

## **GARLING J MAKES THE FOLLOWING ORDERS:**

1. Make each of orders set out in consent orders as signed by Garling J.
  2. Liberty to apply.
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### **ORDERS SOUGHT BY PARTIES:**

#### **Defendant's Supplementary Retail Report**

1. The defendant is granted leave to rely upon its supplementary expert evidence regarding retail impacts filed and served on 26 May 2022.

#### **Defendant's Programming Report**

2. Orders 3 and 4 of the Orders made on 26 May 2022 be vacated.
3. The defendant to file and serve the Third Part of its expert programming evidence by 25 June 2022.
4. No further extension of time for the Third Part of the defendant's expert programming evidence shall be granted other than by leave to be sought upon affidavit evidence.

#### **Plaintiffs' Evidence in Reply**

5. The date in Paragraph 6 of the Orders made on 7 April 2022 as it relates to the plaintiffs' expert evidence on retail impacts, utilities and programming, be varied as follows:
  - (a) The date for the plaintiffs to file and serve any expert evidence on retail in reply be extended to 19 August 2022.
  - (b) The date for the plaintiffs to file and serve any expert evidence on utilities and programming in reply be extended to 2 September 2022.

#### **Joint Expert Evidence**

6. Expert evidence to be given concurrently, as follows:
  - (a) Programming: Mark Griffith (Plaintiffs) and Ian McIntyre (Defendant).
  - (b) Utilities: Eddie Szmalko (Plaintiffs), Craig Sampson (Defendant) and Jarred Hardman (Defendant).
  - (c) Quantum: Tony Samuel (Plaintiffs) and Ashley McPhee (Defendant).
  - (d) Retail: Chris Aberly (Plaintiffs) and Ian Shimmin (Defendant).
  - (e) Noise: Neil Gross (Plaintiffs) and Renzo Tonin (Defendant).
  - (f) Air Quality: Gary Graham (Plaintiffs) and Aleksander Todorovski (Defendant).
  - (g) Traffic: Oleg Sannikov (Plaintiffs) and Shaun Smedley (Defendant).

#### ***Noise, Traffic, Air Quality, Quantum and Retail Evidence***

7. The parties are to confer and agree upon any questions to be provided to the Noise, Traffic, Air Quality, Quantum and Retail expert witnesses (**Tranche 1 Experts**) for their conferral by 26 August 2022.
8. The parties are to agree on a time and date for when the Tranche 1 Experts will meet (either in person, by video-link or telephone) for the purpose of preparing a joint report addressing the matters on which they agree and

disagree and the reasons for any disagreement (**Tranche 1 Expert Conferences**) by 26 August 2022.

9. Tranche 1 Expert Conferences are to occur by 9 September 2022.
10. Joint reports prepared by the Tranche 1 Experts following the Tranche 1 Expert Conferences addressing the matters on which they agree and disagree and the reasons for any disagreement are to be filed by the parties on or before 23 September 2022.

#### *Utilities and Programming Evidence*

11. The parties are to confer and agree upon any questions to be provided to the Utilities and Programming expert witnesses (**Tranche 2 Experts**) for their conferral by 9 September 2022.
12. The parties are to agree on a time and date for when the Tranche 2 Experts will meet (either in person, by video-link or telephone) for the purpose of preparing a joint report addressing the matters on which they agree and disagree and the reasons for any disagreement (**Tranche 2 Expert Conferences**) by 9 September 2022.
13. Tranche 2 Expert Conferences are to occur by 23 September 2022.
14. Joint reports prepared by Tranche 2 Experts following the Tranche 2 Expert Conferences addressing the matters on which they agree and disagree and the reasons for any disagreement are to be filed by the parties on or before 7 October 2022.

#### **Group Member Notice**

15. Between 1 and 8 July 2022, the notice set out in Annexure A to these orders (**Notice**) is to be distributed by a third-party mailing house to all group members whose contact details have been provided to them by the Plaintiffs. The Notice is to be provided by email and short messaging service (SMS) message (containing a link to the web page hosting the Notice) or where email and SMS is not available or bounces back, by ordinary mail.
16. From 1 July 2022, the Plaintiffs will display the Notice on the website of the Plaintiffs' solicitors.

#### **Other**

17. The matter be listed for further directions on 9 September 2022.
18. Liberty to apply on three days' notice.

## **Annexure A**

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

### **SYDNEY LIGHT RAIL NUISANCE CLASS ACTION (2018/263841)**

## **IMPORTANT NOTICE REGARDING YOUR RIGHTS TO REGISTER**

### **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 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.

A mediation notice in relation to these proceedings was published on 3 September 2021 and sent to potential group members ahead of a mediation between the parties (**Mediation Notice**). A copy of the Mediation Notice is available on the NSW Supreme Court website at: [https://www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_classaction/Light-Rail-Nuisance-Class-Action.aspx](https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Light-Rail-Nuisance-Class-Action.aspx). You may have received a copy of the Mediation Notice, or this notice may be the first notice that you have received in relation to the proceedings.

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.

Group members are “bound” by the outcome in a class action unless they have opted out of the proceedings. 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.

A detailed summary of the proceedings is set out at section 3 of the Mediation Notice. However, in short, 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.

### **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.

If you have received a payment under the Small Business Assistance Program (**SBAP**), you may still be a group member, but any damages you receive if the

Class Action is successful may be reduced by the amount of your payment under the SBAP.

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 these proceedings by Mitry Lawyers.

You are not a group member if you have opted out of these proceedings. 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 Mitry 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. Why register?**

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

- (a) First, 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 if 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 you 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 the defendant may say there is 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.

There is no registration deadline for the proceedings. However, the Plaintiffs and Defendant may from time-to-time engage in settlement discussions and so, delaying your registration may mean that the Plaintiffs may not be able to take account of your claim in assessing the total claim size for the purpose of these settlement discussions.

The hearing of these proceedings is scheduled to commence on 24 October 2022 and the parties may wish to engage in settlement discussions prior to the commencement of the hearing. In light of that, it would be desirable for you to register no later than 12 August 2022.

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 or estimates of your damages premised on the information may also be provided to the Defendant during settlement discussions.

**6. Where can you obtain copies of relevant documents?**

Copies of relevant documents (including the Mediation Notice), 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 Mitry Lawyers on (02) 9283 9035 or email [sydneylightrail@mitry.com.au](mailto:sydneylightrail@mitry.com.au) or seek your own legal advice. You should not delay in registering.

- **GROUP MEMBER REGISTRATION FORM**

**“Sydney Light Rail Nuisance Class Action”**  
 Supreme Court of New South Wales proceeding No. 2018/263841

To: Mitry Lawyers  
 Level 1  
 167 Castlereagh  
 Street  
 Sydney NSW 2000  
 Attention: Rick Mitry  
[sydneylightrail@mitry.com.a](mailto:sydneylightrail@mitry.com.au)  
u  
 (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]

**TIME RECORD**

2.30	Matter called – appearances noted. Mr Hochroth – hands up SMO by consent.
2.36	Mr Miller to the Court.
2.36	Bench orders.
2.37	Court adjourned.