

## NOTICE OF MOTION

### COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	Common Law General
Registry	Sydney
Case number	2018/00263841

### TITLE OF PROCEEDINGS

First Plaintiff	<b>Hunt Leather Pty Ltd ACN 000 745 960</b>
Second Plaintiff	<b>Sophie Irene Hunt</b>
Defendant	<b>Transport for New South Wales</b>

### FILING DETAILS

Person seeking orders	<b>Hunt Leather Pty Ltd ACN 000 745 960 and Sophie Irene Hunt, Plaintiffs</b>
Legal representative	Rick Mitry, Mitry Lawyers
Legal representative reference	RM: 13137
Contact name and telephone	Amanda Charchar (02) 9222 2833
Contact email	<a href="mailto:Amanda.charchar@mitry.com.au">Amanda.charchar@mitry.com.au</a>

### PERSON AFFECTED BY ORDERS SOUGHT

**Transport for New South Wales, defendant**

### HEARING DETAILS

This motion is listed at 2pm on 6 March 2020.

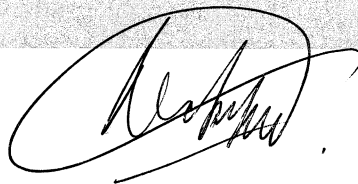
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**ORDERS SOUGHT**

- 1 Pursuant to section 181 of the *Civil Procedure Act* (NSW), the plaintiffs be granted leave to join Ancio Investments Pty Ltd as trustee for the Ancio Unit Trust and Nicholas Zisti as representative parties in these Proceedings and to amend the Further Amended Statement of Claim in the form annexed to this application and marked "A."
- 2 Plaintiff to pay the costs of the motion.
- 3 Such further orders as the Court see fit.

**SIGNATURE**

Signature of legal representative

Signature of or on behalf of  
person seeking orders if not  
legally represented


Capacity

Solicitor on the Record

Date of signature

21 February 2020

**NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT**

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

**REGISTRY ADDRESS**

Street address

Law Courts Building, 184 Phillip Street, Sydney NSW 2000

Postal address

Supreme Court of New South Wales GPO Box 3, Sydney  
NSW 2001

Telephone

1300 679 272

# "A"

Form 3A (version 7)  
UCPR 6.2

## **SECOND FURTHER AMENDED STATEMENT OF CLAIM**

### **COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Common Law
List	Representative Proceedings
Registry	Sydney
Case number	2018/263841

### **TITLE OF PROCEEDINGS**

<u>First Plaintiff</u>	<b><u>Rosa Maria Colagrossi Hunt Leather Pty Ltd</u></b> <b><u>ACN 000 745 960</u></b>
<u>Number of Plaintiffs</u>	<b><u>4</u></b>
Defendant	<b>Transport for New South Wales</b>

### **FILING DETAILS**

Filed for	<b><u>Rosa Maria Colagrossi Hunt Leather Pty Ltd, Sophie Irene Hunt, Ancio Investments Pty Ltd and Nicholas Zisti, Plaintiffs</u></b>
Legal representative	Rick Mitry, Mitry Lawyers
Legal representative reference	RM:13137
Contact name and telephone	Amanda Charchar (02) 9222 2833
Contact email	amanda.charchar@mitry.com.au

### **HEARING DETAILS**

These proceedings are listed for an initial case conference at 9:00am on the Wednesday after the expiration of 42 days from the filing of this statement of claim.

### **TYPE OF CLAIM**

Nuisance

## RELIEF CLAIMED

- 1 Damages.
- 2 Interest.
- 3 Costs.
- 4 Such further or other order as the Court thinks fit.

## PLEADINGS AND PARTICULARS

### Parties

- 1 This proceeding is commenced as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) (**CPA**) on behalf of the plaintiffs and all persons:
  - (a) who or which:
    - (i) hold, or have held, an interest in land in the vicinity of the public works project known as the CBD and South East Light Rail project (the **Project**); and
    - (ii) have suffered loss or damage by reason of the defendant's interference with their enjoyment of their interest in land as pleaded in this statement of claim  
  
(**Private Nuisance Group Members**); and or
  - (b) who or which have suffered loss or damage as pleaded in paragraph 19 below by reason of the defendant's interference with public land through the carrying out of the Project as pleaded in this statement of claim (**Public Nuisance Group Members**); and
  - (c) are not any of the following:
    - (i) the defendants;
    - (ii) an officer or employee of the defendants;
    - (iii) a Chief Justice, Justice or Registrar of the Supreme Court of New South Wales or the High Court of Australia; or
    - (iv) an officer or employee of, or other legal practitioner engaged in connection with these proceedings by, the law firm Mitry Lawyers;  
  
(**Group Members**).

