

DEFENCE TO AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2015/368036

TITLE OF PROCEEDINGS

Plaintiff	Sharon Patricia Weber
Defendant	Greater Hume Shire Council

FILING DETAILS

Filed for	Greater Hume Shire Council, Defendant
Legal representative	Michael Edward Down, Mills Oakley
Legal representative reference	MEDS/MEDS/3184809
Contact name and telephone	Michael Down, +61 2 8289 5852
Contact email	mdown@millsoakley.com.au

HEARING DETAILS

The proceedings are listed for directions and case conference on 20 May 2016.

PLEADINGS AND PARTICULARS

In response to the Amended Statement of Claim filed 18 April 2016:

- 1 The Defendant does not admit paragraph 1.
- 2 In response to paragraph 2, the Defendant:
 - a. Admits Part 10 of the *Civil Procedure Act, 2005* (NSW) applies to the alleged circumstances said to give rise to the proceedings;
 - b. Admits the Plaintiff would have a sufficient interest to commence representative proceedings against it in relation to the alleged circumstances if she had standing to do so on her own behalf: sections 157(1) and 158(1) *Civil Procedure Act, 2005* (NSW);

c. Otherwise, does not know and therefore cannot admit paragraph 2.

3 In response to paragraph 3, the Defendant:

- a. Admits there was a fire at the Walla Walla Rubbish Tip on 17 December 2009;
- b. Does not know and cannot admit where the fire started.

4 The Defendant does not admit paragraph 4.

5 In response to paragraph 5, the Defendant:

- a. Repeats paragraphs 2 and 3 pleaded above;
- b. Does not know and cannot admit the identity of any person in the class identified in paragraph 5(a) who suffered loss or damage of the kind alleged in paragraph 5(a);
- c. Does not know and cannot admit the existence of any loss or damage defined in paragraph 5(a);
- d. Does not know and cannot admit the identity of any person in the class identified in paragraph 5(b) who suffered economic loss of the kind alleged in paragraph 5(b);
- e. Does not know and cannot admit the existence of any economic loss defined in paragraph 5(b);
- f. Does not know and cannot admit the identity of any person in the class identified in paragraph 5(c) who suffered personal injury of the kind alleged in paragraph 5(c);
- g. Does not know and cannot admit the existence of any personal injury defined in paragraph 5(c);
- h. Does not know and cannot admit the existence of any legal personal representatives of the kind defined in paragraph 5(d).

6 The Defendant does not admit paragraph 6.

7 The Defendant admits paragraph 7.

8 In response to paragraph 8, the Defendant:

- a. Admits subparagraph 8(a); and
- b. Does not admit subparagraph 8(b).

- 9 In response to paragraph 9, the Defendant:
- a. Admits it had responsibilities in relation to activities carried out at the Walla Walla Rubbish Tip on or before 17 December 2009;
 - b. Does not admit its responsibilities are accurately summarised as “the ultimate responsibility” as alleged in paragraph 9(a);
 - c. Says persons other than the Defendant or its employees carried out regular maintenance activities at the Walla Walla Rubbish Tip before 17 December 2009;
 - d. Says the Walla Walla Rubbish Tip was secured by a fence to which access was provided by way of a key;
 - e. Says a copy of the key to the Walla Walla Rubbish Tip had been issued to persons other than the Defendant or its employees before 17 December 2009;
 - f. Denies persons other than the Defendant were excluded from carrying out maintenance at the Walla Walla Rubbish Tip before 17 December 2009;
 - g. Otherwise, does not admit paragraph 9.
- 10 In response to paragraph 10, the Defendant:
- a. Does not know and cannot admit the type of waste present at the Walla Walla Rubbish Tip on 17 December 2009 which was capable of igniting and sustaining a fire as alleged in paragraph 10(a);
 - b. Does not admit each of the risks identified in paragraphs 10(b), 10(c) and 10(d) were risks of which the Defendant knew or ought to have known on or before 17 December 2009;
 - c. Denies the risk of a fire spreading from the Walla Walla Rubbish Tip to surrounding properties and beyond was a risk which was reasonably foreseeable to it on or before 17 December 2009;
 - d. Otherwise, denies paragraph 10.
- 11 In response to paragraph 11, the Defendant:
- a. Repeats paragraph 5 pleaded above;
 - b. Denies persons in the classes identified in paragraphs 5(a), 5(b) and 5(c) were vulnerable to the impacts or effects of a fire spreading from the Walla

Walla Rubbish Tip to surrounding properties and beyond because it was open to some or all of those persons to protect themselves by obtaining insurance;

- c. Denies persons in the classes identified in paragraphs 5(a), 5(b) and 5(c) were dependent on the Defendant to ensure a fire did not spread from the Walla Walla Rubbish Tip to surrounding properties and beyond because any such a fire would have to pass over properties over which the Defendant had no control;
- d. Otherwise, does not admit paragraph 11.

