

## FURTHER AMENDED 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:

- 1 Damages
- 2 Costs
- 3 Interest
- 4 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 plaintiff’s 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 who owned houses and premises at the following addresses:
  1. 36 – 38 Rickard Road, Chipping Norton NSW 2170
  2. 42 Rickard Road, Chipping Norton NSW 2170;
  3. 43 - 45 Rickard Road, Chipping Norton NSW 2170;
  4. 60 Rickard Road, Chipping Norton NSW 2170;
  5. 62 Rickard Road, Chipping Norton NSW 2170;
  6. 39 Newbridge Road, Chipping Norton NSW 2170
  7. 40 Newbridge Road, Chipping Norton NSW 2170.
- 4 The defendant on or about the same date caused soil contaminated with asbestos to be dumped on a nature strip outside the premises at 5 Newbridge Road, Chipping Norton NSW 2170. Those premises were not occupied by the owner but were rented to a business proprietor. The owner of the premises does not live at these premises but visits the premises from time to time.

### Group Members

- 5 The Group Members to whom this proceeding relates are persons who have suffered loss or damage to their property as a result of the dumping of the asbestos-contaminated soil outside their properties in or about June 2014 and a business owner at 5 Newbridge Road, Chipping Norton NSW 2170.
- 6 Each of the Group Members with the exception of those members who did not live at the premises are owners and occupiers of their respective properties. Those group members who owned but did not occupy the premises from time to time visited the

premises. Full details of the Group Members and their status are in a document annexed to this Further Amended Statement of Claim as Annexure A.

### **Liverpool City Council**

- 7 At all material times 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).

- 8 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 outside the premises of the Group Members 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.

## **B. NEGLIGENCE**

### **Duty**

- 9 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 outside the premises identified as belonging to and/or being used by Group Members in Rickard and Newbridge Roads, Chipping Norton in the State aforesaid.
- 10 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 plaintiff's 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, including personal property

together with vexation, worry, distress and inconvenience as well as consequential losses including economic loss due to the physical consequences of asbestos.

- 11 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.
- 12 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.
- 13 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*

- 14 At all material times it was foreseeable by the defendant that there was a risk that was not insignificant that the dumping of soil containing asbestos particles on the nature strips adjacent to the relevant properties at Rickard Road and Newbridge Roads, Chipping Norton would cause contamination to the land and adjacent buildings AND that contamination would cause the values of the relevant properties to be severely diminished so that a reasonable person in the position of the defendant would have taken precautions against the risk of such harm occurring by removing from the soil to be dumped all asbestos particles OR would have dumped soil only which it knew was free of all asbestos particles.

#### *Probability and seriousness of the risk harm occurring*

- 15 At all material times the risk of severe diminishing in the values of the relevant properties was not insignificant and the likely seriousness of the damage to property values occurring in the event that the risks of harm eventuated was potentially extreme.

#### *Precautions*

- 16 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**

- 17 The defendant failed to take reasonable care:
- a. To ensure that it had a system of inspection of soil it intended to use for dumping on nature strips and other public places within the municipality that identified that identified particles of asbestos;
  - b. To ensure that all soil dumped outside the relevant properties at Rickard Road and Newbridge Road, Chipping Norton was free of asbestos particles.

### **Causation**

- 18 The plaintiff and the Group Members suffered economic harm in that each of the properties they owned or rented was contaminated by asbestos contained in soil dumped by the defendant negligently in breach of its duty to each of the plaintiff and the group members such that it is appropriate in law that the liability of the defendant for its negligence extend to the economic harm so caused.

### **Loss and Damage**

- 19 As a result of the Council's breach, the plaintiff and Group Members have suffered loss and damage including destruction of, or diminution in value of, real and personal property and, in the case of the tenant at 5 Newbridge Road, Chipping Norton NSW 2170, destruction of a viable business together with severe diminution of earnings and in the case of all the Group Members who owned properties which they did not occupy but let out, diminution in value and destruction of their business as landlords and in relation to all Group Members vexation, worry, distress and inconvenience.

### **C. NUISANCE**

- 20 The actions of the defendant in dumping soil containing asbestos particles on the nature strips adjacent to the relevant properties in Rickard Road and Newbridge Road, Chipping Norton caused a nuisance to each of the plaintiff and the Group

Members in that soil containing particles of asbestos was taken by wind or human or animal action on to the land owned or rented by the Group Members causing the land and improvements to be polluted by asbestos contamination.

- 21 The nuisance has been a continuing nuisance since the day that the material was first dumped and the nuisance substantially and unreasonably interferes with the use and enjoyment of the Group Members in the land they owned, occupied or leased.

### **Creation of Nuisance**

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

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

- 23 At all material times it was reasonably foreseeable to the defendant that dumping soil contaminated with asbestos in the areas already indicated would constitute a nuisance.

### **Common Questions**

- 24 The plaintiff says on behalf of the Group Members that the following questions arise for determination:
- a. did the defendant by itself, its servants or agents in June 2014 cause soil to be dumped on the nature strip outside each of the premises of the Group Members;
  - b. did this soil contain asbestos;
  - c. if the answer to (b) is yes, did the dumping of this soil cause contamination to the premises of each of the Group Members;
  - d. did the dumping of this soil cause damage to the real property owned by those of the Group Members who had a freehold interest in their land;
  - e. did the dumping of the asbestos cause real property damage to each of the Group Members and, if so, in what amount;
  - f. did the dumping of the soil cause damage to the personal property of the Group Members;
  - g. is the defendant liable to each of the Group members to pay damages for vexation, worry, distress and inconvenience suffered as a result of the defendant's negligence;
  - h. did the dumping of the soil cause a nuisance to each of the Group Members;
  - i. if the answer to (h) is yes, what damages are payable by the defendant.

## SIGNATURE OF LEGAL REPRESENTATIVE

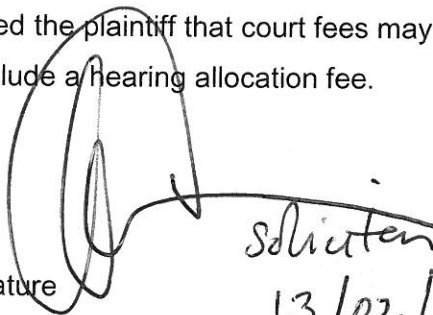
I certify under section 347 of the Legal Profession Act 2004 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

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

Signature

Capacity

Date of signature

  
Solicitor  
13/02/2017

## NOTICE TO DEFENDANT

**If you do not file a defence within 28 days of being served with this Further Amended 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 Further Amended 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)†

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 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

**ANNEXURE "A"**

**BERNARD KING V LIVERPOOL CITY COUNCIL**

**GROUP MEMBERS**

Susan Bate
Richard Arnold
Angelica Arnold
Andrew Groom
Andrew Groom
Maria Carnevale
Jiong Li
Tony Mei Cuan
Chris Mourtzakis
Ali Beydoun
Moufid Behdoun
Walid Jamel-Eddine
Amar Jamel-Eddine
Eric Tigani
Thomas Nomoyle
Joseph Said
Girogos Said
George Said
Apraham Bedros
Frank Maruzza
Wenping Zhu
Xinyue Duan
Amy Li
Leanne Li
Andrew Li
David Yelda
Rebecca Yelda
Asiah Yelda
Elisha Yelda
Zacaria Yelda
Philip Checko
Jessica King
Indianna Checko
Ivy Checko
Scarlett Checko
Joshua King
Hayden King
Jack Ruxton
Cameron Ruxton
Lee McGary