

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Knox v Bellamy* [2021] QCAT 192

PARTIES: **GRAEME KNOX**
(applicant)

v

DEREK BELLAMY
(respondent)

APPLICATION NO/S: BDL007-19

MATTER TYPE: Building matters

DELIVERED ON: 26 May 2021

HEARING DATE: 19 March 2020

HEARD AT: Brisbane

DECISION OF: Member Fitzpatrick

ORDERS: **It is ordered, on an interim basis, that:**

- 1. A copy of these Orders and Reasons are to be given to the Queensland Building and Construction Commission (QBCC) marked to the attention of the Assistant Commissioner (Services and Trades) by the Principal Registrar of the Tribunal.**
- 2. The Assistant Commissioner (Services and Trades) must appoint a senior plumbing inspector to liaise with Graeme Knox and Derek Bellamy in relation to rectification of the wastewater system at the Knox property at Brookfield (the land).**
- 3. Graeme Knox, Derek Bellamy and the inspector appointed by the QBCC must attend at the land within 21 days of the date of this Order for the purpose of determining the scope of works necessary to rectify and complete the installation of an operational wastewater system on the land.**
- 4. Graeme Knox and Derek Bellamy must co-operate with the QBCC inspector by provision of relevant documents and granting access to any experts engaged by the QBCC.**
- 5. Graeme Knox must obtain engineering evidence as to the fitness for purpose of the current evaporation trenches, if rectified, and the**

rectification works required. Alternatively, Graeme Knox must obtain engineering evidence as to the location of new trenches, the style of new trenches and the cost of installing those trenches. That evidence must be provided to Derek Bellamy and to the QBCC plumbing inspector as part of the parties' collaboration in determining the scope of rectification work.

6. Derek Bellamy must attend to rectification of the wastewater tanks, pipework and evaporation trenches necessary to repair and complete installation of the wastewater system on the land, so that it is fully operational.
7. Derek Bellamy must obtain certification of the wastewater system by the Brisbane City Council.
8. In the event of disagreement as to whether rectification work falls within the ambit of the original agreement for installation of a wastewater system on the land, for example, the re-siting of the evaporation trenches and/or the supply of materials; and if the parties cannot resolve the matter themselves, the parties will participate in a dispute resolution process as administered by the QBCC.
9. In the event agreement cannot be reached in relation to the matters set out in Order number 8, Graeme Knox must notify the Tribunal in writing that agreement cannot be reached, whereupon the parties will attend a Directions Hearing on a date and time to be advised, and the matter will be listed for determination by the Tribunal.
10. Graeme Knox must co-operate with Derek Bellamy in the completion of the works and must ensure extra work outside the ambit of the original agreement for the installation of a wastewater system on the land is either contracted to Derek Bellamy or another appropriate contractor, to enable completion of the rectification work.
11. The QBCC inspector must file two copies in the Tribunal and give to the parties one copy of a report confirming satisfactory completion of the works the subject of these Orders.
12. Within seven (7) days of certification of the wastewater system by the Brisbane City Council, Graeme Knox must file two copies in the Tribunal and give to Derek Bellamy one copy of submissions and a schedule setting out all work performed in

the installation, rectification and completion of the wastewater system on the land, together with the cost of all work not met by Derek Bellamy. The schedule must contain copies of all invoices and receipts. The submissions must address the orders sought in relation to payment of the costs of rectification.

13. Derek Bellamy must within a further seven (7) days file two copies in the Tribunal and serve one copy on Graeme Knox of his response in relation to Graeme Knox's submissions in relation to payment of rectification costs, attaching copies of his invoices in relation to work performed.

14. The Tribunal may require, and the parties may request, an oral hearing in relation to the making of final orders in relation to the costs of rectification.

15. The parties have liberty to apply for further Directions of the Tribunal upon application.

CATCHWORDS:

CONTRACTS – BUILDING, ENGINEERING AND RELATED CONTRACTS – PERFORMANCE OF WORK – where domestic building contract does not comply with Schedule 1B of the *Queensland Building and Construction Commission Act 1991* (Qld)

TORTS - NEGLIGENCE - ESSENTIALS OF ACTION FOR NEGLIGENCE – DUTY OF CARE – SPECIAL RELATIONSHIPS AND DUTIES – OTHERS – where homeowner owed a duty of care by licensed plumber – homeowner vulnerable – loss and damage reasonably foreseeable – causation – contributory negligence of homeowner – proportionate liability – application of the *Civil Liability Act 2003* (Qld)

Civil Liability Act 2003 (Qld), s 4, s 9, s 11, Chapter 2 Part 2, Schedule 2

Queensland Building and Construction Commission Act 1991 (Qld), s 77(2), s 77(3), s 82(2), s 97, Schedule 1B s 14, Schedule 2

Bellgrove v Eldridge (1954) 90 CLR 613

Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 and Anor (2014) 254 CLR 185

Bryan v Maloney (1995) 182 CLR 609

Caltex Refineries (Qld) Pty Ltd v Stavara [2009] NSWCA 258

Commonwealth v Amann Aviation Pty Ltd (1991) 174 CLR 64

Gratrax Pty Ltd v TD&C Pty Ltd [2014] 2 Qd R 261

Hobbs Haulage P/L v Zupps Southside P/L & Anor
 [2013] QSC 319
*Kaze Constructions Pty Ltd v Housing Indemnity
 Australia Pty Ltd* (1990) 10 BCL 63
Perre v Apand Pty Ltd (1999) 198 CLR 180
Thompson and Anor v Jedanhay [2012] QCATA 246
Westpac Banking Corporation v Jamieson [2015] QCA
 050
Williams v Stone Homes P/L & Anor [2014] QDC 64
Woolcock Street Investments Pty Ltd v CDG Pty Ltd
 (2004) 216 CLR 515

APPEARANCES & REPRESENTATION:

Applicant: Self-represented
 Respondent: Self-represented

REASONS FOR DECISION

Substitution of respondent

- [1] I order that Derek Bellamy be substituted as respondent in this proceeding in the place of Bellamy Plumbing Pty Ltd t/as Wastewater Systems. The order is made pursuant to section 42(1)(c) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) on the Tribunal's own initiative.
- [2] I make this order as a result of the matters set out in my decision made 24 August 2020. Pursuant to the orders made in that decision, I was provided with submissions by the applicant Mr Knox, and Mr Bellamy who at that time was purporting to defend the matter as a representative of Bellamy Plumbing Pty Ltd trading as Wastewater Systems.
- [3] Neither party raised with the Tribunal the fact that Bellamy Plumbing Pty Ltd ACN 106681341 was de-registered on 11 August 2017 prior to commencement of proceedings against the company. That fact only emerged after the hearing once I was giving consideration to my decision in the matter and conducted searches from the Queensland Building and Construction Commission website and the Australian Securities and Investment Commission website.
- [4] The current and historical company extract of Bellamy Plumbing Pty Ltd filed by Mr Bellamy records that Mr Bellamy was the sole Director and Secretary of the company from 15 October 2013 until the company was deregistered.
- [5] Mr Knox submits that Mr Bellamy should be joined as respondent to the proceedings because he held the relevant trade licence and personally performed the work the subject of the proceeding.
- [6] Mr Bellamy says that he should not be joined as a respondent because the contract to perform the work was entered into with Bellamy Plumbing Pty Ltd. Mr Bellamy submits that any obligations of the company were extinguished on its de-registration and that as the company no longer exists and no application has been made by Mr Knox for reinstatement of the company the proceeding should be dismissed.

