

Friday, 12 April 2019

## Weekly Environmental Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Environmental Law

 Follow @Benchmark\_Legal

### Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

### Executive Summary (1 minute read)

**Cando Management and Maintenance Pty Ltd v Cumberland Council (NSWCA)** - environment and planning - erroneous finding that development consent had lapsed - appeal allowed in part

**Traspunt No 4 Pty Ltd v Moreton Bay Regional Council (QCA)** - environment and planning - development permit - clearing of vegetation - whether work was 'assessable development' - respondent's appeal allowed - applicant's appeal dismissed

**Arcturus Downs Limited v Peta Stilgoe (Member of the Land Court of Queensland) & Ors (QSC)** - administrative law - Land Court recommended grant of mining leases and issue of 'environmental authority' - applicant sought statutory review - amended application dismissed

## Summaries With Link (Five Minute Read)

### **Cando Management and Maintenance Pty Ltd v Cumberland Council [2019] NSWCA 26**

Court of Appeal of New South Wales

Beazley P; Meagher & White JJA

Environment and planning - respondent sought declaration appellant, in breach of s4.3 *Environmental Planning and Assessment Act 1979* (EPA), 'carried out prohibited development for which no development consent was in force' - respondent also sought declaration appellant breached ss81A(2)(a) & 81A(2)(b) EPA - no dispute appellant breached ss81A(2)(a) & 81A(2)(b) - respondent also sought injunction to restrain appellant from use of premises - appeal concerned two issues - whether primary judge erred in finding lapse of development consent - whether Land and Environment Court could and should have ordered breaches of EPA 'should be sanctioned and authorised' if certain 'rectification works' performed - held: development consent had not lapsed - injunction against property's 'use and occupation' to continue until appellant obtained construction certificate, appointed 'principal certifying authority' and obtained occupation certificate - appeal allowed in part.

[View Decision](#)

[From Benchmark Friday, 12 April 2019]

### **Traspunt No 4 Pty Ltd v Moreton Bay Regional Council [2019] QCA 51**

Court of Appeal of Queensland

Gotterson and McMurdo JJA; David J

Environment and planning - applicant owned land within area of respondent - applicant sought development permit for clearing of vegetation - respondent refused permit - Planning and Environment Court found applicant entitled 'to clear firebreaks' along two boundaries (northern and eastern boundaries) - applicant was refused permission to clear firebreaks along two boundaries (southern and western boundaries) - appeal allowed to extent of declaration that firebreaks' clearing along northern and eastern boundaries was 'not an assessable development' - parties each sought to appeal - respondent's position changed - respondent did not oppose work on northern and eastern boundaries but contended it should be 'pursuant to a different order' than that which judge made - whether erroneous finding that work was not assessable development - *Sustainable Planning Act 2009* (Qld) - held: respondent's appeal allowed - primary judge erred in finding work was not assessable development - order set aside - matter remitted - respondent's appeal otherwise dismissed - applicant's appeal dismissed.

[Traspunt](#)

[From Benchmark Friday, 12 April 2019]

### **Arcturus Downs Limited v Peta Stilgoe (Member of the Land Court of Queensland) & Ors [2019] QSC 84**

Supreme Court of Queensland

Lyons SJA

Administrative law - first respondent sought mining leases and submitted 'draft environmental



authorities' - Department issued 'complementary' draft environmental authorities' - applicant objected to 'draft environmental authorities' which third respondent Chief Executive of Department issued under *Environmental Protection Act 1994* (Qld) - applicant also objected to grant of mining leases - Land Court dismissed applicant's application - Land Court recommended grant of mining leases and that 'environmental authority' be issued - third respondent's delegate granted environmental authorities - applicant sought statutory review - held: amended application dismissed.

[Arcturus](#)

[From Benchmark Friday, 12 April 2019]

# Benchmark

**A Midsummer Night's Dream, Act II, Scene I [Over hill, over dale]**

**By:** William Shakespeare, 1564 - 1616

*A wood near Athens. A Fairy speaks.*

Over hill, over dale,  
Thorough bush, thorough brier,  
Over park, over pale,  
Thorough flood, thorough fire,  
I do wander every where,  
Swifter than the moon's sphere;  
And I serve the fairy queen,  
To dew her orbs upon the green:  
The cowslips tall her pensioners be;  
In their gold coats spots you see;  
Those be rubies, fairy favours,  
In those freckles live their savours:  
I must go seek some dew-drops here  
And hang a pearl in every cowslip's ear.  
Farewell, thou lob of spirits: I'll be gone;  
Our queen and all her elves come here anon.

[https://en.wikipedia.org/wiki/William\\_Shakespeare](https://en.wikipedia.org/wiki/William_Shakespeare)

[Click Here to access our Benchmark Search Engine](#)