

RULE 11.15(4)(a)

FORM 11A



Case: S ECI 2025 07766

Filed on: 03/08/2026 11:05 AM

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

S ECI 2025 07766

BETWEEN

STANISLAW KORKLINIEWSKI

Plaintiff

AND

MELBOURNE WATER CORPORATION

First Defendant

AND

GHD PTY LTD (ACN 008 488 373)

First Third Party

(and others in accordance with the schedule)

AMENDED THIRD PARTY NOTICE

(Filed pursuant to Order 1 of the Orders dated 3 August 2026)

Date of Document: ~~7 April 2026~~

3 August 2026

Filed on behalf of: The First Defendant

Prepared by: Wotton Kearney

Level 30, 500 Bourke Street,

MELBOURNE VIC 3000

Solicitors Code: CR 113168

Tel: +61 3 9116 7809

Ref: GXA 3009831 MJR

Attention: Georgie Austin, Amanda Beattie

Email: Georgie.Austin@wottonkearney.com

Amanda.Beattie@wottonkearney.com

TO: GHD PTY LTD (ACN 008 488 373)

OF L15, 133-145 Castlereagh Street, Sydney NSW 2000

TAKE NOTICE that the plaintiff has brought this proceeding against the defendant for the claim set out in the writ and statement of claim served herewith.

AND TAKE NOTICE that the defendant disputes the plaintiff's claim on the grounds set out in the defendant's defence served with this notice, and claims to be entitled to relief against you on the grounds set out in the statement of claim indorsed on this notice.

IF YOU INTEND TO DISPUTE the plaintiff's claim against the defendant, or the defendant's claim against you, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- a. filing a "Notice of Appearance" with the Prothonotary by submitting the Notice of Appearance for filing electronically. See www.supremecourt.vic.gov.au; and
- b. on the day you file the Notice, serving a copy, sealed by the Court at the defendant's address for service, which is set out at the end of this notice.

IF YOU FAIL to file an appearance within the proper time you will be taken to admit the validity of any judgment against the defendant and your own liability to the defendant to the extent claimed in the statement of claim indorsed on this notice, and the defendant may OBTAIN JUDGMENT AGAINST YOU without further notice.

*THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- a. where you are served with the notice in Victoria, within 10 days after service;
- b. subject to paragraph c, where you are served with the notice out of Australia, within 42 days after service;
- c. where you are served with the notice in New Zealand under Part 2 of the *Trans-Tasman Proceedings Act 2010* of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed.

FILED

Prothonotary

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

S ECI 2025 07766

BETWEEN

STANISLAW KORKLINIEWSKI

Plaintiff

AND

MELBOURNE WATER CORPORATION

Defendant

AND

GHD PTY LTD (ACN 008 488 373)

First Third Party

(and others in accordance with the Schedule)

AMENDED STATEMENT OF CLAIM

1. On 23 December 2025, the Plaintiff and Group Members commenced proceedings against the Defendant / Plaintiff by Third Party Notice, Melbourne Water Corporation (**MWC**).
2. If, which is denied, MWC is adjudged to be liable to the Plaintiff and Group Members (or any of them), then MWC makes the following claims against the First Third Party / Defendant by Third Party Notice (**GHD**).
3. GHD:
 - (a) is and at all material times was a corporation incorporated pursuant to the *Corporations Act 2001* (Cth); and

- (b) engaged in the business of, inter alia, conducting hydraulic modelling.
4. In around May 2003, MWC entered into a contract with GHD by which GHD agreed to determine and map the 1:100 year Average Recurrence Interval flood levels (**ARI Levels**) of the Maribyrnong River from Footscray Road to the Canning Street Ford (**Stage A**) (**Contract**).