- [7] I reject Mr Bellamy's submissions. For reasons set out later in this decision, the proceeding was cast as a claim for damages for negligence at the commencement of the hearing. In brief, any contract between the company and Mr Knox is ineffective. Mr Bellamy has conducted the matter to date, he has defended the claim, filed evidence and conducted the hearing. Furthermore, Mr Bellamy held the appropriate plumbing and drainage contractor licence at the time the work the subject of the proceeding was undertaken. Mr Bellamy personally undertook the work in question.
- [8] In all these circumstances, I do not consider it to be in the interests of justice that any further resources of the Tribunal and the parties should be wasted by requiring Mr Knox to discontinue these proceedings and to commence fresh proceedings against Mr Bellamy, when all relevant evidence has been filed and presented in a hearing and Mr Bellamy has been fully engaged in the matter.
- [9] Although it was dismissed earlier in the proceeding Mr Bellamy filed a counter-application in the matter in his own name claiming moneys owing from Mr Knox for plumbing work and extra excavation costs on the job in question. Mr Bellamy has treated the proceeding as personal to him.
- [10] I can discern no procedural unfairness to Mr Bellamy, which arises from substituting Mr Bellamy as respondent in the proceedings.

Status of the applicant

- [11] Following the orders made on 24 August 2020 Mr Knox has advised the Tribunal that he, his wife Kim Knox and another person Heather Matthews are the registered owners of the land at Brookfield. Both Mrs Knox and Ms Matthews have confirmed in writing that Mr Knox is acting as their agent in the proceedings.

Background to the dispute

- [12] The applicant Mr Knox entered into a contract with Bellamy Plumbing Pty Ltd trading as Wastewater Systems to supply and install an H2O Pure Plus Wastewater System.
- [13] Work was commenced on 13 June 2016 by Mr Bellamy. Mr Knox asserts the works have never been completed, that Mr Bellamy has refused to return to site and that the works are defective. Mr Bellamy left the site on 19 July 2016. Mr Knox has incurred costs in attempting to rectify the works, however further work remains to be done.
- [14] The quoted price for the works was \$24,450.00. Mr Knox paid the sum of \$23,933.00 but refused to pay \$2,850.00 for decommissioning and pump out of septic tanks and plumbing labour, because no final certificate from the Brisbane City Council was received. Mr Bellamy also seeks a further \$4,400.00 in excavation and rock breaking costs.
- [15] The contract is comprised of a quotation dated 29 May 2016 which Mr Knox said was accepted by email on 29 May 2016. No copy of the email was able to be provided in evidence.
- [16] The contract is a level 2 regulated contract within the terms of Schedule 1B of the *Queensland Building and Construction Commission Act 1991* (Qld) (QBCC Act). However, the contract does not conform with the requirements of section 14(2) of Schedule 1B of the QBCC Act, in that it could not be established that the contract is in written form, dated and signed by or on behalf of each of the parties to it. The

result is that by section 14 (10) of Schedule 1B of the QBCC Act the contract has no effect, and Mr Knox does not have available to him a claim for damages for breach of contract.

[17] Mr Knox advised the Tribunal at the hearing that he wished to proceed with his claim as a claim for damages for negligently performed work.

[18] I consider that a claim for relief as a consequence of negligently performed work is available in terms of the description of the complaint in the application, and the statements of evidence filed in the matter.¹

[19] I am satisfied that the Tribunal has jurisdiction to determine the dispute between the parties.²

The Works

[20] The 29 May 2016 quotation provides for the following work:

- Supply and install H2O Pure Plus Treatment system
- Supply irrigation pipe and materials for trenches
- Supply 100mm PVC pipe and fittings
- 7mm drainage gravel
- Decommission and pump out old septic tanks
- Excavation
- Plumbing labour
- Extra gravel for trenches
- Extra excavation

[21] In summary the wastewater system consists of tanks that filter effluent, a pump which pumps to trenches and trenches which enable filtered effluent to evaporate. The system is intended to service the two dwellings on the site. The first tank which receives the wastewater from the dwellings is a concrete tank. Pipes connect that tank to a moulded plastic tank containing a sand filtration medium. Adjoining that tank is a pump well containing a pump which pumps treated water through pipework to evaporation trenches. At the hearing I was provided with a copy of an H2O Pure Plus Installation, Operation and Maintenance Manual.³ I note the system described in the Manual differs from what has been installed on site.

[22] Hackworth and Associates Pty Ltd trading as The Soil Testers prepared the design for installation of the system and prepared a site and soil evaluation set out in HDP

¹ *Thompson and Anor v Jedanhay Pty Ltd* [2012] QCATA 246, [22].

² Section 77 *Queensland Building and Construction Commission Act 1991* (Qld); s 77(2) complied with – see letter QBCC to Graeme Knox dated 27 November 2018 attached to the Application for domestic building dispute filed 21 December 2018; see also definitions in Schedule 2 - “domestic building dispute”; “reviewable domestic work”; “domestic building work”; “building contractor”; “building dispute” and “building work”.

³ Exhibit 12.

269437 dated 19 May 2016. That plan received Brisbane City Council approval. The plan was used by Mr Bellamy in the installation of the system.

Complaints of defective work

Mr Knox

[23] Mr Knox complains that:

- (a) the pipework around the pump subsided and cracked within a month of installation, subsequently repaired by Mr Bellamy;
- (b) pipework between the house and tanks cracked within a year causing leaking into the surrounding ground;
- (c) pipework leading into the tanks subsided and cracked causing leaking of untreated wastewater;
- (d) trenches were not installed as designed and shown on HDP269437:
 - (i) the design required tiered or benched trenches. The trenches were graded smooth across;
 - (ii) the pipes in the trenches were covered by clay which did not allow evaporation. The trenches were required to be covered with sandy loam;
 - (iii) recycled concrete instead of “durable gravel” was used in the trenches;
 - (iv) the trenches are not level;
 - (v) effluent is flowing into the bottom corner of the yard creating a swamp;
- (e) the filter media in the tanks is not working. It has clogged and cannot filter;
- (f) the system has created a health hazard; and
- (g) the system has not been certified by the Brisbane City Council.

[24] As at the date of hearing the system had been serviced but the system was still not working. Mr Knox’s evidence is that the media is not filtering properly and the trenches are not functioning correctly. All effluent is going to one corner of the lower trench, whilst the upper trench is bone dry. As at the date of Mr Knox’s latest submissions it is said that the wastewater system is still not functioning properly and that further rectification work is required.

[25] Mr Knox said that Mr Bellamy did not complete the project and that he walked off the job.

[26] In late 2016, upon advice from Mr Hackworth of Hackworth and Associates Pty Ltd, Mr Knox engaged a contractor to strip back the backfill on the trenches and install loam and turf at a cost of \$6,509.00.

[27] Subsequently in July 2017 Mr Knox employed a plumber and drainer, Mr Mohr, to repair broken pipework at a cost of \$514.25 and then in August 2018 to excavate, drain and repair a broken manifold and pipes at a cost of \$899.49.

[28] Mr Knox seeks by way of relief from the Tribunal a system which works, the costs of rectification and re-imburement of the costs of repair to date. As at the date of the hearing the work had not been certified by the Brisbane City Council because the trenches were not evaporating.

