



**IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
GROUP PROCEEDINGS LIST**

**S ECI 2021 04524**  
Case S ECI 2021 04524  
Filed on: 19/09/2023 12:24 PM

BETWEEN

**KEVIN CARLING GREEN**

Plaintiff

and

**GRAINCORP OILSEEDS PTY LTD (ACN 006 772 578)**

Defendant

**REPLY**

Date of Document:	19 September 2023
Filed on behalf of:	The Plaintiffs
Prepared by:	Solicitors code: 107956
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In reply to the defendant's defence dated 7 September 2023 (**Defence**), to the Statement of Claim dated 8 August 2023 (**Claim**), the plaintiff says as follows (using terms in the same way as they are defined in the Defence):

1. The plaintiff generally joins issue with the Defence, save for the defendant's admissions.
2. The plaintiff adopts the admissions (including deemed admissions) in the Defence.

**THE PLAINTIFF AND THE GROUP MEMBERS**

3. As to paragraph 3 of the Defence, the plaintiff says that 'at all material times' means after 1 January 2017.

4. As to paragraph 3(c) of the Defence, the plaintiff says that the term 'actual possession' or 'possession' in respect of real property is a legal term and means the plaintiff is a freeholder of the land situated at 16 Railway Place Property.
5. As to paragraph 4(a) of the Defence, the plaintiff says that the words 'directly opposite' means 'across the road' in their common and ordinary sense and they are intended to be descriptive.

#### BREACH OF ENVIRONMENTAL DUTY

6. As to paragraph 21(a)(i) of the Defence, the plaintiff says that the plaintiff and the Group Members are all persons whose interests in land are affected by Graincorp's contravention of the 2017 EP Act by reason of:
  - (a) in respect of the Group Members, their ownership or occupation and possession or de facto possession of the Affected Land pleaded in paragraphs 1(a) the Claim;
  - (b) in respect of the plaintiff his ownership and possession and residency of a house at the 16 Railway Place Property as pleaded in paragraph 3 of the Claim; and
  - (c) Graincorp's contravention of the EP Act affected the plaintiff and each Group Member's interest in:
    - i. the value of the 16 Railway Place Property and the Affected Land; and/or
    - ii. the use and enjoyment of the 16 Railway Place Property and the Affected Land.
7. As to paragraph 22(b) of the Defence, the plaintiff says:
  - (a) the operations to manufacture oilseed at the GrainCorp Factory are described in paragraph 8(b) of the Claim as the mechanical, thermal and chemical processes to crush, refine, bleach, and deodorise oilseed onsite (**Graincorp's Operations**);
  - (b) GrainCorp's Operations give rise to the risk of:
    - i. an adverse effect on the amenity of the 16 Railway Place Property and the Affected Land that unreasonably interferes

- with, or is likely to unreasonably interfere with, the plaintiff and Group Members' enjoyment of the land by reason of the noise and/or odour emitted from the GrainCorp Factory; and/or
- ii. a change to the condition of the environment so as to make it offensive to the sense of the plaintiff and Group Members, that change being the noise and/or odour emitted from the GrainCorp Factory; and
- (c) GrainCorp was aware that GrainCorp's Operations may give rise to risks of harm to human health or the environment from pollution, from the emission of noise and/or offensive odour, because those risks were referred to in:
- i. Moira Planning Scheme;
  - ii. EPA Publication 1411;
  - iii. EPA Publication 1481;
  - iv. EPA Publication 1695.1;
  - v. EPA Publication 1822.1;
  - vi. EPA Publication 1883; and
  - vii. EPA Works Approval Assessment Report of the defendant's application to increase oil production.
8. As to paragraph 23 of the Defence, the plaintiff concedes that Graincorp owes a duty under section 25 of the 2017 EP Act from the day that the Act came into effect, being 1 July 2021.
9. As to paragraph 24(b)(ii) of the Defence, the plaintiff says that the matters listed in section 6(2) of the EP Act are explanatory only and not material to pleading a breach of section 25 of the 2017 EP Act.
10. As to paragraph 31 of the Defence, the plaintiff says that the basis of Graincorp's actual knowledge that the 16 Railway Place Property and at least some properties defined as Affected Land are noise sensitive receivers in the area of the GrainCorp Factory is to be inferred from a map (copy reproduced below) titled 'noise sensitive receptors' and 'Numurkah site development' prepared by SEMF Pty Ltd appearing at page 3 of the EPA's 'Works Approval

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Dominique Tannock

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