

DEFENCE TO AMENDED STATEMENT OF CLAIM**COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2020/00359004

TITLE OF PROCEEDINGS

Plaintiff	DANNY MARIELLE MOUSSA
First Defendant	CAMDEN COUNCIL
Second Defendant	CORNISH GROUP SPRING FARM PTY LTD ACN 120 837 381
Third Defendant	SMEC TESTING SERVICES PTY LTD (In Liquidation) ACN 101 164 792
Fourth Defendant	SMECTS HOLDINGS PTY LTD ACN 063 746 823

FILING DETAILS

Filed for	Camden Council , First Defendant
Filed in relation to	Plaintiff's Amended Statement of Claim
Legal representative	Richard Oldfield
Legal representative reference	30244
Contact name and telephone	Richard Oldfield +61 (2) 9267 0500
Contact email	ro@mcb.com.au

HEARING DETAILS

If the proceedings do not already have a listing date, they are to be listed at

PLEADINGS AND PARTICULARS

1. The First Defendant admits the allegations severally contained in paragraphs 1(a), 4(a) and 4(c) of the Plaintiff's Amended Statement of Claim (**ASOC**).
2. The First Defendant does not admit the allegations severally contained in paragraphs 4(d), 9, 16, 19, 20B, 20C, 20D and 36 of the ASOC.

3. The First Defendant does not plead to paragraphs 5, 6, 7, 17, 22, 22A, 24 and 47 to 74 inclusive of the ASOC as they contain no allegations against it.
4. The First Defendant denies the allegations severally contained in paragraphs 23 and 37 to 46 inclusive of the ASOC.
5. As regards paragraph 4(b) of the ASOC, the First Defendant admits it was formerly the owner of the Council Land as defined in paragraph 8 of the ASOC but otherwise denies paragraph 4(b).
6. As regards paragraph 8 of the ASOC, the First Defendant admits that, as at May 2007 it was the owner of the Council Land but does not admit that the map marked Annexure C accurately identifies the boundaries of the Council Land.
7. As regards paragraph 11 of the ASOC and insofar as the allegations apply to the First Defendant, the First Defendant denies the Council Land was generally unsound for building and otherwise does not admit the allegations contained in paragraph 11.
8. As regards paragraph 18C of the ASOC:
 - (a) The First Defendant does not admit the allegations contained in paragraphs 18C(a), 18C(d) and 18C(e).
 - (b) The First Defendant admits the allegations contained in paragraphs 18C(b) and 18C(c).
9. As regards paragraph 32 of the ASOC and insofar as they apply to the First Defendant, the First Defendant denies each of the new lots is still unsound for building and otherwise does not admit the allegations contained in paragraph 32.
10. As regards paragraph 33 of the ASOC and insofar as the allegations apply to the First Defendant, the First Defendant denies each of the new lots has been injuriously affected in value as a result of the fact that they are unsound for building becoming manifest, denies each of the new lots are unsound for building and otherwise does not admit the allegations contained in paragraph 33.
11. Insofar as they apply to the First Defendant, the First Defendant admits the allegations severally contained in paragraphs 10, 12, 14, 18, 21, 25A and 25B of the ASOC.
12. Insofar as they apply to the First Defendant, the First Defendant does not admit the allegations severally contained in paragraphs 1(b), 1(c), 2, 3, 18A, 18B, 20, 25, 26, 27, 28, 30, 31 and 34 of the ASOC.

13. Insofar as they apply to the First Defendant, the First Defendant denies the allegations severally contained in paragraphs 13, 15, 29, 35 and 35A of the ASOC.
14. As regards paragraph 75 of the ASOC the First Defendant denies the asserted common questions of law or fact arise and says the claim, as currently pleaded, does not permit ascertainment of common questions.
15. The First Defendant denies it is guilty of negligence as alleged in the ASOC, in the particulars of negligence set forth therein, or at all.
16. For the purposes of Sections 5B and/or 5C of the Civil Liability Act 2002 (CLA), the First Defendant says:
 - (a) The risk of harm to which the Plaintiff and/or Group Members were allegedly exposed (which is denied) was not foreseeable and/or;
 - (b) the risk of harm was insignificant and/or;
 - (c) in the circumstances there were no precautions that a reasonable person would have taken against the risk of harm.
17. If the First Defendant is found to have committed any act of negligence (which is denied), the First Defendant denies any such negligence was a necessary condition of the occurrence of the harm alleged by the Plaintiff and/or Group Members for the purposes of Section 5D of the CLA.
18. Further and in the alternative, the First Defendant relies upon Section 42 of the CLA and says:
 - (a) The questions of whether it owed a relevant duty of care or has breached a duty of care owed to the Plaintiff and/or Group Members are to be determined in accordance with the principles set forth in Section 42 and;
 - (b) The First Defendant did not owe the Plaintiff and/or Group Members a relevant duty of care or;
 - (c) If the First Defendant did owe the Plaintiff and/or Group Members a relevant duty of care, which is denied, the First Defendant did not breach that duty of care.
19. Further and in the alternative, the First Defendant says the proceedings brought by the Plaintiff and/or Group Members against the First Defendant are proceedings for civil liability based on the First Defendant's alleged exercise of, or failure to exercise, a special statutory power conferred on the First Defendant for the purposes of Section 43A of the CLA and the First Defendant says:
 - (a) Any act of omission committed by it in the exercise of, or failure to exercise, the special statutory power, was not, in the circumstances, so unreasonable that no