2 At the time of commencing this proceeding, there are seven or more Group Members who have claims against the defendant within the meaning of section 157 of the CPA.

3 The first plaintiff (**Hunt Leather**):

- (a) operates a retail leather goods business known as "Hunt Leather";
- (b) is a family company started in about 1975 by Mr John Hunt and Mrs Elizabeth Hunt, which has at all times ultimately been owned by members of the Hunt family;
- (c) since about June 2013, has operated a shop retailing leather goods (the **Strand Shop**) located at Shop 2, Ground Level, Strand Arcade, 412-414 George Street, Sydney NSW 2000 (the **Strand Premises**), which is the flagship Hunt Leather shop;
- (d) has, at all material times, held a lease in respect of the Strand Premises;

**Particulars**

Retail lease between Ipoh Strand Pty Limited (ACN 086 637 627) and Hunt Leather Pty Ltd (ACN 000 750 960) dated 1 February 2013 [Dealing no: AH845678T]

Retail lease between Ipoh Pty Limited (ACN 0860 673 627) and Hunt Leather Pty Ltd (ACN 000 750 960) dated 16 April 2018 [Dealing no: AN29995K]

- (e) also operates Hunt Leather shops in Balmain, Melbourne, Brisbane, and Perth;
- (f) since about 1994, has operated shops retailing "Longchamp" branded leather goods, pursuant to a franchise agreement with Longchamp and the The Jean Cassegrain Company (Franchisor);

**Particulars**

Franchising Agreement between Jean Cassegrain Company (Franchisor), Longchamp (Supplier / First Party) and Hunt Leather Pty Ltd (Franchisee / Second Party)

- (g) from about July 2009, until about November 2018, operated a shop retailing Longchamp brand leather goods (the **QVB Shop**) located at Shop 16, Ground Floor, Queen Victoria Building, 455 George Street, Sydney NSW 2000 (the **QVB Premises**); and

- (h) at all material times until about November 2018, held a lease in respect of the QVB Premises.

**Particulars**

Retail lease between Ipoh Pty Limited (ACN 022 443 316) and Hunt Leather Pty Ltd (ACN 000 750 960) commencing 13 May 2009 [Dealing no: AE692478B]

Retail lease between Ipoh Pty Limited (ACN 022 443 316) and Hunt Leather Pty Ltd (ACN 000 750 960) commencing 7 October 2014 [Dealing no: AI982091L]

- ~~(a) is, and has been since about September 2006, the owner and manager of “Kensington Pharmacy and Newsagency” (the **Kensington Business**) and located at 182 Anzac Parade, Kensington (the **Kensington Premises**);~~
- ~~(b) conducts, and has since September 2006 conducted, the Kensington Business as a sole trader (ABN 77 394 303 775); and~~
- ~~(c) holds, and since September 2006 has held, a lease over the Kensington Premises.~~

**3A The second plaintiff (Ms Hunt):**

- (a) has worked for Hunt Leather since about 1987;
- (b) has been the chief executive officer of Hunt Leather since about 2003;
- (c) is the daughter of Mr John Hunt and Mrs Elizabeth Hunt; and
- (d) has overall responsibility for the day to day operations of Hunt Leather, including the Strand Shop, and until November 2018, the QVB Shop.

**3B The third plaintiff (Ancio):**

- (a) is the trustee of a unit trust known as the Ancio Unit Trust (ABN 50 319 048 217);
- (b) from about May 2009 until about April 2019, operated a restaurant business (the **Restaurant**) located at 1/240-268 Anzac Parade, Kensington NSW 2033 (the **Restaurant Premises**); and

**Particulars**

The Restaurant was known as, relevantly, Khing Thai from about 4 July 2011 until about June 2018, and Sugo Pasta Bar from about July 2018 until about April 2019.

