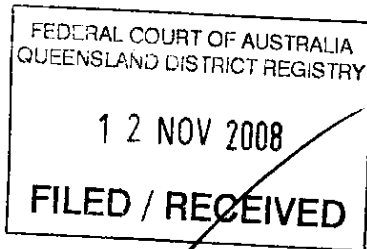


IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

No QUD319 of 2008



**WIDE BAY BURNETT CONSERVATION
COUNCIL INC.**

Applicant

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

Respondent

REQUEST FOR FURTHER AND BETTER PARTICULARS

Please provide the following further and better particulars of the statement of claim dated 7 October 2008 by 19 November 2008.

Paragraph 1

1. Insofar as it is alleged that:

"(b) During the 2 years immediately before the conduct of the respondent to which the application relates and the making of the application, the applicants' objects or purposes included the protection or conservation of, or research into, the environment."

- (a) identify the period or periods of the conduct of the respondent to which the application relates, including the start and end dates for each such period; and
- (b) identify the objects or purposes of the applicant during the 2 year period alleged including, insofar as those objects or purposes are in writing, by identifying the writing.

2. Insofar as it is alleged that:

"(c) During the 2 years immediately before the conduct of the respondent to which the application relates and the making of the application, the applicant engaged in a series of activities related to the protection or conservation of, or research into, the environment."

- (a) identify the period or periods of the conduct of the respondent to which the application relates, including the start and end dates for each such period; and

Filed on behalf of: the respondent

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- (b) identify the series of activities engaged in by the applicant during the 2 year period alleged.

Paragraph 6

3. Insofar as it is alleged that:

"(a) The entrances to the upstream and downstream fishway are not likely to be found by lungfish attempting to move or migrate upstream or downstream of the dam wall."

- (a) provide particulars of the facts matters and circumstances relied upon in support of the allegation that the entrance to the upstream fishway is not likely to be found by lungfish; and
- (b) provide particulars of the facts matters and circumstances relied upon in support of the allegation that the entrance to the downstream fishway is not likely to be found by lungfish.

4. Insofar as it is alleged that:

"(b) The entrances to the upstream fishway and downstream fishway are too small for fully grown lungfish to enter"

- (a) identify the alleged size of a fully grown lungfish;
- (b) provide particulars of the facts matters and circumstances relied upon in support of the allegation that the entrances to the upstream fishway and downstream fishway are too small for fully grown lungfish to enter, including the size of each entrance;
- (c) identify the size it is alleged the entrance to the upstream fishway is required to be for fully grown lungfish to enter; and
- (d) identify the size it is alleged the entrance to the downstream fishway is required to be for fully grown lungfish to enter.

5. Insofar as it is alleged that:

"(c) The caged container in the upstream fishway is too small for fully grown lungfish."

- (a) provide particulars of the facts matters and circumstances relied upon in support of the allegation that the caged container in the upstream fishway is too small for fully grown lungfish, including the size of the caged container; and
- (b) identify the size it is alleged that the caged container in the upstream fishway is required to be to accommodate fully grown lungfish.

6. Insofar as it is alleged that:

"(d) The upstream fishway and downstream fishway do not operate continuously."

- (a) provide particulars of the facts matters and circumstances relied upon in support of the allegation that the upstream fishway does not operate continuously;
- (b) provide particulars of the facts matters and circumstances relied upon in support of the allegation that the downstream fishway does not operate continuously;
- (c) identify the requirement for the upstream fishway to operate continuously; and
- (d) identify the requirement for the downstream fishway to operate continuously.

7. Insofar as it is alleged that:

"(f) Lungfish are likely to be injured by the speed at which they are transported through the downstream fishway and the small dimensions of the pipes and downstream release pool."

- (a) identify the speed at which it is alleged the lungfish are transported through the downstream fishway;
- (b) provide particulars of the facts matters and circumstances relied upon in support of the allegation that lungfish are likely to be injured by the speed at which they are transported through the downstream fishway;
- (c) identify the speed at which it is alleged that lungfish may be transported by the downstream fishway to avoid likelihood of injury;
- (d) provide particulars of the facts matters and circumstances relied upon in support of the allegation that lungfish are likely to be injured by the dimensions of the pipes through which the lungfish are transported by the downstream fishway, including the dimensions of the pipes;
- (e) identify the dimensions of the pipes it is alleged are required to avoid the likelihood of injury to lungfish;
- (f) provide particulars of the facts matters and circumstances relied upon in support of the allegation that lungfish are likely to be injured by the dimensions of the downstream release pool including the dimensions of the downstream release pool;

- (g) identify the dimensions of the downstream release pool it is alleged are required to avoid the likelihood of injury to the lungfish; and
- (h) identify the extent of any injury that it is alleged lungfish are likely to suffer by transportation through the downstream fishway.

8. Insofar as it is alleged that:

"(g) Lungfish, particularly juveniles, are susceptible to predation while moving through the upstream fishway and downstream fishway."

