



QUEENSLAND COURTS AND TRIBUNALS

TRANSCRIPT OF PROCEEDINGS

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MAGISTRATES COURT

WILSON, Magistrate

[REDACTED]

[REDACTED]

Complainant

and

[REDACTED]

Defendants

SOUTHPORT

3.35 PM, WEDNESDAY, 13 MARCH 2024

DAY 1

DECISION

Any rulings in this transcript may be extracted and revised by the presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HER HONOUR: The matter before me today is to dispose of three complaints that have been brought by the Council of the City of the Gold Coast. The defendants before the court today are [REDACTED]

5 [REDACTED] and company number [REDACTED]. [REDACTED] appears at the bar table with his lawyer, Mr McMillan. He, in fact, essentially represents the interests of all.

10 At the beginning of proceedings today, there was a rectification, if you like, to the plea entered by [REDACTED] it having been brought to both the council's and the court's attention that [REDACTED] in fact, was the relevant officeholder and that plea of guilty on behalf of [REDACTED] as put, if you like, to the court by Mr McMillan. In any event, there's no issue raised by the prosecutor today in respect of how that plea was taken in and it's accepted that
15 the four defendants understand the nature and effect of the complaint and that pleas of guilty have been entered.

A matter of housekeeping was that the complaint brought against [REDACTED] [REDACTED] was essentially NETO'd at the beginning of the day and that she was
20 discharged in respect of the complaint brought personally against her of contravening an enforcement notice on the 23rd of December 2022.

Before me today, Mr Purcell of counsel appears instructed by McInnes Wilson on behalf of the Gold Coast City Council. Mr McMillan, solicitor, appears on behalf of
25 the relevant defendants. I was helpfully assisted by a document which I have marked as exhibit A, which is a statement of agreed facts. The facts essentially are that on the 5th of May 2020, the Gold Coast Council filed enforcement proceedings in the Planning and Environment Court in Queensland, seeking enforcement orders relating to the unlawful use of premises and carrying out of assessable development, namely,
30 in essence, a change to the ground level of that permitted – of that lot without all of the necessary development permits being in effect for the development and that property is located at Lot 1 – sorry, Lot 542 Rotary Park Road, Alberton.

The first respondent was nominated as [REDACTED] with the appropriate
35 company number. [REDACTED] was the second respondent and – with the relevant company number. [REDACTED] was the fourth respondent. At all times that those proceedings were on foot, [REDACTED] was the sole director of [REDACTED]

40 On the 27th of September 2022, his Honour Judge Rackemann in the – a District Court judge, made final orders in Queensland by consent in those enforcement proceedings and issued orders against [REDACTED] the relevant company, [REDACTED] and [REDACTED] I was provided with a copy of those orders. Those orders are set out in the following terms:

45 *Pursuant to 180(5) of the Planning Act, that by 23 December 2022, the first respondent, second respondent, third respondent and fourth respondent –*

[REDACTED]

The third respondent to those proceedings being Mulch Management Australia,
608616922 –

remove earthworks from the relevant premises –

5

That being the Alberton premises –

other than the pre-existing cane pad area –

10 And that was identified under an annexure attached to the orders –

*and to restore the premises to its natural ground level under supervision of a
registered professional engineer of Queensland –*

15 Also colloquially referred to as a RPEQ. And to, subsection (2):

*...provide certification from the RPEQ confirming that the natural ground level
of the premises has been reinstated and was carried out under his or her
supervision and in accord with the recommendations.*

20

It is accepted by way of the plea of guilty today and in all of the circumstances,
having entered pleas of guilty to the contravention arising as a result of this factual
matrix from offences that are charged as at 23.12.2022, that the defendants accept
that they had not complied with Judge Rackemann's order.

25

There has been much made today of other issues that postdate the operative period,
being the 23rd of December 2022, and I will come to those shortly and turn to those
when I turn to sentence and what weight I place on any of the issues raised with this
court by way of mitigation. Suffice it to say that the final order made by his Honour
30 Judge Rackemann after a hearing on the 27th of September 2022 was, like today, on
the respondents' admission that a development offence in breach of the relevant
section, which was 163(1) of the Planning Act, had been committed by carrying out
assessable development, being operational works, being a change to a ground level
of premises at 542 Rotary Park Road, Alberton. I have also noted, having taken in
35 submissions today, that the defendants were represented and that is an important
point, because Mr McMillan raises certain issues in his submissions about the tight
turnaround timeframes and so forth and, again, I will turn to those when I come to
penalty.

