

## 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, Sophie Irene Hunt, Ancio Investments Pty Ltd as trustee for the Ancio Unit Trust, Nicholas Zisti, Plaintiffs</b>
Legal representative	Rick Mitry, Mitry Lawyers
Legal representative reference	RM: 13137
Contact name and telephone	Rick Mitry (02) 9222 2833
Contact email	<a href="mailto:rick.mitry@mitry.com.au">rick.mitry@mitry.com.au</a>

### PERSON AFFECTED BY ORDERS SOUGHT

**Transport for New South Wales**, Defendant

### HEARING DETAILS

This motion is listed at [ 2021].

## ORDERS SOUGHT

- 1 An order pursuant to section 175(5) of the *Civil Procedure Act 2005* (NSW) (the **Act**) that group members (**Group Members**) be given notice of:
  - a. the fact that the Court has referred the proceedings to mediation which is to occur by the 30 September 2021; and
  - b. the opportunity to register their claims with the Plaintiffs' solicitors for the purposes of the mediation if they have not already done so.
- 2 An order pursuant to section 176(1) of the Act that the form and content of the long form Notice and short form Notice to Group Members, annexed and marked **Annexure A** and **Annexure B**, respectively, are approved.
- 3 An order pursuant to section 176(2) of the Act that the Notice be caused to be sent by the Plaintiffs' solicitors and or a third-party mailing house agreed by the parties according to the following procedure:
  - a. on or before 20 August 2021, the Plaintiffs are to provide a copy of Annexure A to all Group Members who have registered their interest in the proceedings with the Plaintiffs' solicitors, by email for those Group Members for whom the Plaintiffs' solicitors have been provided an email address, otherwise by ordinary mail;
  - b. on or before 23 August 2021, the third-party mailing house is to provide a copy of Annexure A to all Group Members whose contact details have been provided to them by the Defendant pursuant to order 6 below and/or by the Plaintiffs, by email for those Group Members for whom the Defendant has provided an email address, otherwise by short messaging service (SMS) message containing a link to the web page hosting Annexure A on the website of the Plaintiffs' solicitors, otherwise by ordinary mail;
  - c. to the extent that the third-party mailing house receives "bounce back" or "undeliverable" messages from any Group Member when sending Annexure A by email or SMS, the third-party mailing house is to send the Group Member Annexure A by SMS and or ordinary mail if those details are available for the Group Member;
  - d. continuously throughout the period from 16 August 2021 to 3 September 2021, the Plaintiffs display Annexure A on the website of the Plaintiffs' solicitors;
  - e. continuously throughout the period from 16 August 2021 to 3 September 2021, Annexure A be displayed on the class action page for

these proceedings on the website of the Supreme Court of New South Wales and be available for inspection at the registry of the Court; and

- f. as soon as practicable after 13 August 2021, the Plaintiffs cause to be published Annexure B, as a half page, in the following newspapers:
- i. the *Sydney Morning Herald*;
  - ii. the *Daily Telegraph*.

- 4 The costs of sending, displaying and publishing the Notices as described in order 3 above be borne by the Plaintiffs and shall be costs in the proceedings.
- 5 The Notices at Annexure A and Annexure B may be amended by agreement between the parties before they are posted, emailed or published in order to correct any postal, website, email address or telephone number or any typesetting or typographical error.
- 6 The Defendant provide, for the purposes of distributing the Notice, any list they have of potential Group Members and their contact information to a third-party mailing house agreed to by the parties by 17 August 2021.
- 7 Such further or other order as the Court thinks fit.

## SIGNATURE

Signature of legal representative



Capacity

Solicitor on Record

Date of signature

12 August 2021

## 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

## Annexure "A"

**SUPREME COURT OF NEW SOUTH WALES**  
**SYDNEY LIGHT RAIL NUISANCE CLASS ACTION**  
(2018/263841)

**IMPORTANT NOTICE**  
**REGARDING YOUR RIGHTS TO REGISTER**  
**FOR THE PURPOSES OF MEDIATION**

### 1. What is this Notice?

A class action has been commenced in the Supreme Court of New South Wales against Transport for NSW.

The action arises out of the construction of the Sydney Light Rail Project (the **Project**).

The Plaintiffs bring claims for damages arising from "public nuisance" and "private nuisance" against Transport for NSW in relation to the Project.

