Case: S ECI 2021 04524
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IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S ECI 2021 04524

BETWEEN

KEVIN CARLING GREEN

Plaintiff

and

GRAINCORP OILSEEDS PTY LTD (ACN 006 772 578)

Defendant

DEFENCE TO FURTHER AMENDED STATEMENT OF CLAIM

Date of document: ~~7 September 2023~~ 19 May 2025
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Preliminary Matters

In this Defence, headings are used for convenience only.

Unless otherwise stated, this Defence adopts the defined terms used in the Further Amended Statement of Claim dated ~~8~~ 11 ~~August~~ April ~~2023~~ 2025 (**~~Statement of Claim~~FASOC**) (without admission as to any allegation contained in, or implied by, any defined terms used in the ~~Statement of Claim~~FASOC and adopted in this Defence).

For the avoidance of doubt, in this Defence the Defendant (**GrainCorp**) does not plead to the particulars attached to each subparagraph of the ~~Statement of Claim~~FASOC unless specific reference is made to an alleged particular in this Defence.

In answer to the allegations in the ~~Statement of Claim~~FASOC, GrainCorp states as follows:

THE PLAINTIFF AND THE GROUP MEMBERS

1. As to paragraph 1:

   (a) it does not plead to sub-paragraph 1(a), as no allegations are made against it;

   (b) it denies the allegations in sub-paragraph 1(b)~~.~~;

   (c) says that the allegation in sub-paragraph 1(c) is embarrassing because it does not identify the basis on which the plaintiff and Group Members satisfy the definition of "eligible person" is s 308 of the EP Act, being a person who makes an application under Part 11.4 of the EP Act and "whose interests are affected by the contravention or non-compliance in relation to which the application is made" and, under cover of that objection, it denies the allegation in sub-paragraph 1(c).

2. It does not know and, therefore, cannot admit paragraph 2.

3. As to paragraph 3 of the ~~Statement of Claim~~FASOC, GrainCorp says the reference to "all material times" is not defined or particularised and is embarrassing. Under cover of that objection, and on the basis that in the ~~Statement of Claim~~FASOC "all material times" means after 1 January 2017, GrainCorp:

   (a) admits sub-paragraph 3(a);

   (b) admits that the plaintiff is, and has been since 16 August 1998, a joint registered proprietor of an estate in fee simple in the 16 Railway Place Property;

   (c) says the reference to "actual possession" is embarrassing as the plaintiff does not define what he means by the use of the phrase "actual possession" and, therefore, it does not know and cannot admit sub-paragraph 3(c); and

(d) admits paragraph 3(d).

4. As to paragraph 4 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) says the reference to "directly opposite" is embarrassing as the plaintiff does not define what he means by the use of the phrase "directly opposite" and, therefore, it does not know and cannot admit sub-paragraph 4(a);

(b) admits sub-paragraph 4(b); and

(c) admits sub-paragraph 4(c) and says further that the 16 Railway Place Property is zoned General Residential Zone - Schedule 1 under the Moira Planning Scheme (**Scheme**).

THE DEFENDANT AND THE GRAINCORP FACTORY

5. As to paragraph 5 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) admits sub-paragraph 5(a);

(b) admits sub-paragraph 5(b) and says further that:

(i) the GrainCorp Factory:

A. is situated on land that is approximately four hectares in size;

B. is situated approximately 450 metres from the town centre of Numurkah;

C. is comprised of, among other things, buildings and facilities which include a meal shed, a seed unloading shed, a physical refiner, a waste water treatment plant, a press room, cooling towers, a refinery, a switch room, new and existing tank compounds, an interceptor pit, seed silos, existing and new solvent plants, stormwater

drainage, concrete roadways, a weighbridge, two oil loading and unloading bays, and concrete bunds;

D. adjoins or abuts McDonald Street, Orchard Street and the closed Numurkah train station;

(ii) oilseed crushing operations began at the GrainCorp Factory in or around 1978 by Riverland Oilseeds Pty Ltd (which, at that time, was owned by Gardner Smith Pty Ltd);

(iii) GrainCorp acquired Gardner Smith Pty Ltd on or around 2 October 2012;

(iv) GrainCorp took over the management and day-to-day operations of the GrainCorp Factory in or around mid-October 2012 and has processed oilseed and manufactured oils at the GrainCorp Factory since that date;