40 So today's plea is an early plea in all of the circumstances, notwithstanding the
history of this matter, and whilst I didn't take in any submissions on behalf of the
defendants today about whether it should be considered an early plea, I certainly
consider in circumstances where, upon sitting today, housekeeping was done in
relation to one of the defendants and that [REDACTED] was discharged entirely from the
45 offence of contravening the enforcement order and that there was also, it seems,
some last minute changes made to the company director not being [REDACTED] and
instead being [REDACTED] being supplemented in relation to the [REDACTED]

[REDACTED]

company. So given that there has been significant conferencing and that the defendants come before the court today in those circumstances, I do accept that this is an early plea.

5 Further, the administration of justice today has been served by the fact that there is no now need to proceed to a hearing, as this matter was initially set down for two days. It was dealt with in November of 2023 by way of directions hearings and, in all of the circumstances, the approach adopted by the defendants today necessitates the court taking into account a plea of guilty, which is an important aspect when
10 turning to penalty, which I will do fairly shortly, so as to have the full benefit of that plea.

At the outset, I note that the prosecution, on their own submissions, submit that the contraventions that have been dealt with today before the court are at the lowest end
15 of the spectrum. That is a significant concession in all of the circumstances and when I turn to penalty, not only will the plea of guilty be reflected in what I consider to be a fine at the lowest or lower end, it is also reflective of the fact that, as I say, the prosecution have conceded most fairly that the issues before the court today are at the lowest end of the spectrum.

20 This is not a situation, for example, where the defendants have walked off the land, have not done anything in relation to the matters that have been before the court now for some years. The matters before the court today, however, are a consequence of what appears to be years of not only litigation, but aspects of dealing with the
25 difficulty that the defendants faced by not initially obtaining the appropriate permissions and consents that were required from the Council of the City of the Gold Coast.

The very important aspects that have been reflected to the court today by council, for
30 the prosecution, is that the earthwork issue is most pressing in that particular area, not only because it falls within what I might call a blue zone or a flood plain, but because it poses a risk when sufficient consents and permits are not gained and that the council then has to deal with the consequence of risk of flooding and not only the risk of, but the actuality of flooding.

35 I have also received into submissions today that I should impose a global penalty in respect of the companies and the defendant personally, [REDACTED] in the range of \$20,000 to \$30,000, that that would reflect general and specific deterrence and that I should also direct payment of the complainant's professional, legal and filing fees. I
40 can – there has been absolutely no quarrel with the amount sought for the complainant's legal and filing fees in the amount of \$27,478.75, Mr McMillan having conceded at the outset of proceedings today that that was not an amount that was contested. I therefore direct and order that that amount be paid within three months and otherwise referred to the State Penalties Enforcement Registry for
45 collection and payment.

[REDACTED]

I now turn to how I should deal with imposing penalty today, which will be a fine only, in respect of the defendants. Whilst the plea of guilty is taken in and that I move to conviction on the basis of – that it is the failure to comply with the relevant court order made by his Honour on the 27th of September 2022, I also take into account a number of matters that I must. And I refer to, specifically, the – what seems to be the chronology of events since the making of that order.

Firstly, prior to – or between the date of final order on 27 September 2022 made by his Honour and the 23rd of December 2022, which was the final date that enforcement orders were to be complied with, it seems that a change of title over the land occurred between businesses that are owned and operated by family members. So initially the title was held by a company that is a defendant before the court today and that [REDACTED] was a director of and was transferred to his wife's business, [REDACTED]

The title that has been provided and has been entered into the record in court today clearly shows that the relevant caveat or encumbrance has been transferred with that title and it is on that basis that pleas of guilty have been entered by the relevant defendants, indicating that each accept their, if you like, responsibility and culpability for the breach or noncompliance with the enforcement order. [REDACTED] Haulage was a business that was operating on the land and it was a haulage business that was then run, as I understand it, by [REDACTED] and is no longer operating. Is that correct, Mr McMillan?

MR McMILLAN: Yes, your Honour.

HER HONOUR: Nonetheless, the obligations, as have been clearly indicated to me under the Planning Act, indicates that, pursuant to section 176 of the Planning Act 2016:

An enforcement owner binds the owner, the owners' successors in title and any occupier of the business.

And that is subsection (6)(b). I, therefore, must proceed on these pleas of guilty to deal with each of the defendants before the court today, given that, under the Act, each has obligations and responsibilities and that each are bound by the terms of this legislation. In relation to what penalty a court should consider appropriate, I firstly refer to the Planning Act 2016 again, and I am helpfully taken to the penalty provisions in section 180, specifically subsection (8), where the maximum penalty for a person who contravenes an enforcement order is 4500 penalty units or two years' imprisonment, and that there is an uplift under the – by virtue of cross-reference to the Penalties and Sentences Act of five times that amount for corporations.

The current penalty unit in Queensland is \$154.80. The maximum, therefore, of 4500 units for a person would be \$16,660 and for a corporation would be \$348,300. Again, I say fairly early on in my reasons today that that has not been – the highest

[REDACTED]

end has not been sought at all by the prosecution, who have proceeded on the basis that they seek something akin to a about one per cent or less of the total maximum penalty units. Mr McMillan does not offer up an amount. He invites the court to – in respect of the corporations, to come to its own deliberations about any amount that should be imposed, but he says that it should be something less than what Prosecution have put up.

I also take into account when approaching this sentence that, as I say at the outset, it is not the case it appears on the face of it, from the material that has been provided before – to the court today that either [REDACTED] or the relevant defendant companies have been wholly recalcitrant. I accept that there has been a significant amount of engagement by him and on behalf of the defendant companies with relevant experts to try and work toward certification. I was provided and marked for identification as exhibit 1 – and perhaps I should now- for the sake of completeness, I will call that exhibit 11 for the defendant.

EXHIBIT #11 ADMITTED AND MARKED

HER HONOUR: I have before me, under the hand of a Michael Hughes and dated 13 March 2023, certification of a property returned to natural ground level. Now, the issue in respect of this certification – or issues in respect of this certification are as follows: (1) it has not, until I understand, within the last two days prior to today's court date – ever been brought to the attention of the Council of the City of the Gold Coast. They have been caught by surprise as they approached these proceedings and they say that, in any event, I could not accept that as certification of property being returned to the natural ground level, as is required by the Gold Coast City Council, and that the – even if I were to take it in and to have regard to this document in any way, that the annexures, which are the relevant contour plans and survey plans, have been prepared, if you like, on a wrong premise and that they rely on old or information that is misunderstood, and that the certification before the court – purportedly before – well, purported certification before the court today is not something that would in any way verify compliance even as at today's date, and that there is work to be done. It seems – and I accept the prosecution's submission in relation to that.

However, what it does demonstrate to the court is that, notwithstanding that the certification itself may be erroneous in one or more respects and certainly does not, as I say, indicate that the relevant property has been remedied to the extent that is required, what it does show is that the defendant has set about certainly trying to undertake, it seems to the best of his ability, to comply with orders, notwithstanding that he could not do so within the operative period of time and notwithstanding that he could not do so even at today's date, and that is accepted. But, again, it does show that this is a defendant who has not been idle.

[REDACTED]

I have before me, in corroboration of that submission, also a number of emails which I have marked as exhibits on behalf of the defendants, and they clearly indicate that experts have been engaged and that, in fact, [REDACTED] own previous lawyers, PHD Law, as at 16 February 2023, were writing to the Gold Coast City Council, explaining some of the complexities and difficulties that their clients, [REDACTED] and his companies, were facing. And it is accepted, appropriately again, by Mr Purcell today, that that does indicate that earthworks had started. It also, it seems, proposes and invites the council to jointly inspect the premises, along with [REDACTED] own engineers.

Now, council say the reason that that has not happened in the last 12 months, this letter being dated the 16th of February 2023, is that the council required further and better particulars of – and specifics of – to lay the foundation, if you like, for that joint inspection and I can infer that whatever was required or asked for wasn't forthcoming, because certainly, a joint inspection didn't proceed and I am informed that, in fact, no inspection has, in fact, occurred onsite at Alberton by any authorised delegate of the Gold Coast City Council.

So there has been, essentially, a complete breakdown in communication. It seems that from the submissions today, I can also reasonably infer that [REDACTED] has – it has been necessary for him to change legal representatives, that he wasn't – or didn't gain the traction that he needed to in order to comply with the December 2022 enforcement order, notwithstanding, it appears, very significant and genuine endeavours – and I have a series of emails which clearly indicate his engagement with experts, I am told, who have now gone to ground or wouldn't provide affidavits and assist him.

He did also make, it appears – that is the defendant, [REDACTED] – an endeavour to go back to the court and that there was an adjournment and then the matter was struck out due to a lack of further information per directions of a judge. I am told that there was no supporting material and, again, therefore, the case and the application was deemed deficient.

So as I say, the complexity of this matter really arises out of the fact that – and I don't exactly know what date and time it was, but certainly predating 2022 and, I think, as far back as 2020, although I could be wrong about that, the relevant permission and consents not being obtained from the council in relation to these earthworks are still ongoing as at today's date, which is March 2024.

I have tendered into – today a number of exhibits on both – behalf of the prosecution and the defence. I have been helpfully assisted by the documents. I appreciate – or have an appreciation of the chronology of the events, the factual matrix of the events and the circumstances that give rise to the plea of guilty to these contravention proceedings today.

That being the case, I now move to penalty. I convict each of the defendants before the court. I have taken into account the varying submissions and the way that I

██████████

should proceeding and I am in doubt that the guideposts for how I should proceed are within the relevant Planning Act and also the considerations within sections 9 and 11 of the Penalties and Sentences Act. I absolutely accept that there is no fixed mathematical approach to this matter. I also accept that there is no case across – I am told – all of the Queensland-wide databases under the current legislation that could give me any type of contemporary, if you like, comparison. I am assisted somewhat by the comparative tables and whilst I accept Mr McMillan’s objection to that – to those documents, it’s not unusual for a court to take in such tables. I have also had regard to the prosecution’s register, which I have previously marked as exhibit J and, in all of the circumstances, my approach to the imposition of a penalty today, which will only be a financial fine – a financial penalty, I should say, by way of a fine is as follows.

And that is in respect of the personal defendant, ██████████ having entered a plea of guilty and upon conviction today, I fine you, sir, \$1548 and that is akin to, currently, 10 penalty units as the penalty unit is currently standing in Queensland. I have previously directed that the defendants pay the legal and filing fees of the Gold Coast City Council. In relation to a conviction, I note that there is absolutely no history before me and there would be no reasons in the circumstances, in my view, to record any conviction today and I therefore do not record a conviction against ██████████

In respect of the corporate offenders, if you like, ██████████ Limited, ██████████ and the ██████████ Proprietary Limited, I have taken into account the submissions of Mr McMillan in relation to the corporate defendants, along with ██████████ as a personal defendant and that is this. That the – that both ██████████ himself and the defendant businesses are financially challenged, that I understand the businesses do not operate any longer and that I am told that the submission goes so far as to the fact that each of the three businesses is impecunious; did I – - -

DEFENDANT ██████████ Yes. Yes, yes, your Honour.

HER HONOUR: - - - understand that to be the case? And that I should take that into account when proceeding to deliver the fine today.

It does seem to me, however, that the corporate defendants – or offenders should be penalised at a rate higher than the personal defendant, ██████████ for all of the reasons that are commonly known and for the reasons that are certainly submitted by the prosecution. I have considered that in these circumstances, again, with no fixed mathematical approach and not having any contemporary matters to guide the court, or indeed, really be able to bolster the submissions, that the defendants, ██████████ should be fined 30 penalty units, that amount being \$4644 each. So rather than take the totality approach – or, sort of, the whole one fine, I have applied a \$4644 fine to each of those three corporate defendants.

