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Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
File Number:	NSD1388/2018
File Title:	KIRSTY JANE BARTLETT & ANOR v COMMONWEALTH OF AUSTRALIA
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 14/01/2019 4:55:32 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 33
Rule 16.32

Amended Defence

(Amended pursuant to the order made by Justice Jagot on 28 December 2018)

No. 1388 of 2018

Federal Court of Australia

District New South Wales

Registry: Sydney

Division: General

KIRSTY JANE BARTLETT and ANOR

Applicants

THE COMMONWEALTH OF AUSTRALIA

Respondent

1 As to paragraph 1, the Respondent:

- (a) admits that the proceeding was commenced as a representative proceeding under Part IVA of the *Federal Court of Australia Act 1976* (Cth) ("**FCA Act**") by the Applicants on their own behalf; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

2 As to paragraph 2, the Respondent:

- (a) admits that from on or about 9 July 2003, Kirsty Jane Bartlett and Anthony Craig Bartlett jointly owned the Applicants' Land; and
- (b) admits that the Applicants' Land is in the Relevant Area.

3 As to paragraph 3, the Respondent does not know and therefore cannot admit the allegation in the paragraph.

Filed on behalf of Emma Costello, the Respondent

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Ref: ESC:

4 As to paragraph 4, the Respondent admits the allegations in the paragraph.

5 As to paragraph 5, the Respondent:

- (a) says that in this defence the Respondent will refer to Royal Australian Air Force (“**RAAF**”) Base Tindal as Tindal Base;
- (b) says that the Tindal Base is approximately 105 km² and now comprises the lots specified in Annexure A;
- (c) admits that Tindal Base is approximately 13 kilometres south-east of Katherine in the Northern Territory;
- (d) says that as at the date of this defence, the Respondent owns the Tindal Base;
- (e) says that the operational parts of the Tindal Base form a small portion of the overall land area, the remainder of which is composed of eucalypt bushland and open forest;
- (f) denies that it solely occupied the Tindal Base since 1987 and says that from time to time the Respondent granted (or consented to the grant of) licences (formal and informal), leases, and easements to third parties over parts of the Tindal Base including those specified in Annexure A of this defence; and

Particulars

The reference to informal licences means permission to enter on to the Tindal Base without formal agreement or notification in writing. Informal licences may have been granted to third parties to use the Tindal Base in a particular way, including but not limited to, the landing of civilian aircraft or the visiting of personnel living at Tindal Base by family and/or friends.

- (g) otherwise does not know and therefore cannot admit the allegations in the paragraph.

6 As to paragraph 6, the Respondent:

- (a) says that at a time prior to August 1993, the Respondent, as lessor, entered into a lease with the Katherine Town Council, as lessee, in respect of part of the Tindal Base for the purpose of civil aviation (including the provision of an airport terminal building and other related facilities and activities), which lease commenced on 1 August 1993 to 31 July 2003, and was extended from 1 August 2003 to 31 July 2013;
- (b) says that at a time prior to October 2017, the Respondent, as lessor, entered into a lease over a part of the Tindal Base with the Katherine Town Council, as

lessee, for the purpose of civil aviation and to carry out related functions, which lease commenced on 1 October 2017 and will expire on 30 September 2027 (with options to extend);

- (c) repeats its pleading at subparagraph 5(f) above;
- (d) says that some of the leases, licences, and easements referred to in subparagraph 5(f) above have been for civil aviation, a refuelling depot and ancillary uses, electricity supply and electronic communications; and
- (e) otherwise does not know and therefore cannot admit the allegations in the paragraph.

7 As to paragraph 7, the Respondent:

- (a) says that, as at the date of this defence, and under the Northern Territory Planning Scheme and the Zoning Map for Katherine dated August 2018, the land to the north, east and west of Tindal Base is zoned agriculture, rural, rural living and community purpose;
- (b) says that, as at the date of this defence, the Stuart Highway adjoins the northern boundary of Tindal Base;
- (c) says that, as at the date of this defence, land to the west of Tindal Base is the township of Katherine; and
- (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.

Particulars

Northern Territory Planning Scheme, dated 1 August 2018.

Zoning Map for Katherine dated August 2018.

8 As to paragraph 8, the Respondent admits the allegation in the paragraph.

9 As to paragraph 9, the Respondent admits the allegation in the paragraph but will rely on more detailed evidence at any trial.

10 As to paragraph 10, the Respondent:

- (a) admits that the outcrops of karstic limestone on the Tindal Base included pinnacles, sinkholes, fissures, potholes and dissolution features;
- (b) will rely on more detailed evidence at any trial; and
- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

- 11 As to paragraph 11, the Respondent does not know and therefore cannot admit the allegations in the paragraph.
- 12 As to paragraph 12, the Respondent:
- (a) says that in 1983 the soil groups listed at subparagraphs (a) to (f) of the statement of claim were identified as being represented on Tindal Base;
 - (b) says that in 1983 some of the soil on the Tindal Base and in the Relevant Area was comprised as alleged in the paragraph;
 - (c) denies that all of the soil on the Tindal Base and in the Relevant Area was or is comprised as alleged in the paragraph;
 - (d) will rely on more detailed evidence at any trial; and
 - (e) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 13 As to paragraph 13, the Respondent:
- (a) admits that the cave systems in the Katherine area generally extend from the north west to the south east;
 - (b) admits that water movement through cave systems can be rapid;
 - (c) will rely on more detailed evidence on the cave systems at any trial; and
 - (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 14 As to paragraph 14, the Respondent:
- (a) admits that Tindal Creek now has the characteristics alleged in the paragraph;
 - (b) says that Tindal Creek does not typically flow between May and November;
 - (c) will rely on more detailed evidence on the nature of Tindal Creek and its characteristics at any trial; and
 - (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 15 As to paragraph 15, the Respondent:
- (a) admits that the Katherine River now has the characteristics alleged in the paragraph;
 - (b) will rely on more detailed evidence on the nature of Katherine River and its characteristics at any trial; and

- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 16 As to paragraph 16, the Respondent:
- (a) says that a number of springs are now located within the Relevant Area;
 - (b) says that some of the springs, now located south of the old Stuart Highway, discharge directly into the northern reach of Tindal Creek; and
 - (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 17 As to paragraph 17, the Respondent:
- (a) admits, as at the date of this defence, the allegation in the paragraph; and
 - (b) will rely on more detailed evidence on the nature of the Daly Basin and its characteristics at any trial.
- 18 As to paragraph 18, the Respondent:
- (a) admits, as at the date of this defence, the allegation in the paragraph; and
 - (b) will rely on more detailed evidence on the nature of the Tindal Aquifer and its characteristics at any trial.

Particulars

Background Brief – Tindall Limestone Aquifer, Katherine dated February 2017 at Figure 1.

Background: Water Allocation Plan – Tindall Limestone Aquifer, Katherine at Figure 3.

Tickell Report – Groundwater Resources of the Tindall Limestone (2005), at pp 1, 10.