(v) the majority of the GrainCorp Factory is located on land zoned Industrial 1 Zone, with a small portion of that land also being zoned Urban Floodway Zone, within the Scheme;

(vi) the land immediately adjoining or surrounding the GrainCorp Factory is subject to a number of different zones under the Scheme, including the Mixed Use Zone, Commercial 1 Zone, Commercial 2 Zone, Public Park and Recreation Zone, State Transport Infrastructure Road Zone and General Residential Zone;

(c) admits sub-paragraph 5(c);

(d) admits sub-paragraph 5(d) and refers to and repeats sub-paragraph 5(b) above;

(e) as to sub-paragraph 5(e):

(i) subject to sub-paragraphs (ii) and (iii), it admits that it was, until June 2022, the holder of the Licence and will refer to the Licence for its full terms and effect;

(ii) says that the Licence was issued in or around January 1997 and, since January 2017, has been amended on:

A. 9 December 2017;

B. 12 June 2020; and

C. in or around June 2022, at which time the Licence was replaced with Operating Licence OL000001116 (**Operating Licence**);

(iii) says that the Licence is no longer operative because of its replacement by, and substitution with, the Operating Licence in or around June 2022 under s 74(1) of the *Environment Protection Act 2017* (Vic) (**2017 EP Act**) and it is the 2017 EP Act that applies to, and governs, the Operating Licence and GrainCorp's obligations under it;

(iv) otherwise denies the allegations in sub-paragraph 5(e);

(f) says sub-paragraph 5(f) is embarrassing as the plaintiff does not identify the basis on which he alleges that GrainCorp is required to comply with the Permit in relation to the operation of the GrainCorp Factory and the period during which compliance was required. Under cover of that objection, GrainCorp:

(i) says the Permit provides permission for "Buildings & Works – alterations to process including extraction plant and ancillary changes and a reduction in the number of car parking spaces";

(ii) says the Permit was spent, and no longer operative, upon completion of the "Buildings & Works" permitted by the Permit;

(iii) otherwise denies the allegations in sub-paragraph 5(f);

(g) admits sub-paragraph 5(g); and

(h) refers to and repeats paragraph 5(b)(iv) above and otherwise denies paragraph 5(h).

6. As to paragraph 6 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) subject to reference to the Permit for its full terms and effect, admits that the Permit contains the statements pleaded in sub-paragraph 6(a) to 6(c);

(b) refers to and repeats sub-paragraph 5(f) above;

(c) says further that, by reason of sub-paragraph 6(b), the Permit is no longer operative; and

(d) otherwise denies the allegations in paragraph 6.

7. As to paragraph 7 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) says that, between 1 January 2017 to 8 December 2017, the Licence contained conditions that:

(i) offensive odours must not be discharged beyond the boundaries of the premises; and

(ii) unacceptable noise (including vibration) must not be emitted beyond the boundaries of the premises;

(b) says that, between 9 December 2017 and 22 June 2022, the Licence contained the conditions pleaded in paragraph 7(a) and 7(b) of the ~~Statement of Claim~~FASOC;

(c) says that, in June 2022, the Licence was amended to remove the conditions pleaded in paragraph 7(a) and 7(b) of the ~~Statement of Claim~~FASOC; and

(d) otherwise denies the allegations in paragraph 7.

8. As to paragraph 8 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) admits that the GrainCorp Factory operates 24 hours per day and 7 days per week except that there were:

(i) 21 days when the GrainCorp Factory was shut down for planned maintenance in the 2017 financial year;

(ii) 27 days when the GrainCorp Factory was shut down for planned maintenance in the 2018 financial year;

(iii) 20 days when the GrainCorp Factory was shut down for planned maintenance in the 2019 financial year;

(iv) 20 days when the GrainCorp Factory was shut down for planned maintenance in the 2020 financial year

(v) 26 days when the GrainCorp Factory was shut down for planned maintenance in the 2021 financial year;

(vi) 21 days when the GrainCorp Factory was shut down for planned maintenance in the 2022 financial year;

(vii) 20 days when the GrainCorp Factory was shut down for planned maintenance in the 2023 financial year; and

(viii) additional periods when the GrainCorp Factory was shut down due to breakdowns or for planned and unplanned maintenance,

and in future financial years there will be periods in which the GrainCorp Factory is shut down due to breakdowns and for planned and unplanned maintenance;

(b) admits sub-paragraph 8(b);