QBCC investigation

- [29] After largely unsuccessful attempts at rectification, Mr Knox complained to the Queensland Building and Construction Commission (QBCC) about the work carried out by Mr Bellamy. A site inspection took place on 5 November 2018. The QBCC engaged BT Plumbing to assist with the investigation. A report was prepared by the QBCC.⁴
- [30] The QBCC took into account the unpaid invoices from Mr Bellamy in deciding whether to give a Direction to rectify. It concluded that the filtration system had not been serviced as required under the manufacturer's warranty for a period of two years and on that basis, there was insufficient evidence to reveal any obvious defective construction. In relation to the septic trenches not performing the QBCC formed the view that because the trenches had been altered or modified after completion of the work undertaken by Mr Bellamy it was unable to apportion liability without "unfair prejudice". In relation to cracked pipework the QBCC concluded that the work had been rectified and proposed to take no further action.
- [31] QBCC's consultant BT Plumbing made the following observations in its report:
- (a) It was immediately evident that there was a major fault with the treatment plant. Untreated sewage was observed ponding around the septic tanks. The primary holding tank had filled up with sewage and wastewater, over the inlet and outlet baffles inside the tank which was allowing solidified waste material to enter the media blend tank. The final effluent chamber was almost empty but was pumping a small amount of wastewater to the trenches. The level of water in the primary tanks and the area around the tank indicates that a blockage has occurred in the first or second media blend tank which is stopping the liquid from passing through the final effluent chamber. As the septic system was completely under black septic water, no visual inspection of the secondary tank was undertaken. Also, the secondary tanks were buried.
 - (b) It was concluded that because annual servicing had not taken place, the cause of the system failure is a lack of maintenance to the system which has allowed solids to enter the second stage media part of the system, likely blocking the media.
 - (c) It was recommended that the manufacturers be engaged to bring the system back to normal operating conditions because: "the current state of the system is a legitimate health and safety concern with raw untreated sewerage (sic) lying in the area."
 - (d) As to the evaporation trenches, measurement revealed the rectified trenches were not level, however no further investigation was carried out to determine the condition of the trenches because of the modifications made by a contractor, thought to be an unlicensed plumber and drainer.
 - (e) It was recommended that the trenches be replaced or repaired by levelling the top of the trenches and ensuring there is non-porous soil on the side of the trenches, both upper and lower, to ensure they have an equal overflow point. It was also recommended that testing of the bottom of the trenches be

⁴ Exhibits 7 and 8.

undertaken to ensure the base is level. If not, then the trenches should be replaced.

- [32] In all, limited testing was undertaken by the QBCC and its contractor. Many of the issues referred to later in this decision were not known to the QBCC.
- [33] Mr Murphy, the QBCC Inspector, was called to give evidence by Mr Bellamy. Mr Murphy could not say if Mr Bellamy's installation of the septic system was correct. He said that the tanks appeared to be positioned in accordance with the specification. He could make no comment in relation to the connecting pipes. He could not say if the evaporative trenches had been correctly constructed. He was unaware if servicing required any attention to the filter media.
- [34] Given the very limited investigation conducted by the QBCC and BT Plumbing, I place no reliance on the conclusions reached by them as to the cause of the failings in the wastewater system. However, I accept their observations as evidence that the evaporation trenches were not performing, that the primary tank was overflowing, the filter media in the second tank was clogged with solids and the pump was only pumping limited amounts of water as at the date of the inspection.

What has caused the defects in the wastewater system?

Irrigation trenches

- [35] It is apparent from the evidence of Mr Knox, including the photographs of the state of the irrigation trenches, that the irrigation trenches are not performing and have not performed since installation in July 2016.⁵

Mr Hackworth

- [36] Mr Hackworth, an engineer and the designer of the sewerage system, prepared a report dated 16 November 2016⁶ after attending at site on several occasions. The report discloses that the beds (or trenches) were draining to the surface through cracks in the soil profile above the geotextile layer and the low point of the lower bed was flooding. The report discloses that:
- (a) On 24 August 2016 the system was found to be running (pumping) continuously. The uphill bed was capped off diverting all the wastewater to the lower bed.
 - (b) On 30 August 2016 the cap was removed to allow the effluent to flow into both beds and the equipment service was to be arranged.
 - (c) On 11 October 2016 at a site meeting it was observed that the top layer of the beds was not an appropriate material. Testing was agreed to be conducted to confirm various layers of materials were in place as per the design.
 - (d) On 16 November 2016 onsite testing took place by drilling test holes in each disposal bed which revealed that once the gravelly clay overlay was penetrated water immediately came up the borehole.

⁵ Exhibit 1, attachments 6 and 9; Exhibit 2.

⁶ Exhibit 2

- [37] It was concluded that the system was pumping the water to the effluent beds but the gravelly clay layer on top of the geotextile was impervious, preventing evaporation, and was greater than 300mm thick, preventing the beds performing as designed. It was recommended that the gravelly clay be removed from above the geotextile, the profile below the geotextile be determined the distribution pipes checked, and if that is in order to then backfill to a maximum of 300mm with sandy loam and grass. It was also recommended that bunding around the beds should be completed to prevent overland flow across the beds. Finally, it was recommended to landscape the surrounds and allow the system to stabilise.
- [38] Mr Hackworth prepared a further undated report filed in the Tribunal on 5 March 2020⁷ which records his observations following an inspection on 16 November 2019 which revealed 40% of the lower bed surface was saturated with water sitting on the surface. The upper bed was, by comparison, dry with grass cover along the separation bund. It was observed that a patch of grass between the two beds may be a point of leakage between the beds.
- [39] In the later report Mr Hackworth noted that during an inspection whilst the beds were being rectified in 2016 the base of the bed was extremely weathered rock which may affect the rate of absorption.
- [40] In evidence Mr Hackworth stressed the lack of conformity of the trenches as constructed with the design which required tiered benches and a sufficiently spaced bund. The design is intended to ensure an even flow top to bottom Mr Hackworth said that as constructed rain washes over and fills the beds with water. That overloads the bed which cannot then evaporate the effluent.
- [41] Mr Hackworth emphasised that on the uphill side of the trenches as constructed by Mr Bellamy, the overlay material was thicker on one side than the other which prevented evaporation and the overlay was not the required loamy soil. The clay which had been used was said to act as a cap or sealant over the top of the benches.
- [42] Mr Hackworth said that another possible contributing problem might be that the floor of the trenches and the pipes are not level. He said that water heads to the lowest level and then floods. He thought that was an explanation for the problems with the lower bed on the fence side of the property. Despite expressing this opinion Mr Hackworth had undertaken no measurements to determine if his hypothesis was correct.
- [43] Mr Hackworth was also unable to say why there appeared to be a break in the separation between the two beds which was causing water in the upper bed to disperse to the lower bed, overloading its capacity.
- [44] In cross-examination Mr Hackworth acknowledged that he did not but should have done a percolation test on site. He instead relied on the soil test results done for the building work being undertaken on the land.
- [45] In an exchange between Mr Bellamy and Mr Hackworth, Mr Bellamy put it to Mr Hackworth that when he hit rock digging the trenches, he told the owner and asked for a site inspection with Mr Hackworth. Mr Hackworth said it was unusual for him not to attend. He agreed that no site investigation was a major issue, that hitting rock

⁷ Exhibit 3.

at 350mm is not what he would expect to see, and that no permeability test was done on the site. Mr Hackworth's evidence is that once Mr Bellamy hit rock he should have stopped work because no trench is meant to sit on exposed rock.