- 19 As to paragraph 19, the Respondent:
- (a) admits that the Coffey February 2018 Executive Summary and Coffey February 2018 Report contained statements to the effect of the matters pleaded in subparagraphs 19(a), (b), (c), (d), (f) and (g) of the statement of claim;
 - (b) denies that the reports particularised by the Applicants contain the statements pleaded in paragraph 19(h) of the statement of claim;
 - (c) will rely on more detailed evidence on the nature of the Tindal Aquifer and its characteristics at any trial; and

- (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 20 As to paragraph 20, the Respondent:
- (a) repeats the matters pleaded at paragraphs 9 to 19 above;
 - (b) will rely on more detailed evidence at any trial; and
 - (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 21 As to paragraph 21, the Respondent:
- (a) admits that, as at the date of this defence, the Tindal Base has a drainage system;
 - (b) admits that the drainage system includes open and closed drains;
 - (c) admits that some drains are concrete, earthen or both;
 - (d) will rely on more detailed evidence at any trial; and
 - (e) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 22 As to paragraph 22, the Respondent:
- (a) admits that, as at the date of this defence, there is a drain as alleged in the paragraph;
 - (b) will rely on more detailed evidence at any trial; and
 - (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 23 As to paragraph 23, the Respondent:
- (a) admits that, as at the date of this defence, there is a fire training area located south of the runway at the Tindal Base comprising of three staged evaporation ponds and a bunded and lined fire pit ("**FTA**");
 - (b) will rely on more detailed evidence relating to the FTA at any trial; and
 - (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 24 As to paragraph 24, the Respondent:
- (a) admits that there are a number of bores located within the boundaries of the Tindal Base as shown in Annexure B of this defence;

- (b) does not know and therefore cannot admit who or by what authority those bores were drilled;
- (c) admits that some of those bores have been used by the Respondent from time to time;
- (d) will rely on more detailed evidence at any trial; and
- (e) otherwise does not know and therefore cannot admit the allegations in the paragraph.

25 As to paragraph 25, the Respondent:

- (a) repeats paragraphs 9 to 24 above;
- (b) does not know and therefore cannot admit if liquids and soluble material discharged on the Tindal Base would have moved as alleged in subparagraphs 25(b) and (c) of the statement of claim because the nature of those liquids and soluble materials has not been pleaded sufficiently to allow the Respondent to respond;
- (c) will rely on more detailed evidence at any trial; and
- (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.

26 As to paragraph 26, the Respondent:

- (a) admits that there has been some use of Tindal Creek for swimming;
- (b) says that this was only (or alternatively predominantly) via Uralla where Tindal Creek passes through or near private property;
- (c) admits that there has been some use of Tindal Creek for fishing;
- (d) says that this was predominantly at the point of Tindal Creek's discharge into the Katherine River near the sewerage treatment plant,
(collectively, "**Tindal Creek Usage**");
- (e) says that the Tindal Creek Usage was and is intermittent by reason of the ephemeral character of Tindal Creek;
- (f) will rely on more detailed evidence at any trial; and
- (g) otherwise does not know and therefore cannot admit the allegations in the paragraph.

27 As to paragraph 27, the Respondent:

- (a) admits that, from time to time, the stretch of the Katherine River in the Relevant Area has been used for recreational activities such as swimming, boating and fishing;
- (b) admits that, from time to time, water from the Katherine River in the vicinity of the Katherine township has been used for drinking, domestic and irrigation purposes;
- (c) says that it does not know if any of the irrigation uses were or are authorised uses of water;
- (d) says that river water taken from Donkey Camp weir, up-stream of Katherine township, is the primary town water supply;
- (e) will rely on more detailed evidence at any trial; and
- (f) otherwise does not know and therefore cannot admit the allegations in the paragraph.

28 As to paragraph 28, the Respondent:

- (a) does not know and therefore cannot admit that groundwater from the Tindal Aquifer has been used by the residents of the Municipality of Katherine and the Relevant Area as alleged in the paragraph;
- (b) says that it does not know if any of the alleged uses pleaded in subparagraphs 28(a) to (e) of the statement of claim were or are authorised;
- (c) will rely on more detailed evidence at any trial; and
- (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.

29 As to paragraph 29, the Respondent:

- (a) admits that some persons resident in the Municipality of Katherine and surrounding areas, including in the Relevant Area, had, at times, private bores on their land;
- (b) says that it does not know if each of the private bores were registered;
- (c) will rely on more detailed evidence at any trial; and
- (d) otherwise does not know and therefore cannot admit the allegations.

30 As to paragraph 30, the Respondent:

- (a) repeats paragraphs 25 to 29 above; and

- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

31 As to paragraph 31, the Respondent:

- (a) repeats paragraphs 5 and 6 above;
- (b) denies that it has been responsible for conducting all activities conducted at the Tindal Base;
- (c) says that it has been responsible for conducting all of the authorised Department of Defence activities conducted at the Tindal Base;
- (d) says further that some activities conducted at the Tindal Base were and are the activities of third parties, including civilian use of the airfield at the Katherine Tindal Civilian Airport currently operated and occupied by the Katherine Town Council and includes other uses carried out under leases and licences (formal and informal) to third parties including those listed in Annexure A of this defence;
- (e) will rely on more detailed evidence at any trial; and
- (f) otherwise does not know and therefore cannot admit the allegations in the paragraph.

32 As to paragraph 32, the Respondent admits the allegations in the paragraph.

33 As to paragraph 33, the Respondent:

- (a) admits that, since in or about 1988, it has from time to time conducted activities in the nature of the Training and Operation Activities at Tindal Base (the "**Tindal Fire Training and Operation Activities**");
- (b) says that, due to the inherent hazards and catastrophic consequences that may arise from aircraft incidents, stringent international standards were and are used to set the minimum requirement for the provision of Airfield Rescue and Fire Fighting ("**ARFF**") support at airfields;
- (c) says that the Civilian Aviation Safety Regulations ("**CASR**"), and its subordinate Manual of Standards Part 139H (based on the International Civil Aviation Organisation's ("**ICAO**") Standards and Recommended Practices), require a certain level of fire protection in place at all times including minimum numbers of vehicles and usable amounts of extinguishing agents. There was at material times a regulatory link between the level of fire protection required and the airfield category;

- (d) says that while the Defence Force is exempt from the applicable CASR at its airfields, the RAAF abides by the ICAO standard as industry best practice and is required to comply with Civil Aviation Safety Authority (“CASA”) requirements at airfields jointly used by military and civilian aircraft;
- (e) says that from around 1988, the Tindal Base required at a minimum:
 - (i) 2 ARFF vehicles to be available;
 - (ii) 3,600 litres of foam meeting performance level A with a discharge rate of 2,600 litres per minute; and
 - (iii) 2,400 litres of foam meeting performance level B with a discharge rate of 1,800 litres per minute;
- (f) says that the minimum ARFF requirements at Tindal Base changed from time to time;
- (g) says that the Tindal Fire Training and Operation Activities were required to accord with International and National Fire Protection Association standards;

Particulars

- (i) *RAAF Fire Manual, 4230.001, May 1999;*
- (ii) *Defence Instruction (Air Force) Operational 6-9: Airfield Emergency Services, issued pursuant to s 11(1) of the Defence Act 1903 (Cth).*
- (iii) *Annex 14 “Aerodromes” to the Convention on International Civil Aviation (7th edition 2016).*
- (iv) *ICAO Airport Services manual – Part 1 – Rescue and Firefighting (3rd ed) (1999).*
- (v) *Australian Standards (AS 1851-2012) – Routine service of fire protection systems and equipment.*
- (vi) *National Fire Protection Association (NFPA) 409 – Standard on Aircraft Hangars 2016 edition*
- (vii) *National Fire Protection Association (NFPA) 414 – Standard for Aircraft Rescue and Fire-Fighting Vehicles. 2017 edition*
- (viii) *National Fire Protection Association (NFPA) 11 – Standard for Low-, Medium-, and High-Expansion Foam 2016 edition*

- (ix) *Civilian Aviation Safety Regulations 1998;*
- (x) *Standards and Recommended Practices, International Civil Aviation Organisation.*

