

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 11364/18

Plaintiff: JOHN MICHAEL KOZIK

AND

Second Plaintiff: SIMON JOHN AKERO

AND

Third Plaintiff: SARAH AKERO

AND

Fourth Plaintiff: NEIL ROBERT COLLIER

AND

Defendant: REDLAND CITY COUNCIL

Capitalised terms used in this pleading are those as defined in the Amended Reply and Answer to the First Further Amended Defence and Counterclaim (**Reply and Answer**), the First Further Amended Defence (**Defence**), the First Further Amended Counterclaim (**Counterclaim**) and Further Amended Statement of Claim (**Statement of Claim**), except where the contrary intention appears.

REJOINDER TO ANSWER REPLY AND ANSWER

The Defendant replies on the following in reply to the Reply and Answer:

1. The Defendant adopts the admissions made in the Reply and Answer.
2. Save as otherwise pleaded below, the Defendant joins issue with each non-admission or denial pleaded in the Reply and Answer.

"Exclusive entitlement" no part of statutory test

3. As to sub-paragraphs 2(l), 5(l) and 13(l) of the Answer, the Defendant:
 - a. admits the allegations in each sub-paragraph (i);
 - b. says the test of 'exclusive entitlement' appears nowhere in s 92(3) of the *Local Government Act 2009*;
 - c. says further that the allegation is, for this reason, liable to be struck out as immaterial to the proceeding and as tending to prejudice or delay the fair trial of this proceeding;

d. otherwise denies the allegations and believes them to be untrue because the existence of:

i. an 'exclusive entitlement'; and/or

ii. a 'determination or choice' in respect of plans or works,

on the part of those to be levied with special rates and charges was (and remains) no part of the statutory scheme under the *Local Government Act 2009*.

Other persons

4. As to sub-paragraphs 2(m), 2(n), 5(m), 5(n) 13(m) and 13(n) of the Answer, the Defendant:

a. admits the allegations;

b. says that the facts of sharing of a benefit by members of the public of the works did not affect the power of the Defendant to levy the special rates and charges the subject of this proceeding.

Direct and comparable benefit

5. As to sub-paragraphs 2(q), 5(q) and 13(q) of the Answer, the Defendant denies the allegations and believes them to be untrue for the reasons pleaded in:

a. paragraph 4 of the Counterclaim (in respect of the First Plaintiff and the Group Members for Aquatic Paradise);

b. paragraph 8 of the Counterclaim (in respect of the Second and Third Plaintiffs and the Group Members for Sovereign Waters);

c. paragraph 16 of the Counterclaim (in respect of the Fourth Plaintiff and the Group Members for Raby Bay).

6. As to paragraph 4, 8 and 16 of the Answer, the Defendant joints issue with the assertions of law contained therein.

7. As to sub-paragraphs 4A(d), 9(d) and 17(d) of the Answer, the Defendant denies the allegations and believes them to be untrue because the fact that persons other than Group Members could also benefit from:

a. the Aquatic Paradise Works (in respect of sub-paragraph 4A(d));

b. the Sovereign Waters Works (in respect of sub-paragraph 9(d));

c. the Raby Bay Works (in respect of sub-paragraph 17(d)),

does not deprive the works of being of direct benefit to Group Members.

First Plaintiff

8. As to sub-paragraph 2(j) of the Answer, the Defendant:
- a. admits being obliged under the *Coastal Protection and Management Act 1995* to perform the Aquatic Paradise Works;
 - b. otherwise denies the allegations and believes them to be untrue because:
 - i. the levying of rates was necessary, as a matter of fact, to fund such works the Defendant was obliged to carry out;
 - ii. in performance of such obligations, the Defendant had power (by s 92(3)(a)(i) of the *Local Government Act 2009*) to levy the Special Charges;
 - iii. it is a subsequent (and presently immaterial) fact that the special rates and charges were levied, (whether lawfully or not) upon the First Plaintiff and Aquatic Paradise Group Members.
9. As to sub-paragraph 2(k) of the Answer, the Defendant:
- a. admits the allegations;
 - b. in further answer, repeats and relies upon the matters stated at sub-paragraph 8(b) above.
10. As to sub-paragraph 2(o) of the Answer, the Defendant:
- a. denies the allegation at sub-paragraph (iii) and believes it to be untrue because plans existed in respect of the Aquatic Paradise Works.

Particulars

The plans will be disclosed to the Plaintiffs in the course of disclosure.

- b. denies the allegation at sub-paragraph (iv) and believes it to be untrue because the Aquatic Paradise Works were undertaken in accordance with the following, and, therefore were not *'ad hoc'*:
 - i. the plans referred to in the preceding sub-paragraph; and
 - ii. the plans and reports of third parties engaged by the Defendant to perform the Aquatic Paradise Works.

Particulars

The plans and reports of third parties will be disclosed to the Plaintiffs in the course of disclosure.

11. The Defendant denies sub-paragraph 3(c) of the Answer and believes it to be untrue by reason of the facts stated in paragraph 10 above.

Second and Third Plaintiffs

12. As to sub-paragraph 5(j) of the Answer, the Defendant:
- a. admits that the Defendant was obliged under the *Local Government Act 2009* to undertake the Sovereign Waters Works;
 - b. denies it was obliged under s 121 of the *Coastal Protection and Management Act 1995* to undertake the Sovereign Waters Works and believes that allegation to be untrue because Sovereign Lake is a non-tidal water body;
 - c. otherwise denies the allegations and believes them to be untrue because:
 - i. the levying of rates was necessary, as a matter of fact, to fund such works the Defendant was obliged to carry out;
 - ii. in performance of such obligations, the Defendant had power (by s 92(3)(a)(i) of the *Local Government Act 2009*) to levy the Special Charges;
 - iii. it is a subsequent (and presently immaterial) fact that the special rates and charges were levied, (whether lawfully or not) upon the Second and Third Plaintiffs and Sovereign Waters Group Members.

13. As to sub-paragraph 5(k) of the Answer, the Defendant:
- a. admits the allegations;
 - b. in further answer, repeats and relies upon the matters stated at sub-paragraph 12(c) above.

14. As to sub-paragraph 5(o) of the Answer, the Defendant:
- a. denies sub-paragraph (iii) and believes that allegation to be untrue because plans existed in respect of the Sovereign Waters Works.

Particulars

The plans will be disclosed to the Plaintiffs in the course of disclosure.

- b. denies the allegation at sub-paragraph (iv) and believes it to be untrue because the Sovereign Waters Works were undertaken in accordance with the following, and, therefore were not '*ad hoc*':
 - i. the plans referred to in the preceding paragraph;

were undertaken in accordance with the following, and, therefore were not 'ad hoc':

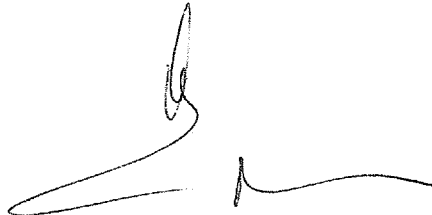
- i. the plans referred to in the preceding sub-paragraph;
- ii. the plans and reports of third parties engaged by the Defendant to perform those works.

Particulars

The plans and reports of third parties will be disclosed to the Plaintiffs in the course of disclosure.

19. The Defendant denies sub-paragraph 15(c) of the Answer and believes it to be untrue by reason of the facts stated in paragraph 18 above.

Signed:



Description: Solicitor for the Defendant

This pleading was settled by Jonathan Horton QC and by Scott Richardson of Counsel.