- [46] Mr Bellamy said that he proceeded because the Brisbane City Council approved the work, however he says that he told Mr Knox the system would fail because of the rock.
- [47] In cross-examination Mr Hackworth said that three quarters of the beds were now functioning as expected but he thought there may be a group of problems causing water to transfer from one bed to another. He could not say with certainty what the problem was. He acknowledged that rock could be causing the problem but that until someone does permeability testing, it is not possible to say.
- [48] Mr Hackworth acknowledged that despite replacing the clay on top of the beds, there is still leaking although it is currently saturating rather than leaking between beds. He could not give a definitive cause for that problem.
- [49] Mr Hackworth also agreed that if the system is not serviced the trenches will be affected. He said that if untreated product is sent to the trenches it will cause a blockage over time. I note from Mr Mohr's evidence, referred to later in this decision, that untreated wastewater was going into the trenches.

Mr Bellamy

- [50] Mr Bellamy's evidence in relation to the trenches is that he struck rock and the work took an extra two days to complete. The rock was shale and it was necessary to remove boulders. He said that he had to use an auger with teeth to do the job. His evidence is that after clearing the rock he used a laser level on each trench. He also said that the Brisbane City Council inspector inspected the trench and confirmed it was level before passing the trench.
- [51] Mr Bellamy's evidence is that rock will cause ponding because water is not absorbed. He said that he notified Mrs Knox straight away and told the builder on site about the problems caused by striking rock. The builder told him to "get on with it" because he was holding up the job. Mr Bellamy said that he told the builder the system would fail, but the builder said that was nonsense because the design plan was passed by the Brisbane City Council.
- [52] In cross-examination Mr Knox acknowledged that his wife may have instructed Mr Bellamy to continue construction of trenches despite hitting rock, however, he said that his wife was not qualified to say how a septic tank trench should work.
- [53] Mr Bellamy said that he contacted The Soil Testers, but no-one came to site and he contacted the Brisbane City Council. The Brisbane City Council inspected and told Mr Bellamy to go by the soil report and that the work looked fine. For these reasons he continued with the construction of the trenches.
- [54] Mr Bellamy said that no borehole logs were supplied to the Council and that the soil test Mr Hackworth relied upon was from a different part of the site. The Brisbane City Council Inspector did not know where the soil test came from.
- [55] As to why the trenches slope rather than being constructed in tiers Mr Bellamy said that Mrs Knox wanted a slope for the children to use as a slide and that she had said he would not be paid if the trenches did not slope. Mr Bellamy said that on the last day there was an argument over payment for rock breaking and payment of the final

invoice. On the last day he was backfilling the tank so he backfilled the slope over the trenches with the clay on site in order to complete the work and leave the site as soon as he could.

- [56] In cross-examination Mr Bellamy said that he took instruction from Mrs Knox to create a slope over the trenches although he told her the trenches would not work. Mr Bellamy said that he put whatever was left from the excavation work on top of the trenches. He said that Mrs Knox refused to pay for extra soil. He said that he just did what he was told but he knew it was wrong.
- [57] Mr Knox put it to Mr Bellamy that he was a professional plumber, that he was not engaged by the builder on site and he should not have taken instructions on how to do the work from a housewife. Mr Bellamy gave no answer.
- [58] Mr Bellamy's final statement in cross-examination was that he challenged the engineer who did not do a proper design with appropriate borehole information so that a minimum .3m set back distance from bed rock could be achieved, in accordance with the design plan. He also challenged the groundwork performed as it was done without Brisbane City Council involvement.
- [59] In his written statement of evidence Mr Bellamy says that he only received the soil report from Mr Hackworth on 13 February 2020. The report revealed that the soil profile was determined from a soil test provided by the client for the site. He said it was evident the bore holes were not drilled on the proposed application area. Bore Hole number 2 shows rock encountered at 0.4m below ground level. On providing that report to the Brisbane City Council he says he was told that if the report was provided to the Council from the beginning the design for the land application area would have been redesigned due to the rock. Mr Bellamy did not call any representative of the Brisbane City Council.
- [60] In cross-examination Mr Knox was asked why there was no soil testing in the location of the trenches. Mr Knox said that was a matter for the engineer.

Mr Venville

- [61] Mr Venville, the owner at the time of supply of the H2O Wastewater system business, was critical of the design and the location of the evaporation beds, which he thought should have been located at the bottom of the block with a bark garden bed area and citrus and banana trees planted through. Mr Venville expressed the view that installing the trenches near clay would never work and that the trenches were in the wrong spot. He said that he thought the design was wrong for the site and that an above ground sprinkler system should have been used.
- [62] Mr Venville offers his evidence from experience in the field. He does not say that he has professional qualifications.

Conclusion

- [63] On the evidence before me I conclude that there are multiple problems causing the evaporative trenches not to perform, including:
- (a) in the early months after construction, the uphill bed being capped off, diverting all the water to the lower bed.
 - (b) The trenches being constructed on a rock base. Because of his experience as an installer of wastewater systems, I accept Mr Bellamy's evidence that a rock

base will cause an evaporation trench to fail. I note Mr Hackworth's evidence that a trench should not be built on a rock base, despite his unwillingness to reach a definitive conclusion in this case without a percolation test. Mr Hackworth did, however, say that Mr Bellamy should have stopped work when he struck rock. Furthermore, the design plan requires a minimum setback of 0.3m from bedrock.

- (c) Clay being used to overlay the trenches. I accept the evidence of Mr Hackworth that clay will prevent evaporation and will result in leaking through cracks in the soil. I accept that loamy sand should have been used.
- (d) Failure to construct the trenches in tiers and failure to construct bunds as designed, but instead sloping the trenches. I accept the evidence of Mr Hackworth that the result is no even flow of wastewater from the top to bottom trench combined with rain-water washing over the top and filling the beds with water, overloading the beds and preventing evaporation of effluent.
- (e) Based on Mr Hackworth's evidence, untreated wastewater travelling into the trenches gradually affecting the performance of the trenches.

Broken pipework between the house and garage

- [64] In July 2017 Mr Mohr, licensed plumber and drainer, attended the site and noted the ground in the area between the house and the garage to be saturated. Upon excavation he found that PVC pipe connections had come apart and the pipework had sunk in the area between the house and the garage. I accept Mr Mohr's evidence and find that the broken pipework was caused by the previous concrete septic tank for the house not having been demolished properly so that it held water, that the ground became saturated and the pipework had a lack of support in the conditions and sank. I accept Mr Mohr's evidence and find that due to poor bedding the pipes had sunk in the ground creating backfall and causing them to block. I find that repair was necessary and was undertaken by Mr Mohr cutting and removing the faulty section of drain and by replacement with new 100mm PVC pipe and associated fittings, bedding with gravel and backfilling.
- [65] I note that Mr Bellamy's quote for work included decommissioning and pump out of the old septic tanks as part of the supply and installation of the treatment system. Mr Bellamy gave evidence that he filled the old tank with dirt and gravel and jack hammered it and that should have been sufficient. However, it is possible that highly reactive soil has caused the problem with the old tank and that "knuckles" should have been used on the old tank. Mr Bellamy suggested the pipework may have cracked because another trade had run over it. There is no evidence that any of Mr Bellamy's speculation is the case.
- [66] The observations of Mr Mohr indicate that Mr Bellamy's work was inadequate to ensure there was no build-up of water. Given Mr Mohr's observations of the state of the old septic tank, I accept his evidence in relation to the cause of the cracked pipework. There is no evidence that there has been a further problem in that area since the rectification work was conducted.

