

OPT OUT NOTICE

FEDERAL COURT OF AUSTRALIA

Class Action against Macmahon Holdings Limited

If you wish to participate in this class action you must comply with this notice (unless you have already registered to participate in this class action). If you do not do so your rights may be lost. If you have not already registered, you have three options:

1. Do nothing and lose any rights to any compensation if this action settles
2. Register to receive any compensation that may become available in this class action
3. complete an 'opt out' form and lose a right to any compensation available in this action but keep your right to try and get a refund yourself

1. Why is this notice important?

A class action has been commenced against Macmahon Holdings Limited (**Macmahon Holdings**) in the Federal Court of Australia by David Scott Hopkins, as a representative party on behalf of himself and all Macmahon Holdings shareholders who:

- (i) acquired shares in Macmahon Holdings (ASX:MAH) between 2 May 2012 and 19 September 2012;
- (ii) suffered loss and damage as a result of the conduct of Macmahon (as alleged); and
- (iii) have not settled their claims with Macmahon Holdings.

Such persons are defined as **group members**.

The Federal Court has ordered that this notice be published for the information of persons who might be group members and thus may be affected by the action. **If you are a group member you should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

This notice is part of a court-ordered process to assist the parties to attempt to resolve this proceeding by settlement. In order to do that, the parties need to know how many group

members would participate in any settlement of the proceeding, and the potential value of their claims.

Class members wishing to participate in any potential settlement of the proceeding must register their claims by **4.00 pm on 10 February 2017**. If you do not register, you may lose any rights you have to compensation.

2. What is a class action?

A class action is an action that is brought by one person (**Applicant**) on his or her own behalf and on behalf of a group of people (here, group members) against another person (**Respondent**) where the Applicant and the group members have similar claims against the Respondent.

Group members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for the costs.

Group members are bound by any judgment or settlement entered into in the class action unless they have opted out of the proceeding. This means that:

- (a) if the class action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the Respondent in separate legal proceedings unless they have opted out.

3. What is Opt Out?

The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found below in the section headed "What group members must do".

4. What is this class action?

This class action against Macmahon Holdings is brought by Mr Hopkins on behalf of himself and group members.

In summary, the Applicant alleges that Macmahon Holdings engaged in misleading or deceptive conduct, and breached its continuous disclosure obligation to keep the Australian Securities Exchange (**ASX**) informed of all information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Macmahon Holdings shares. In particular it is alleged that Macmahon Holdings:

- (a) made misleading representations as to its financial performance in the financial year ending on 30 June 2013, both in May 2012 and in August 2012; and
- (b) made misleading representations as to the processes by which it selected projects for which to tender and that it failed to disclose a key risk in relation to the project known as 'Hope Downs 4 – Rail Earthworks and Bridge Construction' which it should have known would have a material adverse effect on its financial performance for the financial year ending on 30 June 2013.

Macmahon Holdings denies the allegations and is defending the class action.

5. Are you a group member?

As noted above, you are a group member if you acquired shares in Macmahon Holdings during the period from 2 May 2012 and 19 September 2012 and you suffered loss and damage as a result of Macmahon Holdings' conduct (as alleged) and have not settled your claims with Macmahon Holdings.

If you are unsure whether or not you are a group member, you should contact ACA Lawyers on +61 2 9216 9898 or email info@acalawyers.com.au or seek your own legal advice without delay.

6. Will you be liable for legal costs?

You will **not become liable for any legal costs** simply by remaining as a group member for the determination of the common questions. However:

- (a) If the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage the Applicant's lawyers, ACA Lawyers, or other lawyers to do that work for you. A copy of the terms on which ACA Lawyers are acting in the class action may be obtained from them by contacting ACA Lawyers at info@acalawyers.com.au or on (02) 9216 9898; and

- (b) Class actions are often settled out of court. If this occurs in the Macmahon Holdings class action, you may be able to claim from the settlement amount without retaining a lawyer.

The Macmahon Holdings Class Action is funded by Harbour Fund II, L.P (**Harbour**). This means that Harbour has agreed to pay all the legal and other costs associated with the action, including any adverse costs orders. Accordingly, if the class action is unsuccessful, group members will have no liability for legal costs.

If, however, the class action is successful and you ultimately receive compensation, then you may be liable for the following costs, which will only be payable by way of a deduction from your compensation amount, and not otherwise:

- (a) a commission to Harbour;
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicant in running the class action but which are not able to be recovered from Macmahon Holdings.

