



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

S ECI 2025 07766

Case: S ECI 2025 07766

Filed on: 07/08/2026 05:56 PM

BETWEEN

STANISLAW KORKLINIEWSKI

Plaintiff

and

MELBOURNE WATER CORPORATION

First Defendant

and

MOONEE VALLEY CITY COUNCIL

Second Defendant

and

GHD PTY LTD (ACN 008 488 373)

Third Party

DEFENCE OF THE THIRD PARTY

(filed pursuant to Order 3 of the Orders of the Honourable Justice Keogh made on 3 August 2026)

Date of Document: 7 August 2026
Filed on behalf of: GHD Pty Ltd, Third Party
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In answer to the Amended Statement of Claim of the First Defendant (**MWC**) dated 3 August 2026 (**ASOC**), indorsed on Amended Third Party Notice filed 3 August 2026, the Third Party (**GHD**) says as follows:

Parties

1. It admits the allegations in paragraph 1.
2. It admits the allegations in paragraph 2.
3. It admits the allegations in paragraph 3.
4. It denies the allegations in paragraph 4 and says that, in around May 2003, MWC entered into a contract with GHD by which GHD agreed to produce and document a HEC-RAS model 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**) on the bases, among others, that in respect of the reach of the River from Plantation Street to the Canning Street Ford:

- (a) MWC would provide GHD with:
 - (i) surveyed cross-sections, at approximately 200m spacings, in HEC2 format;
 - (ii) terrain data (photogrammetry) of the floodplain;
 - (iii) 1m contours in MapInfo format;
 - (iv) all required bridge details; and
 - (v) the 100 year ARI steady state flood flows to be used in the model and associated locations if the flow changed;
- (b) the model was not to be calibrated to historic flood levels or other data;
- (c) the downstream starting condition was to be based on the existing Lower Maribyrnong HEC-RAS model produced by GHD for MWC in February 2003; and
- (d) a property or floor level database was not required by MWC.

Particulars

The contract was in writing and comprised:

- (a) Consultancy Services Agreement between MWC and Gutteridge Haskins & Davey Pty Ltd (now GHD) dated 17 January 2000, styled “Contract No 5973” (**CSA**);
- (b) an email from Adam Dunn of MWC to Gavin Hay of GHD dated 6 May 2003;
- (c) a fax from Gavin Hay of GHD to Adam Dunn of MWC dated 7 May 2003;

- (d) an email from Adam Dunn of MWC to Gavin Hay of GHD sent on 8 May 2003 at or about 1.50pm;
- (e) a fax from George Mallory of GHD to Adam Dunn of MWC sent on 8 May 2003 at or about 5.45pm;
- (f) an email from Adam Dunn of MWC to George Mallory of GHD sent on 8 May 2003 at or about 5.59pm;
- (g) a letter from George Mallory of GHD to Mike Brown of MWC dated 12 May 2003; and
- (h) an email from Adam Dunn of MWC to George Mallory of GHD dated 19 May 2003.

5. As to paragraph 5, it:

- (a) denies the allegations therein;
- (b) refers to and repeats paragraph 4 above; and
- (c) says that MWC commissioned GHD to produce and document a HEC-RAS model to determine and map the ARI Levels of the Maribyrnong River from the Canning Street Ford to Stenson Road (**Stage B**) pursuant to a separate contract from that pleaded in paragraph 4 above.

Particulars

The contract was in writing and comprised:

- (a) the CSA;
- (b) a letter from George Mallory of GHD to Mike Brown of MWC dated 28 May 2003; and

(c) an email from Adam Dunn of MWC to George Mallory of GHD dated 20 June 2003.

6. As to paragraph 6, it:

(a) refers to and repeats paragraph 4 above;

(b) says that the contract between the parties alleged in paragraph 4 above contained express terms that:

(i) GHD must well and faithfully complete the “Services” (a defined term):

(A) 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 (CSA, cl 7(a)(iii));

(B) safely and in a thorough, workmanlike and competent manner (CSA, cl 7(a)(iv));
and

(C) such that the Services are fit for their intended purpose; and having due regard to the assumptions that GHD can be reasonably expected to make in accordance with sound engineering practice and exercising the level of skill, care and attention that MWC can reasonably expect GHD to exercise (CSA, cl 7(a)(v));

(ii) GHD warrants that all work done by the Personnel (a defined term) will be completed in a proper and workmanlike manner and the Personnel will exercise all due care and diligence in the provision of the Services (CSA, cl 15.1(e));

(iii) GHD:

(A) 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 CSA providing

that the losses, damages and liabilities have not been contributed to by MWC or third parties (CSA, cl 7(i)(iii)); and

(B) indemnifies and keeps MWC indemnified from and against all costs, claims or actions arising from:

(1) any breach of GHD's obligations under the CSA; or

(2) any negligence or wilful act or omission by GHD,

save to the extent that the act, omission, breach or negligence complained of is directly caused or contributed [to] by the negligent act or omission of MWC or its personnel (CSA, cl 19); and

(c) otherwise denies the allegations therein.