Cracked pipework

- [67] In August 2018 Mr Mohr again attended the site when it was apparent the new septic tank was not draining. Upon excavation at the outlet Mr Mohr observed the PVC pipework which connects the septic tank to the media filter tank had sunk. This

caused the pipes to have significant backfall. The pipes, including the manifold, were cracked and the PVC had distorted the plastic mould of the media filter tank due to pipes pulling on the inlets to the filter tank. Mr Mohr observed the ground around the media filter tank to be waterlogged. The pipework had no gravel bedding base and was sitting on general fill.

- [68] In evidence Mr Bellamy said that subsidence around tanks is usual. In cross examination Mr Bellamy said that he told Mrs Knox that he needed extra sand because of the size of the hole for the tank caused by excavation of rock. Mr Bellamy said that extra sand involved extra cost, but as no-one was paying for extra fill, he used the clay on site. He said that he filled around the pipes with gravel. Mr Bellamy agreed that subsidence caused cracking of the manifold.
- [69] Mr Venville gave evidence that subsidence around the tank was caused by not enough compaction, rain and clay soil. He said that bringing in sand will help, but subsidence is common and will affect the pipes.
- [70] Mr Mohr conducted repairs with new pipe, backfilled with drainage gravel and drilled a hole in the pump well to allow the ingress of water for pumping.
- [71] In view of Mr Bellamy's admissions as to the use of clay to fill around the tank, I accept Mr Mohr's opinion and that of Mr Venville, and find that the pipework and manifold had cracked because of poor bedding and the fact that they were installed in uncompacted clay fill.

Blocked media filter

- [72] During his investigations in August 2018 Mr Mohr found that the system was not draining into the sump. Mr Mohr observed the media in the filter had blocked with muck and wasn't allowing water to drain through. Mr Mohr's opinion is that the broken manifold which connects the septic tank to the media filter has significantly contributed to the failing of the system. When it was put to Mr Mohr that servicing would have fixed that problem Mr Mohr responded that he did not know how much wastewater could have passed through given the broken pipes and manifold. Mr Mohr also gave evidence that it was unusual for filter media to block so early in the life of a system.
- [73] Mr Mohr expressed the opinion that broken pipes would have allowed silt and sediment from the surrounding soil into the media filter and this could have been avoided if the pipework had been bedded correctly with the correct gravel.
- [74] Mr Mohr did not conduct a full investigation of the filter media, beyond observation of the surface, but expressed the opinion that the wrong filter material may be present in the relevant tank. He describes uncovering the top of the media filter and finding gravel. There is no evidence to support Mr Mohr's opinion.
- [75] Mr Mohr also describes finding the system's floats were disconnected and that the leads were loose. It is my understanding that the floats engage the pump once the effluent reaches a certain level.
- [76] Mr Bellamy suggests that there was no problem with the treatment system installed by him, but that Mr Mohr's work has modified the system and that it is his work which is the problem. There was no evidence by Mr Bellamy as to how the repairs done by Mr Mohr have caused the problems evident in the system.
- [77] Other factors have been raised as contributing to the blocked media filter.

- [78] The plumber engaged by the QBCC concluded that the cause of the system failure is a lack of maintenance to the system which has allowed solids to enter the second stage media part of the system, likely blocking the media. The system was said to require annual inspection maintenance and/or servicing.
- [79] Mr Knox acknowledges that a period of two years passed before he contacted the manufacturer and learned that annual servicing was required.
- [80] At the hearing I requested a copy of the Installation, Operation and Maintenance Manual which should have been provided to Mr Knox upon installation of the system.⁸ Mr Bellamy provided the Booklet. I note that the Manual provides that purification modules are sealed and require no ongoing maintenance.⁹ The filter media tank is the purification module in this system. The Manual goes on to provide that sludge does build up in the primary treatment module. That is the first concrete tank in this system. It is said that the tank should be pumped out and disposed of once every five years. As to servicing, the Manual provides that each installation must be serviced once every 12 months by an authorised agent of the manufacturer. The Manual provides that: “H2O Pure Plus will notify property owner/tenant of due date and complete an official Service Report, which must be provided to the local authority.”
- [81] The Service Report is said to include:
- Check and test well pump
 - Check for odour
 - Check sludge thickness in primary separator tank
 - Check operation of monitoring system and service if necessary
 - Check readings of monitoring system: PH, ORP, Conductivity, Turbidity.
 - Report on weather conditions and wastewater temperature
 - Clean Monitoring system probes in well
 - Check and test alarm system
 - Check, clean or change UV lamp globe
 - Check surface pop-up irrigation sprinklers
- [82] Mr Venville’s evidence is that a failure to service the system every 12 months will cause clogging. Despite it not being mentioned in the Manual Mr Venville said that the Council requires an annual backwash to rejuvenate the filter. Despite it not being mentioned in the Manual Mr Bellamy says that the filter media must be aerated from below to reduce clogging.
- [83] I accept Mr Knox’s evidence that he was not provided with a copy of the Manual by Mr Bellamy. Furthermore, there is no evidence that Mr Knox was told by Mr Bellamy what steps he would have to take to maintain the system nor the nature of the annual servicing required. I note that even if he had been provided with the

⁸ Exhibit 10.

Manual it does not make explicit the nature of the servicing required. There is no evidence of the manufacturer writing to Mr Knox to remind him of the need for servicing. Neither has the Council done so. That is probably because the system was not commissioned by Mr Bellamy and certified by the Council upon completion of the work.

- [84] Mr Venville also gave evidence which attributed clogging to the evaporation trenches not working. He said that when the irrigation area is not working because of water not getting away quickly enough, it puts pressure on the sand filter and causes clogging.

Conclusion

- [85] On the evidence, I find that the following factors combined to cause blockage of the filter media tank:
- (a) based on Mr Mohr's evidence, broken pipework and manifold leading into the filter tank which in turn was caused by subsidence due to inappropriate fill and compaction.
 - (b) Based on Mr Mohr's evidence, disconnected floats.
 - (c) Based on Mr Venville's evidence, non-performing irrigation trenches putting pressure on the sand filter tank.
 - (d) Based on Mr Venville's evidence and Mr Bellamy's evidence, failure to service the system by removing solid waste and aerating the sand in the filter tank.

Has Mr Bellamy been negligent in installing the wastewater system?

Elements of a claim in negligence

- [86] The *Civil Liability Act 2003 (Qld)* (CLA) must be applied in determining Mr Knox's claim.
- [87] To establish an entitlement to damages for negligent installation of the wastewater sewerage system, the following elements must be present:
- (a) a duty of care owed by Mr Bellamy to Mr Knox;
 - (b) the duty of care was breached;¹⁰
 - (c) damage which is not too remote has been suffered by Mr Knox as a consequence;¹¹
 - (d) any defence to the claim has been rebutted; and
 - (e) the proportionate liability sections of the CLA have been applied.

¹⁰ Section 9 *Civil Liability Act 2003 (Qld)*; Schedule 2 *Civil Liability Act 2003 (Qld)*: "duty" means a duty of care in tort – "duty of care" means a duty to take reasonable care or to exercise reasonable skill (or both duties).

¹¹ Section 11 *Civil Liability Act 2003 (Qld)*.

Did Mr Bellamy owe Mr Knox a duty of care?