- (h) will rely on more detailed evidence at any trial; and
 - (i) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 34 As to paragraph 34, the Respondent:
- (a) repeats paragraph 33 above;
 - (b) says that it will refer to AFFF in its various forms as AFFF;
 - (c) admits that the alleged use of AFFF took place from time to time at Tindal Base;
 - (d) says that the use of AFFF, at all material times:
 - (i) was a highly effective fire suppression product for fuel based fires; and
 - (ii) protected and protects life and operational equipment at the Tindal Base from fires and potential fires;
 - (e) will rely on more detailed evidence at any trial; and
 - (f) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 35 As to paragraph 35, the Respondent:
- (a) repeats paragraphs 23 and 33 above;
 - (b) says that from 1988, some Tindal Fire Training and Operation Activities took place in an area south of the sewerage ponds;
 - (c) says that some of the Tindal Fire Training and Operation Activities undertaken at the FTA involved the combustion and extinguishment of a range of fuels within a centrally located bunded fire pit bound by a paved area and a drain;
 - (d) will rely on more detailed evidence at any trial; and
 - (e) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 36 As to paragraph 36, the Respondent:
- (a) says that, from time to time, some Tindal Fire Training and Operation Activities were undertaken in and around the FTA;

- (b) says that some Tindal Fire Training and Operation Activities did on occasion (but the Respondent does not know and therefore cannot admit on how many occasions or on what proportion of occasions) involve the use of AFFF;
 - (c) says that it does not know and therefore cannot admit how frequently Tindal Fire Training and Operation Activities occurred;
 - (d) says that some Tindal Fire Training and Operation Activities did on occasion (but the Respondent does not know and therefore cannot admit on how many occasions) involve the spraying of AFFF into a bunded and lined fire pit;
 - (e) will rely on more detailed evidence at any trial; and
 - (f) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 37 As to paragraph 37, the Respondent:
- (a) admits that some of the Tindal Fire Training and Operation Activities took place around the Fire Station;
 - (b) will rely on more detailed evidence at any trial; and
 - (c) otherwise does not know and therefore cannot admit the allegation in the paragraph.
- 38 As to paragraph 38, the Respondent:
- (a) admits that, from time to time, AFFF was used in some Tindal Fire Training and Operation Activities in and around the Fire Station;
 - (b) admits that wet testing was generally undertaken on a daily basis but does not know and therefore cannot admit that AFFF was used in all or any such wet testing;
 - (c) admits that, from time to time, weekly foam testing of vehicles occurred but does not know and therefore cannot admit that such testing occurred in and around the Fire Station;
 - (d) will rely on more detailed evidence at any trial; and
 - (e) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 39 As to paragraph 39, the Respondent:
- (a) admits that some of the Tindal Fire Training and Operation Activities took place in and around Fuel Farm 1 and Fuel Farm 2;

- (b) will rely on more detailed evidence at any trial; and
- (c) otherwise does not know and therefore cannot admit the allegation in the paragraph.

40 As to paragraph 40, the Respondent:

- (a) admits that Fuel Farm 1 and Fuel Farm 2 had a fire suppression system consisting of, inter alia, a ring main of water connected to the Tindal Base mains water supply;
- (b) will rely on more detailed evidence at any trial; and
- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

41 As to paragraph 41, the Respondent:

- (a) admits that Tindal Fire Training and Operation Activities in and around Fuel Farm 1 and Fuel Farm 2 included the testing of the fire suppression system;
- (b) will rely on more detailed evidence at any trial; and
- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

42 As to paragraph 42, the Respondent:

- (a) admits that, from time to time prior to about 2011, vehicle and equipment maintenance occurred in and around the Maintenance Section;
- (b) says that in or around 2011, the Mechanical Equipment Operations Maintenance Section relocated to a new facility north-east of Fuel Farm 1;
- (c) will rely on more detailed evidence at any trial; and
- (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.

43 As to paragraph 43, the Respondent:

- (a) repeats paragraph 42 above;
- (b) admits that some of the vehicles and equipment maintained in and around the Maintenance Section contained AFFF at times;
- (c) will rely on more detailed evidence at any trial; and
- (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.

44 As to paragraph 44, the Respondent:

- (a) repeats paragraphs 33 to 43 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

45 As to paragraph 45, the Respondent:

- (a) repeats paragraphs 33 to 44 above;
- (b) will rely on more detailed evidence at any trial; and
- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

46 As to paragraph 46, the Respondent:

- (a) repeats paragraphs 34, 38 and 45 above;
- (b) will rely on more detailed evidence at any trial; and
- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

47 As to paragraph 47, the Respondent:

- (a) says that:
 - (i) the chemical composition of brands and formulations of AFFF differed from time to time;
 - (ii) it does not know the exact chemical composition of brands and formulations of AFFF at any particular time;
 - (iii) the constituent chemicals of AFFF have different properties; and
 - (iv) some of the constituent chemicals of AFFF may have formed an emulsion and hence would not have been soluble in water;
- (b) will rely on more detailed evidence at any trial; and
- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

48 As to paragraph 48, for the reasons pleaded in paragraph 47 above, the Respondent does not know and therefore cannot admit the allegations in the paragraph.

49 As to paragraph 49, the Respondent:

- (a) repeats paragraphs 8 to 30, and 33 to 48 above; and
- (b) otherwise denies the allegations in the paragraph.

50 As to paragraph 50, the Respondent:

- (a) admits that per- and polyfluoroalkyl substances ("PFAS") are non-naturally occurring substances; and
- (b) otherwise does not know and therefore cannot admit the allegation in the paragraph.

51 As to paragraph 51, the Respondent:

- (a) repeats paragraph 47 above;
- (b) says that during the period where 3M Light Water was used at the Tindal Base:
 - (i) the product contained PFOS; and
 - (ii) it does not know if the product contained PFOA, PFHxS, or other PFCs;
- (c) says that it does not know if Ansulite used at the Tindal Base contained PFOS, PFOA, PFHxS or other PFCs;
- (d) says that since 2005, the Department of Defence has transitioned away from AFFF now known to contain PFOS;
- (e) says that in June 2007, the Department of Defence introduced guidelines to restrict the use of AFFF to fire fighting and equipment and system testing purposes, and not for training;
- (f) says that in August 2008, the Department of Defence implemented a policy to restrict use of AFFF containing PFOS and PFOA;
- (g) will rely on more detailed evidence at any trial; and
- (h) otherwise does not know and therefore cannot admit the allegations in the paragraph.

Particulars

As to paragraph (e), Environmental Guidelines for Management of Fire Fighting Aqueous Film Forming Foam (AFFF) Products, June 2007.

As to paragraph (f), Aqueous Film Foaming Foam (AFFF) Procurement and usage Interim Policy v 1.0, August 2008.

52 As to paragraph 52, the Respondent does not admit the allegations insofar as they concern synthetic per- and poly-fluorinated compound chemical surfactants generally because it is unclear to what category of chemicals the allegation refers, and in respect of PFOS and PFOA, the Respondent:

- (a) admits subparagraphs 52(a) to (c) and (e) of the statement of claim;

- (b) does not admit subparagraph 52(d) of the statement of claim;
- (c) in respect of subparagraph 52(f) of the statement of claim:
 - (i) admits sub-subparagraph (i); and
 - (ii) does not admit sub-subparagraphs (ii), (iii) and (iv);
- (d) says that, in response to subparagraph 52(g) of the statement of claim, the pleading does not identify the nature of the alleged toxicity or toxic effect of PFOS or PFOA and, accordingly, the Respondent does not know and therefore cannot admit the allegation in subparagraph 52(g) of the statement of claim;
- (e) says further that:
 - (i) there are over 3,000 PFAS with different chemical properties and molecular structures;
 - (ii) the key properties of PFOS are:
 - (A) molar mass of 500g/mol;
 - (B) solubility of 370mg/L; and
 - (C) high chemical stability, even at high temperatures;
 - (iii) the key properties of PFOA are:
 - (A) molar mass of 414.1g/mol;
 - (B) solubility of 9500mg/L; and
 - (C) high chemical stability, even at high temperatures;
 - (iv) the scientific understanding of the effects of PFAS, including PFOS, PFOA and PFHxS, is still developing;
- (f) will rely on more detailed evidence at any trial; and
- (g) otherwise does not know and cannot admit the allegations in the paragraph.