[REDACTED]

I have taken into account – and I use this term loosely and not strictly within the sense that we would perhaps in a criminal court when approaching sentencing – but totality in respect of the fact that each of the businesses is owned by either Mr or Mrs [REDACTED] and/or own the Alberton property, that it may have been strictly open to the council to perhaps charge either [REDACTED] but that in any event, I don't look behind the approach and I accept, as I say, the pleas of guilty today in respect of each of the corporate defendants.

I then turn to whether or not a conviction should be recorded and, in my view, for all of the reasons previously stated and that are also relevant to the personal defendant, there being no history of either of the – or any of these three businesses having before failed to comply or having a history that might be considered relevant, I have determined that convictions should not be recorded against those three defendant – defendants before the court. So, Mr Purcell, what I would like to do is tidy up the form of the order and I have, for the benefit of everyone, handwritten the following:

Upon the court being satisfied that –

And I am using the template order that was provided to me - - -

MR PURCELL: Yes, your Honour.

HER HONOUR: - - - at sub (1) – and thank you for providing that – I have inserted the words:

The defendant, having entered a plea of guilty, has been found guilty of an offence –

Just so that it distinguishes between this being a penalty that's entered after a hearing. I have inserted the relevant amount there in (2)(a) and in (2)(b) and I have amended by hand:

No convictions recorded.

I have also, in relation to the document and form of order for [REDACTED] – at page 2, paragraph 6, it says – it initially said:

If you, [REDACTED]

That should be, "If you, [REDACTED]" I have changed that form of order and I have amended that by hand. Is there anything in relation to just the penalty at the moment, Mr Purcell, that I should turn my mind to? I have, it seems – on your order, there is three months to pay and therefore referred to SPER for collection and payment.

MR PURCELL: That's correct, your Honour.

[REDACTED]

HER HONOUR: All right.

MR PURCELL: Sorry, did you ask me a question? I - - -

5 HER HONOUR: No. Is there anything else that I should then do?

MR PURCELL: Yes. Just in respect to the order to [REDACTED] it should not – in the declaration, under the 665 or equivalent, it should be, “If you, [REDACTED] do not obey this order,” because the order is - - -

10

HER HONOUR: Right.

MR PURCELL: - - - not the director of the company. So it should say that. My apologies, your Honour.

15

HER HONOUR: No, that is fine. So this is – I will just clarify, paragraph 6, “if you, [REDACTED]

MR PURCELL: Yes.

20

HER HONOUR: All right. Any other amendments to be made or - - -

MR PURCELL: No, your Honour.

25 HER HONOUR: - - - rectifications to that order? Mr McMillan?

MR PURCELL: Sorry, I should - - -

MR McMILLAN: Would your Honour – sorry. I’m sorry.

30

MR PURCELL: At the bottom, it says:

A conviction be recorded.

35 Sorry, is a conviction recorded?

HER HONOUR: I have amended by hand and said “not”.

MR PURCELL: Okay. Thank you.


40

HER HONOUR: Not be recorded.

MR McMILLAN: Would your Honour - - -

45 HER HONOUR: I have done that on all four documents.

MR PURCELL: Thank you.


MR McMILLAN: Thank you, your Honour. Would your Honour allow for these fines to be recovered through the State Penalties Enforcement Register?

HER HONOUR: Well, it seems that the form of order allows for that. It says:

5 *Three months to pay and referred to SPER.*

I am just wondering whether I can delete the “three months to pay” and refer immediately to SPER for collection and payment.

10 MR McMILLAN: For the costs, I was – and I’ve been – - -

HER HONOUR: I have done the same with costs, I should say.

15 MR McMILLAN: For the costs, I thought that that may well be – my friend might have wanted at least an attempt made by the defendant to pay within the three months and that it will be permissible for the other – for the entities to put them through the State Penalties Enforcement – because they can ask for - - -

20 HER HONOUR: They can.

MR McMILLAN: They can have it converted, as we all know, and ask for instalments and the various other things.

25 HER HONOUR: Mr Purcell, any objection to me deleting “with three months to pay” and just instead “referred to the State Penalties Enforcement Register”?

