 1991 – 182 mm) which resulted in prolonged and widespread flooding that the Bureau of Meteorology recorded as "the third highest flood on records since readings began in about 1860" and which fully recharged the Bracewell aquifer."

"Data from QCL's Water Monitoring Programme that commenced in 1977 shows an area of more than 60 sq km upstream of the mine is suffering serious decline in water levels due to loss of storage. The nature of Machine, Scrub and Hut Creeks and their tributaries has been changed from perennial to seasonal."

- "Since water is clearly recognized as the life-blood of farming enterprises and communities, EEMAG members respectfully request DNR&M to include reinstatement/rehabilitation of the district's degraded water resource systems or development of an alternative system to restore the district's life-blood as a function of the Calliope River WRP, for example dam(s) and/or storage site(s) to store flood run-off and good quality mine pit discharge water."

"EEMAG members seek for the Calliope River WRP to ensure access for water for users and prospective users consistent with pre-mining water availability and water quality, and for water to be allocated for environmental purposes, with time-lines to be set and met."

"Attached for your information is a letter from [karst expert] regarding modeling karst aquifers." *(Copy of letter to DNR&M, C/c to Minister dated 15 May 2003 Attachment***109**.*)*

A letter from DNR&M dated 16 June 2003 stated quote: "whilst some preliminary activity has been undertaken for the preparation of the draft Calliope Water Resource Plan (WRP), the major activity is yet to commence."

We feel the key issue in the letter is, quote: "Should underground water be included in the proposed WRP then all available information pertaining to the resource will be considered in the development of the WRP. In this regard the documents you refer to in your letter will be considered as background reference material for input to the technical assessments." End of quote. *(Copy of letter from DNR&M 16June 2003 Attachment* **110**.*)*

We believe the WRP could provide an excellent opportunity to regeneratively/sustainably/ equitably manage water loss due to mining if groundwater is included.

However, our optimism is tempered by our experience that government policy is to abstain from requiring QCL to comply with Environmental Sustainability and Water Reform, and by the Minister's letter of 19 June 2003, quote: "As you are aware, the East End mine issue has been on going for a number of years and EEMAG have openly aired their concerns and the issues have been the subject of two reports by the Ombudsman. My Department has always treated the members of EEMAG with fairness and respect. I cannot accept that the Group has not been afforded natural justice." *(Copy of letter from the Minister for Natural Resources and Mines of 19 June 2003 Attachment* **112**.*)*

No process to respond to allegedly inaccurate and misleading reports by DNR&M

We have raised the matter of two reports to the Ombudsman by DME and DNR&M that we allege contain deliberate inaccuracies, misleading statements and misrepresentations. *(Copies of DNR&M Reports to the Ombudsman and EEMAG responses to the Ombudsman Attachments* **99, 100, 102** *and* **103**. *)*

On 31 March 2003 we wrote to DNR&M requesting access to procedural fairness (natural justice) in accordance with the DNR&M Code of Conduct. We requested opportunity to orally put our case to the decision maker and that the decision makernot have a direct or personal interest in the outcome of the decision. DNR&M has not responded to date. *(Copy of letter to DNR&M 31 March 2003 available.)*

We verbally requested DNR&M for a process so that EEMAG could respond to the misinformation in the reports to the Ombudsman. The DNR&M officer advised he would "have to think about it". The officer who authored the reports had a significant role in QCL's mining lease renewal process, including "drafting the rules and regulations for the new legislation" [the transfer of mining to EPA under the EPOLA Bill] as commented by a QCL delegate at the CLG.

On 22 April 2003 we wrote to the Minister for Natural Resources and Mines claiming we are consistently denied natural justice by DNR&M culminating in the process for renewing QCL's Mining Leases. We requested of the Minister "What steps will you take to properly investigate the matters we have raised, and to ensure EEMAG members receive natural justice?" *(Copy of letter to Minister for Natural Resources and Mines dated 22 April 2003 Attachment* **111**.*)*

On 19 Jun 2003, the Minister responded to our local Member quote: " Thank you for your letter of 20 May 2003 making representation on behalf on [Secretary] East End Mine Action Group (Inc) (EEMAG) concerning a belief that the members of EEMAG had not been afforded natural justice."

"Natural justice means, simple, fairness in the steps leading to a determination of an issue, and in the actual decision. It is also imperative that proper notice of intentions are given and that parties are given meaningful opportunity to plead their case."

"As you are aware, the East End Mine issue has been on going for a number of years and EEMAG have openly aired their concerns and the issues have been the subject of two reports by the Ombudsman. My department has always treated the members of EEMAG with fairness and respect. I cannot accept that the Group has not been afforded natural justice." End of quote. *(Copy letter from Minister for Natural Resources and Mines of 19 Jun 2003 Attachment* **112**.*)*

The Ombudsman refused to continue to investigate our complaint, and the CJC/CMC referred us back to the Ombudsman. There is no avenue available to us to require any regulatory officer from any government agency to abide by their Code of Conduct when regulating/undertaking monitoring and assessment of environmental impacts. There is no mechanism to require accountability in the administrative process that is available to us.

The Attitude of Banks

Although the banks have not released a public policy statement they have adopted a cautious attitude and a number of instances can be quoted.

- **In one instance the bank expressed great reluctance to mortgage a farm but were quite content to advance a loan against a house in Rockhampton.**
- **A number of sales have reputedly fallen through because individuals could not obtain funding from a bank.**
- **In another instance the bank would not lend money for purchase of a farm but would consider lending for purchase of a rural residential block provided the individual had off property employment.**
- **Despite the ability to demonstrate that land within the 170 sq kilometre zone should attract compensation the bank's policy is to rely upon "current market value" in any valuation or consideration of lending.** *(Copy of letter from National Australia Bank of 11 June 2003 Attachment* **117**.*)*

<u>Takeover of QCL by Holderbank in 1990</u>

The Queensland government was a substantial shareholder in the initial QCL project. When QCL was taken over by Holderbank in 1990, the government divested their shareholding to Holderbank. We understand that in the 1990 sale of QCL to Holderbank no environmental assessment or due diligence was conducted. This is in contrast to the sale of the State owned Gladstone Power Station in 1994.

A letter from the Minister for Environment on 17 May 2002 to our local member regarding the sale of the Gladstone Power Station in 1994 advised, quote:There were a number of reports and assessments produced during 1993 and 1994 regarding 'due diligence' and the environmental management of the Power Station. The following is a list of documents held at the Gladstone District Office of the Environmental Protection Agency that are available for perusal:"

- "Environmental Risk Assessment of the Gladstone Power Station";
- "Gladstone Power Station Flyash Placement Trials";
- "Gladstone Power Station Ash disposal Management Plan Volumes 1 and 2";
- "Gladstone Power Station Site Hisotry";
- "Draft 4 August 1993 Gladstone Power Station Environment Management Plan";
- "Gladstone Power Station Environmental Management Plan";
- "Gladstone Power Station Ash Bund Hydrogeological Assessment and Environmental Monitoring; and"
- "Noise Assessment, Queensland Electricity Commission Gladstone Power Station."

End of quote. *(Letter from Environment Minister of 17 May 2002 Attachment* **113**.*)*

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