(c) says that the allegation that GrainCorp "has significantly increased oilseed crush and processing volumes since 1 July 2016" is embarrassing because the plaintiff does not define what he means by the use of the term "significantly increased oilseed crush and processing volumes" and, under cover of that objection, says further that:

(i) in the 2017 financial year, it crushed 246,000 tonnes of oilseed;

(ii) in the 2018 financial year, it crushed 200,000 tonnes of oilseed;

(iii) in the 2019 financial year, it crushed 311,000 tonnes of oilseed;

(iv) in the 2020 financial year, it crushed 359,000 tonnes of oilseed;

(v) in the 2021 financial year, it crushed 397,000 tonnes of oilseed; and

(vi) in the 2022 financial year, it crushed 41~~1~~3,000 tonnes of oilseed;

(vii) in the 2023 financial year, it crushed 434,000 tonnes of oilseed and

(viii) in the 2024 financial year, it crushed 475,000 tonnes of oilseed.

and that there is no planning permit, Licence or Operating Licence condition which limits grain crush volumes at the GrainCorp Factory; and

(d) otherwise denies the allegations in paragraph 8.

ALLEGED NUISANCE

Noise

9. As to paragraph 9 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) says that the allegation that GrainCorp has "continuously emitted from its operations at the GrainCorp Factory excessively loud noise":

(i) does not identify the basis upon which it is alleged that the excessively loud noise emitted was "continuous" and is embarrassing;

(ii) does not identify the basis upon which it is alleged that the noise emitted was "excessively loud" and, to the extent that the plaintiff relies on the particulars:

A. does not particularise the basis on which the plaintiff alleges that the noise emitted "~~exceeds permitted levels~~does not comply at all times with ~~at~~ permitted levels at night-time", including by failing to identify the relevant "permitted levels at night-time" or how and when it is said the levels have not been complied with;

B. purports to allege that the "degree of impact" from the emitted noise varies depending on the equipment which GrainCorp is operating and atmospheric conditions but does not identify which degree of impact is alleged to

exceed permitted levels at night-time or how the equipment or atmospheric conditions affect the degree of impact;

C. purports to allege that the intrusion into the homes located at 16 Railway Place Property and the Affected Land is the same, notwithstanding the different proximities and locations of the properties to the GrainCorp Factory, and without distinguishing between the effects on the properties,

and is embarrassing;

(iii) gives rise to individual issues, not common issues, which cannot be addressed until each alleged Group Member's claim has been properly pleaded and particularised; and

(b) under cover of those objections, otherwise denies the allegations in paragraph 9.

10. As to paragraph 10 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) says that the allegation that the GrainCorp Factory Noise has "caused a substantial interference to the use and enjoyment of" the 16 Railway Place Property does not identify the scope of the "use and enjoyment" to which the plaintiff is entitled having regard to, among other things:

(i) the date on which the plaintiff purchased the 16 Railway Place Property;

(ii) the historical, existing and extant operation of the GrainCorp Factory for the purposes of oilseed manufacturing as at the date on which the plaintiff purchased the 16 Railway Place Property;

(iii) the self-evident proximity of the 16 Railway Place Property to the GrainCorp Factory;

(b) says that the allegation that the GrainCorp Factory Noise has "caused a substantial interference to the use and enjoyment of" the Affected Land gives rise to individual issues, not common issues, which cannot be addressed until each alleged Group Member's claim has been properly pleaded and particularised, including in relation to the following matters:

(i) the date on which each Group Member purchased or came into exclusive occupation of their land;

(ii) the zoning of that land;

(iii) the proximity and location of that land in relation to the GrainCorp Factory;

(iv) the scope of the "use and enjoyment" to which each alleged Group Member is entitled having regard to, among other things:

A. the date of purchase or coming into exclusive occupation of the land;

B. the historical, existing and extant operation of the GrainCorp Factory for the purposes of oilseed manufacturing as at the date of purchase or coming into exclusive occupation of the land;

C. the proximity of that land to the GrainCorp Factory; and

(c) otherwise denies the allegations in paragraph 10.

Particulars

~~GrainCorp intends to file expert evidence in relation to the allegations concerning noise emissions, and further particulars may be provided following the filing of this evidence.~~ GrainCorp relies on the Joint Expert Witness Report of Darran Humpheson and Matthew Di Giovine dated 8 May 2025.

