

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 11364/18

Amended this 15th day of April 2020 pursuant to Rule 378 of the Uniform Civil Procedure Rules 1999 (Qld).

Signed _____, Shine Lawyers

First Plaintiff: **JOHN MICHAEL KOZIK**

 AND

Second Plaintiff: **SIMON JOHN AKERO**

 AND

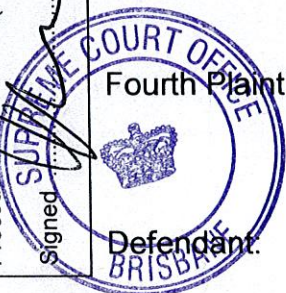
Third Plaintiff: **SARAH AKERO**

 AND

Fourth Plaintiff: **NEIL ROBERT COLLIER**

 AND

Defendant: **REDLAND CITY COUNCIL**



**AMENDED REPLY AND ANSWER TO THE FIRST FURTHER
AMENDED DEFENCE AND COUNTERCLAIM**

AMENDED REPLY

The plaintiffs (~~Mr Kozik~~) rely on the following facts in reply to the first further amended defence (**defence**). Unless otherwise specified, references in this reply to numbered paragraphs are to paragraphs of the defence.

1. The plaintiffs adopt the admissions contained in the defence.

2. The plaintiffs are not obliged, and do not plead to any:
 - (a) explanation of any denial or non-admission contained in the defence;

 - (b) particulars in the defence.

**AMENDED REPLY & ANSWER TO THE FIRST
FURTHER AMENDED DEFENCE AND
COUNTERCLAIM**

Filed on behalf of the Plaintiff

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3. The plaintiffs admit the allegations in paragraphs 2(b), 2(c) and 2(d).
4. The plaintiffs do not plead to paragraph 16(c) of the defence because no allegation of fact is contained therein.
5. The plaintiffs do not plead to paragraph 17(b) of the defence because no allegation of fact is contained therein.
6. The plaintiffs deny the allegations in paragraphs 18(c) of the defence on the basis that, in the plaintiffs' belief, the allegations are untrue, because the true facts are those pleaded in paragraph 10 of the further amended statement of claim (the statement of claim).
7. The plaintiffs do not plead to paragraph 18(d) of the defence because no allegation of fact is contained therein.
8. As to paragraph 35(c) of the defence, the plaintiffs:
 - (a) deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue, because of the matters pleaded below in this paragraph;
 - (b) refer to and rely upon the matters pleaded in paragraphs 13 to 30 of the statement of claim;
 - (c) say that the legislative breaches or non-compliance referred to therein (in the respects pleaded in paragraphs 13 to 20 of the statement of claim):
 - (i) deprived the defendant of any power to then proceed to levy "special rates or charges", within the meaning of the Local Government Act 2009 (Qld), in respect of any land, as it purported to do in respect of each of the plaintiffs and the Group Members;
 - (ii) in turn resulted in special rates and charges proceeding to be being levied on the land (of the plaintiffs and Group members) to which land the special rates or charges levied did not apply,

for the purpose of the 2010 Regulation and the 2012 Regulation respectively (as pleaded in the statement of claim);

- (iii) resulted, further, in special rates or charges being levied that should not have been levied on any of the plaintiffs or any Group Member, as a ratepayer, for the purpose of the 2012 Regulation as amended from 5 December 2014 (as pleaded in the statement of claim).

9. The plaintiffs deny the allegations in paragraphs 39(b) and 39(c) of the defence on the basis that, in the plaintiffs' belief, the allegations are untrue, because of the matters pleaded in paragraph 24A of the statement of claim.
10. The plaintiffs deny the allegations in paragraphs 40(b) and 40(c) of the defence on the basis that, in the plaintiffs' belief, the allegations are untrue, because of the matters pleaded in paragraph 24B of the statement of claim.
11. As to paragraph 42(b) of the defence, the plaintiffs:
- (a) deny the allegations therein, on the basis that, in the plaintiffs' belief, the allegations are untrue, because of the matters pleaded below in this paragraph;
- (b) refer to and rely upon the matters pleaded in the statement of claim;
- (c) refer to and rely upon the matters pleaded below in the answer to the defendant's counterclaim.

1. — ~~Mr Kozik admits the allegations in paragraphs 2(b), 5(a) and 6(a).~~

2. — ~~As to paragraph 14(b) and (c), Mr Kozik:~~

(a) — ~~denies the allegations therein because there are no questions 1(d) and 1(e) in the common questions section of the Claim; and~~

(b) — ~~further or alternatively, if the defence intended to refer to the questions identified in paragraphs 1[A] and 1[B] at page 5 of the Claim, under the heading "Questions common to claims of Group Members", denies the allegations and believes that they are untrue because:~~

- (i) ~~for the purposes of s 103B of the *Civil Proceedings Act 2011* (Qld), the questions identified in the said paragraphs 1[A] and 1[B] of the common questions section of the Claim are common to the claims of Mr Kozik and each of the Group Members remaining upon the completion of the opt out period (**Group Members**), notwithstanding that their properties were located variously in Raby Bay, Aquatic Paradise and Sovereign Waters; and~~
- (ii) ~~those questions concern whether the Resolutions complied with the applicable regulations, rather than the expenditure of the Special Charges levied; and~~
- (c) ~~says further that:~~
 - (i) ~~paragraph 14(c)(i) is vague and embarrassing, particularly as to the meaning of the words "the way in which the funds levied as Special Charges were spent with respect to the Plaintiff";~~
 - (ii) ~~Mr Kozik will plead further upon clarification of the meaning of paragraph 14(c)(i);~~
 - (iii) ~~paragraphs 14(c)(i) and (ii) are not particularised adequately or at all; and~~
 - (iv) ~~Mr Kozik will plead further upon provision of the particulars of the facts relied upon for the allegations in paragraphs 14(c).~~