- (c) at all material times until about April 2019, held a lease in respect of the Restaurant Premises.

**Particulars**

Retail lease between Dowra Pty Limited (ACN 002 226 039) and Ancio Investments Pty Ltd (ACN 136 917 041) commencing 1 May 2014 [Dealing no: AJ338155]

**3B The fourth plaintiff (Mr Zisti):**

- (a) is, and at all material times has been, the sole director of Ancio;
- (b) is, and at all material times has been, a beneficiary of the Ancio Unit Trust; and;
- (c) at all material times, operated and had responsibility for the Restaurant.

**4 The defendant:**

- (a) is a NSW Government Agency constituted as a statutory corporation pursuant to section 3C of the *Transport Administration Act 1988* (NSW) (**TAA**);
- (b) by operation of section 13A(1)(a) of the *Interpretation Act 1987* (NSW) (**Interpretation Act**), has the status of the Crown; and
- (c) may be sued pursuant to section 50(1)(c) of the *Interpretation Act* and or section 5(2) of the *Crown Proceedings Act 1988* (NSW).

**The Project**

**5 On or about 1 December 2012, the defendant published:**

- (a) the NSW Long Term Transport Master Plan (the **Master Plan**); and
- (b) a report entitled "Sydney's Light Rail Future: Expanding public transport, revitalising our city" (the **Light Rail Future Report**).

**6 In the Master Plan and the Light Rail Future Report, the defendant announced that:**

- (a) the NSW Government was proceeding with a new light rail line extending from Circular Quay through George Street to Central Station and to the University of NSW via Anzac Parade and Alison Road (being the Project);
- (b) construction on the Project would take place in stages, with city streets closed in sections to minimise disruption to residents, businesses and commuters; and

(c) construction on the Project would likely take between five and six years to complete.

7 On or about 30 June 2014, the defendant entered into a contract for the carrying out of certain early works (**Early Works**) for the purposes of the Project.

**Particulars**

Contract entitled “Formal Instrument of Agreement” between the defendant and Laing O’Rourke Australia Construction Pty Ltd dated 30 June 2014.

8 The Early Works commenced in about October 2014.

9 On or about 17 December 2014, the defendant entered into a deed for the design, construction, testing and commission, operations and maintenance of the Project (**Project Deed**).

**Particulars**

Deed entitled “Sydney Light Rail Project Deed” between the defendant and the ALTRAC Light Rail Partnership, being a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3, dated 17 December 2014 (**ALTRAC**).

10 Under the Project Deed, construction of the Project was due to be completed by 16 March 2019.

**Particulars**

Clause 17.2 of the Project Deed.

10A At all material times, ALTRAC sub-contracted the civil construction works phase of the Project to Acciona Infrastructure Australia Pty Ltd (**Acciona**).

**Particulars**

(a) Contract entitled “Sydney Light Rail D&C Contract” between ALTRAC, Acciona and Alstom Transport Australia Pty Ltd (**Alstom**) dated 17 December 2014 (**D&C Contract**).

(b) Pursuant to the D&C Contract, Acciona was contracted to perform design and construction works on the Project in respect of civil works and Alstom was contracted to perform design and construction works on the Project in respect of rolling stock.



- 11 On or about 28 May 2015, the defendant announced that:
- (a) the Project route had been divided into 31 individual zones to minimise, as much as possible, the impacts of construction in any one area; and
  - (b) major construction on the Project was expected to start in September 2015 and to complete in mid 2018.

#### **Particulars**

CBD and South East Light Rail Project Update May 2015, published by the defendant on or about 28 May 2015.

- 12 Major construction on the Project commenced on or about 23 October 2015.

#### **Delays in the civil works caused by the defendant**

- 12A In or around March 2015, and again in or around May 2015, Acciona advised the defendant, in substance, that:

- (a) it had received a document from Ausgrid that set out Ausgrid's requirements for the treatment of its utilities (**Ausgrid Guidelines**);
- (b) the Ausgrid Guidelines differed significantly from the treatment of Ausgrid's utilities that had been developed and agreed between the defendant and Acciona (as recorded in Schedule F8 to the relevant project documentation);
- (c) the new Ausgrid Guidelines would result in:
  - (i) a substantial change to the scope of works for the Project;
  - (ii) an estimated delay of 865 days (over two years and four months) to the completion of Project; and
  - (iii) an estimated additional cost of around \$426 million to the civil construction works

(collectively, **Ausgrid Scope Changes**).

