

**WIDE BAY BURNETT CONSERVATION COUNCIL INC**

Applicant

**BURNETT WATER PTY LTD (ACN 097 206 614)**

Respondent

**NOTICE OF MOTION**

(Form 27)

(Order 19, rule 2)

The abovenamed Applicant will at 9.30 am on Friday 5 December 2008 at the Federal Court of Australia, Queensland District Registry, Level 6, 119 North Quay, Brisbane move the Court for orders:

1. That the Respondent provide further and better particulars for the Defence by 12 December 2008 in answer to the Applicant's request for further and better particulars, dated 2 December 2008.
2. That the parties provide discovery of the following specified classes of documents on which the party relies, that adversely affect the party's case, that adversely affect the other party's case, or that support another party's case:
  - (a) Documents in the possession, custody or power of the parties directly relevant to the design of the upstream and downstream fishways on the Paradise Dam, including:
    - (i) The Directive stated in paragraph 6(c) of the Defence to have been issued to the Respondent by the Queensland Department of Primary Industries and Fisheries (DPI);
    - (ii) Documents relevant to the consultations stated in paragraph 6(d) of the Defence to have been undertaken by the Respondent with numerous experts and the DPI over a period from July 2002 until October 2004;
    - (iii) The "Report into suitability of fish transfer device for Burnett River Dam" in the Burnett Dam Alliance Burnett River Dam Detailed Design Report Section 10 – Fishway (section 10.4.1) design criteria for lungfish

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Filed on behalf of the applicant  
Form 27, O 19, r 2

Environmental Defenders Office (Qld) Inc  
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and associated letter from DPI stating design addresses fish passage objectives.

- (iv) Documents relevant to the allegation in paragraph 4(a)(i) of the Defence that waters levels of EL 62.0 m and above are estimated to be achieved approximately 80% of the time, including any hydrological modelling of the expected operation of the dam;
  - (v) Documents relevant to the allegation in paragraph 4(a)(ii) of the Defence that the downstream fishway has not operated due to drought conditions;
  - (vi) Documents relevant to the design of the minimum and maximum water heights for the operation the main water outlet (irrigation) works for the Paradise Dam.
- (b) Documents in the possession, custody or power of the parties directly relevant to the operation of the upstream and downstream fishways on the Paradise Dam and the main water outlet works from the dam, including:
- (i) Manuals or other documents describing how the upstream fishway or the downstream fishway is intended to operate;
  - (ii) Logbooks or other records of actual operation of the upstream fishway or the downstream fishway;
  - (iii) Logbooks or other records of stoppages in the operation of the upstream fishway or the downstream fishway due to mechanical failure or other causes;
  - (iv) Any records of monitoring of use of the upstream fishway or the downstream fishway by lungfish;
  - (v) Reports or records of the quantity and timing of water releases from the main water outlet works of the dam, including the quarterly reports by SunWater / Burnett Water Pty Ltd to the Queensland Department of Natural Resources and Water on water releases from the Paradise Dam.
- (c) Documents in the possession, custody or power of the parties directly relevant to the monitoring of lungfish populations in the Burnett River, including:
- (i) The system of monitoring of lungfish populations in the Burnett River alleged in paragraph 6(f) of the Defence to be designed to detect any or any significant adverse impact on lungfish populations ;
  - (ii) The baseline monitoring of the lungfish population in the vicinity of the Paradise Dam as required by condition 4 of the EPBC Act approval for the dam and prepared by the DPI, "Burnett River Dam Baseline Monitoring", dated May 2005;
  - (iii) As required by condition 6 of the EPBC Act approval, annual aquatic ecosystem monitoring at about AMDT 119 km, AMTD 201 km and at

least two sites between these points, including the measurement of the condition of lungfish and lungfish habitat / macrophytes.

- (d) Documents in the possession or control of the parties directly relevant to the dealings alleged in paragraph 6(g) of the Defence to have been engaged in between the Respondent and the Department of the Environment, Water, Heritage and the Arts to identify and address any further requirements of the Department for the fish transfer device.
3. Discovery of the abovementioned documents be given by:
    - (a) serving a list of documents in their possession or control relevant to the issues in dispute by Friday 23 January 2009; and
    - (b) serving copies of any documents requested by the other party that are not subject to a claim of privilege within 5 working days of a request being made.
  4. The parties be granted liberty to apply later for particular discovery or discovery on a broader basis.
  5. The Applicant's expert witnesses and legal representatives be granted access to the dam to inspect the upstream fishway and downstream fishway, subject to any reasonable safety requirements determined by the Respondent.
  6. The matter be listed for review and further directions on ... February 2009.

Date: 2 December 2008

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Jo-Anne Bragg, Principal Solicitor  
Solicitor for the Applicant

**TO:** Burnett Water Pty Ltd of Level 9, 120 Edward Street, Brisbane, c/- Bill McCredie, Partner, Allens Arthur Robinson, Level 31, Riverside Centre, 123 Eagle Street, Brisbane.