3. ~~Mr Kozik denies the allegations in paragraph 18(b) and believes that they are untrue because he believes that the correct amount of Special Charges levied on 4 Chart Street as pleaded in paragraph 10(a) of the amended statement of claim (**statement of claim**).~~

4. ~~As to paragraph 20, Mr Kozik:~~

- (a) ~~denies the allegations in subparagraph (b)(i) and believes that they are untrue because:~~
 - (i) ~~by reason of the matters pleaded in paragraphs 13 to 20 of the statement of claim, each of the Resolutions:~~
 - [A] ~~was invalid; and~~
 - [B] ~~further, therefore, was not a resolution for the purposes of s 94(2) of the *Local Government Act 2009* (Qld) (**LGA**);~~
 - (ii) ~~as a matter of law, a special rate or charge imposed without observance of regulation 28(5) of the 2010 Regulation, regulation 94(2) of the 2012 Regulation, or s 94(2) of the LGA, is invalid and, therefore, a nullity;~~
 - (iii) ~~by reason of the said invalidity referred to in subparagraphs 4(a)(i) and (ii) above of this reply:~~
 - [A] ~~the defendant had no authority to levy the Special Charges; and~~

~~[B] — the Special Charges did not apply to the land of either Mr Kozik or any of the Group Members; and~~

~~(iv) — in so levying the Special Charges, the Rates Notices did, and did purport to, levy the Special Charges on land to which such charges did not apply;~~

~~(b) — does not admit the allegation in subparagraph (b)(ii), which is an allegation of law;~~

~~(c) — denies the allegations in subparagraph (b)(iii) and believes that they are untrue because no valid Special Charges were levied and because of the matters pleaded in paragraph 4(a) above of this reply;~~

~~(d) — as to subparagraph (b)(iv):~~

~~(i) — repeats and relies on paragraph 4(a) above of this reply; and~~

~~(ii) — otherwise does not admit the allegations therein and cannot admit or deny the allegations because:~~

~~[A] — despite having made reasonable inquiries, Mr Kozik remains uncertain of the truth or otherwise of the allegations; and~~

~~[B] — the allegations are hypothetical and do not make any allegations of fact against Mr Kozik or the remaining Group Members;~~

~~(e) — denies the allegation in subparagraph (c) and believes that they are untrue because:~~

~~(i) — they are wrong as a matter of law;~~

~~(ii) — compliance with regulation 28 of the 2010 Regulation and regulation 94 of the 2012 Regulation was a condition precedent to lawful authority in the defendant to levy the Special Charges, pursuant to s 94(2) of the LGA;~~

~~(iii) — the defendant's non-compliance with the said regulations were not technical breaches of those regulations or the LGA; and~~

~~(iv) — otherwise, of the matters pleaded in paragraph 4(a) above of this reply.~~

~~(f) — says further, in respect of subparagraph 29(c), that whether the unlawfulness resulted from technical breaches or a fundamental absence of power is irrelevant to Mr Kozik's claim in this proceeding.~~

5. — As to paragraph 30, Mr Kozik:

~~(a) — admits the allegation in subparagraph 30(b)(i) that the requirements of s 28(3) of the 2010 Regulation and s 94(2) of the 2012 Regulation were not satisfied as pleaded in paragraphs 13 to 20 of the statement of claim and admitted in the defence; and~~

(b) — denies the allegation in subparagraph (b)(ii), which is an allegation of law.

6. — Mr Kozik denies the allegations in paragraph 31(b) and believes that they are untrue by reason of the matters pleaded below in the answer to the counterclaim.

7. — Mr Kozik denies the allegations in paragraph 34(b) and believes that they are untrue by reason of the matters pleaded in the statement of claim, this reply and below in the answer to the counterclaim.

8. — As to paragraph 35, Mr Kozik:

(a) — admits subparagraph (b)(i);

(b) — denies the allegations in subparagraph (b)(ii) and believes that they are untrue because of the matters pleaded in paragraph 4(a) of above of this reply;

(c) — denies the allegations in sub-paragraph (b)(iii) and believes that they are untrue because of the matters pleaded in paragraph 4(a) of above of this reply and paragraph 22 of the statement of claim;

(d) — denies the allegations in subparagraphs (b)(iv) and (v) and believes that they are untrue because:

(i) — the premises pleaded in paragraphs 35(b)(ii) and (iii) are incorrect;

(ii) — they are wrong at law; and

(iii) — of the matters pleaded in paragraphs 13 to 20 and 23 of the statement of claim and paragraph 4(a) above of this reply.

9. — Mr Kozik denies the allegations in paragraphs 36(b) to (d), which are allegations of law.

10. — Save as aforesaid, Mr Kozik:

(a) — adopts the admissions; and

(b) — joins issue with the denials and non-admissions

pleaded in the defence.

AMENDED ANSWER

The plaintiffs Mr Kozik relies rely on the following facts in defence of the first further amended counterclaim (**counterclaim**). References below in this answer to

numbered paragraphs are to paragraphs of the counterclaim unless otherwise specified.

1. The plaintiffs do not plead to the allegations in paragraph 1 of the counterclaim as no allegation of fact is contained therein.

