

## **DRAFT NOTICE OF APPEAL**

### **COURT DETAILS**

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	2023/00084603

### **TITLE OF PROCEEDINGS**

Appellant	<b>The Owners – Strata Plan No. 84674</b>
First respondent	<b>Pafburn Pty. Limited</b> <b>(ACN 003 485 505)</b>
Second respondent	<b>Madarina Pty. Limited</b> <b>(ACN 080 675 627)</b>

### **PROCEEDINGS IN THE COURT BELOW**

Title below	The Owners – Strata Plan No. 84674 v Pafburn Pty. Limited and Madarina Pty. Limited
Court below	Supreme Court of New South Wales
Case number below	2020/00340673
Date[ of hearing	16 February 2023
Material date	23 February 2023
Decision of	Rees J

### **FILING DETAILS**

Filed for	<b>The Owners – Strata Plan No. 84674, Appellant</b>
Filed in relation to	Decision below in relation to <i>The Owners – Strata Plan No 84674 v Pafburn Pty Ltd</i> [2023] NSWSC 116 (hearing date: 16 February 2023 and decision date: 23 February 2023)
Legal representative	Colin Grace, Grace Lawyers Pty Limited
Legal representative reference	GL 191281.1
Contact name and telephone	Sean Turner, [REDACTED]
Contact email	[REDACTED]

### **HEARING DETAILS**

This notice of appeal is listed for directions at

**TYPE OF APPEAL**

Statutory Interpretation

**DETAILS OF APPEAL**

1 This appeal is brought under s 101(2)(e) of the *Supreme Court Act 1970* (NSW)

The appellant has filed and served a notice of intention to appeal, which was served on the prospective respondents on 15 March 2023.

2 The appellant appeals from the whole of the decision below.

**APPEAL GROUNDS**

1 The primary judge erred in concluding that the statutory duty created by section 37 of the *Design and Building Practitioners Act 2020* (NSW) (**DBP Act**) is not a "non-delegable duty" within the meaning of s 5Q of the *Civil Liability Act 2002* (NSW) (**CLA**).

2 The primary judge erred in failing to hold that a person who owes a duty under s 37 of the DBP Act is "vicariously liable", within the meaning of s 39(a) of the CLA, for the acts of those to whom the duty has been delegated.

3 In the alternative to orders 1 and 2, the primary judge erred in failing to hold that s 39 of the DBP Act imposes several liability on a person in respect of what would otherwise be an apportionable claim within the meaning of s 39(c) of the CLA.

4 The primary judge erred in failing to strike out the defendants' proportionate liability defences at paragraphs 27 and 29A of the defendants' first amended technology and construction list response.

5 The primary judge erred in failing to exercise her discretion to refuse leave to amend the proportionate liability defences on basis that the apportionable claims pleaded are time-barred.

**ORDERS SOUGHT**

1 Appeal allowed

2 The orders made on 16 February 2023 be set aside.

3 The respondents' proportionate liability defence be struck out.

4 The respondents pay the appellant's costs.

**UCPR 51.22 CERTIFICATE**

The right of appeal is not limited by a monetary sum


**#SIGNATURE OF LEGAL REPRESENTATIVE**

This notice of appeal does not require a certificate under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014.

I have advised the appellant[s] that court fees will be payable during these proceedings.  
These fees may include a hearing allocation fee.

Signature

Capacity

  
Solicitor for the Appellant, by a partner in the same firm,  
Daniel Radman

Date of signature

23 / 5 / 23

Note:

1. This notice must be served personally unless non-personal service under UCPR 10.18 is permitted.
2. A copy of this notice must be filed in the court below in accordance with UCPR 51.42.

## NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

## HOW TO RESPOND

**Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

Court forms are available on the UCPR website at [www.ucprforms.nsw.gov.au](http://www.ucprforms.nsw.gov.au) or at any NSW court registry.

## REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

## PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

[on separate page]

**FURTHER DETAILS ABOUT APPELLANT**

[Do not include this section if you have previously given this information to the court in these appeal proceedings, eg in a summons for leave to appeal.]

**Appellant**

Name The Owners – Strata Plan No. 84674  
 Address c/- Bright & Duggan Pty Limited  
 Level 1, 37-43 Alexander Street  
 CROWS NEST NSW 2065

**Legal representative for Applicant**

Name Colin Grace  
 Practising certificate number [REDACTED]  
 Firm Grace Lawyers Pty Limited  
 Contact solicitor Sean Turner  
 Address Level 12  
 160 Sussex Street  
 SYDNEY NSW 2000  
 Telephone [REDACTED]  
 Email [REDACTED]  
 Electronic service address [REDACTED]

**DETAILS ABOUT RESPONDENT[S]****First Respondent**

Name Pafburn Pty Limited  
 (ACN 003 485 505)  
 Address Registered Office –  
 9 Claremont Road  
 BURWOOD HEIGHTS NSW 2136

**Second Respondent**

Name Madarina Pty Limited  
 (ACN 080 675 627)  
 Registered Office –  
 9 Claremont Road  
 BURWOOD HEIGHTS NSW 2136