Particulars

The Contract is in writing, and comprises:

- (i) Consultancy Service Agreement between MWC and Gutteridge Haskins & Davey Pty Ltd (now known as GHD) dated 17 January 2000, headed “Contract No 5973”.
 - (ii) the email from Adam Dunn of MWC to Gavin Hay dated 6 May 2003.
 - ~~(iii) the terms contained in the document “Conditions of Purchase Order Minor Services”.~~
 - (iii) the letter from George Mallory of GHD to Mike Brown of MWC dated 14 May 2003 setting out a scope of works and fee estimate; and
 - (iv) email from Adam Dunn to George Mallory dated 19 May 2003. In that email, Adam Dunn (MWC) states “The project is to be done under the existing services agreement between Melbourne Water and GHD (Contract No 5973).”.
5. In around June 2003, MWC and GHD agreed to amend the scope of Contract such that GHD would also determine and map the ARI Levels of the Maribyrnong River from the Canning Street Ford to Stenson road (**Stage B**).

Particulars

- (i) The document titled “GHD Monthly Progress Report” dated 30 June 2003 states “The scope of the project has changed to included (sic) HEC-RAS modelling and flood mapping from Canning Street Ford to

Stenson Street (Stage B)". MWC does not presently know whether that agreed change in scope was in writing or oral.

6. The Contract contained the following express terms:

- (a) GHD ~~warrants that its~~ must provide the services the subject of the Contract such that they are fit for their intended purpose, and having regard to the assumptions that it can be reasonably expected to make in accordance with sound engineering practice would be fit for the purposes or results for which they are required by MWC and will be of such a nature and quality that they might reasonable be expected to achieve that result (cl 7(a)(ii)(v)) (Fitness for Purpose **Obligation Warranty**);
- (b) GHD:
 - (i) must provide its services the subject of the Contract with the degree of skill, care and diligence normally exercised by members of the profession or trade association of which GHD is a member when performing services of a similar nature (cl 7(a)(iii)); exercising the level of skill, care and attention that MWC can reasonably expect GHD to exercise (cl 7(a)(v)); and safely and in a thorough, workmanlike and competent manner (cl 7(a)(iv)); and
 - (ii) warrants that its services the subject of the Contract would be completed in a proper and in a proper and workmanlike manner and its personnel will exercise all due care and diligence in the provision of services the subject of the contract (cl 15.1(e)) and any materials supplied in connection with its services would be reasonably fit for the purpose for which they are supplied (Due Care **Obligation Warranty**); and
- (c) GHD:
 - (i) indemnifies MWC from and against all losses, damages, liabilities, express or implied, actions, suits, proceedings, claims, demands, costs and expenses which may be caused by or arise from or be suffered or incurred directly or indirectly by reason of any breach by GHD of the

provisions of cl 7 of the Contract providing that the losses, damages and liabilities have not been contributed to by Melbourne Water or third parties (cl 7(a)(i)(iii)); and

- (ii) indemnifies and keeps MWC indemnified from and against all costs, claims or actions arising from (a) any breach of GHD's obligations under the Contract; and (b) any negligence or wilful act or omission by GHD (cl 19) loss, liability, claim, suit, legal expenses and costs both direct and consequential which MWC may sustain or incur or have made against it as a result of or contributed to by any act or omission of GHD (cl 14)-(Indemnity).

Particulars

- ~~(i) — The email from Adam Dunn of MWC to Gavin Hay of GHD dated 6 May 2003 states “Work to be done under the existing Melbourne Water GHD provision of services agreement.”~~
- ~~(ii) — The existing services agreement” referred to in the above email contained the terms set out in the MWC document titled “Conditions of Purchase Order Minor Services”, including the Fitness for Purpose Warranty, the Due Care Warranty, and the Indemnity.~~
- (i) Consultancy Service Agreement between MWC and Gutteridge Haskins & Davey Pty Ltd (now known as GHD) dated 17 January 2000, headed “Contract No 5973”.

7. In around August 2003, GHD provided MWC with a report by which it provided the modelled ARI Levels at cross-sections of the area of the Maribyrnong River the subject of Stage A and Stage B of the Contract.
8. The Modelled Flood Levels (or any of them) the subject of GHD's August report (**GHD Modelled Flood Levels**) were below the true ARI Levels.

Particulars

- (i) The Plaintiff alleges at paragraph 9 of its Statement of Claim that the “GHD Modelled Flood Levels significantly underestimated the 1% annual exceedance probability levels at the RRV”.

- 9. In the premises of paragraph 8 above, GHD’s provision of the GHD Modelled Floor levels was a breach the Fitness for Purpose Obligation Warranty and / or the Due Care Obligation Warranty (**GHD Breach**).