- [88] Schedule 2 of the CLA defines relevant terms. “Duty” is defined to include, relevantly, a duty of care in tort. “Duty of care” is defined to mean a duty to take reasonable care or to exercise reasonable skill (or both duties). “Harm” means harm of any kind, including damage to property and economic loss.
- [89] The relationship of a licensed plumber and drainer to a homeowner is a category of relationship where a duty of care in tort is owed. That is because it is reasonably foreseeable that if care is not taken by a plumber and drainer undertaking installation of a wastewater system, the client is likely to suffer loss and damage. The owner of a property where the wastewater system is being installed may be assumed to rely on a licensed plumber and drainer to carry out the work with care and skill and the plumber and drainer generally accepts the responsibility arising from that reliance.¹² Installation of a wastewater system involves specialist knowledge and skill not possessed by Mr Knox. The reliance by Mr Knox on Mr Bellamy also gives rise to another factor relevant to the existence of a duty of care and that is the notion of vulnerability. In other words, Mr Knox did not have the knowledge to protect himself from the consequences of a want of reasonable care on the part of Mr Bellamy.¹³
- [90] For these reasons I find that Mr Bellamy did owe Mr Knox a duty of care in the installation of the wastewater system. The duty was to install the system with all reasonable care and skill and to the standard to be expected of a licensed plumber and drainer, so as to avoid harm to Mr Knox.

Did Mr Bellamy breach the duty of care? Did Mr Bellamy cause harm?

- [91] Section 9 of the CLA provides that:
- (1) A person does not breach a duty to take precautions against a risk of harm unless –
 - (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought reasonably to have known); and
 - (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the position of the person would have taken the precautions.
 - (2) In deciding whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (among other relevant things) –
 - (a) the probability that the harm would occur if care were not taken;
 - (b) the likely seriousness of the harm;
 - (c) the burden of taking precautions to avoid the risk of harm;

¹² *Bryan v Maloney* (1995) 182 CLR 609, [6], [14], [18] and [19] (Mason CJ, Deane and Gaudron JJ); *Caltex Refineries (Qld) Pty Ltd v Stavara* [2009] NSWCA 258.

¹³ *Perre v Apand Pty Ltd* (1999) 198 CLR 180; *Woolcock Street Investments Pty Ltd v CDG Pty Ltd* (2004) 216 CLR 515; *Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288 and Anor* (2014) 254 CLR 185.

- (d) the social utility of the activity that creates the risk of harm.

[92] Section 11 of the CLA provides that:

- (1) A decision that a breach of duty caused particular harm comprises the following elements –
 - (a) the breach of duty was a necessary condition of the occurrence of the harm (factual causation);
 - (b) it is appropriate for the scope of the liability of the person in breach to extend to the harm so caused (scope of liability).

...

[93] I find that Mr Bellamy, as a licensed plumber and drainer, experienced in the installation of wastewater systems, ought to have known and did know that:

- (a) leaving the uphill trench capped off from distribution would affect the performance of the trenches;
- (b) the evaporation trenches would not perform their function if they were constructed on a rock base. Mr Bellamy's evidence is that he knew the trenches would fail, because of the presence of rock;
- (c) the evaporation trenches would not perform if they were not constructed in tiers as designed, and if they were not covered in sandy loam. Mr Bellamy's evidence is that he knew the trenches would fail for these reasons;
- (d) failure to adequately demolish the old septic tank and to lay sufficient bedding would result in pipework subsiding and cracking;
- (e) cracking of the manifold and pipework would be caused by subsidence in the event of poor bedding and use of clay to fill around the tanks;
- (f) a broken manifold and pipework and non-performing irrigation trenches would affect the passage of solids into the filter tank allowing it to fill with muck and affecting its operation; and
- (g) failing to advise Mr Knox as to the nature of servicing needed on the system would result in him failing to undertake necessary servicing at the appropriate time.

[94] I conclude that the risk of failure of the tanks and trenches forming the wastewater system and the need for rectification and completion of the system was reasonably foreseeable.

[95] I find that the risk of failure of the trenches, broken pipework, overflow of the primary tank and clogging of the filter tank was likely to occur if care was not taken and that the risk was not insignificant. The wastewater system is a major piece of sanitation infrastructure on a home-site and its failure affects the health and safety of the people who rely on the system. If the system fails it is a necessity that it is rectified.

[96] In the circumstances a reasonable person in Mr Bellamy's position would have taken precautions against defects occurring. He did not do so.

[97] Apart from the failings set out earlier, I find that it was unreasonable and not the actions of a tradesman taking reasonable care and exercising skill to construct

evaporation trenches knowing they would fail. I accept Mr Hackworth's evidence that Mr Bellamy should have stopped work and insisted on a meeting with Mr Hackworth, as the designer and an engineer, to enable a solution to be developed. I do not consider it a defence for Mr Bellamy to say that he took direction in relation to the work from Mrs Knox. Mr Bellamy is the qualified tradesman, not Mrs Knox. Mr Bellamy admitted that he knew he was wrong. Mr Bellamy knew the consequences of failing to install the tanks correctly and to construct trenches which would operate as intended.

- [98] I find that it was unreasonable and not the actions of a tradesman taking reasonable care and exercising skill, not to take the precaution of using appropriate bedding and fill around the tanks and pipes; and that he should have done so, even if the work could not proceed until a variation to the contract had been agreed with Mr Knox or the contractual dispute otherwise resolved.
- [99] I find that it was unreasonable of Mr Bellamy not to have taken the precaution of providing information about maintenance and servicing to Mr Knox on completion of the work, and that he should have done so.
- [100] Given the probability that Mr Knox would be put to considerable cost in addressing the defective work, the seriousness of a failure of the wastewater system and the relatively straightforward precautions which should have been taken, it was not reasonable for Mr Bellamy not to take precautions against failure of the system.
- [101] For these reasons, I find that Mr Bellamy has breached his duty of care to Mr Knox.
- [102] I find that Mr Bellamy's failures were a necessary condition of the occurrence of the harm suffered by Mr Knox as contemplated by s 11(1)(a) of the CLA. The harm is the failure of the wastewater system, the cost of rectification and the need for further rectification.
- [103] Section 11(1)(b) and (4) of the CLA require me to consider whether it is appropriate for the scope of liability of Mr Bellamy to extend to the harm caused to Mr Knox. I must consider whether or not and why responsibility for the harm should be imposed on Mr Bellamy.
- [104] The questions usually explored with respect to scope of liability go to the remoteness of damage and a break in the chain of causation.¹⁴
- [105] The costs of rectification were reasonably foreseeable as flowing from Mr Bellamy's work, performed without the reasonable care and skill expected of a licensed plumber and drainer. Accordingly, the scope of Mr Bellamy's liability is not reduced on this basis.
- [106] Mr Bellamy raises that the work carried out by Mr Mohr voided the warranty on the system and that Mr Mohr has modified the system so that untreated water is now leaking from it. He says that it is Mr Mohr's work, not his installation of the treatment system which is causing the failure.

¹⁴ *Gratrax Pty Ltd v TD & C Pty Ltd* [2014] 2 Qd R 261, [20]; *Westpac Banking Corporation v Jamieson* [2015] QCA 050, [102].

