



Annexure A

NOTICE TO GROUP MEMBERS

PROPOSED DISCONTINUANCE OF CLASS ACTION

Susan Margaret Lloyd v Belconnen Lakeview Pty Ltd and others (NSD 1417/2017)

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 August 2017 by Susan Margaret Lloyd (the **applicant**) against Belconnen Lakeview Pty Ltd (**Belconnen Lakeview**) and its director and company secretary (the **Class Action**).

The Class Action is about the sale of residential apartments at 35-41 Chandler Street, Belconnen, ACT (the **Altitude development**) by Belconnen Lakeview. Records show that you purchased one or more of the units at the Altitude 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's allegations in the Class Action included that:

- (a) Persons who purchased apartments in the Altitude development from Belconnen Lakeview paid an amount that was referable to GST as part of their purchase price, and that this amount should be returned to them by Belconnen Lakeview under the law of restitution;
- (b) Belconnen Lakeview engaged in misleading or deceptive conduct in breach of the Australian Consumer Law; and
- (c) Belconnen Lakeview's director and secretary were knowingly involved in the misleading or deceptive conduct in breach of the Australian Consumer Law.

Belconnen Lakeview together with its director and company secretary denied these allegations.

The Class 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.



The applicant's claim in the Class Action has been dismissed with costs.

As a result of these decisions:

- (a) The claim in restitution for return of the amount alleged to be referable to GST failed and as such, purchasers are **not** entitled to the return of any money under the law of restitution;
- (b) Belconnen Lakeview was found to have engaged in misleading conduct in its dealings with the applicant, **but** because the applicant did not suffer any loss as a result she was not entitled to be paid any damages;
- (c) Various factual findings were made which apply to all class members, including the representations conveyed by Belconnen Lakeview to class members in relation to GST;
- (d) The claim that Belconnen Lakeview's director and company secretary were knowingly involved in any breach of the Australian Consumer Law was dismissed; and
- (e) The applicant, who is funded by the litigation funder Omni Bridgeway Limited, has been ordered to pay the costs of Belconnen Lakeview and its director and company secretary in the various court proceedings to which they were parties.

3 REASONS FOR DISCONTINUANCE

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

- (a) the applicant's individual claim has been dismissed;
- (b) the claim for restitution has failed; and
- (c) 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 will still be able to bring any individual claim you may have connected to the Class Action, if you wish. The factual findings already made in the Class Action will apply to future litigation commenced by class members. 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 Ms Lloyd 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; 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 (A) 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.