First Plaintiff

2. As to paragraph 2 of the counterclaim, the plaintiffs:
 - (a) in pleading thereto, and hereinafter in paragraphs 3 to 4D, refer to the invalidly levied special rates and charges in respect of the first plaintiff and the Aquatic Paradise Group Members as **the Special Charges**, and the portion of same not returned to them as **the balance Special Charges**;
 - (b) admit that an amount in the sum of the balance Special Charges was expended by the defendant in respect of the Aquatic Paradise Works referred to in the following subparagraph;
 - (c) admit the conduct, and the defendant's incurring of the expense, in respect of the Aquatic Paradise Works, referred to in Annexures A to D of the counterclaim (**Aquatic Paradise Works**);
 - (d) admit that the defendant expended other funds from its consolidated revenue for the expenditure entailed on the Aquatic Paradise Works;
 - (e) do not admit the lastmentioned funds which the defendant so expended in undertaking the Aquatic Paradise Works in that, after reasonable enquiry, they are unable to say whether the allegation is true or false;
 - (f) do not admit the allegation concerning the proportion of expenditure by reference to the first plaintiff or any Aquatic Paradise Group Member, on the basis that, after reasonable enquiry, they are unable to say whether the allegation is true or false;
 - (g) admit that had it done so lawfully, the defendant could have sought to impose, under the *Local Government Act 2009 (Qld)*, special rates and

charges, upon the first plaintiff and the Group Members, in the relevant years in which each was a landowner in Aquatic Paradise;

- (h) admit that the Aquatic Paradise Works had the effect of maintaining, but not improving, Aquatic Paradise canals in an orderly, visually pleasing, navigable and structurally sound condition;
- (i) save as aforesaid, deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue, because of the matters pleaded below in this paragraph;
- (j) say, irrespective of whether or not the defendant had lawfully levied special rates and charges upon the first plaintiff and Aquatic Paradise Group Members, the defendant was obliged to undertake the Aquatic Paradise Works pursuant to obligations imposed on it under s 121 of the *Coastal Protection and Management Act 1995 (Qld)* and its general government obligations under the *Local Government Act*;
- (k) say the defendant undertook the Aquatic Paradise Works pursuant to the lastmentioned statutory obligations;
- (l) say the relationship between each of the first plaintiff and the Aquatic Paradise Group Members, as a ratepayer paying special rates and charges, and the defendant, as a local authority, under the *Local Government Act*, did not entail any exclusive entitlement on the part of such ratepayer to:
 - (i) enjoy any specific benefit in respect of the ratepayer's land, by reason of any of the works, or specific work, the subject of overall plans or works undertaken;
 - (ii) make any determination or choice, in respect of such plan, or such works;
- (m) say, at all material times, the canals and waterways in Aquatic Paradise were accessible, by water or bordering park areas, to any member of the public to enjoy the benefit of the same, whether or not a ratepayer or

resident in the defendant's local government area, and whether or not by a vessel, flotation device, or otherwise;

- (n) say the lastmentioned persons enjoyed the benefit of the Aquatic Paradise works;
- (o) say in respect of the Aquatic Paradise Works:
 - (i) no consent was sought from the first plaintiff, or Aquatic Paradise Group Member, to the conduct of any portion of such works;
 - (ii) no consent was given by the first plaintiff or Aquatic Paradise Group Member, to the conduct of any portion of such works;
 - (iii) no written plan existed in respect of such works;
 - (iv) such works were undertaken on an ad hoc basis;
 - (v) any benefit furnished by such works was incidental to their undertaking;
- (p) say that the Special Charges:
 - (i) did not constitute any consideration given by the first plaintiff or any Aquatic Paradise Group Member for the conduct of the Aquatic Paradise works, to obtain or garner any specific or exclusive benefit;
 - (ii) but rather were merely levied, or purported to be levied, on each of them;
 - (iii) so levied in the absence of an overall plan promulgated and adopted by the defendant,
 - (iv) so levied with no specific obligation assumed by the defendant by receipt of the Special Charges;
- (q) say, in the premises of this paragraph, the Aquatic Paradise Works:

- (i) were not in aid of the first plaintiff or any of the Aquatic Paradise Group Members;
- (ii) did not furnish any direct and comparable benefit to such persons.

2A. As to paragraph 2A of the counterclaim, the plaintiffs:

- (a) admit the expenditure as identified in Annexures A to D as pleaded to above;
- (b) otherwise do not admit the purposes of the expenditure as pleaded to in paragraphs 2A(a) to 2A(m) as after reasonable enquiry, they are unable to say whether the allegation is true or false.

3. As to paragraph 3 of the counterclaim, the plaintiffs:

- (a) deny the allegation therein, which is to the effect that the special rates "were expended by the defendant on the specific purposes for which the [same] were levied, namely those pleaded in paragraph 2A of the counterclaim";
- (b) so deny the lastmentioned allegation on the basis that, in the plaintiffs' belief, the allegations are untrue, because of the matters pleaded below in this paragraph;
- (c) say there were no such specific purposes in existence, or specifically planned, on the occasion of the levying of the Special Rates because of the absence of an overall plan, and the subsequent ad hoc conduct of the works, pleaded in the statement of claim and above in paragraph 2.

4. As to paragraph 4 of the counterclaim, the plaintiffs:

- (a) deny the allegation therein, namely that by the defendant expending the balance Special Charges, the first plaintiff and the Aquatic Paradise Group Members "received a direct and comparable benefit from the defendant ... in connection with the payment by them of the Special Charges";

- (b) deny the lastmentioned allegation on the basis that, in the plaintiffs belief, the allegation is untrue, because of the matters pleaded below in this paragraph;
- (c) refer to and rely upon the matters pleaded above in paragraph 2;
- (d) say, in the premises of this paragraph, as a matter of law or fact, such "direct and comparable benefit" allegation does not operate as a defence to, or diminution of, the plaintiffs' cause of action for moneys had and received pleaded in paragraphs 28A and 28B of the statement of claim;
- (e) say, further, that such allegation, as a matter of law, does not operate by way of defence to, or in diminution of, the plaintiffs' cause of action in debt pleaded in paragraphs 27 and 28 of the statement of claim;

4A. As to paragraph 4A of the counterclaim, the plaintiffs:

- (a) admit that the first plaintiff and each of the Aquatic Paradise Group Members, who owned homes on a canal, as a result of the Aquatic Paradise Works, received a benefit by reason of the matters referred to therein;
- (b) save as aforesaid, deny the allegations therein on the basis that, in the defendant's belief, the allegations are untrue because of the matters pleaded below in this paragraph;
- (c) refer to and rely upon the matters pleaded above in paragraph 2;
- (d) say that the benefits referred to therein were indirect, and to the extent of navigation in and utilisation of the canal and revetment walls, and the appearance of the canal, were benefits enjoyed, and available to be enjoyed, by other persons, namely those referred to above in paragraph 2(m).