- [107] Mr Mohr's work involved repairing and re-bedding broken pipework and an attempt to achieve flow of water into the pump well by drilling a hole in the plastic wall of the pump well to allow water to flow in.
- [108] By the time Mr Mohr attended to investigate the problems with the wastewater system in August 2018, the pipes were broken, the primary tank was full and overflowing and the filter media tank was full of sludge and not draining to the pump well. Mr Mohr's actions did not cause any of these problems. Mr Mohr undertook such rectification work as seemed reasonable at the time. There is no evidence that the work performed by Mr Mohr has caused any failure of the system.
- [109] It is true that the Warranty¹⁵ given by the manufacturer would appear not to respond to Mr Knox's claims for a number of reasons. That however is a separate question to the question of Mr Bellamy's liability for his own negligence. In any event, I note that Mr Bellamy's own conduct is likely to have voided the warranty, relating as it does to installation without appropriate fill, resulting in "soil subsidence ... plumbing fault, or other matter outside H2O Pure Plus Pty Ltd's control".
- [110] Mr Bellamy raises that the work performed stripping away the clay overlay from the evaporation beds and replacing it with sandy loam should not have been done without Council approval. I do not think a lack of Council approval for the work impacts on the performance of the trenches. The question is whether the work has caused the current problems of non-performance. There is no evidence that is the case. The work was performed upon the direction of the designer of the trenches and was rectification work intended to improve the performance of the trenches, which has occurred to a degree. I find that it was reasonable for Mr Knox to do remedial work on the advice of the engineer and designer. The primary problem remains that the trenches are not functioning as intended. As discussed earlier that problem relates to the trenches having been constructed on a rock base and not in conformance with the design. Those issues are not changed by the rectification work.
- [111] In all, I consider that there is no reason to limit the scope of Mr Bellamy's liability for the harm he has caused.
- [112] It is however appropriate to consider if there has been any contributory negligence on the part of Mr Knox which may reduce any damages awarded to Mr Knox and to consider whether Hackworth and Associates Pty Ltd should bear a proportion of liability for Mr Knox's damages.

Contributory negligence

- [113] Section 23 of the CLA provides that the principles as to whether a person has breached a duty also apply in deciding whether the person who suffered harm has been guilty of contributory negligence in failing to take precautions against the risk of that harm. The standard of care is that of a reasonable person in the position of the person and the matter is decided on the basis of what that person knew or ought reasonably to have known at the time.
- [114] Mr Bellamy alleges that Mr Knox is responsible for the filter tank filling with sludge and not operating, because he did not service the system. That is also the view of the

¹⁵ Exhibit 10.

QBCC. The question is whether Mr Knox should have known that servicing was required and that if he did not service the filter tank, the system was likely to fail by filling with sludge.

- [115] There were a number of matters not investigated by the QBCC. For that reason, I place no weight on the opinions expressed in the QBCC report as to the cause of the problems.
- [116] The job was never finished by Mr Bellamy. He was responsible for final commissioning and obtaining council certification. He did not do so. I accept that Mr Knox was given no service material or information as to how to maintain the system. The Manual in any event does not say that servicing of the filter tank is required. Mr Knox received no communications from the supplier H2O Pure Plus Pty Ltd as to servicing, nor from the Council.
- [117] Servicing the system requires specialist knowledge and tools beyond an ordinary householder. Mr Bellamy ought to have known that without information as to servicing requirements Mr Knox would not take the maintenance and servicing steps required.
- [118] I have found that lack of a backwash in the filter tank contributed to the sludge in that tank. However, I cannot find that without knowledge of the maintenance requirements of the system Mr Knox could reasonably foresee the likelihood of blockage in the filter tank from that cause. I find that he had no reason to know and no means of knowing that if the media filter was not serviced within 12 months of installation it would create a blockage in the tank or make the existing problems worse, if indeed it did. Given the extent of failure evident only approximately 18 months after installation, it is possible that servicing the filter tank within 12 months would not have corrected the problems caused by broken pipes and non-performing trenches. I find that a reasonable person in Mr Knox's place would have acted as Mr Knox did in attempting to address the problems with the system and that a reasonable person would not have attended to a backwash of the filter media.
- [119] I note that Mr Knox called on Mr Bellamy in August 2018 to assist with the problems in the system. He was ignored.¹⁶ He called on Mr Hackworth from 2016 to assist with problems with the trenches. He contacted Mr Venville in late 2018. He later unsuccessfully attempted to find contractors who would service the system, but it became apparent he could get no help from any quarter, other than from Mr Mohr who revealed the extent of the problems and made limited repairs.
- [120] For these reasons I find that there was no contributory negligence on the part of Mr Knox.

Proportionate liability

- [121] Mr Bellamy alleges that the cause of the problems with the evaporation trenches is a poor design combined with a failure to drill boreholes to test the soil in the location of the trenches. He asserts that at the location of the trenches, it was impossible to

¹⁶ Email Graeme Knox to Derek Bellamy dated 12 August 2018, forming part of Exhibit 7.

achieve a minimum 300 mm set back distance¹⁷ from bed rock and that would have been apparent if proper testing had been carried out.

- [122] The evidence reveals that Mr Hackworth did not soil test the location of the trenches. In fact, he did not perform soil testing; he relied on testing provided by Mr Knox with respect to other areas of the land undertaken for the building work on site.
- [123] It is possible that if Mr Hackworth had undertaken soil testing at the trench location, the trenches may have been located elsewhere on the site or designed differently. If that had occurred Mr Bellamy would not have encountered the difficulties with the site that he did. It is also possible that if, as part of rectification, it is necessary to move the location of the trenches and to build new trenches, Mr Hackworth's failures will have been causative of some of that cost. There is limited evidence available to me on these issues.
- [124] The matter is further complicated by the fact that Mr Hackworth's failings were not the immediate cause of the non-performing trenches and their impact on the wastewater tanks. The proximate cause was Mr Bellamy recognising the problem of bedrock, ignoring it and pressing on to complete trenches with a clay overlay, which did not accord with the design and which he knew would fail.
- [125] The question of the liability Mr Bellamy must bear and the liability Hackworth and Associates Pty Ltd may bear is resolved by either the proportionate liability provisions of the CLA¹⁸ or common law principles of solidary liability.
- [126] In this case I decline to make any apportionment of liability against Hackworth and Associates Pty Ltd under the proportionate liability provisions of the CLA, because no claim has been brought against Hackworth and Associates Pty Ltd, even though it might have been. ¹⁹The parties may pursue such other rights as they may have, taking note of the relevant period of limitation.

Conclusion

- [127] I conclude that Mr Bellamy is responsible for the loss and damage suffered by Mr Knox as a consequence of negligent installation of the wastewater system.

Remedy

- [128] The object of an award of damages in an action such as this is to restore Mr Knox to the position which he would have been in if the negligent acts had not occurred.²⁰ Damages may include the cost of rectification.
- [129] Mr Knox seeks as an outcome of the proceedings a wastewater system which works. He seeks recovery of the costs of rectification that he has incurred to date in an amount of \$7,918.23, comprised as follows:

¹⁷ Attachment 4 to Exhibit 1, minimum setback distances recorded in Plan HDP:269437.

¹⁸ *Civil Liability Act 2003* (Qld), Chapter 2 Part 2.

¹⁹ *Hobbs Haulage P/L v Zupps Southside P/L & Anor* [2013] QSC 319, [29]-[32]; *Williams v Stone Homes P/L & Anor* [2014] QDC 64, [84]-[88].

²⁰ *Kaze Constructions Pty Ltd v Housing Indemnity Australia Pty Ltd* (1990) 10 BCL 63, 77.