The Supreme Court of NSW has referred the class action to a mediation which is to occur by no later than 30 September 2021. The purpose of this notice is to:

- (a) inform you of the mediation and how it may affect your rights if you are a class member; and
- (b) invite you to register your interest in the class action if you have not already done so, and explain the reasons why you may wish to register. **If you wish to register your details in time for your claim to be taken into account in the mediation, you need to do so by 3 September 2021.**

The Supreme Court of NSW has approved and ordered this notice be published for the information of persons who are or might be members of the class on whose behalf the class action is brought and who may be affected by the action.

You may be a potential class member. **You should read this notice carefully as it may affect your legal rights.**

**Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

### 2. What is a class action?

A class action is an action that is brought by one person ("**Plaintiff**") on his or her own behalf and on behalf of a group of people ("**group members**") against another person ("**Defendant**") where the Plaintiff and the group members have similar claims against the Defendant.

Class members are “bound” by the outcome in a class action unless they have opted out of the proceeding. This means that:

- (a) if the class action is successful or settles, group members may be eligible to receive a share of any Court-awarded damages, or settlement monies;
- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the Defendant in separate legal proceedings unless they have opted out.

### **3. What is this Class Action?**

This class action, the Sydney Light Rail Nuisance Class Action, is brought by the Plaintiffs on their own behalf and on behalf of all persons who are group members as defined in the proceeding.

In summary, the Plaintiffs allege in the Second Further Amended Statement of Claim in the class action that:

- (a) Transport for NSW is the NSW Government Agency which procured the design, and construction of the Project;
- (b) in 2015, it was announced that major construction on the Project was expected to start in September 2015 and to complete in mid-2018;
- (c) there were substantial delays to the construction of the Project;
- (d) Transport for NSW has substantially caused those delays through its conduct in failing to effectively plan and procure the Project, and in 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 entering a contract for the construction of the Project;
- (e) the construction of the Project has substantially and unreasonably interfered with the enjoyment by the Plaintiffs and group members of their private property, by reason of damage to and obstruction of roadways and footpaths through road closures and erection of hoardings, excessive noise, vibration, dust, and light spillage, with these effects prolonged by reason of the delays;
- (f) the construction of the Project has also substantially and unreasonably interfered with the exercise of public rights by the Plaintiffs and group members, by reason of damage to and obstruction of roadways and footpaths through road closures and erection of hoardings, with these effects prolonged by reason of the delays.

The circumstances set out at (e) above are alleged to amount to “private nuisance”. The Plaintiffs allege that private nuisance is an action available to persons with an interest in property where another person has caused substantial and unreasonable interference with that person’s enjoyment of their property interest.

The circumstances set out at (f) above are alleged to amount to “public nuisance”. The Plaintiffs allege that public nuisance is an action available to persons who are affected by a substantial and unreasonable interference with rights of the public if those persons suffer damage from that interference over and above damage suffered by the public generally.

The Defendant to the Class Action is Transport for NSW. The Defendant does not admit the allegations of nuisance and is defending the class action.

The Defendant has raised a number of other defences to the claim, including that it is not liable in nuisance because it was authorised to develop the Project under statute.

The Plaintiffs in response to this defence, allege that the Defendant is not entitled to rely upon these defences, by reason of the alleged conduct referred to in (d) above.

#### **4. Are you a group member?**

You are a group member if you:

- (a) hold, or have held, an interest in land in the vicinity of the Project and have suffered loss or damage by reason of the Defendant's alleged interference with your enjoyment of your interest in land; or
- (b) have suffered loss or damage by reason of the Defendant's alleged interference with public land through the carrying out of the Project (other than merely loss or damage in your capacity as a member of the general public).

In simple terms, you are likely to be a group member if you own land in the vicinity of the Project, own or operate a business in the vicinity of the Project, or live in the vicinity of the Project, and you have been adversely affected by the consequences of the construction of the Project.

You are excluded from being a group member if you are an officer or employee of the Defendant, a judge or registrar of the Supreme Court of NSW or the High Court of Australia, or an officer or employee of, or other legal practitioner engaged in connection with this proceeding by Mityr Lawyers.

You are not a group member if you have opted out of this proceeding. A notice advising of the right to opt out was previously published in 2019. The deadline to opt out was 8 November 2019.

If you are unsure whether you are a group member, you should contact Mityr Lawyers on 02 9283 9035 or email [sydneylightrail@mitry.com.au](mailto:sydneylightrail@mitry.com.au) or seek your own legal advice without delay.

#### **5. The Mediation**

The Court has ordered that the parties engage in a mediation to occur no later than 30 September 2021. A mediation involves discussions between the parties which can lead to the settlement of the dispute on behalf of all class members, including you.

Before any settlement that may be reached at the mediation becomes effective, the Court must assess that it is a fair and reasonable compromise of the claims against the Defendant and must approve its terms as being in the interests of group members.

If the mediation does not result in a settlement, then the class action will continue.

If you have not already done so, you may wish to register your claim for the purposes of the mediation. If you wish to register, you should fill out the enclosed 'Group Member Registration Form' and return it to the Plaintiffs' solicitors, Mityr Lawyers, no later than 5:00 PM on 3 September 2021.

## 6. Why register?

It is not compulsory for you to register your claim. However, there are a number of reasons why you may wish to register now:

- (a) Firstly, it allows Mitry Lawyers to confirm that you are a group member and to contact you if you become eligible to receive compensation. You may become eligible to receive compensation in the event that the class action settles at mediation, or if there is a favourable judgment. Registration will also allow you to receive updates on the progress of the class action from Mitry Lawyers if you wish to.
- (b) Secondly, there is no cost to register and it does not render you liable to pay any costs. You may, if you wish, also choose to enter into a retainer and costs agreement with Mitry Lawyers, but do not have to do so.
- (c) Thirdly, registration enables Mitry Lawyers to make an assessment about the size of your claim. Unless a sufficient number of class members register, it may be harder to reach a settlement, and there is a risk that the settlement may be lower (and produce less return for class members, including you), because there was insufficient information to assess the total claim size accurately.
- (d) Fourthly, in the event of a successful settlement or judgment, there is a risk that Mitry Lawyers will not know about your claim or how to contact you, if you have not registered.

**Your registration must be completed and received by Mitry Lawyers before 5:00 PM on 3 September 2021.** If you do not send in a registration form before that time, there is a risk that the Plaintiffs will not be able to take account of your claim in assessing the total claim size for the purpose of the mediation.

If you have already entered into a retainer agreement with Mitry Lawyers in relation to this class action, you need not, and should not, register. Mitry Lawyers may be in contact with you separately in relation to the mediation if they need further information from you.

Along with the completed 'Group Member Registration Form', you should provide any information to substantiate your claim, including financial information. The information you provide to Mitry Lawyers will be used by Mitry Lawyers, and all or some of the information may also be provided to the Defendant prior to the Mediation to enable the Defendant to have sufficient information about all the claims against it to settle the class action.

## 7. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the second further amended statement of claim and the defence, may be obtained by:

- (a) downloading them from [www.mitry.com.au/sydneylightrail](http://www.mitry.com.au/sydneylightrail);
- (b) inspecting them between 9am and 5pm at the offices of Mitry Lawyers, contact details for which are available from [www.mitry.com.au](http://www.mitry.com.au) or by calling (02) 9283 9035;
- (c) Downloading them from the Supreme Court of NSW website at [http://www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_classaction/Light-Rail-Nuisance-Class-Action.aspx](http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Light-Rail-Nuisance-Class-Action.aspx); or
- (d) Inspecting them by visiting the Registry of the Supreme Court of NSW at Level

5, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW 2000.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Mityr Lawyers on (02) 9283 9035 or email [sydneylightrail@mityr.com.au](mailto:sydneylightrail@mityr.com.au) or seek your own legal advice. You should not delay in making your decision.



**GROUP MEMBER REGISTRATION FORM**

**“Sydney Light Rail Nuisance Class Action”**

Supreme Court of New South Wales proceeding No. 2018/263841

To: Mityr Lawyers  
Level 1  
167 Castlereagh  
Street  
Sydney NSW 2000  
Attention: Rick Mityr

[sydneylightrail@mityr.com.au](mailto:sydneylightrail@mityr.com.au)  
(02) 9283 9035

Name of group member:	.....
Person completing this form (print):	.....
Authority of person completing this (e.g., company director, lawyer)	.....
Telephone contact:	.....
Postal address	.....
List of documentation supporting the group member's damages claim  (Please attach copies of any Supporting documentation to this form)	..... ..... ..... ..... .....

Date:

Signed by [Name]

[Insert capacity e.g. group member /  
Lawyer for the group member]

## **Annexure “B”**

### **Short Form of Notice of Mediation**

#### **MEDIATION NOTICE**

#### **SUPREME COURT OF NEW SOUTH WALES**

#### **SYDNEY LIGHT RAIL NUISANCE CLASS ACTION**

(2018/263841)

The Supreme Court of New South Wales has order that this notice be published. Any person who owns land, owns or operates a business, or lives in the vicinity of the Sydney Light Rail Project (the **Project**) should read this notice carefully as it may affect their rights.

#### **1. Why is this notice important?**

A class action has been commenced in the Supreme Court of New South Wales by Mistry Lawyers, acting for Hunt Leather Pty Ltd, Sophie Irene Hunt, Ancio Investments Pty Ltd as trustee of the Ancio Unit Trust and Nicholas Zisti against Transport for NSW, bringing claims for monetary damages in “public nuisance” and “private nuisance” in relation to the Project.

**This Notice contains important information about an upcoming mediation in the proceeding and your right to register your claim for the purposes of that mediation if you wish to.**

#### **2. The proceeding**

The Supreme Court of New South Wales has ordered that the following information be provided to group members.

The Plaintiffs allege that Transport for NSW has substantially caused delays in the Project, and that the Project has substantially and unreasonably interfered with the enjoyment by the Plaintiffs and group members of their private property, by reason of damage to and obstruction of roadways and footpaths through road closures and erection of hoardings, excessive noise, vibration, dust, and light spillage, with these effects prolonged by reason of the delays.

Transport for NSW does not admit these allegations and is defending the representative action on a number of grounds, including that it is not liable in nuisance because it was authorised to develop the Project under statute. The Plaintiffs in response to these defences allege that Transport for NSW is not entitled to rely upon these defences by reason of its conduct.

The proceeding is called the Sydney Light Rail Nuisance Class Action.

### 3. Are you a group member?

You are a group member if you:

- (a) hold, or have held, an interest in land in the vicinity of the Project and have suffered loss or damage by reason of the Defendant's alleged interference with your enjoyment of your interest in land; or
- (b) have suffered loss or damage by reason of the Defendant's alleged interference with public land through the carrying out of the Project (other than merely loss or damage in your capacity as a member of the general public).

In simple terms, you are likely to be a group member if you own land in the vicinity of the Project, own or operate a business in the vicinity of the Project, or live in the vicinity of the Project, and you have been adversely affected by the consequences of the construction of the Project.

You are excluded from being a group member if you are an officer or employee of the Defendant, a judge or registrar of the Supreme Court of NSW or the High Court of Australia, or an officer or employee of, or other legal practitioner engaged in connection with this proceeding by Mitry Lawyers.

You are not a group member if you have opted out of this proceeding. A notice advising of the right to opt out was previously published in 2019. The deadline to opt out was 8 November 2019.

### 4. Mediation and Registration

The Court has ordered that mediation occur no later than 30 September 2021.

If you are a class member, you may register your claim for the purposes of mediation if you wish. Registration is not compulsory, and you do not need to register to participate in the action. However, there are various good reasons for registering, including so that Mitry Lawyers can confirm whether you are a class member, so that Mitry Lawyers is aware of your claim and can contact you, and because it assists in calculating the alleged loss the subject of the claim for settlement purposes, and therefore may produce a better result for class members if the matter settles at mediation.

**To register, you need to send a registration form to Mitry Lawyers by 3 September 2021.** A copy of the registration form and more information can be found at the website addresses below. You do not need to register if you have already entered into a retainer with Mitry Lawyers.

### 5. More information

If you believe you may be a group member, it is important that you read the further information available from Mitry Lawyers at [www.mitry.com.au/sydneylightrail](http://www.mitry.com.au/sydneylightrail) or from the Supreme Court of New South Wales at [www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_classaction/Light-Rail-Nuisance-Class-Action.aspx](http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Light-Rail-Nuisance-Class-Action.aspx)