12 The Defendant denies paragraph 12.

13 In response to paragraph 13, the Defendant:

- a. Repeats paragraph 10(a) pleaded above;
- b. Does not admit each of the matters pleaded at paragraphs 13(a), 13(b), 13(c) and 13(d) were matters of which the Defendant knew or ought to have known on or before 17 December 2009;
- c. In specific respond to paragraph 13(c)(ii), says the construction and maintenance of a fire break around the perimeter of the Walla Walla Rubbish Tip before 17 December 2009 was work carried out by a person other than the Defendant or its employees;
- d. Otherwise, denies paragraph 13.

14 In response to paragraph 14, the Defendant:

- a. Admits subparagraph 14(a);
- b. Says the Walla Walla Golf Course is located on land owned by the Department of Lands in right of the State of New South Wales;
- c. Says the Walla Walla Golf Course was not maintained by the Defendant, nor was there any agreement between the Department of Lands and the Defendant for the Defendant to carry out any such work, before 17 December 2009;
- d. Otherwise, does not admit subparagraph 14(b).

15 In response to paragraph 15, the Defendant:

- a. Does not admit each of the conditions pleaded therein existed at the Walla Walla Rubbish Tip on 17 December 2009;
- b. Otherwise, denies paragraph 15.

- 16 The Defendant denies paragraph 16.
- 17 The Defendant denies paragraph 17.
- 18 In response to paragraph 18, the Defendant:
- a. In specific response to subparagraphs 18(b)(i) and 18(b)(ii), repeats subparagraph 13(c) pleaded above;
 - b. In specific response to subparagraphs 18(c)(i) and 18(c)(iii), says it inspected each of the four designated waste areas at the beginning and at the conclusion of each day the Walla Walla Rubbish Tip was open for operation;
 - c. Otherwise, it denies paragraph 18 and each and every particular pleaded therein.
- 19 The Defendant denies paragraphs 19 and 20.
- 20 In response to paragraph 21, the Defendant:
- a. Repeats paragraph 5 pleaded above;
 - b. Otherwise, it does not admit paragraph 21.
- 21 The Defendant denies paragraph 22 and 23.
- 22 The Defendant does not admit paragraph 24.
- 23 The Defendant denies paragraph 25.
- 24 In response to paragraph 26, the Defendant:
- a. Repeats paragraph 5 pleaded above;
 - b. Otherwise, it does not admit paragraph 26.
- 25 In response to the paragraphs pleaded under the heading "Common Questions of Law or Fact", the Defendant:
- a. Says the questions concerning whether a duty was owed and/or breached by the Defendant are not necessarily common to the claims made by the Plaintiff and all Group Members because the nature and content of each duty, and the circumstances in which any duty is breached, will depend on the circumstances in which they arise;
 - b. Otherwise, the Defendant does not admit those paragraphs.
- 26 In answer to the whole of the allegations made against the Defendant in the Amended Statement of Claim, in the event the Defendant is found to have owed any duty of care to the Plaintiff (which is denied), the Defendant says it was not

negligent pursuant to the principles in sections 5B and 5C of the *Civil Liability Act, 2002 (NSW)* and, in the event the Defendant is found to have been negligent (which is denied), it relies on the principles in section 5D and 5E of the *Civil Liability Act, 2002 (NSW)*.

Section 42 of the *Civil Liability Act, 2002 (NSW)*

27 Further, and in the alternative, the Defendant relies on section 42 of the *Civil Liability Act, 2002 (NSW)* and says it is a public authority limited in its functions by financial and other resources available to it for the purposes of exercising its functions.

Section 733 of the *Local Government Act, 1993 (NSW)*

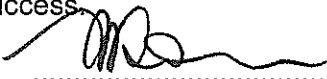
28 Further, and in the alternative, the Defendant says the particulars of negligence and nuisance pleaded against it relate to acts or omissions of the Defendant in relation to land being subject to the risk of bush fire.

29 The acts of the Defendant or omissions by it to take those steps, which the particulars of negligence and nuisance imply should have been taken, were acts or omissions done by the Defendant in good faith.

30 By reason of section 733(2A) of the *Local Government Act, 1993 (NSW)*, the Defendant does not incur any liability in respect of those acts or omissions.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature of legal representative 

Capacity Solicitor for the Defendant

Date of signature 12/5/16

AFFIDAVIT VERIFYING

Name Steven Pinnuck
Address 39 Young Street, Holbrook NSW 2644
Occupation General Manager
Date 11 May 2016

I say on oath:

- 1 I am the General Manager of the Defendant and, in this capacity, I am authorised under delegation to make the affidavit.
- 2 I believe that the allegations of fact contained in the defence are true.
- 3 I believe that the allegations of fact that are denied in the defence are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

SWORN at Holbrook

Signature of deponent



Name of witness

TANYA BYRON

Address of witness

21 STIRBECK ST, HOLBROOK

Capacity of witness

Solicitor/Justice of the Peace

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.
- 2 I have known the deponent for at least 12 months.

~~I have confirmed the deponent's identity using the following identification document:~~

Identification document relied on (may be original or certified copy)

Signature of witness