53 As to paragraph 53, the Respondent:

- (a) repeats paragraphs 50, 51 and 52 above;
- (b) subject to the matter pleaded at subparagraph(d) below, admits that AFFF Concentrate had the characteristics pleaded in subparagraphs 53(a) and (b) of the statement of claim;
- (c) does not know and therefore cannot admit whether AFFF Concentrate had such characteristics by reason of the matters pleaded in subparagraphs 50, 51 and/or 52 of the statement of claim; and

- (d) says further that, to the extent AFFF Concentrate was at any material time potentially damaging to the environment, or potentially causative of adverse health effects in humans, that depended on the amount of AFFF Concentrate to which the environment or humans were exposed.
- 54 As to paragraph 54, the Respondent:
- (a) repeats paragraphs 50 to 53 above; and
 - (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 55 As to paragraph 55, the Respondent denies the allegations in the paragraph.
- 56 As to paragraph 56, the Respondent admits the allegations in the paragraph.
- 57 As to paragraph 57, the Respondent:
- (a) repeats paragraphs 8 to 30 and 47 to 49 above;
 - (b) will rely on more detailed evidence at any trial; and
 - (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 58 As to paragraph 58, the Respondent:
- (a) repeats paragraphs 56 and 57 above; and
 - (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 59 As to paragraph 59, the Respondent:
- (a) repeats paragraphs 8 to 30, 47 to 49 and 56 to 58 above; and
 - (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 60 As to paragraph 60, the Respondent:
- (a) repeats paragraphs 8 to 30, 47 to 49, 56 and 57 above; and
 - (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 61 As to paragraph 61, the Respondent:
- (a) admits that a plume (groundwater containing PFOS, PFOA and PFHxS (together referred to as the "**Relevant PFCs**")) has been identified in the groundwater beneath part of the Relevant Area;

- (b) does not know and therefore cannot admit whether the plume was or is 'toxic' as alleged in the paragraph;
- (c) says further that:
 - (i) the highest concentration of the Relevant PFCs in the plume appears under the Tindal Base Fire Station and FTA; and
 - (ii) the concentration gradually decreases (although not uniformly) as the plume moves away from the point where the concentration of the Relevant PFCs is highest;

Particulars

The current details of the plume are available online at:

<http://www.defence.gov.au/Environment/PFAS/docs/Tindal/Images/201803RevisedTindalInvestigationArea.pdf>

- (d) will rely on more detailed evidence at any trial; and
 - (e) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 62 As to paragraph 62, the Respondent:
- (a) repeats paragraphs 25, 44, 46 and 61 above;
 - (b) says that some of the Relevant PFCs have been detected:
 - (i) in the soil at the Tindal Base; and
 - (ii) in the groundwater beneath the Tindal Base;
 - (c) will rely on more detailed evidence at any trial; and
 - (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 63 As to paragraph 63, the Respondent:
- (a) repeats paragraphs 8 to 30, 47 to 49, 56, 57, 61 and 62 above; and
 - (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 64 As to paragraph 64, the Respondent:
- (a) repeats paragraphs 8 to 30, 47 to 49, 56, 57 and 63 above; and
 - (b) otherwise denies the allegations in the paragraph.
- 65 As to paragraph 65, the Respondent:

- (a) repeats paragraphs 59, 61, 63 and 64 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

66 As to paragraph 66, the Respondent:

- (a) repeats paragraph 65 above;
- (b) says further that, as to the matter pleaded in subparagraph 66(c) of the statement of claim, it is, and has been since 2016, providing rainwater tanks, alternative water installations and packaged water as an alternative source of drinking water to eligible properties; and
- (c) otherwise denies the allegation in the paragraph.

67 As to paragraph 67, the Respondent:

- (a) repeats paragraphs 61, 63 and 65 above;
- (b) says that the Relevant PFCs have been detected in some soil in the Relevant Area;
- (c) does not know and therefore cannot admit that all soil on the land in the Relevant Area has become, and is likely to continue to become and remain, contaminated by Relevant PFCs; and
- (d) otherwise does not know and therefore cannot admit whether the Relevant PFCs are in the soil on the land owned by each of the Group Members and/or each of the Applicants.

68 As to paragraph 68, the Respondent:

- (a) repeats paragraph 65 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

69 As to paragraph 69, the Respondent:

- (a) repeats paragraph 65 above;
- (b) does not admit that, within the Relevant Area:
 - (i) extensive other aspects of the biotic and abiotic matrices have become and are likely to continue to remain contaminated by the Relevant PFCs; or
 - (ii) the Relevant PFCs will be recirculated indefinitely,

because it does not know which biotic and abiotic matrices are alleged to be affected for each of the Group Members and/or each of the Applicants;

- (c) will rely on more detailed evidence at any trial; and
- (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.

70 As to paragraph 70, the Respondent:

- (a) repeats paragraph 65 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph because remediation and mitigation options may vary in the different circumstances of different areas of land and therefore will differ between Group Members and the Applicants.

71 As to paragraph 71, the Respondent:

- (a) admits the allegations; and
- (b) says further that the "Contamination Announcement" also stated:
 - (i) "According to enHealth, there is currently no consistent evidence that exposure to PFOS and PFOA causes adverse human health effects";
 - (ii) "enHealth recommends that human exposure is minimised as a precaution";
 - (iii) "PFAS were also used across Australia and internationally in a range of common household products and specialty applications, including in the manufacture of non-stick cookware; fabric, furniture and carpet stain protection applications; food packaging and in some industrial processes. As a result, most people living in the developed world will have levels of PFAS in their body";
 - (iv) "[The Respondent] has adopted a precautionary approach and is providing alternative sources of drinking water to eligible residents located in close proximity to the base who do not have a town water connection, and rely on the use of a bore for drinking water"; and
 - (v) "[The Respondent] will also provide water to residents if drinking water is sourced from a rainwater tank that contains, or has in the past contained, bore water".

72 As to paragraph 72, the Respondent:

- (a) admits the allegations in subparagraph 72(a) of the statement of claim;

- (b) admits the allegation in subparagraph 72(b) of the statement of claim but says PFAS are perfluorooctane sulfonate, perfluorooctanoic acid and perfluorohexane sulfonate;
- (c) says that in relation to subparagraph 72(c) of the statement of claim, the Respondent made a statement that PFAS are a class of manufactured chemicals that have been used to make products that resist heat, stains, grease, and water;
- (d) says that in relation to subparagraph 72(d) of the statement of claim, the Respondent advised that PFAS are of concern around the world because they persist in the environment;
- (e) says that in relation to subparagraph 72(e) of the statement of claim, the Respondent also advised that enHealth advises that there is currently no consistent evidence that exposure to PFOS and PFOA causes adverse human health effects, but that enHealth nevertheless recommends that human exposure to these chemicals be minimised as a precaution because these chemicals bioaccumulate and persist in humans and the environment;
- (f) admits the allegation in subparagraph 72(f) of the statement of claim, and says that the Respondent also advised that a total of nine samples were collected from off-base and that PFAS was detected in the two surface water samples at relatively low levels and two of the seven groundwater samples detected low levels of PFAS;
- (g) admits subparagraph 72(g) of the statement of claim, and says that the Respondent also advised that it has adopted a precautionary approach and is providing alternative sources of drinking water to eligible residents who:
 - (i) are located in close proximity to the Tindal Base;
 - (ii) do not have a town water connection;
 - (iii) rely on the use of a bore for drinking water; and/or
 - (iv) source drinking water from a rainwater tank that contains, or has in the past contained, bore water as a precautionary approach;
- (h) admits the allegation in subparagraph 72(h) of the statement of claim;
- (i) admits the allegation in subparagraph 72(i) of the statement of claim, and says that the Respondent also said that:
 - (i) the investigation will be run by consultants who are experts in this field;

