



Annexure A

NOTICE TO GROUP MEMBERS

PROPOSED DISCONTINUANCE OF CLASS ACTION

Anthony William Boys v 38 Akuna Pty Limited (in liquidation) (NSD 1192/2021)

1 WHY AM I GETTING THIS NOTICE?

On 16 May 2022, the Federal Court of Australia ordered that this notice be sent to persons who might be members of a class action commenced in November 2021 by Anthony William Boys (the **applicant**) against 38 Akuna Pty Ltd (in liquidation) (**38 Akuna**) (the **Class Action**).

The Class Action is about the sale of residential apartments at 240 Bunda Street, Canberra, ACT (the **Manhattan on the Park development**) by 38 Akuna. Records show that you purchased one or more of the units at the Manhattan on the Park development and therefore you may be a class member in the Class Action. Schedule 1 of this notice helps explain whether you are a class member or not.

The applicant will be making an application in the Federal Court on 9 June 2022 to discontinue the Class Action. If the Class Action is discontinued, the Class Action will end. Section 4 of this notice explains what options are available to you if you do not want the Class Action to end.

2 WHAT HAS HAPPENED IN THE CLASS ACTION?

The applicant has alleged in the Class Action that:

- (a) Persons who purchased apartments in the Manhattan on the Park development from 38 Akuna paid GST as part of their purchase price, and the GST should be returned to them by 38 Akuna under the law of restitution; and
- (b) 38 Akuna engaged in misleading or deceptive conduct in breach of the Australian Consumer Law.

The applicant is also seeking an order in the Class Action in relation to the suspension of any limitation period relating to the claims made in the Class Action. A limitation period is the time within which a person has to bring a claim. A person may not be permitted to bring a claim once that deadline expires.

3 REASONS FOR DISCONTINUANCE

The applicant is making an application to discontinue the Class Action because:

- (a) A separate class action, *Susan Margaret Lloyd v Belconnen Lakeview Pty Ltd and others (NSD1417/2017)* (the **Altitude Action**), was brought in the Federal Court. The Altitude Action made similar claims to the allegations made in this Class Action;



- (b) The Altitude Action was heard by the Federal Court (*Lloyd v Belconnen Lakeview Pty Ltd* [2019] FCA 2177; *Lloyd v Belconnen Lakeview Pty Ltd (No 2)* [2020] FCA 698) and by the Full Court of the Federal Court (*Belconnen Lakeview Pty Ltd v Lloyd* [2021] FCAFC 187), and was the subject of an application for special leave to the High Court on 12 April 2022. As a result of those decisions, the applicant's individual claim in the Altitude Action has now been determined and the claim for restitution has failed; and
- (c) Given the outcome in the Altitude Action, the litigation funder which has funded the legal costs of the Class Action to date is unwilling to provide ongoing funding for the Class Action.

Before deciding whether to permit the Class Action to be discontinued, the Court will listen to any arguments of class members who wish to be heard.

4 WHAT OPTIONS ARE AVAILABLE TO YOU?

There are three options available to you:

- A. Do nothing, in which case the Court may order the Class Action be discontinued. In this event, you may still be able to bring any individual claim you may have connected to the Class Action, if you wish. However, there are deadlines which apply to making such claims and you may not be permitted to bring a claim once those deadlines expire;
- B. Propose yourself or another class member to be substituted for Mr Boys as the lead applicant in the Class Action, and thereby take over the conduct of the case. Any proposed new lead applicant must be willing to conduct the case on his or her own behalf and on behalf of the class members, to appoint lawyers to act in the case and to meet the legal costs of the case (either at their own cost or via an alternative funding arrangement); or
- C. Object to or oppose the proposed discontinuance of the Class Action.

Class members are strongly recommended to obtain independent legal advice when considering these options.

If you are a class member and you wish to take up option (B) or (C) above, **you should:**

- (a) send an email to the applicant's solicitors (emily.brownlee@corrs.com.au) by 5 pm on 7 June 2022 notifying your wish to make an argument to oppose the discontinuance or substitute a new lead applicant; **and**
- (b) send any documents you wish to rely on in support of your argument to emily.brownlee@corrs.com.au by 5 pm on 7 June 2022; **and**
- (c) attend the hearing at the Federal Court in Sydney (Law Courts Building, Queens Square, 184 Phillip Street, Sydney) at 10.15 am on 9 June 2022 to make your argument.