7. As to paragraph 7, it:

(a) refers to and repeats paragraphs 4–5 above;

(b) otherwise admits the allegations in paragraph 7; and

(c) says further that:

(i) GHD provided MWC with two versions of the report pleaded in paragraph 7, one (**rev 0**) on or about 22 August 2023 and another (**rev 1**), which was expressed to supersede rev 0, on or about 3 September 2003;

Particulars

Letter from George Mallory of GHD to Adam Dunn of MWC dated
3 September 2003.

- (ii) prior to providing either of the versions referred to in subparagraph (i) above, by email from George Mallory of GHD to Adam Dunn of MWC sent on or about 6 June 2003, GHD:
- (A) advised MWC that GHD had developed a HEC-RAS model for the reach of the Maribyrnong River from Plantation Street to the Canning Street Ford;
 - (B) provided MWC with preliminary ARI levels from the model at cross-sections of the reach of the Maribyrnong River from Plantation Street to the Canning Street Ford; and
 - (C) advised MWC that “[t]he model has been developed without calibration data to assist in the determination of appropriate planning flood levels. The model should not be modified or used for other purposes without a thorough understanding of its reliability and inherent limitations”; and
- (iii) by rev 1 of the report pleaded in subparagraph (i) above, GHD:
- (A) expressly stated that: “The flood extents mapped for both Stage A and Stage B were based on the 100 year ARI total energy level (TEL). This methodology of adopting total energy levels as opposed to water surface levels is in keeping with the ‘Maribyrnong River Hydraulic Model, Final Report, February 2003’ (Ref. 1), and is explained therein” (section 4.1);
 - (B) mapped the flood extent as extending over parts of the floodplain on which the Rivervue Retirement Village (**RRV**) was subsequently constructed (**Property**); and
 - (C) estimated the 100 year ARI TEL at the Property as ranging between 6.4 m AHD at the western boundary to 6.0 m AHD at the northern boundary (south side of the Canning Street Bridge).

8. As to paragraph 8, it:
- (a) denies each and every allegation therein; and
 - (b) further or in the alternative, says that, if the flood levels modelled by GHD significantly underestimated the 1% annual exceedance probability levels at the RRV, that was a result of:
 - (i) the data provided to GHD by MWC, as pleaded in paragraph 4(a) above;
 - (ii) the fact that, as pleaded in paragraph 4(b) above, MWC engaged GHD to develop a model that was not calibrated to historic flood levels; and/or
 - (iii) the fact that MWC did not advise GHD of the existence of, or provide GHD with, historic flood levels for any part of the reach of the Maribyrnong River between Plantation Street and the Canning Street Ford from the 1974 flood or otherwise.
9. It denies each and every allegation in paragraph 9 and refers to and repeats paragraphs 4 and 6–8 above.
10. As to paragraph 10, it:
- (a) admits that, in or about December 2004, the Planning Group (Vic) Pty Ltd (**Planning Group**), on behalf of Retirement Services Australia and Metricon Homes Pty Ltd, lodged with the Second Defendant (**MVCC**) a planning permit application in respect of the Property for “use & development of a retirement village & nursing home & associated services, creation of an access to land in a category 1 road zone, removal of native vegetation, variation of the car parking requirements and construction works to alter the 1 in 100 year flood line”; and
 - (b) otherwise denies the allegations therein.
11. As to paragraph 11, it:
- (a) refers to and repeats paragraph 9 above;

- (b) says that, on or about 22 December 2005, MWC informed the MVCC that it did not object to the planning permit application pleaded in paragraph 10(a) above, as amended, subject, among other things, to:
 - (i) a condition that finished floor levels must be a minimum of 600 mm above the applicable flood level (**MWC Freeboard Condition**); and
 - (ii) the placement of a footnote on the permit that “[t]he estimated flood level for 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 boundary (south side of the Canning Street Bridge)” (**applicable flood level**); and
- (c) otherwise denies the allegations therein.

