

# REDLAND CITY COUNCIL CLASS ACTION

## BS 11364/18 (Kozik -v- Redland City Council)

### 1. Why is this notice important?

A class action has been commenced in the Queensland Supreme Court by Mr John Kozik against the Redland City Council (**the Council**).

The class action claims compensation for special charges incorrectly levied by the Council in relation to certain properties in Raby Bay, Aquatic Paradise and Sovereign Waters between about 1 July 2011 and 31 March 2017. These levies related to various goods and services provided by the Council including canal and lake maintenance, as well as dredging. The Council has refunded the unspent part of the Special Charges to property owners in 2017. Mr Kozik claims that the balance that was spent on the goods and services should also be paid back to property owners.

Mr Kozik's lawyers are Shine Lawyers (**Shine Lawyers**), and they are helping Mr Kozik to run the case. A company called Augusta Ventures Limited (**Augusta**) is paying for the case to be brought.

The Supreme Court has ordered that this Notice be published. This Notice provides important information about:

- a) your status as a group member in this class action;
- b) what you need to do to remove yourself from participating in the class action if you wish to do so; and
- c) the orders made in the class action in respect of how group members will contribute to the costs of the litigation if it is successfully resolved.

**You should read this notice carefully, as it concerns your rights. 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 or a small number of people (**Plaintiff** – in this case Mr Kozik) on behalf of a class of people (**Group Members** – this may include you) against another person (**Defendant** – in this case the Council), where the Plaintiff and the Group Members have the same or similar claims against the Defendant.

The Plaintiff in a class action does not need to seek the consent of group members to commence a class action on their behalf. However, persons can cease to be group members by “opting out” of the class action. An explanation of how Group Members are able to opt out is found below.

### 3. What is this class action?

This class action is brought by the Plaintiff (Mr Kozik) on behalf of all persons who are Group Members (see Section 4 below).

The Plaintiff alleges that between about 1 July 2011 and 31 March 2017, the Council invalidly levied special charges on Ratepayers in Raby Bay, Aquatic Paradise and Sovereign Waters for various goods and services that would be provided to canal/lake/waterfront properties including maintenance, dredging and marina charges.

The Council does not dispute that these charges were incorrectly levied and has returned the unspent portion of the funds raised but not the portion that it says it has already spent in paying for goods and services.

The Plaintiff accepts that Council has spent part of the Special Charges (other than the part already paid back to property owners) on goods and services.

There is a difference of view between Mr Kozik and the Council as to whether the relevant Regulations require the Council to return all funds that were incorrectly levied, including any part that it spent on goods and services for the benefit of property owners.

The Council says it is not liable to repay any part of the Special Charges which it has spent for the benefit of Group Members. The Council denies that it is liable to refund the spent portion and is defending the proceedings. This is on the basis that the portion of the Special Charges which were spent by Council were for goods and services to Group Members from which Group Members benefitted.

The detailed allegations are set out in the Plaintiff's Amended Statement of Claim filed with the Court on 16 November 2018. The Council has filed a Further Amended Defence in these proceedings.

If the action succeeds, individual Group Members will recover that part of the incorrectly levied Special Charges that the Council has spent and has not returned (the Council has already returned the unspent part). Any amount which Group Members recover for spent Special Charges will be reduced by the fees for the lawyers and the Funder, which are explained below.

#### **4. Are you a Group Member?**

The class action has been brought on an 'open class' basis which means the proceeding has been brought for the benefit of all persons who fall within the definition of a Group Member (as set out below).

You are a Group Member in this class action if, between about 1 July 2011 and 31 March 2017 you:

- a) owned land or a building unit located in the Redland local government area; and
- b) paid special charges levied by the Council on that land or building unit in relation to canal/waterways maintenance including marina special charges.

If you fit the above description, you should read this notice carefully as it will affect your rights.

If you are unsure whether or not you are a Group Member, you should contact the Plaintiff's lawyers, Shine Lawyers, via email on [redlands.rates@shine.com.au](mailto:redlands.rates@shine.com.au) or seek your own legal advice without delay.