authority having the special statutory power in question could properly consider the act or omission to be a reasonable exercise of, or failure to exercise, its power and;

- (b) The act or omission does not give rise to any civil liability to the Plaintiff on the part of the First Defendant.

PARTICULARS

(i) Chapter 7, Division 1 and Division 3 of the Local Government Act 1993.

(ii) Part 4A, Division 1 of the Environmental Planning and Assessment Act 1979.

20. The First Defendant says this is an apportionable claim for the purposes of Part 4 of the CLA and says:

- (a) If its found liable for the loss and damage claimed in the ASOC (which is denied), then the liability of the First Defendant is limited to an amount reflecting the proportion of the loss and damage that the Court considers just having regard to the extent of the First Defendant's responsibility for the loss and damage and;
- (b) The Court may give judgment against the First Defendant for not more than that amount and;
- (c) The Court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings and;
- (d) The First Defendant says it has reasonable grounds to believe the following parties may be concurrent wrongdoers:

Regarding All Group Members Including the Plaintiff

(i) The Second Defendant, Cornish Group Spring Farm Pty Ltd.

(ii) The Third and/or Fourth Defendants, SMEC Testing Services Pty Ltd and/or SMECTS Holdings Pty Ltd.

(iii) Landfill Projects NSW Pty Ltd.

Regarding the Plaintiff

(iv) The entity responsible for construction of the residential building constructed on the Plaintiff's lot, the identity of whom has not been disclosed by the Plaintiff.

(v) Any architect or building designer involved in the design and construction of the residential building constructed on the Plaintiff's lot, the identity of whom has not been disclosed by the Plaintiff.

- (vi) Any structural engineer involved in the design and construction of the residential building constructed on the Plaintiff's lot, the identity of whom has not been disclosed by the Plaintiff.
- (vii) Any geotechnical engineer involved in the design and construction of the residential building constructed on the Plaintiff's lot, the identity of whom has not been disclosed by the Plaintiff.

Regarding Group Members as Defined in Paragraph 1 (c) (i)

- (viii) Any builder, architect, building designer and/or engineer involved in the design and construction of the residential building constructed on the Group Member's lot. The identities of the relevant Group Members and the relevant entities have not been disclosed by the Plaintiff.

Regarding Group Members as Defined in Paragraph 1 (c) (ii)

- (ix) The Plaintiff.

21. Further and in the alternative, the First Defendant avers the loss and damage complained of in the ASOC occurred wholly or in part as a result of the Plaintiff's own fault or contributory negligence.

PARTICULARS OF FAULT OR CONTRIBUTORY NEGLIGENCE

- (a) Providing information and/or statements to the media regarding alleged damage to properties in the Spring Farm Area.
 - (b) Providing information and/or statements to the media that injuriously affected the value of properties in the Spring Farm Area.
 - (c) Failing to repair property damage affecting the residential building constructed on his lot.
 - (d) Assisting in the promotion of the representative proceedings.
22. To the extent that the Plaintiff and/or any Group Members allege the First Defendant is liable to Group Members who acquired their properties and/or suffered loss or damage on or before 6 years prior to 18 December 2020, the First Defendant says those claims are not maintainable pursuant to s.14 of the Limitation Act 1969.

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



Name of Legal representative

Richard Oldfield

Capacity

Solicitor for First Defendant

Date of signature

19 November 2021

AFFIDAVIT VERIFYING

Name Samantha Sharkey
 Address 70 Central Avenue ORAN PARK NSW 2570
 Occupation Director Customer & Corporate Strategy
 Date 19 November 2021

I say on oath:

1. I am employed by the First Defendant, Camden Council as Director Customer & Corporate Strategy.
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 Camden 19 November 2021

Signature of deponent



Name of witness Minela Addison
 Address of witness 70 Central Avenue, Oran Park NSW 2557
 Capacity of witness Solicitor (LSID 61731)

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.

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.]

DETAILS ABOUT FILING PARTY**Filing party**

Name	Camden Council
Address	70 Central Avenue ORAN PARK NSW 2570

Legal representative for filing party

Name	Richard Oldfield
Practising Certificate Number	20696
Firm	McCulloch & Buggy
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