4B. As to paragraph 4B of the counterclaim, the plaintiffs:

- (a) admit that the first plaintiff received a benefit in respect of each of the matters referred to therein;

- (b) save as aforesaid, deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue because of the matters pleaded below in this paragraph;
 - (c) refer to and rely upon the matters pleaded above in paragraphs 2 and 4A.
- 4C. As to paragraph 4C of the counterclaim, the plaintiffs:
- (a) deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue because of the matters pleaded below in this paragraph;
 - (b) refer to and rely upon the matters pleaded above in paragraphs 2, 4A and 4B.
- 4D. As to paragraph 4D of the counterclaim, the plaintiffs:
- (a) deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue because of the matters pleaded below in this paragraph;
 - (b) refer to and rely upon the matters pleaded above in paragraphs 2, 4A, 4B and 4C.

Second and Third Plaintiffs

5. As to paragraph 5 of the counterclaim, the plaintiffs:
- (a) in pleading thereto, and hereinafter in paragraphs 6 to 12, refer to the invalidly levied special rates and charges in respect of the second and third plaintiffs and the Sovereign Waters Group Members as **the Special Charges**, and the portion of same not returned to them as **the balance Special Charges**;
 - (b) admit that an amount in the sum of the balance Special Charges was expended by the defendant in respect of the Sovereign Waters Works referred to in the following subparagraph;

- (c) admit the conduct, and the defendant's incurring of the expense, in respect of the Sovereign Waters Works referred to in Annexures E to H of the counterclaim (**Sovereign Waters Works**);
- (d) admit that the defendant expended other funds from its consolidated revenue for the expenditure entailed on the Sovereign Waters Works;
- (e) do not admit the lastmentioned funds which the defendant so expended so expended in undertaking the Sovereign Waters Works in that, after reasonable enquiry, they are unable to say whether the allegation is true or false;
- (f) do not admit the allegation concerning the proportion of expenditure by reference to the second and third plaintiffs or any Sovereign Waters Group Member, on the basis that, after reasonable enquiry, they are unable to say whether the allegation is true or false;
- (g) admit that had it done so lawfully, the defendant could have sought to impose, under the *Local Government Act 2009 (Qld)*, special rates and charges, upon the second and third plaintiffs and the Group Members, in the relevant years in which each was a landowner in Sovereign Waters;
- (h) admit that the Sovereign Waters Works had the effect of maintaining, but not improving, Sovereign Waters lake in an orderly, visually pleasing, navigable and structurally sound condition;
- (i) save as aforesaid, deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue, because of the matters pleaded below in this paragraph;
- (j) say, irrespective of whether or not the defendant had lawfully levied special rates and charges upon the second and third plaintiffs and Sovereign Waters Group Members, the defendant was obliged to undertake the Sovereign Waters Works pursuant to obligations imposed on it under s 121 of the *Coastal Protection and Management Act 1995*

(Qld) and its general government obligations under the Local Government Act,

- (k) say the defendant undertook the Sovereign Waters Works pursuant to the lastmentioned statutory obligations;
- (l) say the relationship between each of the second and third plaintiffs and the Sovereign Waters Group Members, as a ratepayer paying special rates and charges, and the defendant, as a local authority, under the Local Government Act, did not entail any exclusive entitlement on the part of such ratepayer to:
 - (i) enjoy any specific benefit in respect of the ratepayer's land, by reason of any of the works, or specific work, the subject of overall plans or works undertaken;
 - (ii) make any determination or choice, in respect of such plan, or such works;
- (m) say, at all material times, the lake and waterways in Sovereign Waters were accessible, by bordering park areas, to any member of the public to enjoy the benefit of the same, whether or not a ratepayer or resident in the defendant's local government area, and whether or not by a vessel, flotation device, or otherwise;
- (n) say the lastmentioned persons enjoyed the benefit of the Sovereign Waters Works;
- (o) say in respect of the Sovereign Waters Works:
 - (i) no consent was sought from the second and third plaintiffs, or Sovereign Waters Group Member, to the conduct of any portion of such works;
 - (ii) no consent was given by the second and third plaintiffs or Sovereign Waters Group Member, to the conduct of any portion of such works;

- (iii) no written plan existed in respect of such works;
 - (iv) such works were undertaken on an ad hoc basis;
 - (v) any benefit furnished by such works was incidental to their undertaking;
- (p) say that the Special Charges:
- (i) did not constitute any consideration given by the first plaintiff or any Sovereign Waters Group Member for the conduct of the Sovereign Waters Works, to obtain or garner any specific or exclusive benefit;
 - (ii) but rather were merely levied, or purported to be levied, on each of them;
 - (iii) so levied in the absence of an overall plan promulgated and adopted by the defendant, so levied with no specific obligation assumed by the defendant by receipt of the Special Charges;
- (q) say, in the premises of this paragraph, the Sovereign Waters Works:
- (i) were not in aid of the second and third plaintiffs or any of the Sovereign Waters Group Members;
 - (ii) did not furnish any direct and comparable benefit to such persons.