MR PURCELL: Not at all, your Honour. Thank you.

30 HER HONOUR: Thank you very much for that concession. And I do so for both the fines and the costs.

MR McMILLAN: May it please.


35 HER HONOUR: All right. Give me a minute to deal – all right. All right. Those amendments have been made by hand. Mr Purcell.

MR PURCELL: Thank you, your Honour. That just leaves us the issue in respect of the enforcement orders.

40 HER HONOUR: I have to say, I am inclined to move to that matter. Mr McMillan.

MR McMILLAN: I predicted after the sentence occurred that we did.

45 HER HONOUR: All right. So, Mr Purcell, perhaps you can take me to the relevant orders.


MR McMILLAN: Can I say this, your Honour – I don't mean to cut across my friend. I hinted at this before the adjournment. I'm instructed to indicate to your Honour that we're seeking an adjournment of this component of matter, and it's put by way of instructions to me that the adjournment is needed because of the late service of the proposed enforcement order - - -

HER HONOUR: All right.

MR McMILLAN: - - - the details of it. They came to my office – I think it was yesterday. So in terms of the structure of the order - - -

HER HONOUR: What detriment – and I have not closed my mind yet to how I am going to proceed, but what detriment would there be to your client if it was to proceed today on this basis or on a renegotiated timeframe?

MR McMILLAN: I – it was – it really was about – it was about area and time that the two – the two issues that my client raised with me about this. So the reason area was important was because the – let's call it the cane pad area that my client is going to have to deal with in a different way. But that area needs to be – on my client's instructions, needs to be accurately assessed.

And the second part is – before anything can happen. And the second part is timeframe. Given that it is an enormous amount of material that needs to be removed, potentially, my client wants an opportunity to determine how much and how long it's going to take, because if it's – he tells me that it might be something like 85 or 90 truckloads of material that might have to move, but that can vary wildly depending upon how much needs to be moved in different places.

HER HONOUR: Isn't that, then, just a renegotiation of the timeframe required to comply, rather than the actual process?

MR McMILLAN: He just doesn't want to have to come back to court to vary the order, if that has to happen.

HER HONOUR: Well, I appreciate that. It just seems to me he will have to if you seek an adjournment. We can deal with it today otherwise. And if he complies, there is – no one needs to come back.

MR McMILLAN: I understand, your Honour. It's - - -

HER HONOUR: What I might do – Mr Purcell, if you were able to, behind closed doors, persuade Mr McMillan that the council might be amenable to a perhaps more sympathetic timeframe - - -

MR PURCELL: Yes.

[REDACTED]

HER HONOUR: - - - I would be inclined to deal with the matter today. It actually occurred to me in chambers, when I was reading these orders, that they are tight.

MR PURCELL: Yes.

5

HER HONOUR: Notwithstanding that, for all of the reasons I said earlier, that I understand that [REDACTED] is a little further down the track than he was at the end of 2022, but I can understand why the council are eager to resolve this and also why – I cannot imagine why [REDACTED] would want to spend – he would not want to spend one more cent on this, so needs the time to be able to resolve it.

10

MR PURCELL: Yes. And can I say this for two things: we – I don't – sorry, I don't accept my learned friend's submissions in respect of the cane pad area and the

- - -

15

HER HONOUR: Right.

MR PURCELL: - - - disagreement between the parties about that, because the order is the order – is the order that his Honour Judge Rackemann made. It delineates that cane pad area which excluded – if they want to apply to vary orders, they need to do so with supporting application material. That is something that hasn't even been raised simply on a proper basis we've asked prior to today. The – if that's the case, they need to go away and do that. They've had a year to do so, if that was – in terms of variation. In fact, over a year. I'm happy to deal with – the proper approach is the orders be made, and I'm happy to take instructions on further time - - -

20

25

HER HONOUR: Yes.

MR PURCELL: - - - to be provided, but I will not be taking – sorry, negotiating – or I don't accept the submission in respect of, "Well, those orders were wrong and therefore we should do something else."