11. GrainCorp does not plead to paragraph 11 of the ~~Statement of Claim~~FASOC as it contains a purported plea of legal principle and does not contain any allegation against GrainCorp.

12. As to paragraph 12 of the ~~Statement of Claim~~FASOC, GrainCorp:

    (a) refers to and repeats paragraphs 5, 9 and 10 above;

    (b) says that by reason of the matters in paragraphs 9 and 10 above, it does not know the basis on which the plaintiff contends, and cannot plead to the allegation, that the "GrainCorp Factory Noise is unreasonable" and reserves its right to plead any further matter that is relevant to that allegation if the plaintiff clarifies and pleads a proper basis for that allegation; and

    (c) otherwise denies the allegations in paragraph 12.

13. As to paragraph 13 of the ~~Statement of Claim~~FASOC, GrainCorp:

    (a) refers to and repeats paragraphs 5, 9, 10 and 12 above; and

    (b) otherwise denies the allegations in paragraph 13.

14. As to paragraph 14 of the ~~Statement of Claim~~FASOC, GrainCorp:

    (a) refers to and repeats paragraphs 6, 9, 10 and 12 above; and

    (b) otherwise denies the allegations in paragraph 14.

Odour

15. As to paragraph 15 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) says that the allegation that GrainCorp has "continuously emitted from its operations at the GrainCorp Factory offensive odour" is embarrassing and:

(i) does not identify the basis upon which it is alleged that the odour emitted was "continuous";

(ii) does not identify the basis upon which it is alleged that the odour emitted was "offensive" save for the subjective assertions of the plaintiff and Group Members;

(iii) gives rise to individual issues, not common issues, which cannot be addressed until each alleged Group Member's claim has been properly pleaded and particularised; and

(b) otherwise denies the allegations in paragraph 15.

16. As to paragraph 16 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) says that the allegation that the GrainCorp Factory Odour has "caused a substantial interference to the use and enjoyment of" the 16 Railway Place Property does not identify the scope of the "use and enjoyment" to which the plaintiff is entitled having regard to, among other things:

(i) the date on which the plaintiff purchased the 16 Railway Place Property;

(ii) the historical, existing and extant operation of the GrainCorp Factory for the purposes of oilseed manufacturing as at the date on which the plaintiff purchased the 16 Railway Place Property;

(iii) the self-evident proximity of the 16 Railway Place Property to the GrainCorp Factory;

(b) says that the allegation that the GrainCorp Factory Odour has "caused a substantial interference to the use and enjoyment of" the Affected Land gives rise to individual issues, not common issues, which cannot be addressed until each alleged Group Member's claim has been properly pleaded and particularised, including in relation to the following matters:

(i) the date on which each Group Member purchased or came into exclusive occupation of their land;

(ii) the zoning of that land;

(iii) the proximity and location of that land in relation to the GrainCorp Factory;

(iv) the distance of that land from the GrainCorp Factory; and

(c) otherwise denies the allegations in paragraph 16.

Particulars

~~GrainCorp intends to file expert evidence in relation to the allegations concerning odour emissions, and further particulars may be provided following the filing of this evidence.~~ GrainCorp relies on the Expert Witness Report of Lyn Denison dated 16 May 2025.

17. GrainCorp does not plead to paragraph 17 of the ~~Statement of Claim~~FASOC as it contains a purported plea of legal principle and does not contain any allegation against GrainCorp.

18. As to paragraph 18 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) refers to and repeats paragraphs 5, 15 and 16 above;

(b) says that by reason of the matters in paragraphs 15 and 16 above, it does not know the basis on which the plaintiff contends, and cannot plead to the allegation, that the "GrainCorp Factory Odour is unreasonable" and

reserves its right to plead any further matter that is relevant to that allegation if the plaintiff clarifies and pleads a proper basis for that allegation; and

(c) otherwise denies the allegations in paragraph 18.

19. As to paragraph 19 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) refers to and repeats paragraphs 5, 15 and 16 above; and

(b) otherwise denies the allegations in paragraph 19.

20. As to paragraph 20 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) refers to and repeats paragraphs 15 and 16 above; and

(b) otherwise denies the allegations in paragraph 20.