- 12B A substantial cause of the Ausgrid Scope Changes was the defendant's failure, despite repeated reviews recommending that it be done, to finalise agreements with stakeholders such as utility providers (including Ausgrid) and local councils to complete the Project's design and scope of works prior to entry into the Project Deed.

### Particulars

- (a) NSW Auditor-General's Report, *Performance Audit: CBD and South East Light Rail Project* dated 30 November 2016, at page 13.
  - (b) The admissions contained in paragraphs 21a and 21b of Section C of the defendant's Commercial List Response in Supreme Court of NSW proceedings no 2018/99002 brought by Acciona against the defendant.
  - (c) Sydney Light Rail Urban Domain Reference Group Meeting 10 minutes (9 December 2015), which record as "Lessons Learned" from the Project "[g]reater council and major stakeholder engagement prior to the EIS" and the "[i]mportance of understanding the invisible constraints such as underground utilities and drainage, to avoid unrealistic visions." (page 6).
  - (d) Sydney Light Rail Urban Domain Reference Group report titled "Lessons for Light Rail" dated 1 February 2016 which records "Visions were promoted before understanding the real constraints of the project - the underground utilities and drainage. The project is then blamed or delayed when it can not deliver the unrealistic expectations." (page 3).
  - (e) Further particulars may be provided following discovery and evidence.
- 12C During the course of the civil construction works, the defendant has issued Acciona with approximately 60 directions to change the scope of those works (**Project Scope Changes**)
- 12D A substantial cause of the Project Scope Changes was the failure by the defendant to effectively plan and procure the Project between 2011 and 2014.

### Particulars

- (a) NSW Auditor-General's Report, *Performance Audit: CBD and South East Light Rail Project* dated 30 November 2016, at pages 2, 3, 9-12.
- (b) Sydney Light Rail Urban Domain Reference Group report titled "Lessons for Light Rail" dated 1 February 2016 which records "The CSELR project is incurring high prices and design delays as the inevitable detailed design changes (the 'unknown unknowns') go through an onerous contract modifications process." (page 1) and states that more of these latent issues should have been flushed out in a one year competitive design process.
- (c) Further particulars may be provided following discovery and evidence.

- 13 Since the commencement of construction on the Project, the defendant has made repeated public statements to the effect that the Project would be operational by 2019.

#### Particulars

- (a) CBD and South East Light Rail Project Update September 2016, published by the defendant on or about 30 September 2016 (“The project will be completed and operating in 2019.”).
- (b) Statements made by Marg Prendergast, Coordinator General of the defendant, to Australian Associated Press on or about 5 June 2017, to the effect that although work in seven out of ten zones along George Street had failed to meet completion dates, the Project was still “on track for overall completion in early 2019”.
- (c) Webpage titled “CBD and South East Light Rail”, published by the defendant on or about 13 October 2017 and available at <https://www.transport.nsw.gov.au/projects/current-projects/cbd-and-south-east-light-rail> (“The CBD and South East Light Rail is expected to complete and begin service in 2019.”)
- (d) Further particulars may be supplied following discovery and evidence.
- 14 On or about 19 April 2018, the defendant publicly confirmed that a program of works provided by ALTRAC indicated an end date of March 2020 for construction on the Project.
- 14A As at 4 October 2018, the schedule for completion of the Project was May 2020.
- 14B The delays in the completion of the Project have largely been caused by delays to civil construction works phase of the Project (**Civil Works Delay**).
- 14C Each of the Ausgrid Scope Changes and the Project Scope Changes are a substantial cause of the Civil Works Delay.
- 14D In the premises of paragraphs 12B, 12D and 14C above, a substantial cause of the Civil Works Delay

has been the defendant’s conduct in:

- (a) failing to finalise agreements with stakeholders such as utility providers (including Ausgrid) and local councils to complete the Project’s design and scope of works prior to entry into the Project Deed; and
- (b) failing to effectively plan and procure the Project between 2011 and 2014.