Under no circumstances will class members be required to pay more in legal costs and commissions than they receive in compensation.

Please note, you will be required to pay any costs you incur on your own behalf, including legal advice you choose to obtain from lawyers other than ACA Lawyers.

7. Funding of this Class Action?

For the purposes of funding this class action, the Applicant and some group members have entered into funding agreements with Harbour (**Funding Agreements**), the terms of which include:

- (a) Harbour will pay the costs incurred in conducting the class action;
- (b) Harbour will pay any adverse costs which are made in the class action against the Applicant;
- (c) At the conclusion of the class action (whether by settlement or judgment), Harbour is entitled to receive, as a first priority out of that group member's share of the settlement or judgment amount:

- (i) reimbursement of the amounts paid by Harbour under the Funding Agreements (which includes legal costs and disbursements); and
- (ii) a commission.

The Applicant proposes to seek orders from the Court which would have the effect that the above funding arrangements will apply to all class members, even if they have not entered into a Funding Agreement with Harbour (**Common Fund Orders**). If the Court makes Common Fund Orders, all class members who have not opted out of the action will in effect be bound by the funding arrangements and will ultimately be bound to contribute, out of any amount to which they become entitled to receive by way of settlement or judgment of their claims, an amount payable to Harbour (including legal costs, disbursements and commission) as if they had agreed to the funding arrangements with Harbour. A copy of the Funding Agreement may be inspected upon request.

It is possible that the court may make no order, or other orders in respect of funding arrangements. An example of an alternative order is an “equalisation order”, which would result in Harbour being paid only the total amount to which it is entitled under the funding arrangements it has actually agreed with group members, but that amount being shared across all group members rather than only those who have entered the funding arrangements.

Group members will not be required to pay any amounts to Harbour (or to ACA Lawyers) unless and until there is a successful outcome in the class action, whereupon any amounts payable will be deducted from the amount to which each group member is otherwise entitled (but under no circumstances will they exceed that amount). No group member will be out-of-pocket simply by remaining as a group member.

8. What will happen if you choose to remain a group member?

Unless you opt out, you will be bound by the outcome of the class action. If the class action is successful, and if you have registered in accordance with “Option A” below, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and group members. If the action is unsuccessful or is not as successful as you might have wished, you will not be able to bring proceedings or take action against Macmahon Holdings in respect of the matters the subject of the class action.

Note: Group members who retain ACA Lawyers and enter into a funding agreement with Harbour Litigation Funding Ltd before 4pm AEST on 10 February 2017, or who have already retained ACA Lawyers and entered into a funding agreement with Harbour Litigation Funding Ltd, will be registered to participate in the class action by ACA Lawyers and may disregard this notice.

9. Why is this notice being published?

The Federal Court has ordered that this notice be published for the information of persons who might be group members and thus may be affected by the Macmahon Holdings class action. The parties to the class action have agreed to mediate before a court appointed Registrar. The mediation will be held on 28 February 2017, and following the closure of registration (Option A, below) or Opting Out (Option B, below).

10. What group members must do

If you are a group member in the Macmahon Holdings class action, and you wish to remain a group member but have not retained ACA Lawyers, you must select one of the following options:

Option A – Register your interest in receiving compensation

If you wish to make a claim for any loss you may have suffered as a result of Macmahon Holdings' conduct, as alleged, you must complete the "Group Member Registration Form", which can be obtained via the ACA Lawyers website at <http://www.acalawyers.com.au/Macmahon-holdings-class-action> (unless you have already registered prior to receiving this notice).

Registrations must be completed and submitted online before **4:00pm AEST on 10 February 2017**. Registrations received after this time will not be accepted with the result that you will be treated as having not responded to this notice (see Option C below).

As set out below, you will find copies of the court papers which detail the claims made in the Macmahon Holdings class action at this website.

If you register, the funding arrangements reflected in the Funding Agreements will apply to you and you will ultimately be bound to contribute, out of any amount to which you become entitled to receive by way of settlement or judgment of your claims, an amount payable to Harbour (including legal costs, disbursements and commission) as if you had agreed to the funding arrangements with Harbour. A copy of the Funding Agreement may be inspected upon request. The terms of the Funding Agreement will be considered by the Court (and, in some circumstances, can be varied) in the event the class action is resolved by way of settlement.