6. As to paragraph 6 of the counterclaim, the plaintiffs:

- (a) admit the expenditure as identified in Annexures E to H as pleaded to above;
- (b) otherwise do not admit the purposes of the expenditure as pleaded to in paragraphs 6(a) to 6(e) as after reasonable enquiry, they are unable to say whether the allegation is true or false.

7. As to paragraph 7 of the counterclaim, the plaintiffs:

- (a) deny the allegation therein, which is to the effect that the special rates “were expended by the defendant on the specific purposes for which the [same] were levied, namely those pleaded in paragraph 5 of the counterclaim”;
 - (b) so deny the lastmentioned allegation on the basis that, in the plaintiffs’ belief, the allegations are untrue, because of the matters pleaded below in this paragraph;
 - (c) say there were no such specific purposes in existence, or specifically planned, on the occasion of the levying of the Special Rates because of the absence of an overall plan, and subsequent ad hoc conduct of the works, pleaded in the statement of claim and above in paragraph 5.
8. As to paragraph 8 of the counterclaim, the plaintiffs:
- (a) deny the allegation therein, namely that by the defendant expending the balance Special Charges, the second and third plaintiffs and the Sovereign Waters Group Members “received a direct and comparable benefit from the defendant ... in connection with the payment by them of the Special Charges”;
 - (b) deny the lastmentioned allegation on the basis that, in the plaintiffs’ belief, the allegation is untrue, because of the matters pleaded below in this paragraph;
 - (c) refer to and rely upon the matters pleaded above in paragraph 5;
 - (d) say, in the premises of this paragraph, as a matter of law or fact, such “direct and comparable benefit” allegation does not operate as a defence to, or diminution of, the plaintiffs’ cause of action for moneys had and received pleaded in paragraphs 28A and 28B of the statement of claim;
 - (e) say, further, that such allegation, as a matter of law, does not operate by way of defence to, or in diminution of, the plaintiffs’ cause of action in debt pleaded in paragraphs 27 and 28 of the statement of claim;

9. As to paragraph 9 of the counterclaim, the plaintiffs:

- (a) admit that the second and third plaintiffs and each of the Sovereign Waters Group Members, who owned homes on the lake, as a result of the Sovereign Waters Works, received a benefit by reason of the matters referred to therein;
- (b) save as aforesaid, deny the allegations therein on the basis that, in the defendant's belief, the allegations are untrue because of the matters pleaded below in this paragraph;
- (c) refer to and rely upon the matters pleaded above in paragraph 5;
- (d) say that the benefits referred to therein were indirect, and to the extent of navigation in and utilisation of the lake and revetment walls, and the appearance of the lake, were benefits enjoyed, and available to be enjoyed, by other persons, namely those referred to above in paragraph 5(m).

10. As to paragraph 10 of the counterclaim, the plaintiffs:

- (a) admit that the second and third plaintiffs received a benefit in respect of each of the matters referred to therein;
- (b) save as aforesaid, deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue because of the matters pleaded below in this paragraph;
- (c) refer to and rely upon the matters pleaded above in paragraphs 5 and 9.

11. As to paragraph 11 of the counterclaim, the plaintiffs:

- (a) deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue because of the matters pleaded below in this paragraph;
- (b) refer to and rely upon the matters pleaded above in paragraphs 5, 9 and 10.

12. As to paragraph 12 of the counterclaim, the plaintiffs:
- (a) deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue because of the matters pleaded below in this paragraph;
 - (b) refer to and rely upon the matters pleaded above in paragraphs 5, 9, 10 and 11.

Fourth Plaintiff

13. As to paragraph 13 of the counterclaim, the plaintiffs:
- (a) in pleading thereto, and hereinafter in paragraphs 14 to 20, refer to the invalidly levied special rates and charges in respect of the fourth plaintiff and the Raby Bay Group Members as **the Special Charges**, and the portion of same not returned to them as **the balance Special Charges**;
 - (b) admit that an amount in the sum of the balance Special Charges was expended by the defendant in respect of the Raby Bay Works referred to in the following subparagraph;
 - (c) admit the conduct, and the defendant's incurring of the expense, in respect of the Raby Bay Works referred to in Annexures I to N of the counterclaim (**Raby Bay Works**);
 - (d) admit that the defendant expended other funds from its consolidated revenue for the expenditure entailed on the Raby Bay Works;
 - (e) do not admit the lastmentioned funds which the defendant so expended in undertaking the Raby Bay Works in that, after reasonable enquiry, they are unable to say whether the allegation is true or false;
 - (f) do not admit the allegation concerning the proportion of expenditure by reference to the fourth plaintiff or any Raby Bay Group Member, on the basis that, after reasonable enquiry, they are unable to say whether the allegation is true or false;

- (g) admit that had it done so lawfully, the defendant could have sought to impose, under the *Local Government Act 2009* (Qld), special rates and charges, upon the fourth plaintiff and the Group Members, in the relevant years in which each was a landowner in Raby Bay;
- (h) admit that the Raby Bay Works had the effect of maintaining, but not improving, Raby Bay canals in an orderly, visually pleasing, navigable and structurally sound condition;
- (i) save as aforesaid, deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue, because of the matters pleaded below in this paragraph;
- (j) say, irrespective of whether or not the defendant had lawfully levied special rates and charges upon the fourth plaintiff and Raby Bay Group Members, the defendant was obliged to undertake the Raby Bay Works pursuant to obligations imposed on it under s 121 of the *Coastal Protection and Management Act 1995* (Qld) and its general government obligations under the *Local Government Act*;
- (k) say the defendant undertook the Raby Bay Works pursuant to the lastmentioned statutory obligations;
- (l) say the relationship between each of the fourth plaintiff and the Raby Bay Group Members, as a ratepayer paying special rates and charges, and the defendant, as a local authority, under the *Local Government Act*, did not entail any exclusive entitlement on the part of such ratepayer to:
 - (i) enjoy any specific benefit in respect of the ratepayer's land, by reason of any of the works, or specific work, the subject of overall plans or works undertaken;
 - (ii) make any determination or choice, in respect of such plan, or such works;
- (m) say, at all material times, the canals and waterways in Raby Bay were accessible, by water or bordering park areas, to any member of the public

to enjoy the benefit of the same, whether or not a ratepayer or resident in the defendant's local government area, and whether or not by a vessel, flotation device, or otherwise;