ALLEGED BREACH OF ENVIRONMENTAL DUTY

21. As to paragraph 21 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) says that the allegation that the plaintiff and Group Members are "eligible persons" within the meaning of s 308 of the 2017 EP Act:

(i) does not identify the basis upon which each of the plaintiff and the Group Members satisfy the statutory definition of "eligible person" within the meaning of s 308 of the 2017 EP Act in that it does not allege any contravention or non-compliance with the EP Act by GrainCorp, and is embarrassing;

(ii) gives rise to individual issues, not common issues, which cannot be addressed until each alleged Group Member's claim has been properly pleaded and particularised; and

(b) under cover of that objection, otherwise denies the allegations in paragraph 21.

22. As to paragraph 22 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) admits that, on and from 1 July 2021, the 2017 EP Act imposes a duty on a "person who is engaging in an activity that may give rise to risks of harm to human health or the environment from pollution";

(b) says that the allegation that, at all material times, GrainCorp has known or ought to have known that its ~~GrainCorp's~~ "operations to manufacture oilseed at the GrainCorp Factory has given rise to risks of harm to human health or the environment from pollution within the meaning of" the 2017 EP Act is embarrassing in that it does not identify which risks of harm (if any) to human health or the environment from pollution are presented by the processing of oilseed and manufacturing of oils, having regard to the definition of "harm" in s 4 of the 2017 EP Act, or how operations at the GrainCorp Factory are alleged to give rise to such risks; and

(c) otherwise denies the allegations in paragraph 22.

23. As to paragraph 23 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) admits that, on and from 1 July 2021, it owes a duty under s 25 of the 2017 EP Act to minimise the risks of harm to human health or the environment from pollution so far as is reasonably practicable;

(b) refers to and repeats paragraphs 21 and 22 above and says ~~further~~ that, ~~by reason of the matters therein, it does not owe the~~its duty referred to in sub-paragraph (a) above is not a duty owed to the plaintiff and Group Members by reason of the matters referred to in paragraphs 21 and 22 of the FASOC;

(c) says further that, if it does owe the duty referred to in sub-paragraph 23(a) above to the plaintiff and Group Members, it owed that duty on and from 1 July 2021; and

(d) otherwise denies the allegations in paragraph 23.

24. As to paragraph 24 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) refers to and repeats paragraph 6 above;

(b) refers to and repeats paragraph 22(b) and says that the plaintiff's allegation that GrainCorp has "failed to minimise the risks of harm to human health or the environment from pollution so far as is reasonably practicable" is embarrassing because the plaintiff has failed to, and does not, identify:

(i) the alleged risks of harm to human health or the environment from pollution that has been caused by GrainCorp or the GrainCorp Factory;

(ii) the steps which should have been taken, but which were not taken, by GrainCorp in order to minimise the alleged risks "so far as is reasonably practicable", including by having regard to the criteria specified in s 6(2) of the 2017 EP Act;

(c) to the extent that the plaintiff relies on the particulars to paragraph 24 of the ~~Statement of Claim~~FASOC:

(i) to the extent the plaintiff relies on an alleged failure to comply with the Permit, it refers to sub-paragraph 5(f) and paragraph 6 above;

~~(ii) the plaintiff does not identify the basis on which he alleges that GrainCorp has failed to comply with the conditions of the Licence;~~

(iii) the plaintiff does not identify any applicable environmental standards with which he says GrainCorp is required to, but has failed to, comply;

(d) refers to and repeats paragraphs 12(b) and 18(b) above; and

(e) otherwise denies the allegations in paragraph 24.

Particulars

GrainCorp relies on the Joint Expert Witness Report of Darran Humpheson and Matthew Di Giovine dated 8 May 2025, the Expert Witness Report of Lyn Denison dated 16 May 2025 and the Expert Witness Report of Geordie Galvin dated 19 May 2025.

25. As to paragraph 25 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) refers to and repeats paragraphs 21 to ~~25~~ 24 above, and the particulars thereto; and

(b) otherwise denies the allegations in paragraph 25.

26. As to paragraph 26 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) refers to and repeats paragraphs 21 to 25 above; and

(b) otherwise denies the allegations in paragraph 26.

ALLEGED COMMON ISSUES OF FACT OR LAW

27. GrainCorp does not plead to paragraph 27 of the ~~Statement of Claim~~FASOC as it contains no allegations against it. For the avoidance of doubt, GrainCorp does not accept that the questions set out in paragraph 27 of the ~~Statement of Claim~~FASOC are all questions of law or fact which are common to the claims of the Group Members within the meaning of s 33H(2)(c) of the *Supreme Court Act 1986* (Vic), or that they are properly expressed as common questions.