30

HER HONOUR: No. Look, I am fairly eager for everyone to have a talk about timeframes, and it might be that there is something – there is a little more gaps left in the tank there, Mr McMillan.

35

MR McMILLAN: Yes.

HER HONOUR: And it seems, then, we can draw a line – certainly [REDACTED] and his family can draw a line under it today and get out there with their trucks tomorrow and start the job.

40

MR McMILLAN: Yes. I hear you loud and clear, your Honour.

HER HONOUR: All right. Look, take the time that you need. I will come back in a few minutes, when you have - - -

45


MR McMILLAN: Okay.

ADJOURNED

[3.18 pm]

RESUMED

[3.34 pm]

10 HER HONOUR: All right. Thank you. Mr Purcell.

MR PURCELL: Yes, thank you, your Honour. Thank you for that indulgence. We've used that time usefully and we've come to an agreed position on constructions.

15 HER HONOUR: Yes, thank you.

MR PURCELL: Can we amend order 5 from 28 June 2024 to 16 August 2024?

20 HER HONOUR: All right. So order 5, instead of by June – 28 June, that should now be?

MR PURCELL: Sixteen August.

25 HER HONOUR: Sixteen. Yes.

MR PURCELL: Yes.

30 HER HONOUR: Is that the only amendment to be - - -

MR PURCELL: That's the only amendment required, your Honour. The first step is a procedural step; it's relatively – could be down tomorrow in – for instance, but we'll give them two weeks just in case there's any issues in respect of engaging other people and so on. But yeah, that [indistinct] which should allow sufficient time for the defendant to make – to undertake compliance with these orders.

HER HONOUR: All right. Now, Mr McMillan, that is by consent?

40 MR McMILLAN: It is, your Honour.

HER HONOUR: All right. Thank you very much, everyone. What I now do is direct and order that, pursuant to section 1761 of the Planning Act, by 28 March 2024 the defendants engage a registered professional engineer of Queensland to supervise and certify works described in paragraph 5, and by paragraph 5 I mean of the draft orders on file which I signed today, and to give notice to the complainant of the RPEQ engaged including name, contact details and – details and company.

[REDACTED]

And then order 5, per the draft I have amended by hand, by 16 August the defendant must – and there is a series of requirements, including removing from the premises the unlawful fill; giving to the complainant certification from the RPEQ confirming such and that it has been restored to natural ground level; and (c) removing from the premises any and all heavy vehicles and machinery used or associated with that removal. All right. Now, I can make those amendments across each of the orders for each of the defendants. Is there anything else, Mr Purcell?

MR PURCELL: Nothing further, your Honour. So just to clarify there is an order 6 about the – to give notice, just to avoid any doubt about who they should give it to.

HER HONOUR: All right. I think that is probably important, notwithstanding that it has been firmly lodged on the record today. Order 6, [REDACTED] requires any obligation to give the complainant notice, sir, under this order, must be given by email, and there is an email address, which is the Gold Coast Council Queensland dot gov au and citing a particular reference number.

DEFENDANT [REDACTED] Yeah.

HER HONOUR: So that will remove any doubt whatsoever - - -

DEFENDANT [REDACTED] Right.

HER HONOUR: - - - about your personal obligation on – and on behalf of the defendants. All right. Mr Purcell, anything further?

MR PURCELL: Nothing further, your Honour. Thank you very much.

MR McMILLAN: No, your Honour. Thank you, your Honour.

HER HONOUR: All right. Well, in closing, can I just thank you, Mr Purcell, and your instructor, and you, Mr McMillan. Much appreciated. They are obviously matters that are – have a level of complexity and that are – present certain challenges, but I think with everyone's goodwill we have managed to work through all of the salient issues today, and, [REDACTED] sir, I wish you the best of luck, sir, in regard to this compliance, and hopefully you can go and get that dirt off ASAP.

DEFENDANT [REDACTED] Thank you.

HER HONOUR: All right.

DEFENDANT [REDACTED] Thank you, your Honour.

HER HONOUR: Thank you, everyone.

MR McMILLAN: Yes.

DEFENDANT [REDACTED] Thank you.

HER HONOUR: Take care. We can adjourn the Court. Thank you all.

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