- (ii) the investigation will use laboratories that are nationally accredited;
 - (iii) the investigation will follow the national standard process called NEPM Standard;
 - (iv) the results will be peer reviewed by other expert consultants who were not involved in the investigation and also by the Environmental Protection Agency of the Northern Territory; and
 - (v) throughout the investigation, results will be compared to international screening criteria to assess the need for the human health and ecological risk assessment;
- (j) says that the Respondent also said at the November 2016 Community Information Session:
- (i) most people in the modern world have been exposed to PFAS and most people in the modern world would have a measurable amount of PFAS in their blood;
 - (ii) AFFF has been used extensively worldwide;
 - (iii) from 2004, the Respondent introduced a new foam and commenced phasing out use of the old foams for both training and emergencies;
 - (iv) for emergencies, the Respondent uses a foam that does not contain PFOS and PFOA as active ingredients; and
 - (v) for training, the Respondent currently uses water or a foam which does not contain PFOS and PFOA; and
- (k) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 73 As to paragraph 73, the Respondent admits the allegation in the paragraph but relies on the terms of the fact sheet rather than the pleaded summary.
- 74 As to paragraph 74, the Respondent admits the allegation in the paragraph but relies on the terms of the fact sheet rather than the pleaded summary.
- 75 As to paragraph 75, the Respondent admits the allegation in the paragraph but relies on the terms of the fact sheet rather than the pleaded summary.
- 76 As to paragraph 76, the Respondent:
- (a) repeats paragraphs 56 to 70 above;

- (b) says that Relevant PFCs have been detected in some soil in the Relevant Area at levels above what is considered background levels;
- (c) says that Relevant PFCs have been detected in some groundwater at levels above what is considered background levels;
- (d) says that Relevant PFCs have been detected in some biota in the Relevant Area at levels above what is considered background levels;
- (e) will rely upon further evidence at any trial; and
- (f) otherwise does not know and therefore cannot admit the allegations in the paragraph.

77 As to paragraph 77, the Respondent:

- (a) repeats paragraphs 56 to 70 above;
- (b) says that some biota on some land in the Relevant Area may have an ongoing exposure to Relevant PFCs;
- (c) does not know and therefore cannot admit whether occupiers, produce or livestock on land in the Relevant Area will have an ongoing exposure to Relevant PFCs because such exposure has not been assessed;
- (d) says that such of the Applicants' produce that was tested returned a nil detection; and
- (e) otherwise does not know and therefore cannot admit the allegations in the paragraph.

78 As to paragraph 78, the Respondent:

- (a) says that there is some risk that land in the Relevant Area may be:
 - (i) recorded on the WMPCA register; and/or
 - (ii) the subject of a pollution abatement notice;
- (b) does not know and therefore cannot admit the extent of any such risk in respect of particular land within the Relevant Area;
- (c) says that if land is:
 - (i) recorded on the WMPCA register, in some circumstances owners may be obliged to disclose the fact of registration to prospective purchasers; and
 - (ii) the subject of a pollution abatement notice under s 77 of the WMPCA, owners will be obliged to disclose such notice to prospective purchasers;

- (d) says that if land is registered on the WMPCA register, or the subject of a pollution abatement notice, and a contract of sale is rescinded because the vendor failed to inform the purchaser that the land under sale was so registered or notified, then such rescission is the result of the vendor's failure and not any failure of the Respondent; and
- (e) otherwise does not know and therefore cannot admit the allegations in the paragraph.

79 As to paragraph 79, the Respondent:

- (a) repeats paragraphs 56 to 78 above;
- (b) says that it does not know and therefore cannot admit that there is a material risk as alleged in the paragraph;
- (c) says further that the nature and extent of any risk, and the consequences if the risks were to eventuate, depends on an assessment of the particular property involved and the business or other activity conducted upon it; and
- (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.

80 As to paragraph 80, the Respondent:

- (a) repeats paragraphs 56 to 78 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

81 As to paragraph 81, the Respondent:

- (a) repeats paragraph 80 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

82 As to paragraph 82, the Respondent:

- (a) repeats paragraphs 56 to 80 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

83 As to paragraph 83, the Respondent:

- (a) repeats paragraphs 80 to 82 above;
- (b) says that whether and to what extent businesses operating as pleaded in subparagraphs 82(a) to (c) of the statement of claim have become, or may

remain, affected in profitability or value, and the duration of any such effect, depends on an assessment of the particular property involved and the business or other activity conducted upon it; and

- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

84 As to paragraph 84, the Respondent:

- (a) repeats paragraphs 8 to 30 and 33 to 55 above;
- (b) denies that it was reasonably foreseeable at all material times that the use of AFFF at the Tindal Base would result in each of the matters in subparagraphs 84(a) to (g) of the statement of claim; and
- (c) otherwise denies the allegations in the paragraph.

85 As to paragraph 85, the Respondent:

- (a) repeats paragraphs 5 to 16 above in response to subparagraph 85(a) of the statement of claim;
- (b) repeats paragraphs 17 to 19 above in response to subparagraph 85(b) of the statement of claim;
- (c) repeats paragraph 20 above in response to subparagraph 85(c) of the statement of claim;
- (d) repeats paragraphs 21 to 24 above in response to subparagraph 85(d) of the statement of claim;
- (e) repeats paragraphs 9 to 30, 47, 48, 84 above and 105 below in response to subparagraph 85(e) of the statement of claim;
- (f) will rely upon further evidence at any trial; and
- (g) otherwise does not know and therefore does not admit the allegations in the paragraph.

86 As to paragraph 86, the Respondent:

- (a) repeats paragraphs 26 to 30 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

87 As to paragraph 87, the Respondent:

- (a) repeats paragraphs 33 to 49 above; and

- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

88 As to paragraph 88, the Respondent:

- (a) admits the allegation at subparagraph 88(a) of the statement of claim;
- (b) does not admit the allegation at subparagraph 88(b) of the statement of claim, and says that from 30 May 2000, information was available to the Respondent to indicate AFFF and Spent AFFF and Fire Run-Off was potentially causative of adverse health effects in humans;
- (c) will rely upon further evidence at any trial; and
- (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.

89 As to paragraph 89, the Respondent:

- (a) repeats paragraph 88 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

90 As to paragraph 90, the Respondent denies the allegations in the paragraph.

91 As to paragraph 91, the Respondent:

- (a) repeats paragraphs 33 to 45 above;
- (b) admits that, at all material times, its use of AFFF as a fire suppressant in Tindal Fire Training and Operation Activities was deliberate; and
- (c) otherwise denies the allegations in the paragraph.

92 As to paragraph 92, the Respondent:

- (a) repeats paragraphs 5, 33 to 46, 57, 61 to 62, 65 to 68 and 88 to 90 above;
- (b) denies that its use of AFFF was careless, to the extent that it did the acts alleged in subparagraph 92(a) or made the omissions alleged in subparagraph 92(b) of the statement of claim, because:
 - (i) AFFF was the most appropriate substance to fight Class B fires;
 - (ii) AFFF was used to ensure Australian and international standards were met;
 - (iii) no reasonable alternative to AFFF was available from manufacturers at that time; and

- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

93 As to paragraph 93, the Respondent:

- (a) repeats paragraphs 33, 71 to 72, and 88 to 90 above;
- (b) says that on or about 23 November 2016 it held a community information session to discuss its historical use of AFFF and the identification of PFOS and PFOA in groundwater at the Tindal Base;
- (c) says that on or about 12 April 2017 it held a community walk-in session at which the nature of PFAS substances and the environmental investigation were discussed;
- (d) says that on or about 29 June 2017 it held a community walk-in session at which the results of the preliminary site investigation were discussed;
- (e) says that between 10 and 12 October 2017 it held a community shopfront to answer questions by Katherine residents about the investigation;
- (f) says that on or about 4 December 2017 it held a community walk-in session at which the information gathered during the detailed site investigation and the findings of the interim human health risk assessment were discussed;
- (g) says that on 5 and 6 December 2017 it held a community shopfront;
- (h) says that on 27 and 28 March 2018 it held a community shopfront to answer questions from Katherine residents about the investigation;
- (i) says that on or about 18 June 2018 it held a community walk-in session at which the human health risk assessment findings were discussed;
- (j) says that on 19 and 20 June 2018 it held another community shopfront; and
- (k) otherwise denies the allegations in the paragraph.