12. As to paragraph 12, it:

- (a) refers to and repeats paragraph 11 above,
- (b) otherwise admits the allegations in paragraph 12; and
- (c) says further that:
 - (i) VCAT found “no basis to reject the proposal” for reasons relating to flooding based not only on MWC’s lack of objection but also on the basis of a report from Neil M Craigie Pty Ltd and the evidence of hydrologist, Dr A McCowan;

Particulars

Retirement Services Australia v VicRoads [2006] VCAT 1172 at [57]–[61].

- (ii) neither the conditions imposed by VCAT nor the planning permit issued by the MVCC pursuant to VCAT’s orders contained the footnote pleaded in paragraph 11(b)(ii) above;

(iii) there were also conditions of the planning permit that:

- (A) “All finished floor levels to accord with Melbourne Water’s requirements”; and
- (B) “The layout of the site and the size, design and location of the buildings and works permitted must be carried out in accordance with the endorsed plans and must not be altered or modified without the further written consent of the [MVCC]”.

Particulars

Conditions 1(d) and 2, respectively.

12A. It says that:

- (a) on or about 25 March 2009, the Planning Group, on behalf of Retirement Services Australia and Metricon Homes Pty Ltd, wrote to MWC requesting MWC’s consent, pursuant to the MWC Freeboard Condition, to the proposed floor levels for a number of buildings proposed to be constructed at the Property;
- (b) the proposed floor levels for certain buildings:
 - (i) ranged between 6.4 m AHD and 6.76 m AHD; and
 - (ii) were not:
 - (C) a minimum of 600 mm above the applicable flood level; or
 - (D) compliant with the MWC Freeboard Condition;

Particulars

The buildings were unit nos. 39, 41, 43, 45, 47, 49, 51, 53 and 121–137 and the clubhouse.

- (c) notwithstanding subparagraph (b) above, on or about 22 April 2009, MWC wrote to the Planning Group in response to the request pleaded in subparagraph (a) above and stated that “Melbourne Water has no objection to the amended floor levels as shown in the letter detailed above. The levels comply with the revised flood levels supplied to Melbourne Water and confirmed in our letter dated 3 February 2009”; and
- (d) in reliance on MWC’s view that the levels complied with the MWC Freeboard Condition, on or about 2 June 2009, the MVCC endorsed, pursuant to the condition of the planning permit pleaded in paragraph 12(c)(iii)(B) above, a revised set of plans for the Property issued by DL Design Group that depicted:
 - (i) “adjusted flood levels” ranging from 5.64 m AHD to 5.85 m AHD; and

Particulars

Sections A–A, B–B, C–C, D–D, E–E, I–I.

- (ii) proposed floor levels for a number of buildings that had the characteristics pleaded in subparagraph (b) above.

Particulars

The proposed floor levels for unit nos. 39, 41, 43, 45, 47, 49, 51, 53 and 122–137 and the clubhouse ranged between 6.4 m AHD and 6.540 m AHD. The proposed floor level for unit no. 121 was 6.76 m AHD.

13. As to paragraph 13, it:

- (a) refers to and repeats paragraph 11 above;
- (b) otherwise admits the allegations in paragraph 13; and
- (c) says further that the amended planning permit issued by the MVCC:

- (i) did not contain the footnote pleaded in paragraph 11(b)(ii) above; and
- (ii) was subject to the same conditions as pleaded in paragraph 12(c)(iii) above.

Particulars

Conditions 1(b) and 3, respectively.

13A. It says that:

- (a) by letter dated 19 September 2011, MWC wrote to the MVCC stating that MWC was satisfied that the development plans and civil drawings submitted to it by the MVCC satisfied, among other things, the MWC Freeboard Condition in the amended planning permit;
- (b) the development plans and civil drawings referred to in the letter pleaded in subparagraph (a) above included architectural plans issued by McCabe Architects in June 2011 that depicted:
 - (i) “adjusted flood levels” ranging from 5.64 m AHD to 5.85 m AHD; and

Particulars

Sections A–A, B–B, C–C, D–D, E–E, I–I, F–F.

- (ii) finished floor levels for a number of buildings that:
 - (A) ranged from 6.4 m AHD to 6.9 m AHD; and
 - (B) did not comply with the MWC Freeboard Condition.

Particulars

Sections B–B, C–C, D–D, E–E, I–I, G–G.