## Private Nuisance

15 Through its conduct in:

- (a) authorising or permitting the construction of the Project; and or
- (b) causing the Civil Works Delay,

the defendant has caused a substantial and unreasonable interference with the Plaintiff's and the Private Nuisance Group Members' enjoyment of their respective interests in land located in the vicinity of the Project (**Private Nuisance**).

### Particulars

- (i) Damage to and obstruction of roadways and footpaths through road closures and erection of hoardings, causing a substantial decrease in customers of businesses operated by, or operating on land owned by, Private Nuisance Group Members.
- (ii) Excessive noise caused by construction on the Project.
- (iii) Excessive vibration caused by construction on the Project.
- (iv) Excessive dirt and dust caused by construction on the Project.
- (v) Light spillage from light towers used on the Project without adequate screening.
- (vi) Prolongation of the above impacts by reason of the Civil Works Delay.
- (vii) Further particulars may be provided following discovery and evidence.

16 By reason of the Private Nuisance, the first and third plaintiffs and Private Nuisance Group Members have suffered, and continue to suffer, loss and damage.

### Particulars

- (a) The first plaintiff:
  - (i) experienced impacts at the Strand Shop during construction of the Project between about November 2015 to December 2017 (significantly in excess of the originally advised construction period of about 6-8 months), including:
    - (1) decreased foot traffic due to road closures and hoardings erected along the footpath, particularly on the block of

- George Street between King and Market Streets where the Strand Shop is located;
- (2) even after hoardings had been removed from the block of George Street between King and Market Streets, continued to experience decreased foot traffic due to surrounding blocks of George Street still being obstructed by hoardings;
  - (3) excessive noise and vibration reducing the amenity of the Strand Shop for customers and staff; and
  - (4) excessive dirt and dust in the Strand Shop reducing the amenity of the Strand Shop for customers and staff;
- (ii) as a result of the impacts referred to in (i), experienced a significant decline in sales at the Strand Shop;
  - (iii) as a result of the decline in sales, was forced to reduce costs including by reducing staff, staff hours, stock purchases, cleaning services and marketing activities, all of which made it even more difficult to maintain sales levels;
  - (iv) as a result, suffered financial loss from the business conducted at the Strand Shop estimated at approximately \$3,123,000 in the 2016 to 2019 financial years;
  - (v) was paid an *ex gratia* payment by or on behalf of the defendant in respect of the Strand Shop in the amount of \$198,686 pursuant to the Small Business Assistance Program established by the defendant, which was not sufficient to offset the financial losses referred to above;
  - (vi) experienced impacts at the QVB Shop during construction of the Project due to:
    - (1) road closures and hoardings reducing the visibility of the QVB Shop onto George Street and decreasing foot traffic; and
    - (2) cash flow impacts from the Strand Shop affecting its ability to purchase stock for the QVB Shop;
  - (vii) as a result of the impacts in (vi), experienced a significant decline in sales at the QVB Shop;

- (viii) as a result, suffered financial loss from the business conducted at the QVB Shop estimated at approximately \$431,000 in the 2017 to 2019 financial years;
- (ix) did not receive any *ex gratia* payment in respect of the QVB Shop under the Small Business Assistance Program;
- (x) in the result, has suffered financial loss in the total amount of approximately \$3,554,000 less the *ex gratia* payment of \$198,686 referred to at (v) above, being a net financial loss of approximately \$3,355,314; and
- (xi) suffered further financial loss as a result of decreased cash flow impacting on its other shops, further particulars of which may be supplied following service of expert evidence.
  - ~~(i) — experienced a significant decline in customers and sales at the Kensington Business from the commencement of construction on the Project in Kensington, as the Kensington Premises are located on Anzac Parade, being part of the route of the Project, the construction works impeding foot traffic and reducing the amenity of the surrounding neighbourhood, including the Kensington Premises;~~
  - ~~(ii) — to meet the reduced customers and sales, had to reduce staff at the Kensington Business as she was unable to meet her debts associated with the Kensington Business due to the decline in sales and customers;~~
  - ~~(iii) — in the period since construction commenced, experienced total economic loss in the Kensington Business from the matters set out above of approximately \$660,000;~~
  - ~~(iv) — experienced non-economic loss in the form of mental anguish and distress at the demise of the local business she had developed and built since 2006.~~