94 As to paragraph 94, the Respondent:

- (a) repeats paragraphs 33 to 46, 56 to 70, and 91 to 92 above;
- (b) says that Group Members were advised by the Respondent in November 2016 that they should not, as a precaution, use water from bores in the Relevant Area as a regular drinking source;
- (c) denies that all Group Members cannot safely use water from bores in the Relevant Area for all purposes as it is not certain that all groundwater within the

Relevant Area is affected by the Relevant PFCs in circumstances where the identity of all Group Members is not known to the Respondent;

- (d) denies that the Applicants and all Group Members have suffered an interference with the use and enjoyment of land in the Relevant Area resulting from the allegations in subparagraph 94(c) of the statement of claim because:
 - (i) inhalation of dust from soil and sediment presents only a low and acceptable risk to humans of exposure to the Relevant PFCs; and
 - (ii) typical use of the land for growing plants or consuming meat from sheep or cattle grown on the land in the Relevant Area presents only a low and acceptable risk to humans of exposure to Relevant PFCs;
- (e) denies that the Applicants and all Group Members have suffered an interference with the use and enjoyment of the land in the Relevant Area resulting from the allegations in subparagraph 94(d) of the statement of claim;
- (f) denies that the Applicants and all Group Members have suffered an interference with the use and enjoyment of the land in the Relevant Area resulting from the allegation in subparagraph 94(e) of the statement of claim because typical use of the land will, for most Group Members, present a low and acceptable risk of ongoing exposure;

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Human Health Risk Assessment (HHRA), RAAF Base Tindal, Coffey (2018)

- (g) says that whether the Applicants and/or any Group Member has in any particular case suffered an interference with the use and enjoyment of the land they own will depend on the location and nature of their property, the degree to which their soil and the groundwater beneath their property is affected and whether any consequential effects on their use and enjoyment of the property are sufficient to constitute interference of the requisite nature and extent to constitute a nuisance; and
- (h) otherwise does not know and therefore cannot admit the allegations in the paragraph.

95 As to paragraph 95, the Respondent:

- (a) repeats paragraphs 25, 30, 33 to 36, 49, 55, 84, 85 and 90 above; and
- (b) otherwise denies the allegations in the paragraph.

96 As to paragraph 96, the Respondent:

- (a) repeats paragraphs 94 and 95 above;
- (b) says that whether actionable nuisance has occurred depends on an assessment of the particular property involved and the business or other activity conducted upon it; and
- (c) otherwise denies the allegations in the paragraph.

97 As to paragraph 97, the Respondent:

- (a) repeats paragraphs 59, 64, 67, 69, 81 and 83 above; and
- (b) otherwise denies the allegations in the paragraph.

98 As to paragraph 98, the Respondent:

- (a) repeats paragraphs 85 to 92 above;
- (b) denies the allegations in the paragraph; and
- (c) denies that the Applicants and/or Group Members are entitled to aggravated damages.

99 As to paragraph 99, the Respondent:

- (a) repeats paragraphs 85 to 92 above;
- (b) denies the allegations in the paragraph; and
- (c) denies that the Applicants and/or Group Members are entitled to exemplary damages.

100 As to paragraph 100, the Respondent admits the allegations in the paragraph.

101 As to paragraph 101, the Respondent:

- (a) admits that some land in the Relevant Area was physically proximate to the Tindal Base; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

102 As to paragraph 102, the Respondent:

- (a) repeats paragraphs 100 and 101 above;
- (b) says that:
 - (i) no details of the Group Members affected or their alleged "position of vulnerability" have been provided by the Applicants;

- (ii) any alleged "position of vulnerability" will depend on the particular Applicant and/or Group Member; and
 - (iii) it cannot assess or know whether persons other than the Applicants and Group Members had the alleged "position of vulnerability"; and
 - (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 103 As to paragraph 103, the Respondent:
- (a) repeats paragraphs 25, 30, 33 to 46, 49, 55, 84 to 90 and 102 above; and
 - (b) otherwise denies the allegations in the paragraph.
- 104 As to paragraph 104, the Respondent:
- (a) repeats paragraphs 25, 30, 49, 55, 84 to 90 and 100 to 103 above; and
 - (b) otherwise denies the allegations in the paragraph.
- 105 As to paragraph 105, the Respondent:
- (a) repeats paragraphs 25, 30, 49, 55, 84 to 90, 93 and 100 to 103 above;
 - (b) will rely upon further evidence at any trial; and
 - (c) otherwise denies the allegations in the paragraph.
- 106 As to paragraph 106, the Respondent:
- (a) admits that the CWO and CWA had the general effect pleaded in paragraph 106 of the statement of claim but will rely on the terms of the CWO and CWA rather than the pleaded summary; and
 - (b) says that the CWO and CWA as pleaded do not apply, and did not apply at any material time, to the Respondent.
- 107 As to paragraph 107, the Respondent:
- (a) denies that subparagraph 107(a) of the statement of claim accurately states the terms or effect of the WA at all times from 1 July 1992;
 - (b) admits subparagraphs 107(b) and (c) of the statement of claim but will rely on the terms of the WA rather than the pleaded summary; and
 - (c) says that s 4(1) and s 16 of the WA, and the pleaded provisions of the WA, do not apply, and did not apply at any material time, to the Respondent.
- 108 As to paragraph 108, the Respondent:

- (a) denies that subparagraph 108(a) of the statement of claim accurately states the terms or effect of s 12 of the WMPCA;
- (b) admits that the WMPCA had the general effect pleaded in subparagraphs 108(b)-(g) of the statement of claim but will rely on the terms of the WMPCA rather than the pleaded summary; and
- (c) says that s 12 and s 83 of the WMPCA, and the pleaded provisions of the WMPCA, do not apply, and did not apply at any material time, to the Respondent.

109 As to paragraph 109, the Respondent denies the allegations in the paragraph.

110 As to paragraph 110, the Respondent:

- (a) repeats paragraphs 33 to 46 above;
- (b) admits that it had the capacity to exercise control of the Tindal Fire Training and Operations Activities at Tindal Base;
- (c) says that such capacity included taking precautions against the Risk of Harm as set out in subparagraphs 110(a) and (b) of the statement of claim, to the extent that any such Risk of Harm was identified and known to the Respondent; and
- (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.

111 As to paragraph 111, the Respondent:

- (a) repeats paragraphs 33 to 90 above;
- (b) admits that, to the extent that it had knowledge of the matters in subparagraphs 111(a) to (c) of the statement of claim, it had the capacity to warn the general public of those matters; and
- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

112 As to paragraph 112, the Respondent:

- (a) repeats paragraphs 33 to 46, 92 and 110 above; and
- (b) otherwise denies the allegations in the paragraph.

113 As to paragraph 113, the Respondent:

- (a) repeats paragraphs 33 to 46, 93 and 111 above; and
- (b) otherwise denies the allegations in the paragraph.