ALLEGED GROUNDS FOR AN INJUNCTION

28. GrainCorp denies the allegations in paragraph 28 of the ~~Statement of Claim~~FASOC to the extent that it contains allegations against it.

29. GrainCorp does not plead to paragraph 29 of the ~~Statement of Claim~~FASOC as it contains a purported legal conclusion and does not contain any allegation against GrainCorp.

ALLEGED GROUNDS FOR AGGRAVATED AND EXEMPLARY DAMAGES

30. GrainCorp denies the allegations in paragraph 30 of the ~~Statement of Claim~~FASOC.

31. As to paragraph 31 of the ~~Statement of Claim~~FASOC, GrainCorp:

    (a) says that the allegation that GrainCorp has "actually known since about May 2015 that the 16 Railway Place Property and at least some properties defined as the Affected Land are noise sensitive receivers in the area of the GrainCorp Factory" does not identify the basis upon which GrainCorp is said to have actual knowledge of the relevant allegation and is embarrassing;

    (b) says that the reference to "some properties defined as the Affected Land" is embarrassing because the plaintiff does not define the properties to which the allegation refers and, in any event, demonstrates that the allegation gives rise to individual issues, not common issues, which cannot be addressed until each alleged Group Member's claim has been properly pleaded and particularised; and

    (c) otherwise denies the allegations in paragraph 31.

32. As to paragraph 32 of the ~~Statement of Claim~~FASOC, GrainCorp:

    (a) refers to and repeats paragraphs 24(c) above;

    (b) says that the allegation that GrainCorp has received pollution abatement notices (**PANs**) from the Environment Protection Authority (**EPA**) is embarrassing as the plaintiff does not identify which PAN(s) issued by the EPA to GrainCorp have required GrainCorp to undertake "adequate or effective measures";

(c) says further that the allegations made in paragraph ~~24~~ 32 are embarrassing because the plaintiff does not identify:

(i) the "adequate" or "effective" measures that GrainCorp was required to undertake but did not undertake;

(ii) what he means by the phrase "detrimental emissions";

(d) under cover of the objections in sub-paragraphs (b) and (c) above, admits that, in the period since 1 January 2017, it has received one PAN from the EPA concerning noise emissions and three PANs from the EPA concerning odour emissions, and these PANs have each been revoked by the EPA; and

(e) otherwise denies the allegations in paragraph 32.

Particulars

In relation to noise:

(i) on 22 July 2017, the EPA issued PAN 7845 to GrainCorp;

(ii) on 30 July 2018, the dates for compliance with PAN 7845 were extended with the EPA acknowledging that GrainCorp had made attempts to comply with PAN 7845;

(iii) on 18 December 2018, the EPA assessed the noise impact of GrainCorp's operations at the 16 Railway Place Property with the results recording general compliance with recommended noise limits;

(iv) on 22 February 2019, on the basis of steps taken by GrainCorp to comply with PAN 7845, the EPA revoked PAN 7845.

In relation to odour:

(i) in or around July 2017, the EPA issued PAN 7846 to GrainCorp, which was revoked in or around May 2019;

(ii) on 7 July 2020, the EPA issued PAN 11261 to GrainCorp, which was revoked in or around June 2021;

(iii) in or around May 2021, the EPA issued PAN 12186 to GrainCorp, which was revoked in or around March 2022.

33. As to paragraph 33 of the ~~Statement of Claim~~FASOC, GrainCorp:

(a) says that the allegation that GrainCorp has received "complaints from other Group Members" does not identify:

(i) the number of complaints made;

(ii) the nature of the complaints made;

(iii) the identity of the "other Group Members" who made the alleged complaints;

(b) refers to and repeats paragraph 32 above; and

(c) otherwise denies the allegations in paragraph 33.

34. GrainCorp denies the allegations in paragraph 34 of the ~~Statement of Claim~~FASOC to the extent that it contains allegations against it.

35. GrainCorp denies the allegations in paragraph 35 of the ~~Statement of Claim~~FASOC to the extent that it contains allegations against it.

Dated ~~7 September 2023~~ 19 May 2025

~~P NESKOVCIN~~ R CRAIG

R CHAILE

L O'RORKE

_____

Ashurst Australia
Solicitors for the Defendant