#### **5. Will Group Members be liable for legal costs?**

In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party (**adverse costs order**).

In a class action, it is only the Plaintiff that faces the risk of an adverse costs order if the action fails. As a group member, an adverse costs order will not be made against you.

In this class action against the Council, the Court has made orders that Augusta is to fund legal costs and indemnify the Applicant and Group Members in respect of any adverse costs order which may be made and provide any security for costs that the Court may order.

Mr Kozik has retained Shine Lawyers to act as his solicitors. Mr Kozik's liability for legal costs and out of pocket expenses (**disbursements**) will be funded by Augusta and recovered by Augusta only in the event of a successful outcome of the proceeding (judgment or settlement). In the event of such an outcome, the Plaintiff will seek an order that those legal costs and disbursements be paid out of the total amount recovered for all group members.

## **6. Common Fund Orders**

As noted above, this class action is being funded by Augusta. The Court has made a common fund order in these proceedings (**Common Fund Order**). The effect of the Common Fund Order is that, subject to further order, Augusta will be entitled to receive, out of any settlement or judgment delivered in the proceedings (assuming the Plaintiff is successful), reimbursement for the costs it has paid plus a commission as consideration for funding the proceedings.

The amount of the commission will be determined by the Court after the proceedings are settled or judgment is delivered, but will not exceed the amount calculated in accordance with clause 6 of the Funding Terms, prior to any distribution to Group Members. All Group Members will be bound by orders of the Court to pay these amounts.

A copy of the Funding Terms, approved as part of the Common Fund Order, are available for inspection, and can be provided on request (see Section 8 below).

**Important Note:** No Group Member will be liable to pay any amount of money to Augusta unless there is a successful outcome in the proceeding. If a successful outcome is reached (subject to any order the Court might make), the amounts payable by Group Members will be deducted from the settlement or judgment sum before the balance is distributed to Group Members. This will reduce the amounts received by you from the settlement or judgment sum. But you will never need to pay any money out-of-pocket to Augusta or to Shine Lawyers. The amounts paid to Augusta in the event of a successful outcome will not exceed the settlement or judgment sum.

## **7. What do you need to do?**

If you are a Group Member in this proceeding, you have two options:

- a) **Option 1:** remain as a group member in the class action; or
- b) **Option 2:** opt out of the class action.

### **OPTION 1: If you want to be part of this class action**

You do not need to do anything to stay as a Group Member in this class action.

If you do not opt out, you will maintain the opportunity to benefit from any favourable outcome that is reached in the class action. This also means that you may be bound by any judgment or settlement of the proceeding. In due course, the Court may require you to take further steps to confirm your participation in the class action.

## **OPTION 2: If you do not want to be part of this class action**

If you do not wish to be a Group Member in this class action, you should opt out.

If you opt out you will not be bound by the outcome of the class action and will be excluded from receiving any monetary compensation that results from the class action. Group Members who opt out of the proceeding will no longer be Group Members in the proceeding following their opt out, and will preserve their legal rights against the Defendant to the class action. You will be able to commence separate proceedings on your own behalf if you wish.

If you do not wish to remain a Group Member you must opt out of this class action by completing an "Opt Out Notice" in the form shown at Annexure "A" to this notice, and returning it to the Registrar of the Queensland Supreme Court at the address on the form.

**IMPORTANT: the Notice must reach the Registrar by no later than 4.00pm on 4 October 2019, otherwise it will not be effective.**

### **8. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the current pleadings, and the Funding Terms may be obtained by:

- a) downloading them from <https://www.shine.com.au/service/class-actions/redlands-ratepayer-class-action>; or
- b) inspecting them between 9am and 5pm at one of the offices of Shine Lawyers by prior appointment to be made by emailing [redlands.rates@shine.com.au](mailto:redlands.rates@shine.com.au).

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Shine Lawyers via email to [redlands.rates@shine.com.au](mailto:redlands.rates@shine.com.au) (or telephone 1800 066 105) or seek your own legal advice.