- 114 As to paragraph 114, the Respondent denies the allegations in the paragraph.
- 115 As to paragraph 115, the Respondent denies the allegations in the paragraph.
- 116 As to paragraph 116, the Respondent:
- (a) repeats paragraphs 85 to 92 above;
 - (b) denies the allegations in the paragraph; and
 - (c) denies that the Applicants and/or the Group Members are entitled to aggravated damages.
- 117 As to paragraph 117, the Respondent:
- (a) repeats paragraphs 85 to 92 above;
 - (b) denies the allegations in the paragraph; and
 - (c) denies that the Applicants and/or the Group Members are entitled to exemplary damages.
- 118 As to section H.2, the Respondent says that any cause of action founded on negligence is time barred pursuant to s 12(1) of the *Limitation Act 1981* (NT), either in whole or in substantial part.
- 119 As to paragraph 118, the Respondent admits the allegations in the paragraph.
- 120 As to paragraph 119, the Respondent admits that, subject to various exceptions, it is a requirement that the Respondent not take inside or outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment inside or outside the Australian jurisdiction, but relies on the terms of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) rather than the pleaded summary.

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EPBC Act, s 28(1) and (2).

- 121 As to paragraph 120, the Respondent:
- (a) repeats paragraphs 33 to 46, 91 to 92 and 119 above;
 - (b) says that the EPBC Act relevantly commenced on 16 July 2000, and does not create any liability for action taken prior to that date;
 - (c) in so far as it relates to conduct by the Respondent in relation to the use of AFFF after 2003 to 2005, denies the allegation; and

- (d) otherwise does not know and therefore cannot admit the allegations in the paragraph.

122 As to paragraph 121, the Respondent:

- (a) in so far as it relates to conduct by the Respondent after 2005, denies the allegation; and
- (b) otherwise does not know and therefore cannot admit the allegations in the paragraph.

123 As to paragraph 122, the Respondent:

- (a) repeats paragraphs 59, 64, 67, 69, 81 and 83 above;
- (b) in so far as it relates to conduct by the Respondent after 2005, denies the allegation; and
- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

124 As to H.3, the Respondent says that any cause of action founded on a breach of the EPBC Act is time barred pursuant to s 12(1) of the *Limitation Act 1981* (NT), or alternatively pursuant to s 14(1) of the *Limitation Act 1969* (NSW), either in whole or in substantial part.

Date: ~~5-October-2018~~ 11 January 2019



.....
Emma Costello
Lawyer for the Respondent
King & Wood Mallesons

This pleading was prepared by Emma Costello, lawyer

Annexure A

Lots currently comprising the RAAF Base Tindal

Title Reference	Lot on plan details	Area of lot
CUFT 825 360	NT Portion 3259 from plan LTO86/070	29.21km ²
CUFT 203 122	NT Portion 2820 from plan LTO86/072	1.296km ²
CUFT 183 038	NT Portion 2826 from plan S86/414	14.68km ²
CUFT 191 102	NT Portion 2823 from plan LTO86/071A	4.142km ²
CUFT 200 110	NT Portion 2832 from plan S84/295	0.1104km ²
CUFT 763 031	NT Portion 1267 from plan B000487	0.1499km ²
CUFT 141 047	NT Portion 2828 from plan LTO85/095	2.072km ²
CUFT 192 111	NT Portion 2830 from plan S86/283	33.29km ²
CUFT 200 104	NT Portion 2834 from plan S87/170	1.34km ²
CUFT 774 940	NT Portion 7004 from plan S2009/188A	1.29km ²
CUFT 227 061	NT Portion 2833 from plan S86/289	0.1777km ²
CUFT 186 135	NT Portion 3474 from S85/247	15.43km ²
CUFT 218 092	NT Portion 2817 from plan S86/221	2.18km ²

Registered easements and leases on lots currently comprising the RAAF Base Tindal

Title Reference	Lot on plan details	Easement or lease number	Date of registration	Purpose
CUFT 825 360	NT Portion 3259 from plan LTO86/070	Easement	N/A	Electricity supply Easement to Power and Water Authority
CUFT 825 360	NT Portion 3259 from plan LTO86/070	Lease 901924	28/03/2018	Civil aviation (including the provision of an airport terminal building and other related facilities and activities)
CUFT 825 360	NT Portion 3259 from plan LTO86/070	Lease 741734	18/01/2011	Aircraft hanger, offices (including NT Aerial Medical Offices) and ancillary uses
CUFT 825 360	NT Portion 3259 from plan LTO86/070	Lease 568360	06/01/2005	Refuelling depot and ancillary uses
CUFT 825 360	NT Portion 3259 from plan LTO86/070	Lease 568359	06/01/2005	Refuelling depot and ancillary uses
CUFT 825 360	NT Portion 3259 from plan LTO86/070	Lease 299358	13/12/1993	Civil aviation (including the provision of an airport terminal building and other related facilities and activities)
CUFT 183 038	NT Portion 2826 from plan S86/414	Easement	N/A	Electricity supply Easement to Power and Water Authority
CUFT 191 102	NT Portion 2823 from LTO86/071A	Easement	N/A	Electricity supply Easement to Power and Water Authority
CUFT 744 940	NT Portion 7004 from plan S2009/188A	Easement	N/A	Electronic communications Easement to Telstra Corporation Ltd

CUFT 744 940	NT Portion 7004 from plan S2009/188A	Easement	N/A	Electronic communications Easement to Telstra Corporation Ltd
CUFT 744 940	NT Portion 7004 from plan S2009/188A	Easement	N/A	Electricity supply Easement to Power and Water Corporation
CUFT 218 092	NT Portion 2817 from plan S86/221	Easement	N/A	Electricity supply Easement to Power and Water Authority

Unregistered licences on lots currently comprising the RAAF Base Tindal

Location	Licensee	Date of Commencement	Date of Expiry	Purpose
Land part of NT Portion 3259 within Defence Communications Compound, RAAF Base Tindal NT 0853	Telstra Corporation Ltd (ACN 051 775 556)	1 December 2000	30 November 2020	The construction and use of: (a) A Tower for the delivery of a public mobile telecommunication service within the meaning of the <i>Telecommunications Act 1997</i> (Cth); and (b) The joint use of the PABX Room in the Defence Communications Centre for associated equipment.
Part of Building 260 on N.T. Portion 3259 RAAF Base Tindal NT 0853	Defence Bank Limited	1 January 2016	31 December 2020	Operation of a financial institution and providing ATM facilities.
Rooms 01 & 02 and shared use of Room 03 Building 260 on N.T. Portion 3259 RAAF Base Tindal NT 0853	Paynefree Investments Pty Ltd (ACN 623 261 281)	5 March 2018	4 March 2023	Operation of a Licenced Post Office providing services to RAAF Base Tindal.
Easton Pde, N.T. Portion 3259 RAAF Base Tindal NT 0853	Mission Australia Early Learning Services (ABN 26 133 530)	1 July 2012	31 December 2018	Operation of a childcare service on the RAAF Base Tindal.
Part of N.T. Portion 3259 from Plan LTO086/070	Airservices Australia (ABN 59 698 720 886)	1 October 2010	30 September 2020	Operation of the Doppler Visual Omni Directional Range for air navigation services.
Part of N.T. Portion 3259 from Plan LTO086/070	Airservices Australia (ABN 59 698 720 886)	1 October 2010	30 September 2020	Operation of a Powerhouse.
Part of N.T. Portion 3259 from Plan LTO086/070	Airservices Australia (ABN 59 698 720 886)	1 October 2010	30 September 2020	Operation of Satellite Ground Station and Very High Frequency Tower.
Part of Building 530 on N.T. Portion 3259 RAAF Base Tindal NT 0853	Northrop Grumman Overseas Service Corporation	7 October 2006	6 October 2019	Obligations under the contract between the Commonwealth of Australia and Northrop Grumman Overseas Service Corporation.
Rooms 07 & 08 Building 240 on N.T. Portion 3259 RAAF Base Tindal NT 0853	Network Tindal Incorporated (ABN 79 165 232 102)	1 November 2015	31 October 2020	Office accommodation and Tindal community activities.
Room 04, Level 1 Building 250 on N.T. Portion 3259	Shaan Baxter (trading as HairForce One)	17 July 2017	16 June 2019	Hairdressing salon for Defence personnel and civilians.

