



## Transcript of Proceedings

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State Reporting Bureau  
Date: 21 April, 2005

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 154 of 1998

CAIRNS EARTHMOVING CONTRACTORS PTY  
LTD ACN 010 025 831

Respondent/Plaintiff

and

CAIRNS CITY COUNCIL

Applicant/Defendant

CAIRNS

..DATE 20/04/2005

JUDGMENT

**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.

HIS HONOUR: By this application Cairns City Council seeks  
leave to institute a third party claim for indemnity or  
contribution against two parties, namely Connell Wagner Pty  
Ltd, the first proposed third party, and Connell Wagner (Qld)  
Pty Ltd, the second proposed third party.

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The action brought by Cairns Earthmoving Contractors Pty Ltd  
against Cairns City Council is one for damages for breach of  
contract and/or negligence and/or restitution arising from the  
performance of an agreement between the parties, and it  
concerns the work undertaken for the drainage of the O'Leary's  
Creek diversion and catchment area. The plan for the  
management of these works was prepared by the proposed third  
parties or either of them or various parts of the work was  
undertaken by either of those different entities.

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This action is similar in its terms to another proceeding in  
this Court commenced by Vamgold Pty Ltd in which the proposed  
third parties here were named as defendants in that action.  
The rules provide for the commencement of third party  
proceedings if such proceedings are necessary for the proper  
disposition of all the issues. Given that the proposed third  
parties are in fact defendants in an allied action where the  
same disputed issues will be determined, it seems appropriate  
that the applicant be given leave to join the proposed third  
parties in this action so that each action proceed with all  
necessary parties present.

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I give leave therefore to the defendant to institute third parties and I will make orders in terms of the draft initialled by me and placed with the papers.

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