

Listed 7/9/16  
at 9am

Form 3A (version 4)  
UCPR 6.2

### STATEMENT OF CLAIM

#### COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2016/169197

#### TITLE OF PROCEEDINGS

Plaintiff	<b>BERNARD KING</b>
Defendant	<b>LIVERPOOL CITY COUNCIL</b>

#### FILING DETAILS

Filed for	<b>Bernard King</b> - Plaintiff
Legal representative	David Marocchi –Paramount Compensation Lawyers (Class Action Department)
Legal representative reference	DM:15162
Contact name and telephone	Paramount Compensation Lawyers (02) 9099 3199
Contact email	contact@paramountlawyers.com.au

#### TYPE OF CLAIM

Torts - Negligence - Nuisance

#### RELIEF CLAIMED

The plaintiff claims on behalf of himself and the Group Members:

Damages

Costs

Interest

**FILED**

- 2 JUN 2016



Such further or other orders as the Court thinks fit.

## **A. PRELIMINARY**

### *Plaintiff*

- 1 At all material times the plaintiff was the owner/occupier of the real property known as 47 Rickard Road, Chipping Norton in the State of New South Wales (**the plaintiffs residence**).
- 2 The plaintiff brings this proceeding pursuant to Part 10 of the *Civil Procedures Act* 2005 (NSW) on his own behalf and on behalf of the Group Members.

### *Contaminated Soil*

- 3 On or about June 2014 the defendant caused soil contaminated with asbestos to be dumped on a nature strip outside the home of the plaintiff and the homes of other Group Members, all of whom lived at the relevant time in or around Rickard Road and Newbridge Road, Chipping Norton in the State aforesaid.

### *Group Members*

- 4 The Group Members to whom this proceeding relates are persons who have suffered loss or damage to property as a result of the dumping of the asbestos-contaminated soil outside their properties in or about June 2014.

### *Liverpool City Council*

- 5 At all material the Liverpool City Council (**the Council**) was a body politic capable of being sued.

## **Particulars**

The plaintiff refers to Section 220 of the *Local Government Act* 1993 (NSW).

- 6 At all material times the Council, its servants or agents:
  - a. was the body responsible for, and in control of all the contaminated soil dumped in June 2014 on the nature strips located at Rickard and Newbridge Roads, Chipping Norton in the State aforesaid;
  - b. employed and or controlled the work activities of the persons driving the vehicles and/or working in the vehicles that had carried the contaminated soil; and
  - c. directed the persons controlling and/or working from the said vehicles to dump the contaminated soil on the nature strips located at Rickard and Newbridge

Roads, Chipping Norton in the State aforesaid outside the dwellings owned and/or occupied by the plaintiff and the Group Members.

## A. NEGLIGENCE

### Duty

- 7 At all material times the Council had the ultimate responsibility for all activities associated with landscaping, design, construction, operation and maintenance of all relevant materials including removal of sandstone blocks lining the nature strips along Rickard and Newbridge Roads, Chipping Norton in the State aforesaid.
- 8 At all material times it was reasonably foreseeable to the Council that the dumping of contaminated asbestos/contaminated soil in and around the dwellings of the plaintiffs and Group Members' dwellings would create substantial impacts on those dwellings and surrounding areas, i.e. not an insignificant risk that the plaintiff and Group Members would suffer loss or damage to property and consequential losses including economic loss due to the physical consequences of asbestos.
- 9 It was also reasonably foreseeable to the Council that the plaintiff and Group Members would incur substantial losses to various valuations of properties/dwellings and causative substantial losses in relation to resultant bank valuations/security issues of various lending institutions.
- 10 At all material times the plaintiff and Group Members had no ability to prevent or minimise the risk of asbestos contamination and were vulnerable to the impact or effects of same.
- 11 The Council owed the plaintiff and Group Members a duty to take reasonable care to avoid asbestos contamination in the circumstances **(the Duty)**.

### Standard of Care

#### *Foreseeable risks of harm*

- 12 At all material times it was reasonably foreseeable that:
  - a. asbestos contamination would occur from contaminated soil dumped upon the nature strips adjacent to the relevant properties at Rickard and Newbridge Roads, Chipping Norton;
  - b. such contamination would spread and subsequently encompass all relevant dwellings and land contained within the area;
  - c. such contamination would spread to surrounding areas causing further damage;

- d. the matters referred to in sub-paragraphs 'a' to 'c' present risks to property (the **risks of harm**).

*Probability and seriousness of the risk harm occurring*

- 13 At all material times the probability of the risk of harm occurring if care were not taken was not insignificant and the likely seriousness of the harm/damage occurring in the event that the risks of harm eventuated was potentially catastrophic.

*Precautions*

- 14 As a result of the matters pleaded in paragraphs 12 to 13, a reasonable (person) in the position of the Council would have taken adequate precautions against the risks of harm including:
  - a. inspecting the contaminated soil to ensure it was free from potentially catastrophic contaminants such as asbestos;
  - b. remove such contaminated materials such as asbestos to ensure the safety of the contaminated soil;
  - c. undertake inspection and monitoring of the soil during periods of collecting and dispersing of same;
  - d. managing the contaminated material so as to minimise the risk of harm to the plaintiff and Group Members.