(n) say the lastmentioned persons enjoyed the benefit of the Aquatic Paradise works;

(o) say in respect of the Raby Bay Works:

(i) no consent was sought from the fourth plaintiff, or Raby Bay Group Member, to the conduct of any portion of such works;

(ii) no consent was given by the fourth plaintiff or Raby Bay Group Member, to the conduct of any portion of such works;

(iii) no written plan existed in respect of such works;

(iv) such works were undertaken on an ad hoc basis;

(v) any benefit furnished by such works was incidental to their undertaking;

(p) say that the Special Charges:

(i) did not constitute any consideration given by the first plaintiff or any Raby Bay Group Member for the conduct of the Raby Bay Works, to obtain or garner any specific or exclusive benefit;

(ii) but rather were merely levied, or purported to be levied, on each of them;

(iii) so levied in the absence of an overall plan promulgated and adopted by the defendant, so levied with no specific obligation assumed by the defendant by receipt of the Special Charges;

(q) say, in the premises of this paragraph, the Raby Bay Works:

(i) were not in aid of the fourth plaintiff or any of the Raby Bay Group Members;

- (ii) did not furnish any direct and comparable benefit to such persons.

14. As to paragraph 14 of the counterclaim, the plaintiffs:

- (a) admit the expenditure as identified in Annexures I to N as pleaded to above;
- (b) otherwise do not admit the purposes of the expenditure as pleaded to in paragraphs 14(a) to 14(i) as after reasonable enquiry, they are unable to say whether the allegation is true or false

15. As to paragraph 15 of the counterclaim, the plaintiffs:

- (a) deny the allegation therein, which is to the effect that the special rates "were expended by the defendant on the specific purposes for which the [same] were levied, namely those pleaded in paragraph 13 of the counterclaim";
- (b) so deny the lastmentioned allegation on the basis that, in the plaintiffs' belief, the allegations are untrue, because of the matters pleaded below in this paragraph;
- (c) say there were no such specific purposes in existence, or specifically planned, on the occasion of the levying of the Special Rates because of the absence of an overall plan, and subsequent ad hoc conduct of the works, plan pleaded in the statement of claim and above in paragraph 13.

16. As to paragraph 16 of the counterclaim, the plaintiffs:

- (a) deny the allegation therein, namely that by the defendant expending the balance Special Charges, the first plaintiff and the Raby Bay Group Members "received a direct and comparable benefit from the defendant ... in connection with the payment by them of the Special Charges";

- (b) deny the lastmentioned allegation on the basis that, in the plaintiffs belief, the allegation is untrue, because of the matters pleaded below in this paragraph;
 - (c) refer to and rely upon the matters pleaded above in paragraph 13;
 - (d) say, in the premises of this paragraph, as a matter of law or fact, such "direct and comparable benefit" allegation does not operate as a defence to, or diminution of, the plaintiffs' cause of action for moneys had and received pleaded in paragraphs 28A and 28B of the statement of claim;
 - (e) say, further, that such allegation, as a matter of law, does not operate by way of defence to, or in diminution of, the plaintiffs' cause of action in debt pleaded in paragraphs 27 and 28 of the statement of claim;
17. As to paragraph 17 of the counterclaim, the plaintiffs:
- (a) Save for a number of Raby Bay Group Members that do not reside on a canal, admit that the fourth plaintiff and each of the Raby Bay Group Members, who owned homes on a canal, as a result of the Raby Bay Works, received a benefit by reason of the matters referred to therein;
 - (b) save as aforesaid, deny the allegations therein on the basis that, in the defendant's belief, the allegations are untrue because of the matters pleaded below in this paragraph;
 - (c) refer to and rely upon the matters pleaded above in paragraph 13;
 - (d) say that the benefits referred to therein were indirect, and to the extent of navigation in and utilisation of the canal and revetment walls, and the appearance of the canal, were benefits enjoyed, and available to be enjoyed, by other persons, namely those referred to above in paragraph 13(m).
18. As to paragraph 18 of the counterclaim, the plaintiffs:
- (a) admit that the fourth plaintiff received a benefit in respect of each of the matters referred to therein;

- (b) save as aforesaid, deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue because of the matters pleaded below in this paragraph;
 - (c) refer to and rely upon the matters pleaded above in paragraphs 13 and 17.
19. As to paragraph 19 of the counterclaim, the plaintiffs:
- (a) deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue because of the matters pleaded below in this paragraph;
 - (b) refer to and rely upon the matters pleaded above in paragraphs 13, 17 and 18.
20. As to paragraph 20 of the counterclaim, the plaintiffs:
- (a) deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue because of the matters pleaded below in this paragraph;
 - (b) refer to and rely upon the matters pleaded above in paragraphs 13, 17, 18 and 19.
21. There is no paragraph 21.
22. As to paragraph 22 of the counterclaim, the plaintiffs:
- (a) deny the allegations therein on the basis that, in the plaintiffs' belief, the allegations are untrue, because of the matters pleaded below in this paragraph;
 - (b) refer to and rely upon the matters pleaded in paragraphs 13 to 20 of the statement of claim;
 - (c) say that the legislative breaches or non-compliance referred to therein (by reference to paragraphs 13 to 20 of the statement of claim):

- (i) deprived the defendant of any power to then proceed to levy “special rates or charges”, within the meaning of the Local Government Act 2009 (Qld), in respect of any land, as it purported to do in respect of each of the plaintiffs and the Group Members;
- (ii) in turn resulted in special rates and charges proceeding to be being levied on the land (of the plaintiffs and Group members) to which land such special rates or charges did not apply, for the purpose of the 2010 Regulation and the 2012 Regulation respectively (as pleaded in the statement of claim);
- (iii) resulted, further, in special rates or charges being levied that should not have been levied on any of the plaintiffs or any Group Member, as a ratepayer, for the purpose of the 2012 Regulation as amended from 5 December 2014(as pleaded in the statement of claim).