- (a) Invoice from Sam Mohr Plumbing and Excavation Pty Ltd dated 28 July 2017 for repair of pipework - \$514.25.
 - (b) Invoice from Sam Mohr Plumbing and Excavation Pty Ltd dated 2 September 2018 for repair of broken manifold and pipework between septic tank and sand filter - \$899.49.
 - (c) Invoice from Homestead Earth Moving dated 23 December 2016 for earthworks, supply of sandy loam and geotextile - \$6,504.49.
- [130] I find that these costs would not have been incurred if Mr Bellamy's work in installing the tanks and constructing the trenches had been performed with reasonable care and skill. Given that the object of damages is to put the claimant in the position he would have been in if the negligence had not occurred, account must be given for what Mr Knox would have been bound to pay for the value of the work performed. In other words, he may recover his net loss.²¹
- [131] Neither party has put into evidence a copy of the final invoices from Mr Bellamy. The schedule of moneys paid by Mr Knox²² does not reconcile with the quotation for work. I intend to undertake a calculation of Mr Knox's net position, for the purpose of making final orders, and will require submissions once there has been compliance with the orders next dealt with by me.
- [132] At the hearing Mr Knox raised the prospect of Mr Bellamy being directed to rectify the wastewater system so that the Brisbane City Council will certify the system.
- [133] Mr Bellamy was reluctant to return to the site.
- [134] I am empowered under s 77(3)(g) of the QBCC Act to order rectification or completion of incomplete work. I am also empowered by s 82(2) of the QBCC Act, before finally deciding a building dispute, to make an order requiring a building contractor such as Mr Bellamy to rectify or complete work by a process identified in the order.
- [135] The QBCC in its report recommended with respect to the tanks that the manufacturers be engaged to bring the system back to normal operating conditions and that the trenches be replaced or repaired.
- [136] I consider Mr Bellamy should be required to rectify the wastewater system including the evaporation trenches, to provide an operational system fit for certification and to obtain certification. I hold this view because of the uncertainty as to the cost of future rectification work and according to Mr Knox, the lack of qualified tradesmen, familiar with the H2O system able to install and service the system.
- [137] Given the uncertainty as to the extent of work required to make the system operational and to obtain certification, I consider it necessary that a senior plumbing inspector employed by the QBCC attend at the site with Mr Bellamy and Mr Knox, to determine the scope of rectification work and to subsequently inspect the work performed. I am empowered to make that order by s 97(1)(b) of the QBCC Act,

²¹ *Bellgrove v Eldridge* (1954) 90 CLR 613, 617-618; *Commonwealth v Amann Aviation Pty Ltd* (1991) 174 CLR 64, 116.

²² Exhibit 1, attachment 2.

whereby I may authorise a person in writing to enter and inspect land relevant to the proceeding and to report to the tribunal on the action taken.

- [138] It is possible that the rectification work will involve re-siting and/or re-design of the evaporation trenches, with construction work which was not within the ambit of the original agreement for the performance of work. That may involve the engagement of other contractors and further cost. That is not a cost which should fall to Mr Bellamy. Mr Knox may of course have other rights of recovery upon which he should take advice.
- [139] It is obvious to me that the wastewater system will not function as it should without operational evaporation trenches or another style of trench. Mr Knox is required to obtain engineering evidence as to the fitness for purpose of the current trenches if rectified and the rectification works required. Alternatively, Mr Knox is required to obtain engineering evidence as to the location of new trenches, the style of new trenches and the cost of installing those trenches. That evidence must be provided to Mr Bellamy and to the QBCC plumbing inspector as part of the parties' collaboration in determining the scope of rectification work.
- [140] If a question arises as to whether rectification work falls within the ambit of the original agreement, and the parties cannot resolve the matter themselves, the dispute resolution processes of the QBCC should be engaged or failing agreement returned to this Tribunal for further determination as part of the finalisation of the proceeding.
- [141] Given the disastrous outcome of the work performed to date, which the Tribunal observes has been brought about by a failure to document the works and a breakdown in communication, the Tribunal expects that the parties will mitigate the cost and risks associated with the dispute and will co-operate fully in order to bring the wastewater system to full operation and certification as soon as possible.
- [142] Accordingly, on an interim basis, I make the following orders:
1. A copy of these Orders and Reasons are to be given to the Queensland Building and Construction Commission (QBCC) marked to the attention of the Assistant Commissioner (Services and Trades) by the Principal Registrar of the Tribunal.
 2. The Assistant Commissioner (Services and Trades) must appoint a senior plumbing inspector to liaise with Graeme Knox and Derek Bellamy in relation to rectification of the wastewater system at the Knox property at Brookfield (the land).
 3. Graeme Knox, Derek Bellamy and the inspector appointed by the QBCC must attend at the land within 21 days of the date of this Order for the purpose of determining the scope of works necessary to rectify and complete the installation of an operational wastewater system on the land.
 4. Graeme Knox and Derek Bellamy must co-operate with the QBCC inspector by provision of relevant documents and granting access to any experts engaged by the QBCC.
 5. Graeme Knox must obtain engineering evidence as to the fitness for purpose of the current trenches, if rectified, and the rectification works required. Alternatively, Graeme Knox must obtain engineering evidence as to the location of new trenches, the style of new trenches and the cost of installing those

trenches. That evidence must be provided to Mr Bellamy and to the QBCC plumbing inspector as part of the parties' collaboration in determining the scope of rectification work.

6. Derek Bellamy must attend to rectification of the wastewater tanks, pipework and evaporation trenches necessary to repair and complete installation of the wastewater system on the land, so that it is fully operational.
7. Derek Bellamy must obtain certification for the wastewater system by the Brisbane City Council.
8. In the event of disagreement as to whether the rectification work falls within the ambit of the original agreement for the installation of a wastewater system on the land, for example, the re-siting of the evaporation trenches and/or the supply of materials; and if the parties cannot resolve the matter themselves, the parties will participate in a dispute resolution process as administered by the QBCC.
9. In the event agreement cannot be reached in relation to the matters set out in Order number (viii), Graeme Knox must notify the Tribunal in writing that agreement cannot be reached, whereupon the parties will attend a Directions Hearing on a date and time to be advised, and the matter will be progressed for determination by the Tribunal.
10. Graeme Knox must co-operate with Derek Bellamy in the completion of the works and must ensure extra work outside the ambit of the original agreement for the installation of a wastewater system on the land is either contracted to Derek Bellamy or another appropriate contractor, to enable completion of the rectification work.
11. The QBCC inspector must file two copies in the Tribunal and give to the parties one copy of a report confirming satisfactory completion of the works the subject of these Orders.
12. Within seven (7) days of certification of the wastewater system by the Brisbane City Council, Graeme Knox must file two copies in the Tribunal and give to Derek Bellamy one copy of submissions and a schedule setting out all work performed in the installation, rectification and completion of the wastewater system on the land, together with the cost of all work not met by Derek Bellamy. The schedule must contain copies of all invoices and receipts. The submissions must address the orders sought in relation to payment of the costs of rectification.
13. Derek Bellamy must within a further seven (7) days file two copies in the Tribunal and serve one copy on Graeme Knox of his response in relation to Graeme Knox's submissions in relation to payment of rectification costs, attaching copies of his invoices in relation to work performed.
14. The Tribunal may require, and the parties may request, an oral hearing in relation to the making of final orders in relation to the costs of rectification.
15. The parties have liberty to apply for further Directions of the Tribunal upon application.