**Breach**

- 15 The Council failed to take reasonable care by reason of:
  - a. having no or no adequate inspection plan to minimise the incidence/impact of the dangerous dumping;
  - b. taking no or no adequate steps to reduce or control the level of contamination occurring on, around and within the premises of the plaintiff and Group Members;
  - c. taking no or no adequate steps to prevent the initial contamination and contain same after the dumping had occurred;
  - d. failing to ensure that the source of the contaminated soil was not properly inspected prior to collection so as to ensure that the foreseeable damage did not occur to the premises and surrounding areas thus avoiding catastrophic damage occurring.

### **Causation**

16 The asbestos-related contamination was caused by the Council, its servants or agents.

### **Loss and Damage**

17 As a result of the Council's breach, the plaintiff and Group Members have suffered loss and damage including effective destruction of personal property/residences together with severe inconvenience - particulars of the plaintiff's and Group Members' loss and damage will be provided after determination of common questions, details of which will be provided in due course.

### **B. NUISANCE**

18 Further to the aforementioned matters in paragraphs 7 to 17 above, the plaintiff brings this proceeding as a sub-group representative of those Group Members who suffered loss and damage caused by the contaminated soil dumping.

### **Creation of Nuisance**

19 The contaminated dumping was caused by the Council, its servants or agents.

### **Foreseeability of Loss and Damage**

20 At all material times the risk that contaminated soil in the relevant area was reasonably foreseeable to the Council.

### **Interference with Interests in Land**

21 The dumping substantially and unreasonably interfered with the use or enjoyment of the interests in land held by the plaintiff and Group Members in that it permanently affected the use and value of all relevant dwellings.

22 In the circumstances the plaintiff and Group Members suffered nuisance created by the Council **(the Nuisance)**.

### **Loss and Damage**

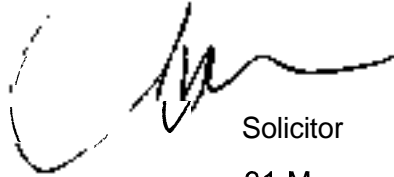
23 As a result of the Nuisance, the plaintiff and Group Members have suffered loss and damage, particulars of which will be provided after determination of common questions.

## **SIGNATURE OF LEGAL REPRESENTATIVE**

I certify under section 347 of the Legal Profession Act 2004 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor

Date of signature

31 May 2016

## **NOTICE TO DEFENDANT**

**If you do not file a defence within 28 days of being served with this statement of claim:**

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

## **HOW TO RESPOND**

**Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

You can respond in one of the following ways:

**1 If you intend to dispute the claim or part of the claim,** by filing a defence and/or making a cross-claim.

**2 If money is claimed, and you believe you owe the money claimed,** by:

Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.

Filing an acknowledgement of the claim.

Applying to the court for further time to pay the claim.

**3 If money is claimed, and you believe you owe part of the money claimed,** by:

Paying the plaintiff that part of the money that is claimed.

Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at [www.lawlink.nsw.gov.au/ucpr](http://www.lawlink.nsw.gov.au/ucpr) or at any NSW court registry.

## **REGISTRY ADDRESS**

Street address	Supreme Court Registry Level 5, Law Courts Building Cnr King and Phillip Streets Queen's Square SYDNEY NSW 2000
Postal address	Supreme Court Registry GPO Box 3 SYDNEY NSW 2001
Telephone	1300 679 272

## AFFIDAVIT VERIFYING

Name

Address

Occupation

Date

I say on oath:

- 1 #I am the plaintiff.  
#I am [give details of the capacity of the person making the affidavit and the facts that qualify the person to make the affidavit].
- 2 I believe that the allegations of fact in the statement of claim are true.

#SWORN #AFFIRMED at

Signature of deponent

Name of witness

Address of witness

Capacity of witness

[#Justice of the peace #Solicitor #Barrister  
#Commissioner for affidavits #Notary public]

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]  
#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.\*
- 2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]  
#I have confirmed the deponent's identity using the following identification document:

\_\_\_\_\_  
Identification document relied on (may be original or certified copy)<sup>†</sup>

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

\_\_\_\_\_  
[\* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]



## **FURTHER DETAILS ABOUT PLAINTIFF**

### **Plaintiff**

Name Bernard King  
Address 47 Rickard Road  
CHIPPING NORTON NSW 2170

Frequent user identifier

### **Legal representative for plaintiff**

Name **David Marocchi**  
Practising certificate number 31502  
Firm **Paramount Compensation Lawyers**  
Contact solicitor David Marocchi  
Address 177 Northumberland Street  
Liverpool NSW 2170  
DX address 5021 Liverpool  
Telephone 9099.3199  
Fax 9099.3198  
Email [contact@paramountlawyers.com.au](mailto:contact@paramountlawyers.com.au)  
Electronic service address

## **DETAILS ABOUT DEFENDANT**

### **Defendant**

Name **Liverpool City Council**  
Address Level 6, 33 Moore Street  
LIVERPOOL NSW 2170