

Appeal **D 118** of 2023

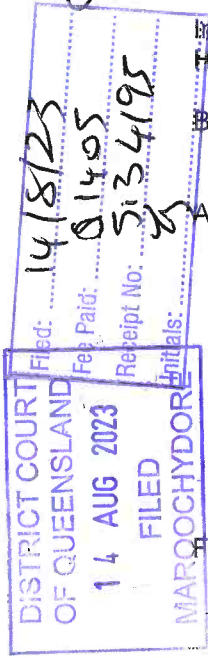
In the Planning and Environment Court
Held at: Maroochydore

Between: **Stanley James Pty Ltd**
ACN 008 733 604

Appellant

And: **Gladstone Regional Council**

Respondent



NOTICE OF APPEAL

Filed on: 14/08/2023

Filed by: **GANTT LEGAL**
Service address: Level 2 1 Innovation Parkway BIRTINYA QLD 4575
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Stanley James Pty Ltd ACN 008 733 604 of Suite 2, 346 Barker Road, Subiaco in the State of Western Australia appeals to the Planning and Environment Court at Maroochydore against the giving by the respondent of an amended enforcement notice dated 19 July 2023 (received by the appellant on 19 July 2023) (bearing respondent reference CSR 697407) in relation to land at 2654 Round Hill Road, Agnes Water in the State of Queensland and more particularly described as Lot 5 on RP612151 ("land") and seeks the following orders or judgment:

1. the appeal be allowed;
2. the amended enforcement notice dated 19 July 2023 be set aside or stayed; and
3. such further or other order as this Honourable Court may require.



NOTICE OF APPEAL
Filed on behalf of the Appellant

Form PEC-1

GANTT LEGAL
Level 2 1 Innovation Parkway
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The grounds of appeal are:

1. By correspondence dated 3 November 2022 the respondent advised the appellant that activity associated with a transport depot use operating on the land may require approval from the respondent, and requested the appellant to advise the nature of the activities being conducted on the land so that the respondent could determine whether the use of the land is a self assessable use or assessable development under the respondent's planning scheme.

2. By email correspondence dated 28 November 2022 the appellant's town planning consultant advised the respondent that:
 - a) the town planning consultants had been engaged by the appellant to review the activities being undertaken on the land and lodge any necessary development applications required;

 - b) the town planning consultant's preliminary view was that the use being undertaken on the land more aligns with a bulk landscape supplies use rather than a transport depot use;

 - c) the town planning consultants intends on preparing and lodging a request for a prelodgement meeting with the respondent by 9 December 2022 to discuss land use and zoning in more detail;

 - d) following the pre-lodgement meeting, the town planning consultants intended to lodge, for and behalf of the appellant, any necessary development applications required within a timely period; and

 - e) considering that the appellant had taken steps to investigate and obtain any necessary approvals, requested that the respondent take no further enforcement action until further discussions had taken place with the



respondent and any necessary development applications had been progressed.

3. By email correspondence dated 29 November 2022 the respondent advised the appellant's town planning consultants that the respondent had not yet considered or determined the relevant land use and awaited the prelodgement meeting request in due course.
4. The appellant's request for a prelodgement meeting was lodged with the respondent on 13 December 2022 and the subsequently raised application fee was paid on 7 January 2023. The respondent provided suggested prelodgement meeting dates to the appellant's town planning consultants on 31 January 2023 and the prelodgement meeting was held on 21 February 2023.
5. On 28 April 2023 and 5 June 2023 the appellant's town planning consultants held telephone discussions with the respondent providing an update on the progress of the preparation of a development application for a material change of use for bulk landscape supplies to try and legitimise the use being conducted on the land.
6. By email correspondence dated 7 June 2023, the respondent gave a show cause notice dated 7 June 2023 to the appellant (bearing respondent reference CSR 697407), in its capacity as the owner of the land, alleging that a bulk landscape supplies use was operating on the land without a development approval. The show cause notice advised that any written representations must be received by the respondent by no later than 5 July 2023.
7. By email correspondence dated 28 June 2023, the appellant's town planning consultant made written representations to the respondent for and on behalf of the appellant about the show cause notice advising that:

- a) significant delays had been encountered from consultants to prepare the necessary supporting documentation for the proposed development
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application for a development permit for a material change of use for bulk landscape supplies;

- b) a development application for a development permit for a material change of use for bulk landscape supplies was intended to be lodged with the respondent before Monday, 7 August 2023; and
- c) requested the respondent to take no further enforcement action considering that the appellant continued to undertake the necessary actions to obtain the required development approval to legitimise the use.

8. By email correspondence dated 19 July 2023, the respondent gave an enforcement notice dated 19 July 2023 (bearing respondent reference CSR 697407) to the appellant in its capacity as the owner of the land.
9. By subsequent email correspondence dated 19 July 2023, the respondent gave an amended enforcement notice dated 19 July 2023 (bearing respondent reference CSR 697407) to the appellant in its capacity as the owner of the land, in the following terms:

TAKE NOTICE:

That you are hereby issued with an Enforcement Notice as Gladstone Regional Council considers that you have committed a development offence pursuant to the Planning Act 2016 requiring you to cease operation of non-compliant Bulk Landscape Supplies.

And requiring the appellant to undertake the actions stated below, within the enforcement notice period stated below:

- *To rectify this development offence the owner is requested to:*
 - *Cease the operations immediately,*



- *Lodge an application for a Material Change of Use development permit for Bulk Landscape Supplies to Council.*

Enforcement Notice Period

Your representations must be received by the Council no later than 17 August 2023

10. On 7 August 2023, Agnes Coast Earthmoving made a development application (impact assessable) for a development permit for a material change of use for bulk landscape supplies ("development application") to the respondent in relation to the land. The development application was accompanied by the following specialist reports:
 - a) a town planning assessment report;
 - b) proposed site plans; and
 - c) a site based stormwater management plan and preliminary engineering plans.
 11. The respondent has not allocated a development application reference to date, and the development application for a development permit for a material change of use for bulk landscape supplies has not been determined by the respondent.
 12. To the extent the carrying out of a bulk landscape supplies use on the land constitutes a development offence (which is not admitted), having regard to the assessment benchmarks in a categorising instrument for the development, the statutory instruments relevant to the development as in effect when the development application was properly made, any matters prescribed by regulation for the purpose of s45(5) of the Planning Act 2016, any other relevant matter other than a person's personal circumstances, financial or otherwise, there is no reason why the development application for a development permit for a material change of use for bulk landscape supplies would not be approved.
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13. The development application for a development permit for a material change of use for bulk landscape supplies which was made to the respondent on 7 August 2023 ought to be determined prior to this appeal, in order that the Court may determine what if any final Orders ought to be made about the use of the land the subject of the enforcement notice.
14. In the circumstances, the Court ought to exercise its discretion in favour of not making an order requiring the appellant to cease the use of the land for bulk landscape supplies.
15. The appellant seeks the following orders or judgment:
 - a) the appeal be allowed; and
 - b) the amended enforcement notice dated 19 July 2023 be set aside or stayed.


GANTT LEGAL
Solicitors for the Appellant
Dated 14 August 2023

If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

- (a) **within 10 days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and**
- (b) **serve a copy of the Entry of Appearance on each other party.**

The Entry of Appearance should be in Form PEC – 5 for the Planning and Environment Court.



If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

- (a) within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this notice of appeal was filed or where the court file is kept; and**
- (b) serve a copy of the Notice of Election on each other party.**

The Notice of Election should be in Form PEC – 6 for the Planning and Environment Court.