RAAF Base Tindal NT 0853				
Easton Pde, N.T. Portion 3259 RAAF Base Tindal NT 0853	B4 Kids Pty Ltd	18 May 2009	30 June 2012	Provision of childcare services at Defence Child Care Centres and Defence Outside School Hours facilities owned by Defence.
Part of Building 260 on N.T. Portion 3259 RAAF Base Tindal NT 0853	Katherine Swimming Centre Pty Ltd (ACN 82 056 438 941) t/a Tindal Mail Service	1 August 2006	31 Jul 2011	Operation of a Licenced Post Office providing services to RAAF Base Tindal.
Part of Building 250 on N.T. Portion 3259 RAAF Base Tindal NT 0853	Joanne Patman	1 January 2007	31 December 2016	Hairdressing salon for Defence personnel and civilians.
Room No 14 Building 255 on N.T. Portion 3259, RAAF Base Tindal NT 0853	Toll Transport Pty Ltd (ABN 31 006 604 191)	1 October 2010	30 September 2017	Office accommodation.
Tennis Courts and Tennis Court Shelter on Buildings 0272, 0273 and 0274 on RAAF Base Tindal on N.T. Portion 3259.	Sandon Murch and Susanna Renkwitz t/a All Tennis (ABN 33 556 027 427)	1 April 2015	31 January 2017	Provision of tennis lessons to Defence families.
Rooms 01 & 02 and shared use of Room 03 Building 260 on N.T. Portion 3259 RAAF Base Tindal NT 0853	Leisa Maree Dore (ABN 16 376 476 492)	30 September 2011	Terminated 5 March 2018	Operation of a Licenced Post Office providing services to RAAF Base Tindal.
Room 4 of Building 250 on N.T. Portion 3259 RAAF Base Tindal NT 0853	Julie-Ann Cernovskis	1 July 2012	30 June 2016	Hairdressing salon for Defence personnel and civilians.
Part of Building 260 on N.T. Portion 3259 RAAF Base Tindal NT 0853	Defence Force Credit Union Limited (ABN 57 087 651 385)	1 July 2010	30 June 2015	Operation of a financial institution.

Annexure B

Registered bores on RAAF Base Tindal

Bore No.	Bore Name	Purpose
RN000148	R.A.A.F NO.465 TINDAL 228M	Unknown
RN000408	R.A.A.F BASE NO.462 TINDAL 227M	Unknown
RN000409	RAAF NO 464 TINDAL	Unknown
RN001450	A 381 TINDAL 227M W OF AERODROME	Unknown
RN001455	A 473 TINDAL	Unknown
RN003025	NO.1 TEST HOLE TINDAL AIR STRIP	Investigation
RN003026	NO.2 TEST HOLE TINDALL AIRSTRIP	Unknown
RN003027	TEST HOLE NO. 3 TINDAL	Investigation
RN004077	NO 2 TINDAL AIRSTRIP	Unknown
RN004143	NO 1 TINDAL AIRSTRIP	Unknown
RN004277	NO 1 TINDAL AIRSTRIP	Unknown
RN004600	RAAF NO3 JOB 230 TINDAL AIRSTRIP	Unknown
RN004648	R.A.A.F NO.5 JOB 241 TINDAL AIRSTRIP	Unknown
RN004709	RAAF NO 4 JOB 231 TINDAL AIRSTRIP	Unknown
RN005329	8' BORE TINDAL MARRIED QUARTERS TINDAL	Unknown
RN005706	TINDAL JOB NO 340 TINDAL	Unknown
RN005729	TINDAL MARRIED QUARTERS R.A.A.F BASE TINDAL	Unknown
RN005732	MARRIED QUARTERS BORE TINDAL	Unknown
RN005770	NO 8 1 ST ATT TINDAL	Unknown
RN005771	RAAF NO. 8 ND ATTEMPT TINDAL AIRSTRIP	Unknown
RN007079	PRODUCTION NO.1 TERMINAL BORE D.C.A. TINDAL	Unknown
RN007821	Mataranka Station	Production
RN021322	GILLS NO 1 2820 QUARRY RD	Unknown
RN021323	8/81 KUMBIDGEE STATION	Unknown
RN021324	1/81 KUMBIDGEE STATION	Unknown
RN022392	TINDAL – WR 83/7	Monitoring
RN022393	7/83 TINDAL AREA	Unknown
RN023541	R.A.A.F TINDAL AIRSTRIP	Production
RN024375	PIONEER CONCRETE TINDAL	Unknown
RN024376	PIONEER CONCRETE TINDAL	Unknown
RN024422	NO 1 NT P=1549	Unknown
RN024423	NO 2 NT P=550	Unknown
RN024458	WHITE CONSTRUCTIONS NO. 3 TINDAL BYPASS ROAD	Unknown
RN024555	WATER RESOURCES TINDAL	Unknown
RN024589	WHITE CONSTRUCTION NTP=2823	Unknown

RN024601	DEPT OF HOUSING & CONSTRUCTION TINDAL	Unknown
RN024614	COMMONWEALTH GOVERNMENT TINDAL	Unknown
RN025650	ORDINANCE RAAF BASE TINDAL	Production
RN025999	GOLF COURSE PRODUCTION TINDAL	Unknown
RN026701	FUEL DUMP OBS NO 1 TINDAL	Unknown
RN026702	FUEL DUMP OBS NO 2 TINDAL	Unknown
RN026703	FUEL DUMP PRODUCTION TINDAL	Unknown
RN026704	SEWERAGE FARM PRODUCTION TINDALL	Unknown
RN026705	BOUNDARY PRODUCTION TINDALL	Unknown
RN026909	ARMY 955 11/89 TINDAL	Unknown
RN026910	ARMY 956 12/89 TINDAL	Unknown
RN028781	R.A.A.F BASE SITE 1 TINDAL	Production
RN028782	R.A.A.F Base Site 2	Production
RN028783	R.A.A.F BASE SITE 3 TINDAL	Production
RN028784	R.A.A.F BASE SITE 4 TINDAL	Production
RN028785	R.A.A.F BASE SITE 5 TINDAL	Production
RN029429	Tindal R.A.A.F – NTG 1/94	Monitoring
RN029430	Tindal R.A.A.F – NTG 2/94	Monitoring
RN029772	R.A.A.F BASE TINDAL	Production
RN029773	RAAF BASE TINDAL	Production
RN035096	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035097	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035098	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035099	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035100	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035101	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035102	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035103	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035104	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035105	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035106	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035107	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035108	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035109	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RM035110	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035111	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035112	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035116	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035117	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035118	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035119	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN035160	R.A.A.F BASE TINDAL (E.R.M AUST PTY LTD)	Investigation
RN037516	GHD R.A.A.F Base Tindal (Katherine)	Investigation

RN037517	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037518	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037519	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037580	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037581	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037582	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037583	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037587	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037588	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RM037589	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037590	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037591	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037592	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037593	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037594	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037595	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037596	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037597	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN037598	GHD R.A.A.F Base Tindal (Katherine)	Investigation
RN038469	GHD R.A.A.F Base Tindal (Katherine)	Production
RN038509	Commonwealth of Australia (R.A.A.F Base Tindal)	Production
RN040410	Coffey Services Australia Pty Ltd (Tindal)	Investigation
RN040411	Coffey Services Australia Pty Ltd (Tindal)	Investigation
RN040412	Coffey Services Australia Pty Ltd (Tindal)	Investigation
RN040477	Contracted by Coffey (Tindal R.A.A.F Base)	Investigation

Certificate of lawyer

I, Emma Costello, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date:

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes, positioned above a dotted line.

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Lawyer for the Respondent