

Notice

Environmental Protection Act 1994

Environmental Protection Order

This environmental protection order is issued by the administering authority pursuant to section 358 of the Environmental Protection Act 1994.

Marcotta Tiles Pty Ltd
151 – 153 Kent Street
MARYBOROUGH QLD 4650

Attention: Raymond William Tatnell

Your reference: EPSL00616513

Our reference: CA45707

28 February 2018

Dear Mr Tatnell

Take notice: that under the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to Marcotta Tiles Pty Ltd ACN 010 539 714 (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Science previously the Department of Environment and Heritage Protection (the department).

The EPO is issued in respect to the activities of Marcotta Tiles Pty Ltd at ML5378 situated Saltwater Creek Road, St Helens, QLD.

A. Grounds

This EPO is issued on the following grounds:

- The department seeks to secure compliance with the Rehabilitation Direction Notice issued 17 March 2017 to you pursuant to section 274 (2) of the *Environmental Protection Act 1994*.

The facts and circumstances forming the basis for these grounds are:

1. A Decision Notice was issued to you on 17 March 2017 refusing the application to partially surrender the Environmental Authority EPSL00616513.
2. The Decision Notice included a Rehabilitation Direction which required you to prepare a rehabilitation plan for ML 5378 by 4 May 2017 by an appropriately qualified person.
3. The Rehabilitation Plan submitted by you on 7 May 2017, was prepared by Mr Andrew Davies - Operational Risk and Environmental Manager, Marcotta Tiles Pty Ltd.

4. The department requested a current copy of Mr Davies curriculum vitae and considers that Mr Davies is not an appropriately qualified person as per the requirements of the Rehabilitation Direction issued to you on 17 March 2017.
5. Observations made by an authorised officer of the departmental on 25 September 2017 identified that many components of the proposed rehabilitation works including diversion banks, erosion and sediment control structures and major earthworks involving rehabilitation of pit walls had not been completed in accordance with the scheduling of the Rehabilitation Plan prepared by you and submitted to the department on 7 May 2017.

B. Requirements

In accordance with this EPO, you are required to do the following:

1. By **5pm on 20 April 2018** you must submit a rehabilitation plan reviewed and endorsed by an appropriately qualified person* to the administering authority that includes the following:
 - (a) A schedule and plan of rehabilitation actions with expected timeframes for implementation to be carried out;
 - (b) A design by an appropriately qualified person* for the installation and maintenance of adequate diversion banks and/or drains to minimise the potential for stormwater runoff to enter the pits on ML5378, that must;
 - i. Include backfilling and re-profiling necessary to ensure the landform is geotechnically stable;
 - ii. Prevent the containment of water; and
 - iii. Ensure the rehabilitation will not have the potential to cause environmental harm.
 - (c) A design by an appropriately qualified person* for the installation and maintenance of adequate erosion and sediment control structures within ML5378 to prevent or minimise erosion of disturbed areas and the sedimentation of any watercourse, waterway, wetland or lake, that must;
 - i. Include backfilling and re-profiling to ensure the landform is geotechnically stable; and
 - ii. Ensure the rehabilitation will not have the potential to cause environmental harm.
 - (d) A plan of rehabilitation actions approved by an appropriately qualified person* to rehabilitate the pit walls in the south east corner of Pit 1 on ML5378 to a stable landform, similar to that of surrounding areas, that must:
 - i. Include backfilling and re-profiling to ensure the landform is geotechnically stable;
 - ii. Prevent the containment of water; and
 - iii. Ensure the rehabilitation will not have the potential to cause environmental harm.
 - (e) A monitoring program that includes performance indicators to measure the effectiveness of the rehabilitation actions undertaken.
 - (f) Certification that the rehabilitation plan will achieve the following outcomes:
 - i. Safe to human and wildlife; and
 - ii. Non-polluting;
 - iii. Stable; and

- iv. Able to sustain an appropriate land use after rehabilitation or restoration.
2. By **5pm on 20 April 2018** you must submit the current CV(s) of the appropriately qualified person who has reviewed and endorsed the rehabilitation plan submitted under requirement 1 to demonstrate they are an appropriately qualified person*. This CV must include:
- (a) Professional qualifications;
 - (b) Any relevant training you may have undertaken;
 - (c) Skills or experience relevant to the subject matter; and
 - (d) Demonstrated ability to give authoritative assessment, advice and analysis regarding the subject matter.
3. By **5pm on 27 April 201** you must commence implementation of the rehabilitation plan submitted under requirement 1 of this EPO.
4. As soon as possible but prior to **5pm on 19 October 2018** you must implement the rehabilitation plan submitted under requirement 1 of this EPO.
5. By **5pm on 2 November 2018** you must submit a report to the department detailing:
- (a) The actions taken to comply with requirements 2, 3 and 4 of this EPO; and
 - (b) Where actions are identified to have not been effective, include revised action that has been taken to achieve rehabilitation outcomes.
6. By **5pm on 1 February 2019** you must submit a report to the department detailing the results from the monitoring program to validate the successful performance of the rehabilitation activities in accordance with requirement 1(f) (i) to (iv) above.

*appropriately qualified person means a person who has professional qualifications, training, skills or experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis on performance relating to the subject matter using the relevant protocols, standards, methods or literature.

C. Obligations

If you propose to dispose of the place or business to which the EPO relates, you **must** advise the buyer of the existence of this EPO.

If you cease to carry out the activity to which this EPO relates, you **must** give written notice of ceasing to carry out the activity to the department within 10 days of ceasing the activity.

Take notice:

- the requirements of this order take effect immediately upon service of the order;
- failure to comply with this order is an offence under the Act;
- this order remains in force until further notice from the administering authority.

D. Penalty

Failure to comply with an EPO is an offence.

- The maximum penalty for an individual for wilfully contravening an EPO is 6250 penalty units, totalling \$788,437.50 or five years imprisonment.

- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling \$3,942,187.50.
- The maximum penalty for an individual for contravening an EPO is 4500 penalty units, totalling \$567,675.00
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling \$2,838,375.00

Failure to provide written notice to the buyer is an offence.

- The maximum penalty for an individual is 50 penalty units, totalling \$6307.50.
- The maximum penalty for a corporation is 250 penalty units, totalling \$31,537.50.

Failure to provide written notice within 10 business days of ceasing the activity to the department is an offence.

- The maximum penalty for an individual is 50 penalty units, totalling \$6307.50.
- The maximum penalty for a corporation is 250 penalty units, totalling \$31,537.50.

Section 3 of the Penalties and Sentences Regulation 2015 prescribes the monetary value of a penalty unit.

E. Reviews and appeals

The provisions regarding review of decisions and appeals may be found in sections 519 to 539 of the Act.

A person who is dissatisfied with certain decisions of the department, may be able to apply to have the department review that original decision.

Generally, a request to have a decision reviewed must be made:

- within 10 business days of the decision being notified to the person;
- be supported by enough information to enable the department to decide the application for review; and
- be made using the application for review of an original decision form ([ESR/2015/1573](#)).¹

Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the information sheet - internal review and appeal to the Planning and Environment Court ([ESR/2015/1572](#)). You may have other legal rights or obligations and should seek your own legal advice.

Should you have any queries in relation to the notice, please contact Chris Ashcroft on telephone number 07 4302 8537.

¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at <www.ehp.qld.gov.au>.

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Environmental Protection Order



Signature

28 February 2018

Date

Kate Harbert
Manager (Compliance)
Delegate of the Chief Executive
Department of Environment and Heritage Protection
Environmental Protection Act 1994

Enquiries:

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