

**IN THE FEDERAL COURT OF AUSTRALIA  
QUEENSLAND DISTRICT REGISTRY**

No QUD 319 of 2008

**WIDE BAY BURNETT CONSERVATION  
COUNCIL INC**

Applicant

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

Respondent

**SUBMISSIONS IN REPLY ON BEHALF OF THE RESPONDENT**

1. The applicant seeks, in its notice of motion filed 2 December 2008 orders for;
  - (a) Further and better particulars of the respondent's defence, by 12 December 2008;
  - (b) Discovery of specified classes of documents by 23 January 2009; and
  - (c) Access to the dam to inspect the fishways.
  
2. The respondent has on foot an application that these proceedings be stayed or stood out of the list pending certain confirmations from the Department of Environment, Water, Heritage and the Arts. If it is not successful in that application its submissions in respect of each of the orders sought by the applicant are:
  - (a) **Further and Better Particulars**

The applicant seeks further and better particulars by 12 December 2008. The particulars are not required in order for the applicant to plead. The particulars sought will be evident from the respondent's disclosed material, if disclosure orders are made. The respondent is still locating documents which are relevant to the further and better particulars sought by the applicant. The respondent expects that some of the information will be technical in nature and require expert assistance in interpreting it. The respondent proposes that it provide the further

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Filed on behalf of: the respondent

**Allens Arthur Robinson**

Lawyers

Riverside Centre

123 Eagle Street

Brisbane QLD 4000

DX 210 Brisbane

Tel (07) 3334 3000 Fax (07) 3334 3444

Ref QNMS

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and better particulars requested on 6 February 2009, as it expects to then be in a position of having identified and reviewed all relevant documents.<sup>1</sup>

(b) **Disclosure**

If the respondent is ordered to give disclosure it does not take issue with the categories proposed by the applicant in its notice of motion but for the following:

- (i) paragraph 2(a)(vi) – this category of documents is not relevant to any issue in the proceedings.
- (ii) paragraph 2(b) – to the extent any of these sub-categories relate to "the main water outlet works from the dam" they are not relevant to any issue in the proceedings.
- (iii) paragraph 2(b)(v) is nonsensical.
- (iv) paragraph 2(b)(vi) this category of documents is not relevant to any issue in the proceedings.

(c) **Timing of Disclosure**

The respondent proposes to give disclosure, if it is ordered, in two tranches<sup>2</sup>:

- (i) the first tranche by 23 January 2009 (which will be the largest tranche);  
and
- (ii) the second tranche by 6 February 2009.

(d) **Access to Inspect**

The applicant has put on no evidence as to why an inspection is said to be necessary. It is difficult to understand why, if disclosure is given, an inspection is required. The appropriate time to make such an application is after disclosure and with supporting affidavit material.

**Allens Arthur Robinson**

4 December 2008

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<sup>1</sup> Third Affidavit Philip Murray

<sup>2</sup> Third Affidavit Philip Murray para 8(a)