

ORDERS

COURT DETAILS

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

TITLE OF PROCEEDINGS


Plaintiff	Bernard King
Defendant	Liverpool City Council

FILING/ISSUING/PREPARATION DETAILS

Filed/Issued/Prepared for	Liverpool City Council , Defendant
Legal representative	Stephen Taylor-Jones, Moray & Agnew
Legal representative reference	STJ:370705 (PCN: 17638)
Contact name and telephone	Stephen Taylor-Jones, +61 2 9232 2255
Contact email	STaylor-Jones@moray.com.au

ORDERS

1. Pursuant to ss 175(4) and 176 of the *Civil Procedure Act 2005* (NSW), the Court:
 - (a) approves the notice to group members of an application for approval of settlement, being Annexure 'A' to these Orders ('the Notice'); and
 - (b) orders the plaintiff is to distribute, at his cost, the Notice to the email addresses of group members or (if there be no such email address) any last known postal address(es) of group members by 19 June 2018.
2. The plaintiff is to file and serve a Notice of Motion for approval of settlement (with any ancillary orders), together with supporting evidence, by 29 June 2018.
3. The Notice of Motion is returnable for hearing on 6 July 2018.
4. The defendant is to file and serve any supplementary evidence in support of the Notice of Motion by 3 July 2018.
5. In the event that the plaintiff's solicitor receives any objection(s) from group members to the settlement, the plaintiff's solicitor is to serve such written objection(s) as are received upon the defendant's solicitor by 29 June 2018.

6. The parties are to file and serve a short outline of submissions in support of the Notice of Motion by 4 July 2018. Such outline is to address any objection(s) by any group member(s) to the settlement.
 7. Copies of the parties submissions are to be emailed to Garling J's Associate by 6 July 2018.
 8. Liberty to apply on 2 days' notice.
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Annexure 'A'

LIVERPOOL COUNCIL CLASS ACTION

NOTICE OF PROPOSED SETTLEMENT

This notice contains important information about the proposed settlement of the Liverpool City Council class action. You should read this notice carefully. If there is anything in it that you do not understand, you should seek legal advice.

1. The Supreme Court of New South Wales has ordered that this notice be published for the information of group members in the Supreme Court of Wales proceeding No. 2016/169197 (Liverpool City Council class action).
2. You have received this notice because you are a group member. The outcome of the Liverpool City Council class action directly affects your rights against Liverpool City Council.

Who is affected?

3. The Liverpool City Council class action is brought by Bernard King (Plaintiff) on his own behalf and on behalf of group members who suffered loss or damage to:
 - a. their residential properties located at 36-38, 42, 43-45, 60 & 62 Rickard Road, Chipping North, NSW; and 39 & 40 Newbridge Road, Chipping North, NSW; and
 - b. a commercial property located at 5 Newbridge Road, Chipping North, NSW as a result of the dumping of allegedly asbestos-contaminated soil outside the said properties.
4. This notice affects the Plaintiff and group members.

Claims against Liverpool City Council

5. The Proceeding alleges that Liverpool City Council was negligent and (alternatively) committed a nuisance by constructing and depositing 12 mounds on the boundary between the footpath reserve and vacant lots (the lots being in close proximity to the plaintiff's property and the properties of group members) in October 2014. These mounds comprised reprocessed soil/shale and clay sourced from a stockpile at the Council's Western Depot. The mounds were eventually removed by licensed asbestos removal contractors in June 2015.
6. It is alleged that the Council was negligent in constructing the mounds using source material which was contaminated with asbestos dust and fibre and that the construction of mounds created a nuisance.
7. It is further alleged that the Council's negligence caused, or contributed to damage to the properties of the plaintiff and group members, representing a diminution in the value of the properties; as well as consequential vexation, distress and inconvenience.

8. Liverpool City Council denies any negligence and denies that it committed any nuisance.
9. The allegations made by the plaintiff are set out in the Amended Statement of Claim. Liverpool City Council's response is set out in its Defence.
10. Copies of the Statement of Claim and the Defence may be inspected:
 - a. by inspecting them on the Supreme Court of New South Wales website: www.supremecourt.justice.nsw.gov.au;
 - b. by appointment at Paramount Compensation Lawyers, 177 Northumberland Street, Liverpool NSW 2170.

Proposed settlement

11. On 7 June 2018, the parties entered into Heads of Agreement to settle the proceeding, subject to Court approval.
12. The Heads of Agreement provide that the claims of the plaintiff and group members be settled for the payment of \$200,000 inclusive of all claims for costs and disbursements (the 'settlement sum'). It also provides for the release of the plaintiff from his provision of security for costs and the vacation of earlier costs orders in the Proceeding.
13. The Heads of Agreement did not provide for a method for distribution of the settlement sum. That is a matter for the plaintiff, subject to any order or direction by the Court.
14. The settlement sum will be paid, subject to the Court's approval, upon the plaintiff's entry into a Deed of Release. Once the settlement sum is paid, Liverpool City Council will be at liberty to apply to the Court for orders disposing of the Proceeding, including the entry of verdicts for the Council on the plaintiff's claim and the representative claim.

Court approval

15. The settlement will not take effect unless and until approved by the Court. The plaintiff will seek the Court's approval at a hearing on **6 July 2018** in the Supreme Court in the Law Courts Building, Queens Square, Sydney. Group members may attend this hearing.
16. If approved, the settlement will bind all group members. This will mean that no group member will be able to take any further action in respect of matters the subject of this Proceeding. If the settlement is not approved, the class action will return to the Court for hearing at a trial scheduled to commence on 30 July 2018.

If you wish to oppose the settlement

17. If you wish to make submissions to the Court on why it should not approve the settlement, you must provide to the Court and Paramount Compensation Lawyers, no later than **28 June 2018**, a written outline of the ground(s) upon which you oppose

the proposed settlement along with any evidence you wish to rely upon.

18. You may attend the hearing and make submissions to the Court on **6 July 2018** when the Court is hearing the application for its approval of the settlement.
19. If you are a group member who does not oppose the settlement, then you need not do anything further at this time.
20. You will be notified of the outcome of the application to the Supreme Court for approval of the Proposed Settlement.
21. Please consider the content of this notice carefully. If there is anything of which you do not understand, you should contact David Marocchi of Paramount Compensation Lawyers or seek your own legal advice.

Contact details

22. The address for the Court is as follows:

Re: King v Liverpool CC Proceeding No. 2016/169197, Common Law Division
Supreme Court of New South Wales
Queens Square
SYDNEY NSW 2000

23. The contact details for Paramount Compensation Lawyers are:

177 Northumberland Street
Liverpool NSW 2170
Ph: (02) 9099 3199
Email: contact@paramountlawyers.com.au
Contact person: David Marocchi