23. As to paragraph 23 of the counterclaim, the plaintiffs:

- (a) refer to and rely upon the admissions made above in this answer;
- (b) save as aforesaid, deny the allegations therein on the basis that, in the plaintiffs’ belief, the allegations are untrue, because of the matters pleaded below in this paragraph;
- (c) refer to and rely upon the matters pleaded above in the reply and in this answer.

1. ~~As to paragraph 1, Mr Kozik repeats and relies on the matters pleaded in the statement of claim and above and below in this reply and answer.~~

2. ~~As to paragraph 2, Mr Kozik:~~

- (a) ~~admits that the defendant expended that part of the Special Charges which has not been returned to either Mr Kozik or to Group Members whose land is located in Aquatic Paradise, Sovereign Waters and Raby Bay; and~~

~~(b) otherwise does not admit the allegations and is unable to plead further to them as the words "in aid of the Plaintiff and such persons" are vague and embarrassing.~~

3. ~~As to paragraph 2A, Mr Kozik:~~

~~(a) does not admit the allegations therein to the extent that they rely on the allegation the subject of the non-admission in subparagraph 2(b) above of this answer; and~~

~~(b) denies that the Annexure to the counterclaim identifies the "purposes" of the said expenditure, because the Annexure does not so identify the purposes of the expenditure; and~~

~~(c) subject to the above, admits the allegations in paragraph 2A.~~

4. ~~As to paragraph 3, Mr Kozik:~~

~~(a) admits that the funds were expended by the defendant on the works and actions as particularised in the Annexure to the counterclaim;~~

~~(b) repeats and relies on paragraph 2(b) above of this answer; and~~

~~(c) otherwise does not admit the allegations. Despite having made reasonable inquiries, Mr Kozik is unable to admit or deny the allegations as the defendant's purpose or purposes for levying the Special Charges is not a matter within Mr Kozik's knowledge or means of knowledge.~~

5. ~~Mr Kozik denies the allegations in paragraph 4 and believes that they are untrue because:~~

~~(a) neither Mr Kozik nor any of the Group Members received a "direct and comparable benefit from the Defendant/Counterclaimant in connection with the payment by them of the Special Charges";~~

~~(b) the meaning of the words "received a direct and comparable benefit from the Defendant/Counterclaimant in connection with the payment by them of the Special Charges" is neither identified nor clear;~~

~~(c) the counterclaim does not plead or allege:~~

~~(i) any facts by which it could be asserted or concluded that Mr Kozik, nor any of the Group Members, received any "direct and comparable benefit from the Defendant/Counterclaimant in connection with the payment by them of the Special Charges";~~

~~(ii) any facts that could establish the transfer of any value, in the form of money or money's worth, from the defendant to Mr Kozik or any of the Group Members;~~

~~(iii) alternatively, any facts to identify the value of any benefit transferred from the defendant to Mr Kozik or any of the Group Members;~~

- (iv) — that any goods or services were supplied by the defendant to Mr Kozik or any of the Group Members;
 - (v) — that Mr Kozik or any of the Group Members was under any legal obligation to carry out any or all of the works or actions referred to in the Annexure to the counterclaim; or
 - (vi) — that any or all of the works or actions referred to in the Annexure to the counterclaim were carried out at Mr Kozik's or any of the Group Members' request;
 - (d) — the works and actions referred to in the Annexure to the counterclaim have not been, and are not capable of, being accepted by Mr Kozik or any of the Group Members; and
 - (e) — further or alternatively, neither Mr Kozik nor any of the Group Members received, or are alleged to have received, any economic benefit from the works.
6. — Mr Kozik does not admit the allegations in paragraph 5. Despite having made reasonable inquiries, Mr Kozik does not know the truth or falsity of the allegations and is unable to admit or deny them.
7. — As to paragraph 6, Mr Kozik:
- (a) — admits that it was wrongful to have so applied the funds as the defendant did, given that:
 - (i) — the Resolutions were not passed according to law;
 - (ii) — it was incumbent on the defendant, in exacting revenue from ratepayers, to:
 - [A] — be familiar with all legal requirements for doing so, including the 2010 and 2012 Regulations;
 - [B] — comply with those legal requirements; and
 - [C] — if, in the event that the defendant failed to comply with or apply those legal requirements, either not levy the Special Charges or return any Special Charges levied to the ratepayers. Mr Kozik repeats and relies on the matters pleaded in the statement of claim and above in the reply; and
 - (b) — says further that the defendant does not plead or identify when it first knew or suspected that the Resolutions were in breach of the 2010 Regulation and the 2012 Regulation, as pleaded in paragraph 20 of the statement of claim.
8. — Mr Kozik denies the allegations in paragraph 7 and believes that they are untrue because:
- (a) — change of position is not a defence to Mr Kozik's claim;
 - (b) — in any event, the defendant did not change its position by expending part of the Special Charges including because:

- (i) — none of the works and actions referred to in the Annexure to the counterclaim are said to have been works or actions which either Mr Kozik or any of the Group Members were legally obliged to carry out; and
- (ii) — the said works were a normal part of the defendant's work to maintain canals and lakes in its local government area such that, if it had not levied and spent the Special Charges, it would have:
- [A] — carried out the works in any event; and
- [B] — spent other money instead of the funds levied from the Group Members,
- and further such that:
- [C] — the receipt of the funds did not cause or contribute to any change of position on part of the defendant; and
- [D] — the payment of the debt or return of equivalent value / funds to Mr Kozik and the Group Members would not place the defendant in any worse position than had it not received and expended the funds from Mr Kozik and the Group Members;
- (c) — the defendant did not irreversibly change its position as it was able lawfully to levy further rates or charges without excessive cost, effort or expense;
- (d) — any assumption adopted by the defendant as to the lawful basis of its receipt of incorrectly levied Special Charges was unreasonable, and the defendant thereby did not act in good faith, in circumstances where:
- (i) — the defendant was the local government authority for the Redland local government area with responsibility for levying of rates and the Special Charges according to law; and
- (ii) — the defendant did not make any, or any adequate, inquiries or seek legal advice to ensure that the Resolutions complied with s 28(3) and (5) of the 2010 Regulation and s 94(2) and (4) of the 2012 Regulation before issuing the rates notices pleaded in paragraph 8 of the statement of claim, or otherwise exercise reasonable care with a view to ensuring that the Resolutions complied with the said regulations; and
- (e) — says further that the defence of change of position is not available to the defendant because:
- (i) — as a matter of law, the retention by a public authority of payments exacted without lawful authority is against public policy, except where parliament has explicitly conferred a right to retain such payments;
- (ii) — is not available to a public authority in respect of taxation or revenue matters; and
- (iii) — paragraph 7 does not plead the necessary material facts by which a change of position defence could be established.

9. — Mr Kozik denies the allegations in paragraph 8 and believes that they are untrue because of the matters pleaded in subparagraphs 8(b) to (d) above of the reply.

10. — As to paragraph 9, Mr Kozik:

(a) — denies the allegations in subparagraph (a) and believes that they are untrue because, by reason of the matters pleaded in the statement of claim and above in this reply and answer:

(i) — the premises of the counterclaim are incorrect;

(ii) — neither Mr Kozik nor any of the Group Members benefitted from the defendant's expenditure of the funds as alleged;

(iii) — the defendant:

[A] — did not change its position on the faith of the receipt of the funds;

[B] — further or alternatively, did not change its position in good faith;

[C] — would not suffer any relevant detriment if ordered to pay the funds to the plaintiff and the Group Members, either as a debt or by way of restitution; and

[D] — knew or ought reasonably to have known that the Resolutions did not comply with the Regulations applicable to the lawful exaction of the funds from Mr Kozik and the Group Members; and

(iv) — otherwise, of the matters pleaded in paragraphs 5 and 8 above of this answer;

(b) — denies the allegations in subparagraphs (b), (c) and (d) and believes that they are untrue because:

(i) — the expenditure of the funds on the works carried out by the defendant did not transfer any value or benefit to Mr Kozik or the Group Members as alleged or in any way that would:

[A] — render it inequitable to order the defendant to pay to Mr Kozik and the Group Members the sum claimed in this proceeding, whether as a debt or by way of restitution; and

[B] — lead to Mr Kozik or the Group Members being unjustly enriched if the defendant were ordered to pay the sum claimed in this proceeding; and

(ii) — otherwise, of the matters pleaded in paragraph 5 above of this answer;

(c) — alternatively, denies the allegations in subparagraph (d) because:

(i) — the canals and lake comprising parts of Raby Bay, Aquatic Paradise and Sovereign Waters are open and accessible to members of the public generally such that:

[A] — any benefit received by Mr Kozik or any Group Member from the works was equal to that of the public; and

[B] — it does not follow, from the proximity of Mr Kozik's or Group Members' properties to where the works were carried out, that Mr Kozik or any of the Group Members would be unjustly enriched if the defendant were required to pay or repay the funds;

(d) — as to subparagraph (e):

(i) — denies the allegations therein and believes that they are untrue as a matter of law;

(ii) — says further that they allegations are irrelevant to Mr Kozik's pleaded action in debt; and

(iii) — further denies that, as a matter of law, the exaction of the Special Charges was a mere technical breach by which the defendant may be excused from or avoid having to pay the sum claimed in this proceeding;

(e) — denies the allegations in subparagraph (f) and believes that they are untrue because:

(i) — of the matters pleaded in paragraph 9 above of the reply and paragraph 23 and 28 of the statement of claim; and

(ii) — section 32(2) of the 2010 Regulation and s 98(2) of the 2012 Regulation, properly construed, provide for the recovery of incorrectly levied charges without limitation or distinction between spent and unspent charges;

(f) — denies the allegations in subparagraph (g) and believes that they are untrue because:

(i) — the allegations are incorrect as a matter of law; and

(ii) — by reason of the matters pleaded in the statement of claim and above in this reply and answer, the defendant is not entitled to decline to pay or refund the unspent portion of the Special Charges to Mr Kozik and the Group Members respectively; and

(g) — says further as to subparagraph (g), that reg. 32(2) of the 2010 Regulation and reg. 98(2) of the 2012 Regulation:

(i) — give rise to a mandatory obligation to return incorrectly levied charges, whether already spent by the defendant or not; and

(ii) — otherwise excludes any element of discretionary judgment in the defendant whether to return such charges, whether or not the defendant has already spent the funds raised by those charges.

11. — Mr Kozik otherwise objects in point of law as the facts and matters pleaded in the counterclaim disclose no basis for the relief sought in the counterclaim.

Signed:

Description: Solicitors for the Plaintiffs

Dated:

This pleading was settled by Mr Douglas of Queen's Counsel and Mr J. Meredith
Mr P. D. Hay of Counsel.