(a1) The third plaintiff:

- (i) experienced impacts at the Restaurant during construction of the Project between about May 2016 and February 2019 including:
  - (1) road blockages and the erection of hoardings outside the front of the Restaurant, which had a large window facing

- out onto Anzac Parade, reducing the amenity of the Restaurant for customers;
- (2) reduction of nearby parking caused by road closures, resulting in customers choosing to eat elsewhere;
- (3) excessive noise reducing the amenity of the Restaurant for customers; and
- (4) excessive dirt and dust coating the outside of the Restaurant windows;
- (ii) as a result of the impacts in (i), experienced a significant decline in customers and sales;
- (iii) as a result of the decline in customers and sales, was forced to cut costs by reducing staff hours, resulting in staff resigning because the third plaintiff could not offer sufficient hours;
- (iv) then had difficulties attracting Thai chefs to replace staff who had resigned, and as a result switched the Restaurant to Italian cuisine in about July 2018;
- (v) to save costs, sub-let the Restaurant Premises to a café business from about October to November 2018, which business failed and the sub-lease was terminated;
- (vi) was forced to close the Restaurant in about April 2019 due to continuing unsustainable financial losses;
- (vii) as a result, suffered financial loss from the business conducted at the restaurant estimated at approximately \$507,224 in the 2016 to 2019 financial years;
- (viii) was paid *ex gratia* payments by or on behalf of the defendant in respect of the Restaurant totaling \$251,600 pursuant to the Small Business Assistance Program established by the defendant, which was not sufficient to offset the financial losses referred to above;
- (ix) in the result, has suffered a net financial loss of approximately \$255,624;
- (x) has suffered further financial loss consequent on the closure of the Restaurant, further particulars of which will be provided following evidence.

- (b) Particulars of Private Nuisance Group Members' loss and damage will be completed following the determination of common questions, but includes:
- (i) Loss of revenue from businesses operated by Private Nuisance Group Members due to drop in customers and consequential loss of profits and the value of business goodwill.
  - (ii) Loss of rent of premises owned by Private Nuisance Group Members due to failure of businesses operated from their land.
  - (iii) Consequential losses from the failure and closure of businesses operated by Private Nuisance Group Members and or operated from land owned by Private Nuisance Group Members.
  - (iv) Loss of amenity.
  - (v) Relocation expenses.
  - (vi) Mental anguish and distress.

17 In the premises, the defendant is liable to pay damages to the first and third plaintiffs and Private Nuisance Group Members for the tort of private nuisance.

### **Public Nuisance**

18 Through its conduct in:

- (a) authorising or permitting the construction of the Project; and or
- (b) causing the Civil Works Delay,

the defendant has caused substantial and unreasonable obstruction or inconvenience to the public in the exercise of public rights, namely by the damage to and obstruction of roadways and footpaths through road closures and erection of hoardings (**Public Nuisance**).

19 By reason of the Public Nuisance, the plaintiffs and Public Nuisance Group Members have suffered, and continue to suffer, loss and damage.

### **Particulars**

- (a) The particulars at paragraphs 16(a)-(a) are repeated.
- (a1) The second plaintiff experienced non-economic loss in the form of mental anguish and distress at the impact that the construction of the Project had on her 40 year old family business and the consequent impact this had on her family members.



(a2) The fourth plaintiff experienced non-economic loss in the form of mental anguish and distress at the impact that the construction of the Project had on the business he had single-handedly built over a period of ten years, and the impact that the failure of the business had on him, his ability to provide for his family and his personal relationships.

(b) Particulars of Public Nuisance Group Members' loss and damage will be completed following the determination of common questions, but includes:

- (i) Loss of revenue from businesses operated by Public Nuisance Group Members due to drop in customers and consequential loss of profits and the value of business goodwill.
- (ii) Loss of rent of premises owned by Public Nuisance Group Members due to failure of businesses operated from their land.
- (iii) Consequential losses from the failure and closure of businesses operated by Public Nuisance Group Members and or operated from land owned by Public Nuisance Group Members.
- (iv) Loss of occupation in businesses operated in the vicinity of the Project.
- (v) Loss of amenity.
- (vi) Relocation expenses.
- (vii) Mental anguish and distress.

20 The loss and damage suffered by the plaintiffs and Public Nuisance Group Members is substantial and appreciably greater in degree than that suffered by the general public.

21 In the premises, the defendant is liable to pay damages to the plaintiffs and Public Nuisance Group Members for the tort of public nuisance.

### **Common Questions**

22 The questions of fact or law common to the claims of Group Members are:

- (a) Whether the defendant's failure to finalise agreements with stakeholders such as utility providers (including Ausgrid) and local councils to complete the Project's design and scope of works prior to entry into the Project Deed was a substantial cause of the Ausgrid Scope Changes as pleaded in paragraph 12B.

- (b) Whether the defendant's failure to effectively plan and procure the Project between 2011 and 2014 was a substantial cause of the Project Scope Changes as pleaded in paragraph 12D.
- (c) Whether each of the Ausgrid Scope Changes and the Project Scope Changes was a substantial cause of the Civil Works Delay as pleaded in paragraph 14C.
- (d) Whether, by authorising or permitting the construction of the Project and or causing the Civil Works Delay, the defendant has caused a substantial and unreasonable interference with the first and third plaintiff's' and the Private Nuisance Group Members' enjoyment of their respective interests in land located in the vicinity of the Project, as pleaded in paragraph 15 above.
- (e) Whether, by authorising or permitting the construction of the Project and or causing the Civil Works Delay, the defendant has caused substantial and unreasonable obstruction and or inconvenience to the public in the exercise of public rights, as pleaded in paragraph 18 above.

#### **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 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 on record

Date of signature

## NOTICE TO DEFENDANTS

**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.ucprforms.justice.nsw.gov.au](http://www.ucprforms.justice.nsw.gov.au) or at any NSW court registry.

## REGISTRY ADDRESS

Street address	Law Courts Building 184 Phillip St Sydney NSW 2000
Postal address	GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

**AFFIDAVIT VERIFYING**

Name Rick Mitry  
 Address 1/167 Castlereagh St Sydney NSW 2000  
 Occupation Solicitor  
 Date

I say on oath

- 1 I am the solicitor for the Plaintiffs.
- 2 I believe that the allegations of fact in the second further amended statement of claim are true.

SWORN at Sydney

Signature of deponent \_\_\_\_\_

Name of witness \_\_\_\_\_

Address of witness \_\_\_\_\_

Capacity of witness Solicitor

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.]

[on separate page]

## FURTHER DETAILS ABOUT PLAINTIFFS

### First plaintiff

Name Hunt Leather Pty Ltd  
Address 213 Darling Street  
Balmain NSW 2041

### Second plaintiff

Name Sophie Irene Hunt  
Address 22 Prince George Parade  
Hunters Hill NSW 2110

### Legal representative for plaintiff

Name Rick Mitry  
Practising certificate number 10900  
Firm Mitry Lawyers  
Address 1/161-167 Castlereagh St  
Sydney NSW 2000  
  
Telephone 02 9222 2833  
Fax 02 9222 2855  
Email [rick@mitry.com.au](mailto:rick@mitry.com.au)  
Electronic service address [rick@mitry.com.au](mailto:rick@mitry.com.au)

## DETAILS ABOUT DEFENDANTS

### First Defendant

Name Transport for NSW  
Address 18 Lee St  
Chippendale NSW 2008

**Second Defendant**

Name ALTRAC Light Rail 1 Pty Limited  
(ACN 603 192 203)

Address Level 8, 136 Exhibit Street  
Melbourne VIC 3000

**Third Defendant**

Name ALTRAC Light Rail 2 Pty Limited  
(ACN 603 194 476)

Address Level 8, 136 Exhibit Street  
Melbourne VIC 3000

**Fourth Defendant**

Name ALTRAC Light Rail 3 Pty Limited  
(ACN 603 190 601)

Address Level 8, 136 Exhibit Street  
Melbourne VIC 3000

**First Defendant**

Name Acciona Infrastructure Australia Pty Limited  
(ACN 140 915 251)

Address 174 Turner Street  
Port Melbourne VIC 3207