

WIDE BAY BURNETT CONSERVATION COUNCIL INC

Applicant

BURNETT WATER PTY LTD (ACN 097 206 614)

Respondent

**REQUEST FOR FURTHER & BETTER
PARTICULARS OF THE DEFENCE**

Please provide the following further and better particulars of the Defence dated 28 November 2008 by 12 December 2008:

Paragraph 4

1. In so far as it is alleged that the downstream fishway:

“(i) does not transfer lungfish when water levels in the dam are beneath EL 62.0 meters (being a level estimated to be achieved approximately 80% of the time) because the designed minimum operating level of the downstream fishway is EL 62.0;

“(ii) has not transferred lungfish because, due to drought conditions, water levels in the dam have not reached EL 62.0 metres; ...”

- (a) Provide particulars of the facts, matters, and circumstances relied upon in support of the allegation that EL 62.0 m is a level estimated to be achieved approximately 80% of the time; and
- (b) Provide particulars of the facts, matters, and circumstances relied upon in support of the allegation that the downstream fishway has not operated due to drought conditions.

Paragraph 6

2. In so far as it is alleged that:

“(a) the Respondent has acted honestly and reasonably at all times.”

REQUEST FOR FURTHER AND
BETTER PARTICULARS OF
THE DEFENCE
Filed on behalf of the applicant

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- (a) provide particulars of the facts, matters, and circumstances relied upon in support of the allegation that the Respondent has acted honestly at all times; and
- (b) provide particulars of the facts, matters, and circumstances relied upon in support of the allegation that the Respondent has acted reasonably at all times.

3. In so far as it is alleged that:

“(b) the Respondent has not acted recklessly at any time.”

- (a) provide particulars of the facts, matters, and circumstances relied upon in support of the allegation that the Respondent has not acted recklessly at any time.

4. In so far as it is alleged that:

“(e) the fish transfer device has not had, and is not likely to have, any or any significant adverse impact on lungfish populations in the Burnett River.”

- (a) provide particulars of the facts, matters, and circumstances relied upon in support of the allegation that the fish transfer device has not had, and is not likely to have, any or any significant adverse impact on lungfish populations in the Burnett River.

5. In so far as it is alleged that:

“(f) there is in place a system of monitoring of lungfish populations in the Burnett River which is designed to detect any or any significant adverse impact on lungfish populations.”

- (a) provide particulars of the system of monitoring of lungfish populations in the Burnett River alleged to be designed to detect any or any significant adverse impact on lungfish populations.

6. In so far as it is alleged that:

“(j) for the reasons stated in paragraphs (a) to (i) above, the Court ought refuse the relief sought by the Applicant in the exercise of its discretion.”

- (a) provide particulars of the facts, matters, and circumstances alleged by the Respondent to constitute a basis for the Court not granting the relief sought, or other relief, if the Court finds that the fish transfer device does not comply with condition 3 of the approval;
- (b) identify whether the Respondent relies only on the grounds stated in paragraphs 6 (a) to (i) of the Defence, to constitute a basis for the Court not granting the relief sought, or other relief, if the Court finds that the fish transfer device does not comply with condition 3 of the approval;
- (c) identify whether the Respondent relies on any grounds of economic hardship or financial cost of compliance, to constitute a basis for the Court not granting

the relief sought, or other relief, if the Court finds that the fish transfer device does not comply with condition 3 of the approval; and

- (d) if the Respondent relies on any grounds of economic hardship or financial cost of compliance to constitute a basis for the Court not granting the relief sought, or other relief, in the exercise of the Court's discretion, identify the grounds and the facts, matters, and circumstances relied upon to support them.

Dated: 2 December 2008

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Jo-Anne Bragg, Principal Solicitor
Solicitor for the Applicant