Causation of loss

- 10. In around 2004, Retirement Services Australia and Metricon Homes lodged with the Moonee Valley City Council a planning permit for the development of the Land into an aged care or retirement village facility.
- 11. In reliance upon the GHD Breach, on 22 December 2005, MWC informed the Moonee Valley City Council that it not object to the above application on the condition that, amongst other things, the Finished Floor Levels (**FFLs**) were above the GHD Modelled Flood Levels (**MWC Condition**).

Particulars

MWC relies upon the following parts of its letter to the Moonee Valley City Council dated 22 December 2005:

- (i) at paragraph 3, MWC stated: “Finished floor levels must a be a minimum of 600mm above the applicable flood level”; and
 - (ii) MWC stated the GHD Modelled Levels under the headings titled “Footnote(s) to be placed on Permit” and “Advice to Council / Applicant”: “*The estimated flood level at the property grades uniformly from 6.4 metres to Australian Height Datum at the western corner of the property down to 6.0 metres to Australian Height Datum at the northern side of the property (south side of the Canning Street Bridge)*”.
- 12. In June 2006:
 - (a) VCAT granted the above development application, subject to, amongst other things, the MWC Condition; and

- (b) the Moonee Valley City Council issued planning permit MV/16866/2004 with respect to the development.

Particulars

- (i) *Retirement Services Australia & Metricon Homes v VicRoads & Others* [2006] VCAT 1172.
 - (ii) Planning permit MV/16866/2004 issued 28 June 2006.
13. The Amended Planning permit issued on 15 August 2011 also contained the MWC Condition.

Particulars

- (i) Amended Planning Permit dated 15 August 2011, cl 37.
14. On or about 14 October 2022, heavy rain caused swelling of the Maribyrnong River, including where it runs beside the Rivervue Retirement Village (**RRV**) (**Flood Event**).
15. If, at the time of the Flood Event, the as-constructed FFLs at the RRV (or any of them) were above the GHD Modelled Flood levels (or any of them), but at or below the Flood Event flood levels at the RRV (or any of them), then the GHD Breach caused part or all of the inundation at the RRV as alleged by the Plaintiff.
16. Further or in the alternative, if, which is denied, the GHD Modelled Floor Levels caused the RRV to be Flood Prone (as alleged at paragraph 23(a) of the Statement of Claim), then the GHD Breach caused the RRV (or part of it) to be Flood Prone.
17. If, which is denied, MWC is liable to the Plaintiff and Group Members (or any of them), then the GHD Breach caused MWC loss or damage.

Particulars

- (i) MWC's loss or damage comprises any liability it may have to the Plaintiff and Group Members in this proceeding (which liability is denied).

18. Pursuant to the Indemnity, GHD is liable to indemnify MWC for any liability it may have to the Plaintiff and Group Members in this proceeding (which liability is denied), as well as with respect to the costs of and incidental to this proceeding incurred by MWC.

**AND THE DEFENDANT / PLAINTIFF BY THIRD PARTY NOTICE CLAIMS
AGAINST THE FIRST THIRD PARTY:**

- A. Damages
- B. Indemnity
- C. Interest
- D. Costs
- E. Such further or other orders as the Court considers appropriate.

3 August 2026

J J Gleeson

J Lipinski

Wotton Kearney
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Wotton Kearney

Solicitors for the First Defendant

Schedule of Parties

Stanislaw Korkliniewski	Plaintiff
Melbourne Water Corporation	First Defendant
Moonee Valley City Council	Second Defendant
GHD Pty Ltd	First Third Party

1. This notice was filed—

b. for the defendant by Wotton Kearney, of L30, 500 Bourke Street, Melbourne VIC 3000;

2. The address of the defendant is— 990 La Trobe Street, Docklands VIC 3008

3. The address for service of the defendant is— c/- Wotton Kearney, L30, 500 Bourke Street, MELBOURNE VIC 3000.

3A. The email address for service of the defendant is— Georgie.Austin@wottonkearney.com and Amanda.Beattie@wottonkearney.com

4. The address of the third party is— L15, 133-145 Castlereagh Street, Sydney NSW 2000