- (c) in reliance on MWC’s view that the levels complied with the MWC Freeboard Condition, on a date presently unknown to GHD, the MVCC endorsed the architectural plans pleaded in subparagraph (b) above; and

- (d) the finished floor levels were not altered in the subsequent versions of the architectural plans endorsed by the MVCC in or about 8 May 2013, 8 July 2013, 25 February 2014, 18 August 2014, 2 March 2015 or 6 January 2016, save to the extent that, in the version consented to and endorsed by the MVCC on 6 January 2016, the finished floor levels of certain buildings forming part of Stage 3 of the development of the RRV were decreased from 6.4 m AHD to 6.32 m AHD.

14. It admits the allegations in paragraph 14.

15. As to paragraph 15, it:

- (a) denies the so-called GHD Breach and refers to and repeats paragraph 9 above; and
- (b) in the alternative:
 - (i) denies that the so-called GHD Breach caused part or all of the inundation at the RRV alleged by the Plaintiff; and
 - (ii) says that that inundation was caused by:
 - (A) the acts or omissions of MWC pleaded in paragraphs 8(b), 12A(c) and 13A(a) above and in paragraph 20 of the plaintiff's statement of claim dated 23 December 2025;
 - (B) MWC's decision to set the MWC Freeboard Condition as a minimum of 600 mm above the applicable flood level, rather than some higher figure, including in circumstances where it knew that the model the subject of the contract pleaded in paragraph 4 above was not calibrated to historic flood levels;
 - (C) MWC's failure to review or update its flood modelling of the reach of the Maribyrnong River from Plantation Street to the Canning Street Ford between 2003 and the Flood Event;

- (D) the acts or omissions of Metricon, Casey Developments and/or the Planning Group, as pleaded in paragraphs 77–82 of MWC’s defence to the plaintiff’s statement of claim filed on 7 April 2026 (**MWC’s Defence**);
- (E) the acts or omissions of DL Design Group and/or McCabe Architects pleaded in paragraphs 12A(d) and 13A(b) above, respectively; and/or
- (F) the acts or omissions of the MVCC, as pleaded in paragraphs 12A(d) and 13A(c)–(d) above and in paragraphs 96–97 and 104 of MWC’s Defence.

16. As to paragraph 16, it:

- (a) denies that the GHD Modelled Flood Levels caused the RRV to be Flood Prone;
- (b) denies the so-called GHD Breach and refers to and repeats paragraph 9 above;
- (c) in the alternative:
 - (i) denies that the so-called GHD Breach caused the RRV (or part of it) to be Flood Prone; and
 - (ii) says that, if the RRV (or part of it) was Flood Prone, that circumstance was caused by the acts or omissions pleaded in paragraphs 15(b)(ii)(A)–(F) above.

17. As to paragraph 17, it:

- (a) denies the so-called GHD Breach and refers to and repeats paragraph 9 above;
- (b) in the alternative:
 - (i) denies that the so-called GHD Breach caused MWC loss or damage; and
 - (ii) says that, if MWC has suffered loss or damage, that loss or damage was caused by the acts or omissions pleaded in paragraphs 15(b)(ii)(A)–(F) above.

18. As to paragraph 18, it:

- (a) denies each and every allegation therein;
- (b) refers to and repeats paragraphs 9, 15–17 above; and
- (c) in the alternative, says that:
 - (i) if MWC is liable to the Plaintiff or any Group Member in the proceeding, that liability (as well the costs of and incidental to the proceeding incurred by MWC) was contributed to by MWC or third parties (being Metricon, Casey Developments, the Planning Group, DL Design Group, McCabe Architects and/or the MVCC) for the purposes of the indemnity pleaded at paragraph 6(a)(iii)(A) above; and

Particulars

GHD refers to and repeats paragraphs 15(b)(ii)(A)–(F) above.

- (ii) any act, omission, breach or negligence of GHD giving rise to any cost of, or claim or action against, MWC was directly caused or contributed to by the negligent act or omission of MWC or its personnel for the purposes of the indemnity pleaded at paragraph 6(a)(iii)(B) above.

Particulars

GHD refers to and repeats paragraph 15(b)(ii)(A)–(C) above.

Limitation defence

19. Pursuant to s 5(1)(a) of the *Limitation of Actions Act 1958* (Vic), actions founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

20. As alleged, the claims against GHD for breach of contract pleaded in paragraphs 1–17 of the ASOC

(Breach of Contract Claims):

(a) are actions founded on simple contract;

(b) accrued in or about August 2003; and

Particulars

ASOC, paragraphs 7–9.

(c) were brought for the first time on 3 August 2026, when the ASOC was filed.

21. In the premises, each of the Breach of Contract Claims is statute-barred.

Dated: 7 August 2026

K FOLEY

R MINSON

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Lander & Rogers
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Lander & Rogers

Solicitors for the Third Party