- (a) provide particulars of the facts matters and circumstances relied upon in support of the allegation that lungfish, particularly juveniles are susceptible to predation while moving through the upstream fishway;
- (b) provide particulars of the facts matters and circumstances relied upon in support of the allegation that lungfish particularly juveniles are susceptible to predation while moving through the downstream fishway.

9. Insofar as it is alleged that:

"(h) Lungfish exiting the upstream fishway or downstream fishway are susceptible to predation at the release point."

- (a) provide particulars of the facts matters and circumstances relied upon in support of the allegation that lungfish exiting the upstream fishway are susceptible to predation at the release point; and
- (b) provide particulars of the facts matters and circumstances relied upon in support of the allegation that lungfish exiting the downstream fishway are susceptible to predation at the release point.

10. Insofar as it is alleged that:

"(i) Due to the matters raised in paragraphs 6(a)-(h), the upstream fishway and downstream fishway are not likely (more than 50% probable) to allow any normal sized lungfish to move upstream or downstream of the dam without injury irrespective of the water level in the dam."

- (a) identify the alleged "normal size" of the lungfish;
- (b) provide particulars of the facts matters and circumstances relied upon in support of the allegation that due to the matters raised in paragraphs 6(a)-(h), the upstream fishway and downstream fishway are not likely (more than 50% probable) to allow any normal sized lungfish to move upstream or downstream of the dam without injury irrespective of the water level in the dam;

- (c) provide particulars of how 50% probability is calculated;
 - (d) identify the respective contribution of each of the matters in paragraphs 6(a)-(h) of the applicant's Statement of Claim to the alleged likelihood of less than 50% probability that the upstream fishway and downstream fishway allow a normal sized lungfish to move upstream or downstream of the dam without injury irrespective of the water level in the dam;
 - (e) identify the respective contribution of each of the matters in paragraphs 6(a), (b), (d), (f), (g) and (h) of the applicant's Statement of Claim to the alleged likelihood of less than 50% probability that the downstream fishway allows a normal sized lungfish to move downstream of the dam without injury irrespective of the water level in the dam;
 - (f) identify the respective contribution of each of the matters in paragraphs 6(a), (b), (c), (d), (g) and (h) of the applicant's Statement of Claim to the alleged likelihood of less than 50% probability that the upstream fishway allows a normal sized lungfish to move upstream of the dam without injury irrespective of the water level in the dam.
11. Insofar as it is alleged that the matters in paragraphs 6(a)-(h) of the applicant's Statement of Claim particularise the alleged conduct of the respondent to fail since the dam became operational to install and operate a fish transfer device suitable for lungfish:
- (a) in what way is it alleged the installation of the upstream fishway by the respondent contravened condition 3 of the approval for the dam;
 - (b) in what way is it alleged the operation of the upstream fishway by the respondent contravened condition 3 of the approval for the dam;
 - (c) in what way is it alleged the installation of the downstream fishway by the respondent contravened condition 3 of the approval for the dam;
 - (d) in what way is it alleged the operation of the downstream fishway by the respondent contravened condition 3 of the approval for the dam.

Paragraph 8

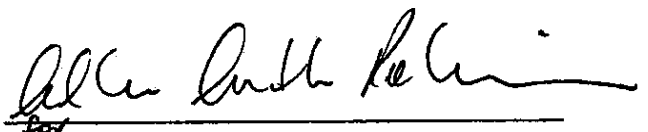
12. Insofar as it is alleged that:

"The respondent's contravention of condition 3 set out in paragraph 6 constitutes an offence or other contravention of section 142A of the EPBC Act":

- (a) provide particulars of the subsections of s 142A which it is alleged the respondent has contravened;

- (b) provide particulars of the facts matters and circumstances relied upon in support of the allegation that the respondent's alleged contravention of condition 3 has been reckless including who on behalf of the respondent it is alleged has been reckless;
 - (c) if it is alleged that the respondent has been reckless as to the fact that the alleged contravention is likely to have a significant impact on the lungfish, provide particulars of the facts matters and circumstances relied upon in support of that allegation including who on behalf of the respondent it is alleged has been reckless;
 - (d) provide particulars of the facts, matters and circumstances relied upon in support of the allegation that the respondent's conduct:
 - (i) in fact results in each of the impacts in paragraph 8(b)(i) and (ii);
 - (ii) will result in each of the impacts in paragraphs 8(b)(i) and (ii);
 - (iii) is likely to result in the impacts in paragraphs 8(b)(i) and (ii);
 - (e) provide particulars of the facts matters and circumstances relied upon in support of the allegation that the impacts in paragraph 8 (b)(i) and (ii) will continue for the indefinite future unless the respondent is restrained.
13. As to the relief claimed by the applicant, provide particulars of:
- (a) the design and design features of the fish transfer device which the applicant seeks to have the respondent install and operate;
 - (b) the facts, matters and circumstances relied on to allege that the design and those features are likely to allow normal sized Australian lungfish to move upstream and downstream without injury irrespective of the water level in the dam.

Dated 12 November 2008 :



for
William James Wilson McCredie
Solicitor for the respondent