Option B – Opt out and cease to be a group member

If you do not wish to remain a group member in the Macmahon Holdings class action, you must opt out of the proceeding by completing the "Opt Out Notice" below. If you opt out of the Macmahon Holdings proceeding, you:

1. will not be affected by any orders made in the Macmahon Holdings class action;
2. will not be permitted to participate in the distribution of any damages award or settlement outcome; and
3. will be able to commence separate proceedings on your own behalf if you so wish.

Opt out forms must be submitted directly to the New South Wales District Registry of the Federal Court of Australia before **4:00pm AEST on 10 February 2017**. Opt out notices received after this time will not be accepted, and you will remain as a group member in the Macmahon Holdings class action but will not be permitted to participate in any compensation award if the class action is settled (see Option C below).

Option C – Not respond to this notice

If you do nothing, you will remain a group member in the Macmahon Holdings class action and you will be bound by any settlement at or following the mediation on 28 February 2017, but **you will not be permitted to participate in or otherwise benefit from the settlement**. Further, in that event, any cause of action you might otherwise have had against Macmahon Holdings in respect of the matters the subject of the class action will no longer be available to you.

In other words, if you do nothing, you will lose your right to make any claim for damages or other relief against Macmahon Holdings in relation to the matters the subject of the class action if the class action is settled at or following the mediation on 28 February 2017.

If you do nothing in response to this notice, in the event that the mediation is unsuccessful and the matter proceeds to trial, you will have a further opportunity to participate in the class action, which may involve a further registration process.

11. Where can you obtain copies of relevant documents?

You may access copies of the court papers which detail the relevant documents filed in connection with the Macmahon Holdings class action, by:

1. viewing them at the ACA Lawyers website, which is accessible at <http://www.acalawyers.com.au/macmahon-holdings-class-action>;

2. inspecting them by appointment between 9.00am and 5.00pm AEST at the Sydney office of ACA Lawyers; or
3. viewing them at the Federal Court website, which is accessible at <http://www.fedcourt.gov.au>, or by visiting a District Registry of the Federal Court in Melbourne, Sydney, Canberra, Brisbane, Perth, Adelaide, Hobart or Darwin.

12. Questions?

Please consider the above matters carefully. If you are unclear about whether you are a group member, or if you have any other questions regarding the Macmahon Holdings class action, you should contact ACA Lawyers by writing to "Macmahon Holdings Class Action", Level 3, 44 Martin Place, Sydney NSW 2000, or by sending an email to info@acalawyers.com.au. Alternatively, you can seek legal advice from other solicitors. You should not delay in making your decision.

If you wish to register (Option A), but do not have access to the internet or are otherwise unable to register in accordance with Option A, please call +61 2 9216 9898 between the hours of 9:00am to 5:00pm AEST by no later than 4:00pm AEST on Friday 10 February 2017.

At the time of your call, please ensure you have all available information relevant to your trading transactions in Macmahon Holdings securities.

OPTION A

GROUP MEMBER REGISTRATION

To register as a group member and retain your right to claim damages, please complete the Group Member Registration Form available at <http://www.acalawyers.com.au/macmahon-holdings-class-action>.

Note: Group members who retain ACA Lawyers and enter into a funding agreement with Harbour Litigation Funding Ltd before 4pm AEST on 10 February 2017, or who have already retained ACA Lawyers and entered into a funding agreement with Harbour Litigation Funding Ltd, will be registered to participate in the class action by ACA Lawyers and may disregard this notice.

OPTION B

Form 21
Rule 9.34

OPT OUT NOTICE

No. NSD1346/2015

Federal Court of Australia
District Registry: New South Wales
Division: General

**DAVID SCOTT HOPKINS (as trustee of The David
Scott Hopkins upper Fund)**

Applicant

MACMAHON HOLDING ACN 007 634 406

Respondent

To: The Registrar
Federal Court of Australia
New South Wales District Registry
Lev 17, Law Courts Building
Queens Square
Sydney NSW 2000

..... (print name), a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that he, she or it is opting out of the representative proceeding.

Date:.....

Signed by

..... (signature)

..... (print name)
Group Member / Lawyer for the Group Member

(please complete the next page)

Address of group member:

.....
.....

Telephone:

Email:

ACN/ABN:(if a company or trustee)

HIN/SRN:

If the shares were acquired on behalf of another person/entity, name of that person/entity:

.....

If you are signing as the solicitor or representative of the group member:

Name:

Capacity in which you are signing:

Address:

.....
.....

Telephone:

Email: