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Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
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File Title:	THE OWNERS - STRATA PLAN 87231 v 3A COMPOSITES GMBH & ANOR
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A handwritten signature in blue ink, reading "Sia Lagos".

Dated: 10/08/2022 12:58:49 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 17
Rule 8.05(1)(a)

Further Amended Statement of Claim

(amended pursuant to leave granted by his Honour Justice Wigney on 9 August 2022)

No. NSD215 of 2019

Federal Court of Australia

District Registry: New South Wales

Division: General

The Owners – Strata Plan No 87231

Applicant

3A Composites GmbH and another named in the schedule

Respondents

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A. PARTIES AND GROUP MEMBERS

A.1 The Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicant on its own behalf and on behalf of all persons (**Group Members**) who, as at the date of this Amended Statement of Claim:

(a) either:

- (i) own or have previously owned a building situated in Australia (**Relevant Building**), or have or have previously had an ownership interest in a part of a building situated in Australia (**Relevant Building Part**); or
- (ii) have or have previously had a leasehold interest in a Relevant Building and/or a Relevant Building Part which includes an obligation to rectify defects of a kind associated with Alucobond PE Core Cladding in the Relevant Building or the Relevant Building Part; and

(b) where the Relevant Building and/or the Relevant Building Part is or was fitted with Alucobond PE Core Cladding; ~~and~~

(c) have suffered loss or damage for which statutory damages or compensation is claimed, as pleaded in the Amended Statement of Claim;

(d) where the Alucobond PE Core Cladding was first supplied to a Consumer in the period that commences on 14 February 2009 and ends on 14 February 2019 (**Relevant Period**); and

(e) were not during the Relevant Period, and are not, any of the following:

- (i) a related party (as defined by s. 228 of the *Corporations Act 2001* (Cth))

(**Corporations Act**) of 3A Composites or HVG;

- (ii) a related body corporate (as defined by s. 50 of the Corporations Act) of 3A Composites or HVG;
 - (iii) an associated entity (as defined by s 50AAA of the Corporations Act) of 3A Composites or HVG;
 - (iv) a director, an officer, or a close associate (as defined by s. 9 of the Corporations Act) of 3A Composites or HVG; or
 - (v) a judge or the Chief Justice of the Federal Court of Australia or a Justice or the Chief Justice of the High Court of Australia.
2. As at the date of the commencement of this proceeding, there are more than seven Group Members.

A.2 The Applicant

3. The Applicant:
- (a) is a body corporate constituted as an owners corporation in accordance with s. 8 of the *Strata Schemes Management Act 2015* (NSW) (**SSMA**) and s. 5 of Schedule 3 of the SSMA;
 - (b) is a statutory corporation for the purposes of s. 50(1)(c) of the *Interpretation Act 1987* (NSW) and able to sue in its corporate name;
 - (c) is and was at all material times the owners corporation of the strata scheme created by virtue of, *inter alia*, the registration of strata plan 87231 in accordance with the *Strata Schemes (Freehold Development) Act 1973* (NSW) (**SSFDA**), which has now been repealed and replaced by the *Strata Schemes Development Act 2015* (NSW) (**SSDA**);
 - (d) is and was at all material times the owners corporation of the residential building known as Shore Dolls Point Apartments located at 172 -174 Russell Avenue, Dolls Point in the State of New South Wales (**Shore Building**); and

Particulars

- A. The strata plan as contained at **Appendix 1** was registered on 24 August 2012.
- B. On 8 November 2010, a Construction Certificate bearing certificate number

10/109 and a Notice of Commencement of Building Work and appointment of Principal Certifying Authority under the *Environmental Planning and Assessment Act 1979* (NSW) was issued in respect of the Shore Building.

- C. On 7 December 2011, another Construction Certificate bearing certificate number 10/109A under the *Environmental Planning and Assessment Act 1979* (NSW) was issued in respect of the Shore Building noting a revised ground floor plan.
- D. On 1 August 2012 and 16 August 2012, Occupation Certificates bearing certificate number 10/109 were issued under the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the Shore Building.

- (e) is and at all material times was the registered proprietor of those parts of the Shore Building comprising common property as that term is defined under the SSFDA and SSDA (**Shore Common Property**).

Particulars

- A. Common property is defined in s. 4 of the SSDA and s. 5 of the SSFDA. The vesting of the common property in the Applicant under the SSFDA continued under the SSDA upon its commencement: SSDA, Schedule 8, Part 2, Item 3(1).
- B. The Shore Common Property vested in the Applicant in accordance with s. 18 of the SSFDA and s. 24 of the SSDA.
- C. The ownership by the Applicant of the Shore Common Property is registered in folio CP/SP87231.

A.3 The Respondents

4. 3A Composites:

- (a) is a company incorporated under the laws of Germany and capable of being sued in its corporate name;
- (b) was at all material times, and is, the owner of each of the registered trademarks “Alucobond” in Australia as set out in the extracts from IP Australia contained in **Appendix 2 (Trademark)**;

Particulars

When the definition of Trademark is used in this pleading, the applicable trademark from Appendix 2 being referred to is the one as applying to the trademark class in the context in which it is being used.

- (c) was formerly known as “Alcan Composites”;
- (d) was at all material times, and is:
 - (i) the “manufacturer” of Alucobond PE Core Cladding within the meaning of that

term in s. 7 of the **ACL**; and

- (ii) a corporation which “manufactured” Alucobond PE Core Cladding within the meaning of s. 74A(1) and (3) of the **TPA**;

Particulars

3A Composites at all material times:

- a. actually produced, processed and/or assembled Alucobond PE Core Cladding;
- b. further or in the alternative, held itself out to the public as the manufacturer of Alucobond PE Core Cladding;
- c. caused or permitted its brand or mark, being the Trademark referred to at paragraph 4(b) to be applied to Alucobond PE Core Cladding by, impressing, annexing or affixing it to the Alucobond PE Core Cladding;
- d. caused or permitted another person, being HVG to hold it out to the public as the manufacturer of the Alucobond PE Core Cladding in connection with the supply or possible supply of the Alucobond PE Core Cladding by HVG;
- e. caused or permitted another person, being HVG to hold it out to the public as the manufacturer of the Alucobond PE Core Cladding in connection with the promotion by HVG of the supply and/or use of the Alucobond PE Core Cladding; and
- f. in respect to sub paragraphs (d) and (e) of these particulars, at all material times HVG distributed, sold, advertised and otherwise promoted the Alucobond PE Core Cladding in Australia, including on its public website referencing the manufacture by 3A Composites and the Trademark, and referring to “3A Composites, Germany” as its “long-term partner”.

- (e) did not at any time prior to, or during, the Relevant Period have a place of business in Australia for the purposes of s 7(1)(e)(ii) of the ACL and s. 74A(4) of the TPA;
- (f) engaged in conduct in Australia in relation to the contraventions of the ACL and/or TPA pleaded in this Statement of Claim; and
- (g) at all material times, carried on business within Australia for the purposes of s. 5 of the CCA and s. 5 of the TPA.

Particulars to (f) and (g)

- A. 3A Composites’ business involved the sale of Alucobond products (through HVG as the exclusive local importer, distributor and long-term partner) to purchasers in Australia, as per the following brochures published, disseminated and/or promoted in Australia:
- a. The words *“Distributed by Alucobond Architectural a Division of [HVG]”, “Alucobond is manufactured by 3A Composites GmbH, 78224 Singen/Germany”* in the brochure titled “Alucobond Vision Materialized” bearing on the front page: the Trademark and the words “40 years of excellence” and www.alucobond.com.au and on the last page the logo of HVG.
 - b. The words *“exclusively distributed by Alucobond Architectural, a Division of [HVG]”, “Alucobond® is manufactured by 3A Composites*

GmbH, 78224 Singen/Germany” with five Australian office addresses on the last page of the brochure titled “Alucobond at a Glance” bearing the logos of 3A Composites and HVG and the Trademark.

- c. The words “exclusively distributed in Australia by [HVG]” and “Alucobond® is manufactured by 3A Composites GmbH, 78224 Singen/Germany” with five Australian office addresses on the last page of “Alucobond Beyond Facades” bearing the logo of the 3A Composites and the Trademark.
- B. 3A Composites owned and owns the Trademark, which are registered in Australia with an Australian address for service, being Phillips Ormonde Fitzpatrick, PO Box 323 Collins Street West, VIC, 8007, Australia.
- C. 3A Composites caused, or permitted, the Trademarks and its logos to be used in materials disseminated in Australia for the sale and/or promotion of Alucobond PE Core Cladding in Australia.
- D. In the materials disseminated in Australia for the sale and/or promotion of Alucobond PE Core Cladding in Australia, 3A Composites offers and offered warranties to Australian Consumers.
- E. 3A Composites is listed as the contact company on the Alucobond web site <https://alucobond.com> for inquiries in or from Australia. It currently has a listed contact person, Susanne Haas dedicated to such inquiries.
- F. ~~[Not used] Further particulars may be provided following discovery and/or service of the applicant’s evidence.~~

5. HVG:

- (a) is a company incorporated in Australia and capable of being sued in its corporate name;
- (b) was the sole and exclusive:
 - (i) importer (either personally or by persons acting on its behalf) to Australia; and
 - (ii) distributor in Australia,

of Alucobond PE Core Cladding after on or about 8 or 17 August 2007 (on which date HVG acquired the business and operations of Alucobond Architectural Pty Ltd, which was previously the exclusive importer and distributor of Alucobond PE Core Cladding in Australia), including during the Relevant Period;
- (c) by reason of the matters pleaded at paragraphs 4(e) and 5(b) above, was at all material times, and is:
 - (i) deemed to have manufactured all Alucobond PE Core Cladding imported to Australia after on or about 8 or 17 August 2007, for the purposes of Part V of the TPA by reason of s. 74A(4) of the TPA (as preserved by Schedule 6, Item 6 of the *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010* (Cth)); and
 - (ii) a “manufacturer” of all Alucobond PE Core Cladding imported into Australia

within the meaning of that term in s. 7 of the ACL (as applicable on and from 1 January 2011); and

- (d) by reason of the matters pleaded in (a) to (c) above, is capable of being sued under s 74D of the TPA, and/or s 271 of the ACL as the person who manufactured, or manufacturer, of all Alucobond PE Core Cladding distributed in Australia after on or about 8 or 17 August 2007, including in the Relevant Period.

Particulars to (b) and (c)

- A. Alucobond Architectural Pty Ltd (ACN 006 573 762) was the exclusive distributor of all aluminium composite products manufactured by 3A Composites until on or about 8 or 17 August 2007 when its business and operations were purchased by HVG: https://www.spec-net.com.au/press/0907/hvg_120907.htm.

B. THE GOODS

B.1 ACPs and Alucobond

6. Alucobond PE Core Cladding are and were goods of a kind commonly known as “Aluminium Composite Panels” or “Aluminium Composite Materials” (**ACP**), which consist of three bonded laminates, being two aluminium cover sheets and a core.
7. At all material times, ACPs (including Alucobond PE Core Cladding) were used in Australia for uses including the following (**Relevant Uses**):
- (a) part of an external wall; and/or
 - (b) an attachment to an external wall or other building element,
- in either case on:
- (i) high rise buildings; and/or
 - (ii) low rise buildings,
- where such buildings were intended to be used for:
- (A) residential purposes;
 - (B) commercial purposes; and/or
 - (C) public or government administration purposes.

Particulars

- A. The Shore Building was and is a high rise building intended for use for residential purposes.
- B. Generally, the Alucobond PE was situated on or around the following parts of

the Shore Common Property:

- a. external upturn around the perimeter of level 4;
- b. fascia above the external walls on level 4 including the soffit;
- c. the underside of the ceiling over the balconies on level 3 and the overhang that extends along the western and eastern sides of the Shore Building; and
- d. on level 3 in between windows in the eastern and western external walls.

8. At all material times:

- (a) Alucobond PE Core Cladding was available in a wide range of sheet sizes, thicknesses and colours;
- (b) Alucobond PE Core Cladding was lightweight, flat and rigid; and
- (c) Alucobond PE Core Cladding was the subject of technical support in Australia from 3A Composites and/or HVG.

Particulars

- A. Brochure titled "the face of tomorrow today" bearing the Trademark, a logo of "Alcan" and the words "Alcan Composites" printed in Germany bearing a date of "01/04/2007"
- B. Brochure titled "Alucobond Vision Materialized" bearing on the front page: the Trademark and the words "40 years of excellence" and www.alucobond.com.au.
- C. ~~[Not used] Further particulars may be provided following discovery and/or service of the applicant's evidence.~~

B.2 ACPs with PE Cores

9. The core of ACPs may comprise:

- (a) polyethylene (**PE**) or a combination of PE and other materials, bonded to the two aluminium cover sheets ~~(a PE Core)~~; or
- (b) other materials, or a combination of other materials, bonded to the two aluminium cover sheets.

10. At all material times, the core of Alucobond PE Core Cladding was comprised of:

- (a) for Alucobond PE – approximately 100% PE;
- (b) for Alucobond Plus ~~—approximately 30% PE.~~ a mixture of:
 - (i) plastic or polymer materials (including PE and/or the copolymer (poly) ethylene vinyl acetate (EVA)) (Plastic Binders); and

(ii) mineral filler.

10A. The composition of the core of Alucobond Plus supplied by 3A Composites and/or HVG in Australia during the Relevant Period varied, such that:

(a) the Plastic Binders (including the PE and/or EVA) could and at times did exceed 30% by weight;

(b) conversely, the mineral filler content could be and at times was less than 70% by weight.

Particulars

- A. The core of the Alucobond Plus fitted to the Five Dock Building (as defined in the Sample Group Members' Points of Claim dated 13 February 2022) contained approximately 67.2 % - 68.3% aluminium hydroxide by weight and 31.7% - 32.8% EVA by weight: Report of Dr Caroline Kirk dated 22 April 2022 (Kirk), paragraph [71].
- B. From time to time, 3A changed the formulation of Alucobond Plus, as referred to in at least the following documents: [3AC.502.007.0195], [3AC.502.007.0513 TR], [HVG.006.029.7161].
- C. Email from Frank Ritter (Senior Engineer, 3A) to Mark Bradfield (HVG) dated 21 August 2018, stating that the nominal mineral content of Alucobond PE is 70% with a tolerance of +/- 3% [3AC.501.001.3942].

10B. Further and in the alternative, at all times during the Relevant Period, 3A Composites and HVG did not know:

(a) the precise composition of the core of Alucobond Plus supplied in Australia; and/or

(b) whether or not any particular panel of Alucobond Plus supplied in Australia contained a core that comprised:

(i) more than 30% Plastic Binders; and/or

(ii) less than 70% mineral filler.

Particulars

- A. The particulars to paragraph 10A are repeated.
- B. Further, in the context of the introduction of the Relevant Regulations referred to in the particulars to paragraph 16 below, HVG asked 3A for details of the core composition of Alucobond Plus. The responses received from 3A included, without being exhaustive:
 - a. from Frank Ritter on 20 August 2018, that it was 'hardly possible' to determine which batches of material have a higher mineral content: [3AC.501.001.3942];
 - b. from Dr Joachim Werner (3A's Managing Director) on 10 April 2018, that so long as relevant government bodies focused on PE content (and not other plastics) 'we are fine' [3AC.501.002.1796];
 - c. from Dr Amin Emami (3A's Head of Technical Department) on 15 May 2018, that it is important that HVG does not promote the product as

having more than 70% mineral content to the outside world
[3AC.501.001.7823 TR].

C. STATE AND CONDITION OF THE GOODS (ALL BUILDINGS)

C.1 Combustibility and Fire Risk

11. PE:

- (a) is a highly flammable synthetic thermoplastic polymer;
- (b) has a high calorific value; ~~and~~
- (c) when ignited, has heat of combustion similar to that of petrol or diesel fuel; ~~and~~
- (d) readily ignites and burns when exposed to sufficient heating.

Particulars

- A. The calorific value of PE is approximately 44 to 46 megajoules per kilogram. The calorific value of petrol is approximately 44 megajoules per kilogram. The calorific value of diesel fuel is approximately 45 megajoules per kilogram. The calorific value of propane gas is approximately 46 megajoules per kilogram.
- B. "The Senate Economics References Committee Non-conforming building products Interim report: aluminium composite cladding" (**Senate Report**), para 2.1 *"In November 2014, the Melbourne Dockland's Lacrosse apartment building fire in Victoria drew attention to the serious implications for fire safety of the use of non-compliant external cladding using Aluminium Composite Panels (ACP, made of Aluminium Composite Material (ACM) that contained a highly flammable polyethylene (PE) core. Three years later, on 14 June 2017, these issues were again brought into sharp focus by the London Grenfell Tower fire which had recently been clad in this material."*
- C. The Senate Report, para 2.2 *"Australian Fire Safety Engineer, Mr Tony Enright stated in a recent ABC Four Corners program examining PE cladding that: A kilogram of polyethylene will release the same amount of energy as a kilogram of petrol, and it gets worse than that because polyethylene is denser than petrol too, so that's about, a kilogram of polyethylene is like about one and a bit, one and a half litres of petrol. If you look at one metre by one metre square section [of PE core ACP cladding] that will have about three kilograms, the equivalent of about five litres of petrol."*
- D. The Victorian Cladding Taskforce Interim report dated November 2017 states on page 9 *"CSIRO has undertaken non-combustibility tests of ACP PE panels at the request of the MFB. The test was a "clear fail", 55 seconds into the test. The MFB found no evidence of any PE-based product would pass the non-combustibility test."*
- E. "The Grenfell Tower Inquiry: Phase 1 Report" at paragraph 23.4 states that the evidence before that Inquiry demonstrated that *"the characteristics of polyethylene, including its high calorific value (when compared with other common construction materials, including those used at Grenfell Tower), providing an ideal fuel source for a growing fire. It is a highly flammable synthetic thermoplastic polymer which has a heat of combustion similar to that of petrol or diesel fuel."*
- ~~F. Further particulars may be provided following the filing of the Applicant's~~

~~evidence~~ Report of Professor Luke Bisby dated 26 April 2022 (**Bisby**), paragraphs [172]-[183], [403]-[408], and [413].

11A. The Plastic Binder component of the core of Alucobond Plus:

- (a) is highly flammable;
- (b) has a high calorific value similar to PE; and
- (c) readily ignites and burns when exposed to sufficient heating.

Particulars

- A. EVA is a copolymer of (poly) ethylene and vinyl acetate.
- B. The precise calorific value of EVA will depend upon the proportions of (poly) ethylene on one hand and vinyl acetate on the other hand. However, both components are highly flammable and combustible.
- C. Kirk, paragraph [18].
- D. Bisby, paragraphs [3],[20], [148], [176], [178], [403]-[408].

12. In the event of a building fire, the aluminium cover sheets of Alucobond PE Core Cladding do not protect the PE Core from ignition because:

- (a) each of the aluminium cover sheets were and are approximately 0.5 millimetres thick;
- (b) when fabricated and fitted on a building in accordance with the specifications provided by 3A Composites and/or HVG, the aluminium cover sheet does not cover all of the PE Core as:
 - (i) the PE Core at the edges of the panel may remain wholly or partially exposed; and/or
 - (ii) the panel is often cut, fabricated or modified in a way that exposes the PE Core; and

Particulars

- A. Without being exhaustive, the ways in which the PE Core may be exposed through cutting, fabrication or modification is by the introduction of routing lines and folds, or perforations for aesthetic effect or services such as pipes, vents and cables. For example, the ACP on the EXO Building in Victoria [HVG.001.001.0047 0003], [3AC.402.001.4106], [HVG.001.001.0047 0014 – 0015], [3AC.600.001.5129 5130 – 5139], [HVG.001.001.0047 0019] and Bisby, paragraphs [511] – [519].

- (c) regardless of the means of fabrication and method of affixation to the building:
 - (i) aluminium has a high coefficient of thermal expansion and a melting point of around 580 °C to 660°C, which is lower than the typical temperature of

approximately 800°C to ~~900°C~~ 1200°C in a building fire, and will rapidly warp, deform, separate and/or degrade in a building fire and expose the PE Core;

(ii) the aluminium cover sheets are attached to the PE Core by means of an adhesive film (generally comprised of EVA) which is very likely to lose adhesive strength if the Alucobond PE Core Cladding is exposed to elevated temperatures due to a building fire, causing the aluminium sheets to separate and expose the PE Core;

~~(ii)(iii)~~ further, when subjected to high temperatures, the PE Core ~~can~~ is likely to melt, ooze, drip and or flow out of the aluminium cover sheets, or so as to cause delamination of the ACP and the further exposure of the PE Core.

Particulars

A. Bisby, Parts 4 and 5.

13. By reason of the matters pleaded in paragraphs 10, 10A, 11, 11A and/or 12 above Alucobond PE Core Cladding was and is flammable and combustible due to its PE Core.

C.2 Risks associated with use of Alucobond PE Core Cladding

14. By reason of the matters pleaded at paragraphs 9, 10, 10A, 11, 11A, 12 and 13, when used as cladding fitted as part of or as an attachment to an external wall or other building element, there was and is a material risk that Alucobond PE Core Cladding will, in the event of a fire in or adjacent to the building to which it is affixed:

(a) cause or contribute to the rapid spread and severity of the fire, including:

(i) the rapid vertical spread and/or horizontal spread of the fire on and in the building;

(ii) the loss of fire compartmentalisation; and/or

(iii) the spread of fire to multiple floors of a multi-storey building;

(b) cause or contribute to debris falling from the building, including:

(i) molten or burning material from the PE Core; and/or

(ii) the whole or part of the aluminium cover sheets;

(c) cause or contribute to the fire and smoke from the fire overwhelming or compromising

any fire safety, suppression and/or smoke control systems in the building;

(d) cause or contribute to the release of toxic products of combustion; and

(e) ~~(b)~~ due to all, any or a combination of any, of the matters set out in paragraphs 14(a) to (d):

- (i) increase the risk of loss of life ~~in the event of a building fire;~~
- (ii) increase the risk of damage to the building or an adjacent building, and/or building contents in either building ~~in the event of a building fire;~~
- (iii) ~~in the event of a building fire,~~ adversely impact the ability of occupants of the building to evacuate; and/or
- (iv) ~~in the event of a building fire,~~ adversely impact the ability of the firefighting authorities to minimise the damage to the building and building contents, and to mitigate against the loss of life or injury to persons in the building,

Particulars

- A. The use of ACPs that contain a PE Core materially contributed to the spread and severity of at least the following building fires:
 - a. The Lacrosse Tower fire in Melbourne in 2014; and
 - b. The Grenfell Tower fire in London in 2017.
- B. The concerns about the risks posed by ACPs that contain a PE Core have led to an inquiry by the Senate Economics References Committee, which recommended, *inter alia*, at paragraphs 3.64 and 3.65 of the Senate Report:

“3.64. In light of the Grenfell Tower fire tragedy, the committee does not consider there to be any legitimate use of PE core ACPs on any building type.

....

“3.65 The committee recommends the Australian government implement a total ban on the importation, sale and use of Polyethylene core aluminium composite panels as a matter of urgency.”

- C. ~~The risks referred to in paragraph (b) include the risk of the Alucobond PE Core cladding delaminating and dropping molten material on other parts of the building, including those to which further Alucobond PE Core Cladding is attached (exacerbating the risk of the spread of fire) and the ground. [Not used].~~
- D. ~~Further particulars may be provided following the filing of the applicant's evidence [Not used].~~
- E. Bisby, Parts 4, 5 and 6.
- F. Report of David Youssef dated 25 April 2022 (Youssef).

- 15. The matters pleaded in paragraphs 10B, 11, 11A, 12, 13 and/or 14 above are referred to in this pleading as the **Material Fire Risk Properties** of Alucobond PE Core Cladding.

C.32 Prohibition Risk Properties

16. From around March 2018, Alucobond PE Core Cladding:

- (a) has been the subject of safety alerts and regulation in Australia prohibiting or restricting its use ~~in~~ on buildings;
- (b) has been the subject of product bans that empower government authorities to issue legally-binding directions or orders to owners or leaseholders (as applicable) of buildings requiring Alucobond PE Core Cladding fitted to those buildings, to be removed and/or replaced at the cost of the owner or leaseholder (as applicable).₂

(the Relevant Regulations).

Particulars

New South Wales

- A. New South Wales Commissioner for Fair Trading DFSI Ban Notice under section 9(1) of the *Building Products (Safety) Act 2017* issued on 10 August 2018 in respect of ACPs with a PE Core that has more than 30% PE (the **NSW Ban**).
- B. Pursuant to s 20 of the *Building Products (Safety) Act 2017* (NSW), relevant enforcement authorities may issue a rectification order in relation to Alucobond PE Core Cladding subject to the NSW Ban requiring the owner of the building to eliminate or minimise the safety risk and remediate or restore the building.

Victoria

- C. ~~B.~~ Victorian Minister's Guideline MG-14 issued pursuant to section 188 of the *Building Act 1993* (VIC) on 13 March 2018 in respect of ACPs with a PE Core that has 30% PE or greater.
- D. ~~C.~~ The State of Victoria "*Building Product Safety Alert*" March 2018.
- E. Victorian Gazette no S 22 effective 1 February 2021, which revoked MG-14, and prohibited 'high-risk' external cladding products with a core of less than 93% inert mineral filler by mass on Class 2 to 9 - Type A or Type B buildings.

Queensland

- F. ~~D.~~ Queensland Development Code, Mandatory Part (MP) 2.5 – "*Use of external cladding*" issued on 18 October 2019 (and re-issued on 8 December 2020). MP 2.5 bans the use of ACPs with a PE Core that has greater than 30% PE being used on any building in any external cladding, external insulation or façade.
- G. ~~E.~~ *Building Regulations 2006* (Qld), Part 4A, introduced on 18 October 2019, which applies to all cladding that is made of a material not mentioned in clause C1.9(e) of the BCA or is deemed to be combustible under AS 1530.1. The relevant parts of this regulation have been continued by Part 11, Division 2 of the *Building Regulation 2021* (Qld).

Western Australia

- H. ~~F.~~ Government of Western Australia, DFES Built Environment Branch Guideline GL-17: "*External Walls and Cladding*" issued in June 2018.
- I. Regulation 31HA of the *Building Regulations 2012* (WA), requiring external walls of Type A or Type B construction to comply with the deemed-to-satisfy provisions of the BCA (pleaded below) or otherwise comply with CV3 and pass a full scale fire test of the wall system to be used in accordance with AS 5113.

South Australia

- J. *Development (Building Cladding) Variation Regulations 2018* (SA), which requires additional notifications and requirements where ACPs are proposed

to be used on South Australian buildings.

Tasmania

K. Direction by the Director of Building Control pursuant to the *Building Act 2016* (Tas) designating ACPs with a PE Core as "*high risk building products*" which cannot be used unless accredited. G. Further particulars may be provided following the filing of the applicant's evidence.

16A. The Relevant Regulations were introduced by the relevant government bodies because Alucobond PE Core Cladding had the Material Fire Risk Properties.

17. By reason of the Material Fire Risk Properties, there was at all material times a material risk that any Alucobond PE Core Cladding used on any building in Australia:

- (a) could be determined by relevant government authorities to be unsafe or create a risk of death or serious injury regardless of its compliance or otherwise with the BCA; and
- (b) could be the subject of a legally-binding direction to be removed and/or replaced at the cost of the owner or leaseholder (as applicable),

(Prohibition Risk Properties).

Particulars

- A. The pleadings and particulars at paragraphs 16 above are repeated as examples of the types of requirements that could be (and have been) issued by relevant government authorities.
- B. In respect to the Shore Building, a legally binding direction to remove and replace the Alucobond PE Core Cladding fitted to the Shore Common Property has been issued by Bayside Council;
- C. ~~Further particulars may be provided following the filing of the applicant's evidence~~[Not used].

D. STATE AND CONDITION OF THE GOODS (CLASS 2 TO 9 BUILDINGS)

D.1 Non-compliance with BCA

D.1.1 Introduction: Relevant requirements

18. At all material times, buildings in Australia were required to be constructed in accordance with the Building Code of Australia and/or National Construction Code (as applicable from time to time) (for the purposes of this pleading, referred to collectively as the **BCA**).

Particulars

- A. The following legislation in each State or Territory of Australia required construction to comply with the BCA:
 - a. the *Environmental Assessment and Planning Act 1979* (NSW) and the *Environmental Planning and Assessment Regulations 2000* (NSW);
 - b. the *Building Act 1993* (Vic), the *Building Regulations 2018* (Vic) and the *Building Regulations 2006* (Vic);

- c. the *Planning Act 2016* (Qld), *Planning Regulations 2017* (Qld), *Building Act 1975* (Qld), *Building Regulations 2006* (Qld), *Sustainable Planning Act 2009* (Qld) and *Sustainable Planning Regulation 2009* (Qld);
 - d. the *Development Act 1993* (SA) and the *Development Regulations 2008* (SA);
 - e. the *Building Act 2011* (WA), *Building Regulations 2012* (WA), *Building Regulations 1989* (WA);
 - f. *Building Act 2016* (Tas), *Building Regulations 2016* (Tas), *Building Act 2000* (Tas), *Building Regulations 2014* (Tas) and *Building Regulations 2004* (Tas);
 - g. the *Building Act 2004* (ACT) and the *Building Regulations 2008* (ACT);
 - h. the *Building Act 1993* (NT) and the *Building Regulations 1993* (NT).
- B. ~~[Not used] Further particulars may be provided following the filing of the applicant's evidence.~~

19. At all material times, Volume 1 of the BCA applied to the construction of all Class 2 to 9 Buildings (as those terms are defined in the BCA).

Particulars

- A. A0.2(b) and A0.3(c) of the BCA (as in force from 1 May 2009 to 30 April 2016).
- B. Page 8 of the Introduction to the BCA (as in force from 1 May 2016 to 30 May 2019).

20. At all material times, a Class 2 to Class 9 Building included:

- (a) all residential buildings, such as apartment buildings and townhouses, other than single dwelling houses or boarding houses, guest houses or hostels with less than 12 residents;
- (b) office buildings;
- (c) retail buildings, such as restaurants, cafes, bars, shops and kiosks;
- (d) factories and warehouses; and
- (e) buildings of a public nature, such as health care and aged care buildings.

Particulars

- A. A3.2 of the BCA.
- B. The Shore Building has 4 storeys above ground containing 17 apartments and a basement level carpark, for residential use. The Shore Building is therefore a "Class 2 building" requiring "Type A" construction as those terms are defined in the BCA.
- C. ~~[Not used] Further particulars may be provided following the filing of the applicant's evidence.~~

21. At all material times, the BCA required that:-

- (a) every part of a Class 2 to 9 Building must be constructed in an appropriate manner to achieve the relevant requirements of the BCA; and
- (b) using materials and products fit for the purposes for which they were intended.

Particulars

A. A1.5 and A2.1 of the BCA.

22. At all material times, the BCA required every part of a Class 2 to 9 Building to be constructed in an appropriate manner to meet the fire resistance performance requirements in Section C of the BCA, which requirements included:

- (a1) the building must have elements which will, to the degree necessary, maintain structural stability during a fire appropriate to, amongst other things, the function or use of the building.

Particulars

A. CP1 of the BCA.

- (a) that the building have elements which will, to the degree necessary, avoid the spread of fire:

- (i) to exits;
- (ii) to sole-occupancy units and public corridors (to the extent the building was a Class 2 or 3 building or a Class 4 part of a building);
- (iii) between buildings; and
- (iv) in a building;

Particulars

A. CP2 of the BCA.

- (b) to maintain tenable conditions during occupant evacuation, any materials, linings and assemblies must, to the extent necessary, resist the spread of fire and limit the generation of smoke and heat, and any toxic gases likely to be produced;

Particulars

A. CP4 of the BCA.

B. The reference to linings is contained in the "Application" annotation to CP4

which expressly provides that “CP4 applies to linings, materials and assemblies in a Class 2 to 9 building”.

- (c) any building element provided to resist the spread of fire must be protected, to the degree necessary, so that an adequate level of performance is maintained where openings, construction joints and the like occur, and where penetrations occur for building services;

Particulars

- A. CP8 of the BCA.

- (d) access must be provided to and around a building, to the degree necessary, for fire brigade vehicles and personnel to facilitate fire brigade intervention,

Particulars

- A. CP9 of the BCA.

(collectively, **Fire Resistance Performance Requirements**).

23. At all material times, the Fire Resistance Performance Requirements for Class 2 to 9 Buildings applied to buildings regardless of the type of construction required by the BCA.

D.1.2 Means of compliance with BCA requirements

24. At all material times, Class 2 to 9 Buildings could only achieve the Fire Resistance Performance Requirements by:

- (a) complying with the “**Deemed-to-Satisfy Provisions**” (as defined in the BCA) of the BCA; or
- (b) having a solution which complies with the Fire Resistance Performance Requirements other than through complying with the Deemed-to-Satisfy Provisions (**Alternative Solution**) or is shown to be at least equivalent to the Deemed-to-Satisfy Provisions as appropriately assessed pursuant to the BCA; or
- (c) a combination of both 24(a) and 24(b) above.

Particulars

- A. A0.5, A0.7, A0.8, A0.9 and A0.10 of the BCA (as in force from 1 May 2009 to 30 April 2016).
 AA. A0.2, A0.3, A0.4, A0.5 and 0.7 of the BCA (as in force from 1 May 2016 to 30 May 2019).
 B. The definitions of “Alternative Solution” (subsequently known as “Performance

Solution" in more recent versions of the BCA) in A1.1 of the BCA.

- C. ~~Further particulars may be provided following the filing of the Applicant's evidence~~[Not used].

D.1.3 Alucobond PE Core Cladding is “combustible” within the meaning of the BCA

25. At all material times, Alucobond PE Core Cladding did not and does not pass the combustibility test pursuant to AS1530.1.
26. By reason of the matter pleaded at paragraph 25 above:
- (a) Alucobond PE Core Cladding is and was a “*combustible*” material as that term is used in the BCA;
 - (b) Alucobond PE Core Cladding is not and was not a “*non-combustible*” material as that term is used in the BCA;
 - (c) an external wall that is or was constructed wholly or in part using Alucobond PE Core Cladding is and was “*combustible*” as that term is used in the BCA; and
 - (d) an external wall that is or was constructed wholly or in part using Alucobond PE Core Cladding is not and was not “*non-combustible*” as that term is used in the BCA.

Particulars

- A. A1.1 of the BCA (part (a) and (b) of definition of “*combustible*” and “*non-combustible*”).
 - B. ~~Further particulars may be provided following the filing of the applicant's evidence~~Report of Stephen Kip dated 27 April 2022 (Kip), Part 4.3.
27. At all material times, Alucobond PE Core Cladding was not able to be used wherever a “*non-combustible*” material was required by the BCA because:
- (a) Alucobond PE Core Cladding is and was a “bonded laminated material” as that term is and was used at C1.12 in the BCA;
 - (b) at all material times, the BCA provided that bonded laminated materials could only be used wherever a “*non-combustible*” material was required if each laminate is or was “*non-combustible*”;
 - (c) each laminate of Alucobond PE Core Cladding is not and was not “*non-combustible*” because the PE Core laminate is not and was not “*non-combustible*” as that term is

used in the BCA.

Particulars

- A. The requirements of C1.12(f) of the BCA (as contained in relevant versions of the BCA prior to the introduction of Amendment 1 to the 2016 version of the BCA (**BCA 2016 Amendment 1**)) and C1.9(e)(vi) of the BCA (in versions of the BCA on and from BCA 2016 Amendment_1) are materially the same. Properly construed, the reference to “laminate” in the earlier version includes the core laminate.
- B. ~~Kip, Part 4.4~~ Further particulars may be provided following the filing of the applicant's evidence.

D.1.4 Non-compliance with Deemed-to-Satisfy provisions

28. At all material times until on or about 12 March 2018 (being the date on which BCA 2016 Amendment 1 came into effect), Alucobond PE Core Cladding could not comply with the Deemed-to-Satisfy Provisions when fitted to an external wall or other building element of any Class 2 to 9 Building (regardless of the construction type) because:

- (a) as pleaded at paragraph 26 above, Alucobond PE Core Cladding was a “*combustible*” material for the purposes of the BCA;
- (b) the Deemed-to-Satisfy Provisions provided that a “*combustible*” material could only be used as a finish or lining to a wall or roof, or in a sign, sunscreen or blind, awning, or other attachment to a building element which had the required fire resistance level ~~an external wall or other building element~~ if:
 - (i) the material was exempted under C1.10 or complied with the “*fire hazard properties*” prescribed in clause 2 of Specification C1.10 or clause 2 and 3 of Specification C1.10a; and
 - (ii) the material was not located near or directly above a required exit so as to make the exit unusable in a fire; and
 - (iii) the material did not otherwise constitute an undue risk of fire spread via the façade of the building; and

Particulars

- A. Spec C1.1, cl 2.4 of the BCA (prior to 2016 version), .
- B. ~~Kip, Parts 4.5 and 4.6~~ Further particulars may be provided following the filing of the applicant's evidence.

(c) Alucobond PE Core Cladding:

- (i) was not exempted under C1.10;
- (ii) did not comply with the “*fire hazard properties*” prescribed in clause 2 of Specification C1.10 or clause 2 and 3 of Specification C1.10a;
- (iii) did make a required exit unusable in a fire to the extent the cladding was located near or directly above the required exit, due to the risk of falling debris as the cladding burned and deteriorated; and
- (iv) did constitute an undue risk of fire spread via the façade of the building by reason of the Material Fire Risk Properties.

Particulars

A. Kip, Parts 4.5 and 4.6.

29. Further, at all material times, Alucobond PE Core Cladding could not comply with the Deemed-to-Satisfy Provisions when fitted as part of an external wall of any Class 2 to 9 Building which required Type A or Type B construction (as those terms are used in the BCA) because:

- (a) as pleaded at paragraph 26 above, an external wall constructed in whole or in part of Alucobond PE Core Cladding was not “*non-combustible*”; and
- (b) the Deemed-to-Satisfy Provisions required external walls for Type A and Type B construction to be “*non-combustible*”.

Particulars

- A. Spec C1.1, cl 3.1 (Type A construction); cl 4.1(b) (Type B construction) of the BCA (prior to 2016 Amendment 1 version);
- B. C1.9(a)(i) (both Type A and B construction) of the BCA (2016 Amendment 1 version).
- C. ~~Further particulars may be provided following the filing of the applicant's evidence~~Kip, Part 4.

30. Further or alternatively, at all material times from 12 March 2018 (being the date on which the BCA 2016 Amendment 1 came into effect), Alucobond PE Core Cladding could not comply with the Deemed-to-Satisfy Provisions when fitted as an “*ancillary element*” (as that term is defined in the BCA) to an external wall or other building element of any Class 2 to 9 Building (regardless of the type of construction) because:

- (a) as pleaded at paragraph 26 above, Alucobond PE Core Cladding was not “*non-*

combustible” as that term is used in the BCA; and

- (b) the Deemed-to-Satisfy Provisions (regardless of the type of construction) required an “*ancillary element*” fixed, installed or attached to the external face of an external wall to be “*non-combustible*” as that term is used in the BCA.

Particulars

- A. C1.14 of the BCA (2016 Amendment 1 version).
- B. Kip, Part 4.7 ~~Further particulars may be provided following the filing of the applicant's evidence.~~

31. Where some or all of the Deemed-to-Satisfy Provisions referred to in paragraphs 28, 29 and/or 30 could not be complied with in order to allow the use of Alucobond PE Core Cladding as part of or as an attachment to an external wall or other building element of any Class 2 to 9 Building, then there was no Deemed-to-Satisfy Provision pathway available for that particular use and the Fire Resistance Performance Requirements could only be met by an Alternative Solution.

D.1.5 Inability to form part of a compliant Alternative Solution

32. Further, at all material times, the use of Alucobond PE Core Cladding as part of or as an attachment to an external wall or other building element could not meet the Fire Resistance Performance Requirements by an Alternative Solution for all Class 2 to 9 Buildings.

Particulars

- A. Alucobond PE Core Cladding could not, and cannot, meet the Fire Resistance Performance Requirements by an Alternative Solution where:
 - a. Alucobond PE Core Cladding, other than an insubstantial quantity, was to be used proximately to one another in a multi-storey building; and/or
 - b. the Alucobond PE Core Cladding was to be used adjacently to, or proximately to an exit, entrance or window in a multi-storey building, because:
 - c. contrary to the requirements of CP2 of the BCA, when so fitted Alucobond PE Core Cladding exacerbates the spread of fire to exits, between buildings or in a building, and from 12 March 2018 would not pass the large scale façade test when tested pursuant to Australian Standard 5113.
 - d. contrary to the requirements of the CP4 of the BCA, when so fitted Alucobond PE Core Cladding does not resist the spread of fire to maintainable conditions during occupant evacuation.
 - e. contrary to the requirements of CP9 of the BCA, when exposed to fire Alucobond PE Core Cladding can hinder the ability of fire brigade vehicles and personnel to access the building
- B. Alucobond PE Core Cladding could not, and cannot, meet the Fire Resistance Performance Requirements by an Alternative Solution when used for buildings with the characteristics of the Shore Building or the Five Dock Building.
- C. Many Class 2 to 9 Buildings have the characteristics of the Shore Building;

- D. ~~Kip, Part 3~~ Further particulars may be provided following the filing of the applicant's evidence.

32A. Further or alternatively, at all material times, it was not possible or, alternatively, reasonably practicable to design or certify an Alternative Solution that would allow the use of Alucobond Plus in accordance with the Fire Resistance Performance Requirements, other than where the Alucobond Plus was used in insubstantial quantities.

Particulars

- A. It was not possible, or alternatively reasonably practicable, to design or certify an Alternative Solution incorporating Alucobond Plus because at all material times:
- a. there was insufficient information available concerning the manufacture and composition of Alucobond Plus (including because of the reasons pleaded in paragraphs 10A and 10B above);
 - b. there was insufficient information available concerning the fire performance of Alucobond Plus, including credible fire testing reports addressing the characteristics and fire performance of the products;
 - c. the design and certification of an Alternative Solution would require stakeholder input (including from the fire brigade), and such stakeholders would not approve of the use of Alucobond Plus;
 - d. even assuming stakeholder approval was obtained, significant fire mitigation measures would be required including (at a minimum) fire breaks, fire sprinklers, shielding of the PE Core with non-combustible or fire-resting construction, limited combustibility insulation, sarkings and fixings behind the cladding, and limitations on the use of areas such as balconies, all of which are expensive and onerous (as compared to using a non-combustible alternative product).
- B. Kip, Part 3.

D.1.6 Non-compliance with BCA

33. By reason of the matters pleaded at paragraphs 28, 29, 30, 31, 32 and 32A, Alucobond PE Core Cladding:
- (a) when fitted as part of or as an attachment to an external wall or other building element of a Class 2 to 9 Building in any type of construction, does not and did not comply with the BCA (and does not and did not allow all Class 2 to 9 Buildings on which it was fitted to comply with the BCA), for the reasons pleaded in paragraphs 28, 29, 30, 31, 32 and 32A; and/or
 - (b) further, or alternatively, when fitted as part of or as an attachment to an external wall or other building element of a Class 2 to 9 Building in any type of construction, does not and did not comply with the BCA (and does not and did not allow all Class 2 to 9 Buildings on which it was fitted to comply with the BCA) for the reasons pleaded in paragraphs 28, 31, 32 and 32A; and/or

- (c) further, or alternatively, when fitted as part of an external wall of a Class 2 to 9 Building which required Type A or Type B construction does not and did not comply with the BCA (and does not and did not allow all Class 2 to 9 Buildings on which it was fitted to comply with the BCA) for the reasons pleaded in paragraphs 29, 31, 32 and 32A; and/or
- (d) further, or alternatively, from 12 March 2018, when fitted as part of an external wall of a Class 2 to 9 Building in any type of construction does not and did not comply with the BCA (and does not and did not allow all Class 2 to 9 Buildings on which it was fitted to comply with the BCA) for the reasons pleaded in paragraphs 30, 31, 32 and 32A; and
- (e) further, or alternatively, was not compliant with the BCA when used for all the Relevant Uses, by reason of the matters pleaded in paragraphs (a), (b), (c) and/or (d).

Particulars

- A. The Shore Building was fitted with Alucobond PE between 8 November 2011 and 16 August 2012.
 - B. Generally, the Alucobond PE was situated on or around the following parts of the Shore Common Property:
 - a. external upturn around the perimeter of level 4;
 - b. fascia above the external walls on level 4 including the soffit;
 - c. the underside of the ceiling over the balconies on level 3 and the overhang that extends along the western and eastern sides of the Shore Building; and
 - d. on level 3 in between windows in the eastern and western external walls.
 - C. The use of Alucobond PE on the Shore Common Property did not comply with the BCA (and therefore the Shore Common Property did not comply with the BCA) because:
 - a. it has been used as a lining, or part of a wall, or as an attachment to an external wall or other building element contrary to the Deemed-to-Satisfy Provisions pleaded in paragraphs 28 to 30 above;
 - b. it was not part of an Alternative Solution that complied with CP2, CP4, CP8 or CP9.
 - c. it could not be part of an Alternative Solution that complied with CP2, CP4, CP8 or CP9 for the reasons contained in the particulars to paragraph 32 above.
 - D. Further particulars in relation to the non-compliance of Alucobond PE Core Cladding with the BCA in respect of Group Members may be provided if and when it is necessary for a determination to be made of part or all of the claims of those Group Members.
 - E. Kip, Parts 3, 4, 5, 6, 7 and 8 Further particulars may be provided following the filing of the applicant's evidence.
34. Further or alternatively, by reason of the matters pleaded at paragraphs 28, 29, 30, 31, 32 and/or 32A, when fitted as part of or as an attachment to an external wall or other building element of a Class 2 to 9 Building, there was a material risk that Alucobond PE Core

Cladding:

- (a) When fitted as part of or as an attachment to an external wall or other building element of a Class 2 to 9 Building in any type of construction, does not and did not comply with the BCA (and does not and did not allow all Class 2 to 9 Buildings on which it was fitted to comply with the BCA), for the reasons pleaded in paragraphs 28, 29, 30, 31, 32 and 32A;
- (b) further, or alternatively, when fitted as part of or as an attachment to an external wall or other building element of a Class 2 to 9 Building in any type of construction, does not and did not comply with the BCA (and does not and did not allow all Class 2 to 9 Buildings on which it was fitted to comply with the BCA) for the reasons pleaded in paragraphs 28, 31, 32 and 32A;
- (c) further, or alternatively, when fitted as part of an external wall of a Class 2 to 9 Building which required Type A or Type B construction does not and did not comply with the BCA (and does not and did not allow all Class 2 to 9 Buildings on which it was fitted to comply with the BCA), for the reasons pleaded in paragraphs 29, 31, 32 and 32A; and/or
- (d) further, or alternatively, from March 2018, when fitted as part of an external wall of a Class 2 to 9 Building in any type of construction does not and did not comply with the BCA (and does not and did not allow all Class 2 to 9 Buildings on which it was fitted to comply with the BCA) for the reasons pleaded in paragraphs 30, 31, 32 and 32A; and
- (e) further, or alternatively, was not compliant with the BCA when used for all the Relevant Uses, by reason of the matters pleaded in paragraphs (a), (b), (c) and/or (d).

35. The matters pleaded at:

- (a) paragraphs 28 to 32A and 33 above are referred to in this pleading as the “**BCA Non-compliance Properties**” of Alucobond PE Core Cladding; and
- (b) paragraphs 28 to 32A and 34 are referred to in this pleading as the “**BCA Non-compliance Risk Properties**” of Alucobond PE Core Cladding.

D.2 BCA-Related Prohibition Risk

36. Further or in the alternative, by reason of the BCA Non-Compliance Properties and/or the

BCA Non-compliance Risk Properties, there is and was at all material times a risk that any Alucobond PE Core Cladding used as part of or as an attachment to an external wall or other building element of a Class 2 to 9 Building:

- (a) could be determined by relevant government authorities to be non-compliant with relevant building codes and standards; and
- (b) could be the subject of a legally-binding direction to be removed and/or replaced at the cost of the owner or leaseholder (as applicable),

(BCA-Related Prohibition Risk Properties)

Particulars

- A. In NSW relevant enforcement authorities can issue a development control order, including a restore works order or compliance order, under section 9.34 and Schedule 5 of the *Environmental Planning and Assessment Act 1979* (NSW) requiring the owner or person responsible to do whatever is necessary to ensure compliance with relevant development standards.
- B. In respect to the Shore Building, a legally binding direction to remove and replace the Alucobond PE Core Cladding fitted to the Shore Common Property has been issued by Bayside Council;
- C. ~~[Not used] Further particulars may be provided following the filing of the applicant's evidence.~~

E. SUPPLY OF THE GOODS

E.1 Supply in trade or commerce for resupply (TPA, 74D(1)(a))

E.1.1 Supply by 3A Composites for resupply

- 37. At all material times, all Alucobond PE Core Cladding supplied in Australia has been supplied by 3A Composites' exclusive distributor in Australia, following 3A Composites supplying it to that distributor.

Particulars

- A. Paragraph 5(b) is repeated.
- B. 3A Composites' exclusive distributor in Australia since about 8 or 17 August 2007 has been HVG, prior to which time it was Alucobond Architectural Pty Ltd.
- C. In respect of the Applicant, 3A supplied the Alucobond PE Core Cladding fitted on the Shore Common Property to HVG on a date presently unknown to the Applicant within its present state of knowledge.
- D. Further particulars in relation to supply of the goods in respect of Group Members may be provided if and when it is necessary for a determination to be made of part or all of the individual claims of those Group Members.

- 38. The supplies pleaded in paragraph 37 were in trade or commerce.

39. At all material times, 3A Composites' exclusive distributor in Australia acquired Alucobond PE Core Cladding for the purpose of re-supplying it.

Particulars

- A. The business of an exclusive distributor is to sell and supply goods to other parties, and this was the business of both HVG and Alucobond Architectural Pty Ltd. The classes of persons to whom goods were supplied included:
 - a. Building product suppliers;
 - b. Fabricators
 - c. Installers;
 - d. Builders and other tradespeople;
 - e. Property developers; and
 - f. Owners or leaseholders of buildings.
 - B. In respect of the Applicant, HVG supplied the Alucobond PE Core Cladding fitted on the Shore Common Property to Modernise Installations between about 27 September 2011 and 29 May 2012.
 - C. Further particulars in relation to supply of the goods in respect of Group Members may be provided if and when it is necessary for a determination to be made of part or all of the individual claims of those Group Members.
40. By reason of the matters pleaded in paragraphs 4(d)(ii), and 37 to 39, in respect of the Alucobond PE Core Cladding fitted on the Relevant Buildings and/or Relevant Building Parts owned, previously owned, leased or previously leased by the Applicant and each Group Member, 3A Composites supplied, in trade or commerce, the Alucobond PE Core Cladding manufactured by it to another person who acquired it for re-supply, within the meaning of s 74D(1)(a) of the TPA.

E.1.2 Supply by HVG for resupply

41. At all material times on or after about 8 or 17 August 2007, HVG has supplied Alucobond PE Core Cladding to:

- (a) persons who acquired the Alucobond PE Core Cladding for the purpose of resupply to other persons (**Further Resuppliers**); and
- (b) persons who acquired Alucobond PE Core Cladding other than for the purpose of resupply to other persons (**Ultimate Consumers**).

Particulars

- A. The classes of persons to whom Alucobond PE Core Cladding was supplied by HVG who are Further Resuppliers included:
 - a. Building product suppliers;
 - b. Fabricators
 - c. Installers;
 - d. Builders and other tradespeople;
 - e. Property developers; and
 - f. Owners or leaseholders of buildings.

- B. The classes of persons to whom Alucobond PE Core Cladding was supplied by HVG who are Ultimate Consumers from HVG included owners and lessees of buildings who intended to fit the goods to their buildings and retain the buildings rather than selling them.
- C. In respect of the Applicant, HVG supplied the Alucobond PE Core Cladding fitted on the Shore Common Property to a Further Resupplier (an installer, namely, Modernise Installations), between about 27 September 2011 and 29 May 2012, who acquired it for the purpose of resupplying it to the prior owner and developer of the Shore Building, namely Ronnstar Pty Limited and/or Lawtow Pty Limited.
- D. To the extent the Alucobond PE Core Cladding was affixed to the Relevant Building or Relevant Building Part at the time of supply, the Applicant and Group Members rely upon ss. 8 of the ACL and 74A(8) of the TPA.
- E. Further particulars in relation to supply of the goods in respect of Group Members may be provided if and when it is necessary for a determination to be made of part or all of the individual claims of those Group Members.

42. The supplies pleaded in paragraph 41 were in trade or commerce.

43. By reason of the matters pleaded in paragraphs 5(c)(i) and (d), and 41 to 42, in respect of the Alucobond PE Core Cladding fitted on the Relevant Buildings and/or Relevant Building Parts owned, previously owned, leased or previously leased by the Applicant and each Group Member, HVG supplied, in trade or commerce, the Alucobond PE Core Cladding which it was deemed to have manufactured to another person who acquired it for re-supply, within the meaning of s 74D(1)(a) of the TPA, except where the person to whom HVG directly supplied it was an Ultimate Consumer.

Particulars

- A. In respect of the Applicant, HVG supplied the Alucobond PE Core Cladding fitted on the Shore Common Property to a Further Resupplier (an installer, namely, Modernise Installations), between 27 September 2011 and 29 May 2012, who acquired it for the purpose of resupplying it to the prior owner and developer of the Shore Building, namely Ronnstar Pty Limited and/or Lawtow Pty Limited. HVG did not directly supply the Alucobond PE Core Cladding to an Ultimate Consumer.
- B. Further particulars in relation to supply of the goods in respect of Group Members may be provided if and when it is necessary for a determination to be made of part or all of the individual claims of those Group Members.

E.2 Supply to consumer otherwise than by sale by auction (TPA, 74D(1)(b); ACL, 54(1))

44. The Applicant and each Group Member:

- (a) was supplied with Alucobond PE Core Cladding as a consumer within the meaning of the TPA and the ACL;
- (b) alternatively, derived their ownership or leasehold interest in a Relevant Building or Relevant Building Part fitted with Alucobond PE Core Cladding from a predecessor in

title who was a consumer within the meaning of the TPA and the ACL (such predecessors in title being **Original Consumer Owners** and **Original Consumer Lessees**);

Particulars

- A. In respect of the Applicant:
 - a. The prior owner and developer of the Shore Building was Ronnstar Pty Limited and/or Lawtow Pty Limited.
 - b. The Applicant:
 - i. was supplied with, and acquired, the Alucobond PE Core Cladding on the Shore Common Property in its capacity as a Consumer upon its creation as part of the process under the SSFDA and the SSMA, or
 - ii. alternatively, it acquired the Alucobond PE Core Cladding on the Shore Common Property from Ronnstar Pty Limited and/or Lawtow Pty Limited who was/were the Original Consumer Owners (and as such, a Consumer) or derived title to it through or under Ronnstar Pty Limited and/or Lawtow Pty Limited who was/were the Original Consumer Owners (and as such, a Consumer).
- B. To the extent the Alucobond PE Core Cladding was affixed to the Relevant Building or Relevant Building Part at the time of supply, the Applicant and Group Members rely upon ss. 8 of the ACL and 74A(8) of the TPA.
- C. Further particulars in relation to the acquisition of the goods by Group Members (or Original Consumer Owners and Original Consumer Lessees in respect of Group Members' claims) may be provided if and when it is necessary for a determination to be made of part or all of the individual claims of those Group Members.

45. Further, or alternatively, at all material times, at the time when Alucobond PE Core Cladding was supplied to the Applicant and Group Members (or the Original Consumer Owner and each Original Consumer Lessee) the price of the Alucobond PE Core Cladding was:

- (a) less than \$40,000 per panel;
- (b) alternatively, less than \$40,000 per delivery batch of panels;
- (c) alternatively, less than \$40,000 for all panels purchased for the building;

Particulars

- A. In respect of the Shore Building:
 - a. each panel of Alucobond PE Core Cladding was supplied at a unit price of between \$234.86 and \$372 (with an average unit price of \$310.77);
 - b. there were seven individual supplies of panels, with the cost of each supply (as displayed on the invoice, excluding freight) being:
 - i. 27 September 2011 - \$12,870.15;
 - ii. 12 October 2011 - \$11,027.70;
 - iii. 18 November 2011 - \$4,499.14;
 - iv. 6 February 2012 - \$1,317.58;
 - v. 11 April 2012 - \$1,197.50;

- vi. 11 May 2012 - \$9,304.58; and
- vii. 29 May 2012 - \$527.03.

B. Further particulars in relation to the acquisition of the goods by Group Members (or Original Consumer Owners and Original Consumer Lessees in respect of Group Members' claims) may be provided if and when it is necessary for a determination to be made of part or all of the individual claims of those Group Members

46. Further, or alternatively to paragraph 45, the Alucobond PE Core Cladding was a good of a kind ordinarily acquired for personal, domestic or household use or consumption within the meaning of s. 3(1)(b) of the ACL and s. 74A(2) of the TPA.

Particulars

A. Reference is made to paragraphs 51 and 52 below and the particulars therein.

47. Further, at all material times, at the time when Alucobond PE Core Cladding was supplied to the Applicant and Group Members (or the Original Consumer Owner and each Original Consumer Lessee), those persons did not acquire it for the purpose of re-supply, or for using up or transforming it in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land, within the meaning of s 4B of the TPA and the CCA.
48. By reason of the matters pleaded in paragraphs 45, 46 and 47 the Applicant and each Group Member (or the Original Consumer Owner and each Original Consumer Lessee) are taken to have acquired the Alucobond PE Core Cladding fitted to their Relevant Building or Relevant Building Parts as a "*consumer*" as that term is used in the TPA and ACL (**Consumer**).

Particulars

A. TPA, s. 4B(1); ACL, s. 3(1).

49. The Applicant and Group Members (and any Original Consumer Owner and Original Consumer Lessee) did not acquire Alucobond PE Core Cladding by way of sale by auction.

Particulars

- A. Alucobond PE Core Cladding was not generally sold in Australia by way of sale by auction to Consumers, but was instead sold and distributed by 3A Composites' exclusive distributor, as pleaded in paragraph 37 above.
- B. In respect to the ~~a~~Applicant:
 - a. To the extent the Applicant was supplied with, and acquired, the Alucobond PE Core Cladding on the Shore Common Property in its

- capacity as a Consumer upon its creation as part of the process under the SSFDA and the SSMA, it did not acquire the Alucobond PE Core Cladding by way of sale by auction, or
- b. alternatively, to the extent the Applicant derived title from Ronnstar Pty Limited and/or Lawtow Pty Limited who was/were Original Owners of the Shore Building who acquired Alucobond PE Core Cladding as a Consumer, Ronnstar Pty Ltd and/or Lawtow Pty Ltd did not acquire the Alucobond PE Core Cladding by way of sale by auction, but by ordinary sale and purchase from HVG or Modernise Installations.
- C. Details of the supply and acquisition of Alucobond PE Core Cladding, in respect of which each Group Member's claims relate to, may be provided if and when it is necessary for a determination to be made of the individual claims of those Group Members.

F. REASONABLE EXPECTATION AS TO QUALITY OF GOODS

F.1 The kind and nature of the goods

50. The Applicant repeats the matters pleaded at paragraphs 6, 7, 8, 9, 10, 10A and 10B above.

F.2 Purposes for which goods were commonly supplied in Australia

51. At all material times, having regard to the Relevant Uses, Alucobond PE Core Cladding was commonly bought or supplied in Australia for:

- (a) the purpose of use as part of an external wall; or
- (b) the purpose of use as an attachment to an external wall or other building element;

in either case on any:

- (i) high rise buildings; or
- (ii) low rise buildings; and

where such buildings were intended to be used for:

- (A) residential purposes; or
- (B) commercial purposes; or
- (C) public or government administration purposes; or

- (c) the purpose of use for any combination of one or more of the uses set out in 51(a) to (b) above,

(each and any combination of (a) to (c) being the **Purposes**).

F.3 Representations about the goods

F.3.1 Representations as to quality and use of goods

52. At all material times, 3A Composites and HVG each represented that Alucobond PE Core Cladding:

(a) was suitable for use for all the Purposes; and

(b) would be suitable for use for any of the Purposes once affixed to a building,

(the **Suitability Representation**)

Particulars

- A. The Suitability Representation was impliedly made by 3A Composites and HVG by means of the images of various types of buildings fitted with Alucobond PE Core Cladding contained in the documents distributed and/or published by each of 3A and HVG in Australia during the Relevant Period for the purposes of promoting Alucobond PE Core Cladding.
- B. Further, the Suitability Representation was made by 3A Composites expressly and/or impliedly:
 - a. in documents published by 3A Composites in Australia, including during the Relevant Period for the purposes of promoting Alucobond PE Core Cladding that included express references to the uses of Alucobond PE Core Cladding, including *inter alia*, the statements in the following documents:
 - i. "Alucobond plus: For greater protection against fire", undated (file created 2 September 2008) [3AC.600.001.5087], p. 2;
 - ii. "Alucobond Vision Materialized: Alucobond at a glance" dated 1 July 2009 [3AC.600.001.4025], p. 2;
 - iii. "Alucobond: Create the Difference" dated 31 January 2011 [3AC.600.001.5413], p. 2.
 - iv. "Alucobond Façade Fascination" dated 1 August 2011 [3AC.600.001.0115], p. 5;
 - v. "Product Information: Alucobond at a Glance" dated September 2012 [3AC.601.001.0047], p. 20;
 - vi. "Alucobond Façade Fascination" dated 16 July 2014 [3AC.600.001.4830], p. 3;
 - vii. "Alucobond Dibond showing identity" dated 10 June 2015 [3AC.600.001.4115];
 - viii. "Alucobond Façade Fascination" dated 18 June 2015 [3AC.600.001.4857], p. 3;
 - ix. "Alucobond Façade Fascination" dated 25 August 2016 [3AC.600.001.4936], p. 3;
 - x. "Alucobond Façade Fascination" dated 11 August 2017 [3AC.600.001.4963], p. 3;
 - xi. "Alucobond Flying High" dated 18 July 2019 (but produced by 3A in response to Order 2(c) made on 8 July 2019, and as such is a document published by 3A in Australia at any date between 18 February 2009 and 18 February 2019) [3AC.600.001.4794], p. 13;
 - xii. "Alucobond – Documentation of Suppliers Façade" dated 18

July 2019 (but produced by 3A in response to Order 2(c) made on 8 July 2019, and as such is a document published by 3A in Australia at any date between 18 February 2009 and 18 February 2019) [3AC.600.001.5093], p. 6;

- xiii. "Alucobond At a Glance" dated 29 August 2019 (but produced by 3A in response to Order 2(c) made on 8 July 2019, and as such is a document published by 3A in Australia at any date between 18 February 2009 and 18 February 2019) [3AC.601.001.0021], p. 1;

- b. by the authorisation or approval of the documents published or distributed by HVG in Australia, to the extent they contained the Suitability Representation as particularised at paragraph C below.

C. Further, the Suitability Representation was made by HVG expressly and/or impliedly:

- a. in documents distributed and/or published by HVG in Australia, including during the Relevant Period for the purposes of marketing or promoting Alucobond PE Core Cladding that included express references to the uses of Alucobond PE Core Cladding, including *inter alia*, the statements in the following documents:

- i. "Alucobond: Product Information" flyer, undated [alucobond_flyer_product_flyer];
- ii. "Alucobond: The face of tomorrow today", dated 2002-2005 [alucobond_bro_10-04], pp.1, 3;
- iii. "Alucobond: The face of tomorrow today", dated 2006-2010 [alucobond_bro_08-06], pp. 1, 2, 3;
- iv. "Alucobond: Vision Materialised" dated 22 October 2010 [Alucobond_Brochure], pp. 3, 7-10;
- v. "Alucobond Façade Fascination" dated September 2012 [Alucobond – Façade Fascination – Production Information], pp. 26-27;
- vi. "Alucobond Anodize Look" dated June 2013, p. 2;
- vii. "Alucobond Façade Fascination" dated September 2012, p. 5;
- viii. "the face of tomorrow today" bearing the Trademark, a logo of "Alcan" and the words "Alcan Composites" printed in Germany bearing a date of "01/04/2007";
- ix. "Alucobond at a Glance" bearing the logos of 3A Composites and HVG and the Trademark;
- x. "Alucobond Beyond Facades" bearing the logo of the 3A Composites and the Trademark; and
- xi. "Alucobond Fire Product Information Guide" dated 6 October 2017; and

- b. by the distribution of the documents published by 3A Composites in Australia, to the extent they contained the Suitability Representation as particularised at paragraph B. above; and-

- c. in correspondence with architects, builders and other potential users or specifiers of Alucobond PE Core Cladding, including *inter alia* [HVG.006.161.6278], [HVG.006.248.1259], [HVG.006.014.6624], [HVG.005.085.3358], [HVG.006.161.4563], [HVG.006.041.1551].

- d. to Prestige Apartments Australia Pty Ltd (**Prestige**) in respect of the Applicant's building, as alleged in the particulars to paragraph 21 to Prestige's Defence dated 10 December 2021. Further particulars may be provided after the service of Prestige's evidence.

D. ~~[Not used]Further particulars may be provided following discovery and/or service of the applicant's evidence.~~

52A. At all material times, 3A Composites and HVG each represented that all panels of Alucobond Plus supplied in Australia contained a core that comprised:

- (a) no more than 30% Plastic Binders; and/or
- (b) not less than 70% non-combustible mineral filler.

(the Plus Composition Representation).

Particulars

- A. The Plus Composition Representation was made expressly and/or impliedly in documents published by 3A Composites and HVG in Australia, including during the Relevant Period, for the purposes of promoting Alucobond PE Core Cladding that included express references to the composition of Alucobond Plus, including *inter alia*, in the following documents:
 - a. "Alucobond: Product Information The Katsumata Centre", dated November 2012 [HVG.001.001.0044], p. 2;
 - b. "Alucobond: At a Glance" undated (file created 27 February 2014) [APP.001.002.0251], p. 12;
 - c. "Alucobond: At a Glance" dated 1 September 2016 [3AC.600.001.4083], p. 1;
 - d. "Alucobond: Beyond Facades" undated (file created 20 April 2017) [HVG.001.001.0039], p. 12;
 - e. "Alucobond: At a Glance" dated 1 May 2017 [3AC.600.001.4085], p. 3;
 - f. "Alucobond: Fire Product Information Guide" undated (file created 6 October 2017) [HVG.001.001.0048], p. 4;
 - g. "Alucobond: At a Glance" dated 1 February 2018 [3AC.600.001.4095], p. 3;
 - h. "Alucobond: At a Glance" undated (file created 3 April 2019) [HVG.001.001.0106], p. 12;
 - i. "Alucobond: Beyond Facades" undated (file created 16 April 2019) [HVG.006.173.2668], p. 12; and
 - j. "Alucobond: Fire Retardancy and ALUCOBOND" undated (file created 29 August 2019) [3AC.601.001.0023], p. 4.
- B. Further, the Plus Composition Representation was made expressly by 3A and/or HVG in Australia, including during the Relevant Period, by publishing, promoting or referring to the Codemark Certificates of Conformity published in respect of Alucobond Plus, which documents (based on information provided by HVG to the relevant bodies issuing the Codemark Certificates) referred to Alucobond Plus as having 70% non-combustible mineral filling and/or 30% plastic binders. This included 3A manufacturing panels of Alucobond Plus for supply in Australia with a printed label that referred to the Codemark Certificates.
- C. In correspondence with architects, builders and other potential users or specifiers of Alucobond PE Core Cladding, including *inter alia* [HVG.006.041.1551].

53. At all material times, 3A Composites and HVG each represented that:

- (a) Alucobond PE Core Cladding could be fabricated by third parties prior to (or as part of) being fitted to buildings , including by:

- | | |
|----------------------|-------------------|
| (i) cutting; | (ii) welding; |
| (iii) drilling; | (iv) gluing; |
| (v) contour cutting; | (vi) screwing; |
| (vii) shearing; | (viii) clamping; |
| (ix) punching; | (x) bonding; |
| (xi) bending; | (xii) routing; or |
| (xiii) riveting; | (xiv) folding. |

(the **Fabrication Methods**); and

(aa) Alucobond PE Core Cladding could be affixed by third parties to buildings using one or more of the following methods or systems:

- (i) the “cassette fix” (or “tray panel”) system;
- (ii) a “flat stick” (or “glued”) system;
- (iii) a “riveted” or “screwed” system;
- (iv) a “clamped” system.

(the **Affixation Methods**); and

- (b) applying any of the Fabrication Methods and/or Affixation Methods to or in connection with the fitting of Alucobond PE Core Cladding to a building for the Purposes would not materially affect the fire performance and safety of Alucobond PE Core Cladding (the **Fabrication and Affixation Representation**).

Particulars

- A. The representations in paragraphs (a) and (aa) were expressly and/or impliedly made by 3A:
 - a. in documents published by 3A Composites in Australia, including during the Relevant Period for the purposes of promoting Alucobond PE Core Cladding containing express references to the Fabrication and Affixation Methods, including inter alia, in the following documents:
 - i. “Alucobond Vision Materialized: Alucobond at a glance” dated 1 July 2009 [3AC.600.001.4025], p. 6-7;

- ii. "Alucobond: Processing", undated (file created 6 August 2010) [3AC.600.001.5129];
- iii. "Alucobond: Create the Difference" dated 31 January 2011 [3AC.600.001.5413], p. 3;
- iv. "Alucobond: Processing and Technical Data" dated 28 June 2012 [3AC.600.001.5157], p. 9-31.
- v. "Alucobond" Façade Fascination" dated 16 July 2014 [3AC.600.001.4830], p. 39-46;
- vi. "Alucobond: Processing and Technical Data" dated 23 September 2014 [3AC.600.001.5203], p. 9-31;
- vii. "Alucobond: Processing and Technical Data" dated 20 March 2015 [3AC.600.001.5251], p. 9-31;
- vii(1). "Alucobond: At a Glance" dated 1 June 2015 [3AC.600.001.4055], p. 3;
- viii. "Alucobond" Façade Fascination" dated 18 June 2015 [3AC.600.001.4857], p. 39-46;
- ix. "Alucobond: Processing and Technical Data" dated 18 June 2015 [3AC.600.001.5343], p. 9-31;
- x. "Alucobond" Façade Fascination" dated 25 August 2016 [3AC.600.001.4936], p. 39-46;
- xi. "Alucobond" Façade Fascination" dated 11 August 2017 [3AC.600.001.4963], p. 39-46;
- xii. "Alucobond: Processing and Technical Data" dated 25 January 2018 [3AC.600.001.5389], p. 9-31;
- xiii. "Alucobond: Processing and Technical Data" dated 12 July 2018 [3AC.600.001.5105], p. 9-31;
- xiv. "Alucobond: Flying High" dated 18 July 2019 [3AC.600.001.4794], pp. 6, 20-21, 24-31;
- b. by the authorisation or approval of the documents published or distributed by HVG in Australia, to the extent they contained the Fabrication and Affixation Representation as particularised at paragraph B below;
- c. a combination of any one or more of the above.

B. The representations in paragraphs (a) and (aa) were expressly and/or impliedly made by HVG:

- a. in documents distributed and/or published by HVG in Australia, including during the Relevant Period for the purposes of marketing or promoting Alucobond PE Core Cladding containing express references to the Fabrication and Affixation Methods, including *inter alia*, in the following documents:
 - i. "Alucobond: The face of tomorrow today", dated 2002-2005 [alucobond_bro_10-04], pp. 3, 7;
 - ii. "Alucobond: The face of tomorrow today", dated 2006-2010 [alucobond_bro_08-06], pp. 3, 7;
 - iii. "Alucobond: Vision Materialised" dated 22 October 2010 [Alucobond_Brochure], pp. 4, 15;
 - iv. "Alucobond Façade Fascination" dated September 2012, p. 39;
 - v. "Detail Sheet No. 1: Alucobond's distinct advantages make specifying easy" created 1 April 2011 (modified 26 April 2012) [ALUCOBOND_Advantages_0312_lowres].
 - vi. "Alucobond: Beyond Facades" undated (file created 24 August 2017) [HVG.001.001.0055], p. 14-16.
- b. by the distribution of the documents published by 3A Composites in Australia, to the extent they contained the Fabrication and Affixation Representation as particularised at paragraph A. above;
- c. to Prestige in respect of the Applicant's building, as alleged in the particulars to paragraph 21 to Prestige's Defence dated 10 December

2021. Further particulars may be provided after the service of Prestige's evidence.

d. e--a combination of any one or more of the above.

C. The representations in paragraph (b) were impliedly made by each of 3A and HVG by:

a. --making the representations pleaded in paragraphs (a) and (aa) without disclosing the matters in paragraph (b) and/or giving the Fabrication and Affixation Warning (as pleaded at paragraph 56); and/or

b. by making the representations pleaded in paragraphs (a) and (aa) together with the Fire Performance Representations (as pleaded at paragraphs 54 and 54A) and/or Compliance Representation (as pleaded at paragraph 55).

D. ~~[Not used]Further particulars may be provided following discovery and/or service of the applicant's evidence.~~

F.3.2 Representations as to fire performance

54. At all material times, 3A Composites and HVG each represented in respect of Alucobond PE that:

(a) the aluminium cover sheets of Alucobond PE protected the PE Core from fire;

(b) Alucobond PE has passed or satisfied a large number of local and international fire performance test that were relevant to its fire performance when used for the Purposes in Australia, including:

(i) AS 1530, Part 3;

(ii) AS 3837;

(iii) ISO 9705;

(iv) EN 13501-1;

(v) ASTM-E84;

(vi) UBC 17-5;

(vii) ASTM E108 modified;

(viii) DIN 4102, Parts 1 and 7; and

(ix) BS 476, Parts 6 and 7;

(c) because of the matters referred to in paragraphs (a) and/or (b), Alucobond PE was safe and suitable for the use for the Purposes and the use of Alucobond PE on a building for the Purposes would not present any material increase in risk to life or safety of occupants, or damage to the property, in the event of a building fire,

~~Alucobond PE Core Cladding was a product which protected against fire and/or did not increase the risks associated with fire in a building to which it was fitted~~

(the PE Fire Performance Representations).

Particulars

- A. The PE Fire Performance Representations ~~was~~ were impliedly made by each of 3A and HVG by making the Suitability Representation (as pleaded at paragraph 52) and/or the Compliance Representation (as pleaded at paragraph 55) without disclosing the Material Fire Risk Properties and/or giving the Fire Risk Warning.
- B. Further or in the alternative, the PE Fire Performance Representations ~~was~~ were made expressly and/or impliedly by HVG:
 - a. in documents distributed and/or published by HVG in Australia during the Relevant Period for the purposes of marketing or promoting Alucobond PE Core Cladding that included statements to the effect that the “*non-combustible aluminium cover sheets protect the plastic core*” together with the image of a panel resisting a flame, including *inter alia*, in the following documents:
 - i. “Product information”, undated (2002-2005) [alucobond_flyer_product_flyer_b];
 - ii. “Alucobond: The face of tomorrow today”, undated (2002-2005) [alucobond_bro_10-04], p. 6;
 - iii. “Alucobond: The face of tomorrow today”, undated (2006-2010) [alucobond_bro_08-06], p. 6;
 - iv. “Alucobond: Product Information” flyer, September 2008 [September 2008- Product Information and Interior Cladding flyers], p. 2;
 - v. “Alucobond: Vision Materialised” dated 22 October 2010 [Alucobond_Brochure], p. 14;
 - vi. “Alucobond: Fire Product Information Guide” created 6 October 2017 [Alucobond Fire Brochure FINAL 06102017] (with respect to Alucobond Plus);
 - ~~b. in relation to Alucobond Plus, documents distributed and/or published by HVG in Australia during the Relevant Period for the purposes of promoting Alucobond Plus that included statements to the effect that Alucobond Plus afforded “greater protection against fire” and/or had “been developed exclusively for the higher requirements of fire regulations”, including *inter alia*, in the following documents:~~
 - ~~i. “Alucobond plus: For greater protection against fire”, undated (2006-2010) [Alucobond_plus_1108_lowres], pp. 3,5;~~
 - ~~ii. “Alucobond Façade Fascination” dated September 2012 [Alucobond Façade Fascination Product Information], p. 36;~~
 - b. in documents distributed and/or published by HVG in Australia during the Relevant Period for the purposes of marketing or promoting Alucobond PE Core Cladding that included reference to international fire tests and approvals. The full list of international first tests and

- approvals are at Bisby paragraph [1089];
- c. in correspondence with architects, builders and other potential users or specifiers of Alucobond PE Core Cladding, including *inter alia* [HVG.006.248.1259], [HVG.005.085.3358], [HVG.006.041.1551].
- d. e. by the distribution of the documents published by 3A Composites in Australia, to the extent they contained the Fire Performance Representations as particularised at paragraph C. below;
- e. to Prestige in respect of the Applicant's building, as alleged in the particulars to paragraph 21 of Prestige's Defence dated 10 December 2021. Further particulars may be provided after the service of Prestige's evidence.
- f. d. a combination of any one or more of the above.

C. Further or in the alternative, the PE Fire Performance Representations ~~was~~ were made expressly and/or impliedly by 3A Composites:

- a. ~~in documents published by 3A in Australia during the Relevant Period for the purposes of promoting Alucobond Plus that included statements to the effect that Alucobond Plus was "hardly inflammable" and designed to meet "stricter [or "higher"] requirements of the fire classifications", including *inter alia*, in the following documents:~~
 - i. ~~"Alucobond plus: For greater protection against fire", undated (file created 2 September 2008) [3AC.600.001.5087], p. 3;~~
 - ii. ~~"Alucobond At a Glance" dated 1 August 2011 [3AC.600.001.0115], p. 2;~~
 - iii. ~~"Alucobond Façade Fascination" dated 1 August 2011 [3AC.600.001.0115], p. 36;~~
 - iv. ~~"Alucobond At a Glance" dated August 2012 [3AC.600.001.4053], p. 1;~~
 - v. ~~"Alucobond Façade Fascination" dated 16 July 2014 [3AC.600.001.4830], p. 19;~~
 - vi. ~~"Alucobond At a Glance" dated 1 June 2015 [3AC.600.001.4055], p. 3;~~
 - vii. ~~"Alucobond Façade Fascination" dated 18 June 2015 [3AC.600.001.4857], p. 19; "Alucobond At a Glance" dated 1 May 2016 [3AC.600.001.4065], p. 3;~~
 - viii. ~~"Alucobond Façade Fascination" dated 25 August 2016 [3AC.600.001.4936], p. 19;~~
 - ix. ~~"Alucobond At a Glance" dated 29 September 2016 [3AC.600.001.4075], p. 3;~~
 - x. ~~"Alucobond Façade Fascination" dated 11 August 2017 [3AC.600.001.4963], p. 19;~~
 - xi. ~~"Alucobond At a Glance" dated 23 March 2018 [3AC.600.001.4095], p. 3;~~
 - xii. ~~"Alucobond At a Glance" dated 4 June 2018 [3AC.600.001.4105], p. 3;~~
 - xiii. ~~"Alucobond At A Glance" dated 1 February 2019 [3AC.600.001.4011], p. 3;~~
 - xiv. ~~"Alucobond: Fire Retardancy and ALUCOBOND" dated 29 August 2019 [3AC.601.001.0023], pp. 3-4 (including the image at p. 3).~~
- a. in documents published by 3A in Australia during the Relevant Period for the purposes of marketing or promoting Alucobond PE Core Cladding that included reference to international fire tests and approvals. The full list of international first tests and approvals are at Bisby paragraph [1089];
- b. by the authorisation or approval of the documents published or distributed by HVG in Australia, to the extent they contained the Fire Performance Representation as particularised at paragraph B. above;
- c. a combination of any one or more of the above.

D. ~~[Not used]Further particulars may be provided following discovery and/or service of the applicant's evidence.~~

54A. At all material times, 3A Composites and HVG each represented in respect of Alucobond

Plus that:

- (a) the aluminium cover sheets of Alucobond Plus protected the PE Core from fire;
- (b) Alucobond Plus was fire resistant, hardly inflammable and/or low flammability;
- (c) Alucobond Plus had passed or satisfied a large number of local and international fire performance tests that were relevant to its fire performance when used for the Purposes in Australia, including:
 - (i) AS 1530, Part 3;
 - (ii) AS 3837;
 - (iii) ISO 9705;
 - (i) EN 13501-1;
 - (ii) BS 8414;
 - (iii) NFPA 285;
 - (iv) ASTM E84;
 - (v) UBC 26-9;
 - (vi) DIN 4102, Part 7;
 - (vii) BS 476, Parts 6 and 7;
 - (viii) BR 135.
- (d) because of the matters referred to in (a), (b) and/or (c), Alucobond Plus was suitable and safe for use for the Purposes and the use of Alucobond Plus on a building for the Purposes would not present any material increase to risk to life or safety of occupants, or damage to property, in the event of a building fire,

(the Plus Fire Performance Representations).

Particulars

- A. The Plus Fire Performance Representations were impliedly made by each of 3A and HVG by making the Suitability Representation (as pleaded at paragraph 52) and/or the Compliance Representation (as pleaded at paragraph 55) without disclosing the Material Fire Risk Properties and/or giving the Fire Risk Warning.
- B. Further or in the alternative, the Plus Fire Performance Representations were made expressly and/or impliedly by HVG:
- a. in documents distributed and/or published by HVG in Australia during the Relevant Period for the purposes of marketing or promoting Alucobond PE Core Cladding that included statements to the effect that the “*non-combustible aluminium cover sheets protect the plastic core*” together with the image of a panel resisting a flame, including *inter alia*, in the following documents:
 - i. “Product information”, undated (2002-2005) [alucobond flyer product flyer b];
 - ii. “Alucobond: The face of tomorrow today”, undated (2002-2005) [alucobond bro 10-04], p. 6;
 - iii. “Alucobond: The face of tomorrow today”, undated (2006-2010) [alucobond bro 08-06], p. 6;
 - iv. “Alucobond: Product Information” flyer, September 2008 [September 2008- Product Information and Interior Cladding flyers], p. 2;
 - v. “Alucobond: Vision Materialised” dated 22 October 2010 [Alucobond Brochure], p. 14;
 - vi. “Alucobond: Fire Product Information Guide” created 6 October 2017 [Alucobond Fire Brochure FINAL 06102017] (with respect to Alucobond Plus);
 - b. documents distributed and/or published by HVG in Australia during the Relevant Period for the purposes of promoting Alucobond Plus that included statements to the effect that Alucobond Plus afforded “*greater protection against fire*” and/or had “*been developed exclusively for the higher requirements of fire regulations*”, including *inter alia*, in the following documents:
 - i. “Alucobond plus: For greater protection against fire”, undated (2006-2010) [Alucobond plus 1108 lowres], pp. 3,5;
 - ii. “Alucobond Façade Fascination” dated September 2012 [Alucobond – Facade Fascination – Product Information], p. 36;
 - c. in documents distributed and/or published by HVG in Australia during the Relevant Period for the purposes of marketing or promoting Alucobond PE Core Cladding that included reference to international fire tests and approvals. The full list of international first tests and approvals are at Bisby paragraph [1089];
 - d. in correspondence with architects, builders and other potential users or specifiers of Alucobond PE Core Cladding, including *inter alia* [HVG.006.248.1259], [HVG.005.085.3358], [HVG.006.027.1436], [HVG.006.197.6397], [HVG.006.041.1551], [HVG.006.193.9376].
 - e. by the distribution of the documents published by 3A Composites in Australia, to the extent they contained the Plus Fire Performance Representations as particularised at paragraph C. below;
 - f. a combination of any one or more of the above.
- C. Further or in the alternative, the Plus Fire Performance Representations were made expressly and/or impliedly by 3A Composites:
- a. in documents published by 3A in Australia during the Relevant Period for the purposes of promoting Alucobond Plus that included statements to the effect that Alucobond Plus was “*hardly inflammable*”

and designed to meet “*stricter* [or “*higher*”] *requirements of the fire classifications*”, including *inter alia*, in the following documents:

- i. “Alucobond plus: For greater protection against fire”, undated (file created 2 September 2008) [3AC.600.001.5087], p. 3;
 - ii. “Alucobond At a Glance” dated 1 August 2011 [3AC.600.001.0115], p. 2;
 - iii. “Alucobond Façade Fascination” dated 1 August 2011 [3AC.600.001.0115], p. 36;
 - iv. “Alucobond At a Glance” dated August 2012 [3AC.600.001.4053], p. 1;
 - v. “Alucobond Façade Fascination” dated 16 July 2014 [3AC.600.001.4830], p. 19;
 - vi. “Alucobond At a Glance” dated 1 June 2015 [3AC.600.001.4055], p. 3;
 - vii. “Alucobond Façade Fascination” dated 18 June 2015 [3AC.600.001.4857], p. 19; “Alucobond At a Glance” dated 1 May 2016 [3AC.600.001.4065], p. 3;
 - viii. “Alucobond Façade Fascination” dated 25 August 2016 [3AC.600.001.4936], p. 19;
 - ix. “Alucobond At a Glance” dated 29 September 2016 [3AC.600.001.4075], p. 3;
 - x. “Alucobond Façade Fascination” dated 11 August 2017 [3AC.600.001.4963], p. 19;
 - xi. “Alucobond At a Glance” dated 23 March 2018 [3AC.600.001.4095], p. 3;
 - xii. “Alucobond At a Glance” dated 4 June 2018 [3AC.600.001.4105], p. 3;
 - xiii. “Alucobond At A Glance” dated 1 February 2019 [3AC.600.001.4011], p. 3;
 - xiv. “Alucobond: Fire Retardancy and ALUCOBOND” dated 29 August 2019 [3AC.601.001.0023], pp. 3-4 (including the image at p. 3).
- b. In documents published by 3A in Australia during the Relevant Period for the purposes of marketing or promoting Alucobond PE Core Cladding that included reference to international fire tests and approvals. The full list of international first tests and approvals are at Bisby paragraph [1089];
 - c. by the authorisation or approval of the documents published or distributed by HVG in Australia, to the extent they contained the Plus Fire Performance Representations as particularised at paragraph B. above;
 - d. a combination of any one or more of the above.

F.3.3 Representations as to compliance

55. At all material times, 3A Composites and HVG each represented that Alucobond PE Core Cladding:

~~(a) had passed all fire safety tests required by all relevant building codes and standards in Australia; and~~

(a) (b) was compliant with all relevant building codes and standards for use on all buildings in Australia as part of an external wall or attachment to an external wall or other building element for the Purposes, including the Fire Resistance Performance

Requirements;

- (b) further or alternatively, would be compliant with all relevant building codes and standards for use on all buildings in Australia as part of an external wall or attachment to an external wall or other building element once affixed to a building for the Purposes, including the Fire Resistance Performance Requirements,

(together, the **Compliance Representation**).

Particulars

- A. ~~The fire safety tests referred to in paragraph (a) are AS1530.1.~~ The building codes and standards referred to in paragraphs (a) and (b) are those contained in the BCA (as applicable at all relevant dates during the Relevant Period).
- B. The Compliance Representation was made expressly and/or impliedly by 3A Composites with respect to Alucobond PE:
- a. in documents published by 3A Composites in Australia, including during the Relevant Period for the purposes of promoting Alucobond PE that referred to fire properties testing results in respect of AS1530.3 and other international standards, including *inter alia*, in the following documents:
 - i. "Alucobond: Vision Materialized" dated 1 July 2009 [3AC.600.001.4025], p. 9;
 - ii. "Alucobond: At A Glance" dated August 2012 [3AC.600.001.4053], p. 2;
 - iii. "Alucobond Façade Fascination" dated 15 July 2014 [3AC.600.001.4830], p. 20;
 - iv. "Alucobond: At A Glance" dated 1 June 2015 [3AC.600.001.4055], p. 6;
 - v. "Alucobond Façade Fascination" dated 18 June 2015 [3AC.600.001.4857], p. 20;
 - vi. "Alucobond: At A Glance" dated 1 May 2016 [3AC.600.001.4065], p. 6;
 - vii. "Alucobond Façade Fascination" dated 25 August 2016 [3AC.600.001.4936], p. 20;
 - viii. "Alucobond: At A Glance" dated 29 September 2016 [3AC.600.001.4075], p. 6;
 - ix. "Alucobond Façade Fascination" dated 11 August 2017 [3AC.600.001.4963], p. 20;
 - x. "Alucobond: At A Glance" dated 25 October 2017 [3AC.600.001.4085], p. 6;
 - xi. "Alucobond: At A Glance" dated 23 March 2018 [3AC.600.001.4095], p. 6;
 - xii. "Alucobond: At A Glance" dated 4 June 2018 [3AC.600.001.4105], p. 6;
 - xiii. "Alucobond Façade Fascination" dated 12 July 2018 [3AC.600.001.4767], p. 20;
 - xiv. "Alucobond: At A Glance" dated 1 February 2019 [3AC.600.001.4011], p. 6;
 - xv. "Alucobond Flying High" dated 18 July 2019 [3AC.600.001.4794], p. 34;
 - b. by the lack of reference to all applicable standards in Australia (other than those referred to above) or the non-compliance of Alucobond PE

with such standards, including, *inter alia*, AS1530.1 in any of the aforementioned documents;

- c. by the lack of reference to the necessity of adopting fire safety measures or systems that may reduce the Material Fire Risk Properties associated with Alucobond Plus, such as sprinklers and/or cavity barriers in any of the aforementioned documents;
- d. by the making of the Suitability Representation (as pleaded at paragraph 52), ~~the and PE~~ Fire Performance Representations (as pleaded at paragraph 54);
- e. by the authorisation or approval of the documents published or distributed by HVG in Australia, to the extent they contained the Compliance Representation as particularised at paragraph D. below;
- f. a combination of any one or more of the above.

C. The Compliance Representation was made expressly and/or impliedly by 3A Composites with respect to Alucobond Plus:

- a. in documents published by 3A Composites in Australia during the Relevant Period for the purposes of promoting Alucobond Plus that referred to fire properties testing results in respect of AS1530.3 and other international standards, as particularised at particular B.a above;
- b. by the lack of reference to all applicable standards in Australia (other than those referred to above) or the non-compliance of Alucobond PE with such standards, including, *inter alia*, AS1530.1 in any of the aforementioned documents;
- c. by the lack of reference to the necessity of adopting fire safety measures or systems that may reduce the fire safety risks associated with Alucobond Plus, such as sprinklers and/or cavity barriers in any of the aforementioned documents;
- d. by the statements to the effect that Alucobond Plus was designed to meet “*stricter* [or “*higher*”] *requirements of the fire classifications*”, as particularised at particular C. to paragraph 54A above;
- e. by the statements to the effect that the “*flame resistant*” version of Alucobond complied “*with the respective country-specific fire protection requirements for buildings*” in:
 - i. “Alucobond: Processing and Technical Data” dated 28 June 2012 [3AC.600.001.5157], p. 43;
 - ii. “Alucobond: Processing and Technical Data” dated 23 September 2014 [3AC.600.001.5203], p. 43;
 - iii. “Alucobond: Processing and Technical Data” dated 20 March 2015 [3AC.600.001.5227], p. 43;
 - iv. “Alucobond: Processing and Technical Data” dated 18 June 2015 [3AC.600.001.5343], p. 43;
 - v. “Alucobond: Processing and Technical Data” dated 25 January 2018 [3AC.600.001.5389], p. 43; and
 - vi. “Alucobond: Processing and Technical Data” dated 12 July 2018 [3AC.600.001.5105], p. 43;
- f. by the making of the Suitability Representation (as pleaded at paragraph 52), ~~and the Plus~~ Fire Performance Representations (as pleaded at paragraph 54A);
- g. by the authorisation or approval of the documents published or distributed by HVG in Australia, to the extent they contained the Compliance Representation as particularised at paragraph E. below;
- h. a combination of any one or more of the above.

D. The Compliance Representation was made expressly and/or impliedly by HVG with respect to Alucobond PE:

- a. in documents published and/or distributed by HVG in Australia during the Relevant Period for the purposes of promoting Alucobond PE referring to the fire properties testing results in respect of AS1530.3 and other international standards, including *inter alia*, in the following

documents:

- i. "Product Information", undated (2002-2005) [alucobond_flyer_product_flyer_b];
 - ii. "Alucobond: The face of tomorrow today", undated (2002-2005) [alucobond_bro_10-04], p. 6;
 - iii. "Alucobond: The face of tomorrow today", undated (2006-2010) [alucobond_bro_08-06], p. 6;
 - iv. "Alucobond Product Information", undated (2008) [September 2008- Product Information and Interior Cladding flyers], p. 2;
 - v. "Alucobond: Vision Materialised", undated (file created 22 October 2010) [Alucobond_Brochure], pp. 14, 19;
 - vi. "Alucobond Façade Fascination" dated September 2012 [Alucobond – Facade Fascination – Product Information], p. 39;
 - vii. "Alucobond: Fire Product Information Guide" created 6 October 2017 [Alucobond Fire Brochure FINAL 06102017], p. 39;
 - viii. "International Fire Classifications", undated [Fire Behaviour PE-Plus-A2].
- b. by the lack of reference to all applicable standards in Australia (other than those referred to above) or the non-compliance of Alucobond PE with such standards, including, *inter alia*, AS1530.1 and AS5113 in any of the aforementioned documents;
 - c. by the lack of reference to the necessity of adopting fire safety measures or systems that may reduce the fire safety risks associated with Alucobond Plus, such as sprinklers and/or cavity barriers in any of the aforementioned documents;
 - d. on and from around 2013, by the references to "Alucobond" being CodeMark certified (and/or "complete compliance with the requirements of the BCA) without differentiation between different types of Alucobond PE Core Cladding in:
 - i. "Alucobond: Alucobond Performs Under Fire", undated [J8696_Alucobond Codemark AA_FP_HI];
 - ii. "Alucobond: At A Glance", undated (file created 27 February 2014);
 - iii. the use of the "CodeMark" certificate logo in "Alucobond: Beyond Facades", undated (file created 24 August 2017) [HV5450 Alucobond Beyond Facades 2017 compressed], p. 16;
 - e. by the reference to "Alucobond" being "CodeMark certified" for "guaranteed & legislated acceptance by building control authorities and...clear demonstration that the product meets mandatory compliance requirements", with Alucobond PE specifically certified for Type C construction, in "Alucobond Now Codemark Certified", undated [Alucobond Now CodeMark Certified];
 - f. in correspondence with architects, builders and other potential users or specifiers of Alucobond PE Core Cladding, including *inter alia* [HVG.005.010.7310], [HVG.006.026.3240], [HVG.005.085.3358], [HVG.006.041.1551]; [HVG.006.193.9376].
 - g. f-by making of the Suitability Representation (as pleaded at paragraph 52), and the PE Fire Performance Representations (as pleaded at paragraph 54);
 - h. g-the distribution of the documents published by 3A Composites in Australia, to the extent they contained the Compliance Representation as particularised at paragraph B. above;
 - i. to Prestige in respect of the Applicant's building, as alleged in the particulars to paragraph 21 to Prestige's Defence dated 10 December 2021. Further particulars may be provided after the service of Prestige's evidence.
 - j. h-a combination of any one or more of the above.

- E. The Compliance Representation was made expressly and/or impliedly by HVG with respect to Alucobond Plus:
- a. in documents published and/or distributed by HVG in Australia during the Relevant Period for the purposes of promoting Alucobond Plus that referred to fire properties testing results in respect of AS1530.3 and other international standards, including those particularised at particular D.a above and the document entitled “Alucobond Fire Product Information Guide” created October 2017 [Alucobond Fire Brochure Final 06102017];
 - b. the lack of reference to all applicable standards in Australia (other than those referred to above) or the non-compliance of Alucobond PE with such standards, including, *inter alia*, AS1530.1 in any of the aforementioned documents;
 - c. the lack of reference to the necessity of adopting fire safety measures or systems that may reduce the fire safety risks associated with Alucobond Plus, such as sprinklers and/or cavity barriers in any of the aforementioned documents;
 - d. the statements to the effect that Alucobond Plus afforded “*greater protection against fire*” and/or had “*been developed exclusively for the higher requirements of fire regulations*”, as particularised at particular B. to paragraph 54 above;
 - e. the statements to the effect that Alucobond Plus had been issued with a “*Codemark Certificate of Conformity*” confirming that it was compliant with the BCA for Types A, B and/or C construction in:
 - i. “Alucobond: Fire Product Information Guide”, created October 2017 [Alucobond Fire Brochure Final 06102017], pp. 2, 3; and
 - ii. “Alucobond Now Codemark Certified”, created 9 September 2013 [Alucobond Now CodeMark Certified];
 - f. in correspondence with architects, builders and other potential users or specifiers of Alucobond PE Core Cladding, including *inter alia* [HVG.005.010.7310], [HVG.006.026.3240], [HVG.005.085.3358], [HVG.006.027.1436], [HVG.006.153.9671], [HVG.006.026.6879], [HVG.006.197.6397], [HVG.006.041.1551]; [HVG.006.193.9376].
 - g. f.-by making of the Suitability Representation (as pleaded at paragraph 52) and the Plus Fire Performance Representations (as pleaded at paragraph 54A);
 - h. g.-by the distribution of the documents published by 3A Composites in Australia, to the extent they contained the Compliance Representation as particularised at paragraph C. above;
 - i. to Prestige in respect of the Applicant’s building, as alleged in the particulars to paragraph 21 to Prestige’s Defence dated 10 December 2021. Further particulars may be provided after the service of Prestige’s evidence;
 - j. h.-a combination of any one or more of the above.
- F. ~~[Not used] Further particulars may be provided following discovery and/or evidence.~~

F.4 No warning as to risks

56. At all material times, neither HVG nor 3A Composites publicly disclosed adequately or at all any of the following matters in connection with the supply of Alucobond PE Core Cladding in Australia during the Relevant Period:

(a) that Alucobond PE Core Cladding was not:

(i) suitable; and/or

(ii) safe,

for use on all buildings, or for all of the Purposes (the **Suitability Warning**);

(b) further or in the alternative, to the extent that Alucobond PE Core Cladding was:

(i) suitable; and/or

(ii) safe,

for use on some buildings, or for some of the Purposes, or when combined with other materials and/or technology to resist the spread of fire (which is not admitted), that Alucobond PE Core Cladding was only suitable and/or safe when used for those limited purposes or when combined with those materials and/or technology (the **Limitation of Use Warning**);

(c) further or in the alternative, that the behaviour of Alucobond PE Core Cladding in a fire was affected in any material way by the application of any of the Fabrication Methods or Affixation Methods to the relevant Alucobond PE Core Cladding (the **Fabrication and Affixation Warning**).

57. At all material times, neither HVG nor 3A Composites publicly disclosed adequately or at all any of the following matters in connection with the supply of Alucobond PE Core Cladding in Australia:

(a) that the aluminium coversheets on Alucobond PE Core Cladding did not protect the PE Core from igniting in a building fire;

(b) that Alucobond PE Core Cladding had the Material Fire Risk Properties,

(the **Fire Risk Warning**).

57A. At all material times (including after the issue of the Codemark Certifications and the introduction of the Relevant Regulations), neither HVG nor 3A Composites publicly disclosed, adequately or at all, that the core of Alucobond Plus could, and at times did, contain less than 70% mineral filler and/or more than 30% Plastic Binders (the **Plus**

Composition Warning).

58. At all material times, neither HVG nor 3A Composites publicly disclosed adequately or at all any of the following matters in connection with the supply of Alucobond PE Core Cladding in Australia:

(a) that Alucobond PE Core Cladding:

- (i) had not passed fire safety test AS1530.1; and
- (ii) was not compliant, or there was a material risk that it was not compliant, with the BCA, including the Fire Resistance Performance Requirements, applicable to all buildings, or when used for all of the Purposes; or

(the **Non-compliance Warning**).

(b) in the alternative to (a), to the extent that Alucobond PE Core Cladding could be used in a manner that was compliant with the BCA (which is not admitted), that Alucobond PE Core Cladding was only compliant with the BCA when used on some buildings, or for some of the Purposes, or when combined with other materials and/or technology to resist the spread of fire (the **Non-compliance Limitation Warning**),

59. The Suitability Warning, Fire Risk Warning, Plus Composition Warning, and Non-Compliance Warning are referred to in this pleading as the “**Relevant Warnings**”.

60. The Limitation of Use Warning, Fabrication and Affixation Warning, and Non-compliance Limitation Warning are referred to in this pleading as the “**Relevant Limitation Warnings**”.

F.5 Reasonable expectation as to fitness of goods

F.5.1 All buildings

61. Having regard to the matters pleaded at paragraphs 50 and 51, any combination of the matters pleaded in paragraphs 52 to 55, and/or any combination of the matters pleaded in paragraphs 56 to 58, at all material times it was reasonable to expect that, and only regard Alucobond PE Core Cladding as acceptable if:

(a) Alucobond PE Core Cladding was fit for all of the Purposes;

- (b) Alucobond PE Core Cladding did not have Material Fire Risk Properties;
- (c) Alucobond PE Core Cladding did not have the Prohibition Risk Properties;
- (d) when used on any building, or for any of the Purposes, Alucobond PE Core Cladding:
 - (i) was safe;
 - (ii) did not pose a material risk (or materially increased risk) to the health or safety of occupants of the building to which the cladding was fitted; and
 - (iii) did not pose a material risk (or materially increased risk) of damage to the building or to property in the building; and/or
- (e) Alucobond PE Core Cladding could be fabricated by applying any of the Fabrication Methods or Affixation Methods and fitted to any building without compromising its fire performance and/or giving rise to the material risks (or material increased risks) pleaded at paragraph 14 above.

F.5.2 Class 2 to 9 buildings

62. Further, having regard to the matters pleaded at paragraphs 50 and 51, any combination of the matters pleaded in paragraphs 52 to 55, and/or any combination of the matters pleaded in paragraphs 56 to 58, at all material times it was reasonable to expect that, and only regard Alucobond PE Core Cladding as acceptable if:
- (a) Alucobond PE Core Cladding was compliant with the BCA when fitted as part of or as an attachment to an external wall or other building element of all Class 2 to Class 9 buildings;
 - (b) the use of Alucobond PE Core Cladding for any of the Purposes would not cause any Class 2 to Class 9 Building to be or to become non-compliant with the BCA;
 - (c) Alucobond PE Core Cladding did not have the BCA Non-compliance Risk Properties; and/or
 - (d) Alucobond PE Core Cladding did not have the BCA-Related Prohibition Risk Properties.

G. GOODS NOT OF MERCHANTABLE OR ACCEPTABLE QUALITY

G.1 *Goods not of merchantable quality*

63. In respect of all Relevant Buildings and Relevant Building Parts, by reason of:

- (a) the Material Fire Risk Properties; and/or
- (b) the Prohibition Risk Properties,

at all material times Alucobond PE Core Cladding is and was not fit for all of the purposes for which goods of the kind were commonly bought as it is and was reasonable to expect (as that expectation is pleaded at paragraph 61).

64. Further, or alternatively, in respect of all Relevant Buildings and Relevant Building Parts, by reason of:

- (a) the BCA Non-compliance Properties;
- (b) the BCA Non-compliance Risk Properties; and/or
- (c) the BCA-related Prohibition Risk Properties,

at all material times Alucobond PE Core Cladding is and was not fit for all of the purposes for which goods of the kind were commonly bought as it is and was reasonable to expect (as that expectation is pleaded at paragraph 61).

65. Further, or alternatively, in respect of all Relevant Buildings and Relevant Building Parts which are, or are part of, Class 2 to 9 Buildings, by reason of:

- (a) the BCA Non-compliance Properties;
- (b) the BCA Non-compliance Risk Properties; and/or
- (c) the BCA-related Prohibition Risk Properties,

at all material times Alucobond PE Core Cladding is and was not fit for all of the purposes for which goods of the kind were commonly bought as it is and was reasonable to expect (as that expectation is pleaded at paragraph 62).

66. In the premises, Alucobond PE Core Cladding fitted to the Relevant Buildings and/or Relevant Building Parts was not at all material times, and is not, of merchantable quality.

67. In the further or alternative premises, Alucobond PE Core Cladding fitted to the Relevant Buildings and Relevant Building Parts which are, or are part of, Class 2 to 9 Buildings was not at all material times, and is not, of merchantable quality.

G.2 Non-compliance with acceptable quality guarantee

68. By reason of the matters set out at paragraphs 37 to 49, the Alucobond PE Core Cladding fitted to the Relevant Buildings and/or Relevant Building Parts (including the Shore Common Property) was and is subject to the guarantee imposed by s. 54 of the ACL that it be of acceptable quality (**Acceptable Quality Guarantee**).

69. In order for Alucobond PE Core Cladding to comply with the Acceptable Quality Guarantee, the Alucobond PE Core Cladding was at all material times, and is, required to be:

- (a) fit for all the purposes for which goods of that kind are commonly supplied;
- (b) acceptable in appearance and finish;
- (c) free from defects;
- (d) safe; and
- (e) durable,

as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable having regard to the matters in s. 54(3) of the ACL,

(The requirements set out at 69(a) to 69(e) are collectively referred to as the **Acceptable Quality Requirement**).

Particulars

S. 54 (2) of the ACL.

70. In respect of all Relevant Buildings and Relevant Building Parts, by reason of:

- (a) the Material Fire Risk Properties; and/or
- (b) the Prohibition Risk Properties,

at all material times Alucobond PE Core Cladding is and was not:

- (i) fit for all of the purposes for which goods of the kind were commonly bought;
and/or
- (ii) safe,

as a reasonable consumer, fully acquainted with the Material Fire Risk Properties and/or the Prohibition Risk Properties, would regard as acceptable (as that expectation is pleaded at paragraph 61).

71. Further, or alternatively, in respect of all Relevant Buildings and Relevant Building Parts, by reason of:

- (a) the BCA Non-Compliance Properties;
- (b) the BCA non-Compliance Risk Properties; and/or
- (c) the BCA-Related Prohibition Risk Properties,

at all material times Alucobond PE Core Cladding is and was not:

- (i) fit for all of the purposes for which goods of the kind were commonly bought;
and/or
- (ii) safe,

as a reasonable consumer, fully acquainted with the BCA Non-Compliance Properties, the BCA Non-compliance Risk Properties and/or the BCA-related Prohibition Risk Properties, would regard as acceptable (as that expectation is pleaded at paragraph 61).

72. Further, or alternatively, in respect of Class 2 to 9 Buildings, by reason of:

- (a) the BCA Non-Compliance Properties;
- (b) the BCA non-Compliance Risk Properties; and/or
- (c) the BCA-Related Prohibition Risk Properties,

at all material times Alucobond PE Core Cladding is and was not:

- (i) fit for all of the purposes for which goods of the kind were commonly bought;
and/or

- (ii) safe,

as a reasonable consumer, fully acquainted with the BCA Non-Compliance Properties, the BCA Non-compliance Risk Properties and/or the BCA-related Prohibition Risk Properties, would regard as acceptable (as that expectation is pleaded at paragraph 62).

73. In the premises, Alucobond PE Core Cladding fitted to the Relevant Buildings and/or Relevant Building Parts did not, and does not, satisfy the Acceptable Quality Guarantee.
74. In the further or alternative premises, Alucobond PE Core Cladding fitted to the Relevant Buildings and Relevant Building Parts which are, or are part of, Class 2 to 9 Buildings did not, and does not, satisfy the Acceptable Quality Guarantee.

H. MISLEADING OR DECEPTIVE REPRESENTATIONS AND CONDUCT

H.1 *False or misleading representations about goods*

75. Each of the:

(a) Suitability Representation;

(aa) the Plus Composition Representation;

(b) Fabrication and Affixation Representation;

(c) PE Fire Performance Representations; ~~and~~

(cc) Plus Fire Performance Representations; and

(d) Compliance Representation,

(severally and in combination, the **Representations**),

were made, in trade or commerce, by 3A and HVG in connexion with the supply or possible supply of Alucobond PE Core Cladding or in connexion with the promotion of the supply of Alucobond PE Core Cladding.

76. Each of the Representations was a continuing representation made at all times prior to and during the Relevant Period.

Particulars

- A. The particulars to each of paragraphs 52 to 55 are repeated.
- B. The Representations were not qualified or contradicted during the Relevant Period, and the absence of any the Relevant Warnings and/or the Relevant Limitation Warnings, as pleaded in paragraphs 56 to 58 is repeated.

77. At all material times, the Suitability Representation:

- (a) was a representation that Alucobond PE Core Cladding had specified performance characteristics, uses and benefits; and
- (b) was false or misleading because Alucobond PE Core Cladding was not suitable for all of the Purposes because of:
 - (i) the Material Fire Risk Properties; and
 - (ii) further or alternatively, the Prohibition Risk Properties.

77A. At all material times, the Plus Composition Representation:

- (a) was a representation that Alucobond PE Core Cladding had specified performance characteristics, uses and benefits;
- (b) was made in circumstances where persons in the building and construction industry who were involved in the design, specification, preparation, certification and use of Alucobond Plus in Australia had a reasonable expectation that the composition of Alucobond Plus would be accurately disclosed by the manufacturer and/or supplier of that product; and
- (c) was false or misleading because of the matters pleaded in paragraphs 10A and/or 10B above.

Particulars

- A. The reasonable expectation of persons in the building and construction industry pleaded in paragraph (b) can be inferred from the fact that:
 - a. the presence of Plastic Binders in the PE Core of Alucobond Plus is what makes the PE Core combustible, and the fire properties of the product are influenced by the amount of Plastic Binders in the PE Core;
 - b. the amount of Plastic Binders in the PE Core may impact upon the ability of the product to meet the Fire Resistance Performance Requirements in the BCA;
 - c. the Codemark Certificates of Conformity issued in respect of Alucobond Plus applied to a product that has a mineral filler of at least 70% and/or plastic binders of no more than 30%; and/or
 - d. from around March 2018, the Relevant Regulations regulated or prohibited ACPs with particular composition of Plastic Binders and mineral fillers, including ACPs with a core of 30% PE or greater as particularised;
- B. Kip, Parts 4 and 5; Report of Greg Incoll dated 27 April 2022, paragraphs [73]-[79], [83]; Report of Peter Quigley dated 30 April 2022, [107]-[115].

78. At all material times, the Fabrication and Affixation Representation:

- (a) was a representation that Alucobond PE Core Cladding had specified performance characteristics, uses and benefits; and
- (b) was false or misleading to the extent that Alucobond PE Core Cladding had the:
 - (i) the Material Fire Risk Properties; and
 - (ii) further or alternatively, the Prohibition Risk Properties,
 by reason of the application of the Fabrication Methods and/or the Affixation Methods.

79. At all material times, the PE Fire Performance Representations and Plus Fire Performance Representations:

- (a) ~~was~~ were representations that Alucobond PE Core Cladding:
 - (i) was of a particular standard or quality;
 - (ii) further or alternatively, had specified performance characteristics, uses and benefits; and
- (b) ~~was~~ were false or misleading because:
 - (i) the aluminium coversheets did not protect the PE Core from fire for the reasons pleaded at paragraph 12 above; and
 - (ii) further or alternatively, the use of Alucobond PE Core Cladding on a building for the Purposes did present a material increase in risk to life or safety of occupants, and/or damage to property, in the event of a building fire because of ~~have~~ the Material Fire Risk Properties;
 - (iii) further or alternatively, Alucobond PE Core Cladding had not passed or satisfied all of the local and international fire tests referred to in the promotional material;
 - (iv) further or alternatively, to the extent that Alucobond PE Core Cladding did purport to pass the local or international fire tests referred to in the promotional material, those fire tests did not provide a reasonable basis for 3A and/or HVG to represent that:
 - (A) Alucobond PE Core Cladding was suitable or safe for use on a building

for the Purposes; and/or

(B) when used for the Purposes, Alucobond PE Core Cladding did not present any material increase in risk to life or safety of occupants, or damage to property, in the event of a building fire.

Particulars

A. Bisby Parts 2, 3, 4, 5, 6 and 8.

80. At all material times, the Compliance Representation:

- (a) was a representation that Alucobond PE Core Cladding:
 - (i) was of a particular standard or quality;
 - (ii) further or alternatively, had approval, performance characteristics, uses or benefits; and
- (b) was false or misleading because Alucobond PE Core Cladding:
 - (i) had not passed all of the fire safety tests required by relevant building codes and standards, including AS 1530.1;
 - (ii) was not compliant with the BCA, by reason of the BCA Non-compliance Properties; and/or
 - (iii) was materially likely to be non-compliant with the BCA, by reason of the BCA Non-compliance Risk Properties.

80A. Further or alternatively, each of:

- (a) the Suitability Representation;
- (b) the Fabrication and Affixation Representation;
- (c) the PE Fire Performance Representation;
- (d) the Plus Fire Performance Representation; and
- (e) the Compliance Representation,

(the Future Representations)

was, in whole or in part, a representation by 3A Composites and HVG with respect to a future matter.

80B. 3A and HVG did not have reasonable grounds for making the Future Representations.

Particulars

A. Paragraphs 77 to 81 above are repeated.

B. The Applicant otherwise relies upon s. 4 of the ACL and s. 51A of the TPA.

81. In the premises, by making the Representations (and each of them), 3A Composites and HVG each contravened s. 53 of the TPA and s. 29 of the ACL.

H.2 Misleading conduct as to the nature of goods

82. Further or in the alternative, by:

- (a) making the Representations (and each of them);
- (b) failing to give the Relevant Warnings (and each of them); and/or
- (c) in the alternative to (b) and to the extent it is found that Alucobond PE Core Cladding was suitable for some uses, failing to give the Relevant Limitation Warnings (and each of them),

(the **Misleading Conduct**)

3A Composites and HVG engaged in conduct, in trade or commerce, that was liable to mislead the public as to the:

- (d) nature;
- (e) characteristics; and
- (f) suitability for purpose,

of Alucobond PE Core Cladding in contravention of s. 55 of the TPA and s. 33 of the ACL.

Particulars

A. The relevant nature, characteristics and suitability of Alucobond PE Core Cladding are that that it was suitable for all of the Purposes and did not have the Material Fire Risk Properties, the Prohibition Risk Properties, the BCA Non-compliance Properties, the BCA-related Prohibition Risk Properties or the BCA

Non-compliance Risk Properties.

B. In respect of Alucobond Plus, the relevant nature, characteristics and suitability of Alucobond Plus included that it had the characteristics pleaded in paragraphs 10A and 10B above and that relevant persons in the building and construction industry had the reasonable expectation pleaded in paragraph 77A above.

I. LOSS AND DAMAGE

I.1 *Entitlement to compensation for non-compliance with consumer guarantees*

83. The aApplicant and each Group Member has suffered loss and damage by reason of or otherwise resulting from the Alucobond PE Core Cladding that is fitted to the Relevant Buildings and/or Relevant Building Parts (including the Shore Common Property), as applicable:

- (a) not being of merchantable quality as pleaded in paragraph 66 above; and/or
- (b) not complying with the Acceptable Quality Guarantee as pleaded in paragraphs 73 above.

Particulars

A. For the aApplicant:

- a. The cost of removing, and-replacing and disposing of the Alucobond PE fitted to the Shore Common Property.
- b. Further or alternatively to A(a), if the Alucobond PE fitted to the Shore Common Property does not require removal and replacement as set out in A(a), the cost of implementation of other measures to rectify the impact on the Shore Building caused by:
 - i. the non-compliance of the Alucobond PE with the Acceptable Quality Guarantee; and/or
 - ii. the Alucobond PE not being of merchantable quality; and
- c. Further and other costs and/or losses due to the Alucobond PE being fitted to the Shore Common Property, including:
 - i. increases in insurance premiums;
 - ii. costs of building safety assessments;
 - iii. costs required to be incurred as a consequence of implementation of the measures set out at described at A(a) and/or A(b) above (as applicable).
- d. Report of Stephen Abbott dated 14 April 2022. ~~Further particulars may be provided following service by the applicant of its evidence.~~

B. For each Group Member:

- a. The cost of removing, ~~and replacing~~ and disposing of the Alucobond PE Core Cladding fitted to the Relevant Building and/or Relevant Building Part.
- b. Further or alternatively to B(a), if the Alucobond PE Core Cladding fitted to the Relevant Building and/or Relevant Building Part does not require removal and replacement as set out in B(a), the cost of implementation of other measures to rectify the impact on the Relevant Building and/or Relevant Building Part caused by:
 - i. the non-compliance of the Alucobond PE Core Cladding with the Acceptable Quality Guarantee; and/or
 - ii. the Alucobond PE Core Cladding not being of merchantable quality; and
- c. Further or alternatively to B(a) and/or B(b), the reduction of value in the Relevant Building and/or Relevant Building Part as a result of Alucobond PE Core Cladding fitted on such building or part of building.
- d. Further and other costs and/or losses due to the Alucobond PE Core Cladding being fitted to the Relevant Building and/or Relevant Building Part, including:
 - i. increases in insurance premiums;
 - ii. costs of building safety assessments;
 - iii. costs required to be incurred as a consequence of implementation of the measures set out at described at B(a) and/or B(b) above (as applicable).
- e. Further particulars in relation to Group Members' losses will be provided following opt out and the determination of the applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

C. Further or alternatively, the Applicant and each Group Member has suffered (and claims) a reduction in the value of the Alucobond PE Core Cladding fitted to their Relevant Building below the price paid for the good, or the average retail price of the goods at the time of supply. The reduction in value is to nil, in circumstances where the Alucobond PE Core Cladding is required to be removed or removed and replaced.

(the **Loss and Damage**).

84. By reason of the matters pleaded in paragraphs 4, 5, 7, 9, 10, 10A, 10B, 11, 11A, 12, 14, 17, 33, 36, 37, 41, 51, and 52 to 62, for the purposes of s. 272 of the ACL, it was reasonably foreseeable at all material times that the applicant and Group Members would suffer the Loss and Damage as a result of the failure to comply with the Acceptable Quality Guarantee.
85. By reason of the matters pleaded in paragraph 44, the applicant and each Group Member:
 - (a) is an "affected person" within the meaning of s. 2 of the ACL and is entitled to recover damages for the Loss and Damage from 3A Composites and HVG, jointly and severally, in accordance with s. 271 and s. 272 of the ACL;
 - (b) further or in the alternative, for the purpose of s. 74D(1)(d) of the TPA:
 - (i) is a Consumer to whom the Alucobond PE Core Cladding fitted to the Relevant

Buildings and/or Relevant Building Parts (as applicable) was supplied; or

- (ii) in the alternative, is a person who acquired the Alucobond PE Core Cladding fitted to the Relevant Buildings and/or Relevant Building Parts (as applicable) from, or derived title such Alucobond PE Core Cladding through or under, the Consumer to whom such Alucobond was supplied,

and is entitled to be compensated by 3A Composites and HVG, jointly and severally, for the Loss and Damage in accordance with s. 74D of the TPA.

1.2 Entitlement to statutory compensation for misleading representations

86. Each of the Representations was made to and the Misleading Conduct was directed to:

- (a) the market of all persons in the building and construction industry who were involved in the design, specification, preparation, certification and use of Alucobond PE Core Cladding in Australia (**Relevant Market**), including all Further Resuppliers; and/or
- (b) all Ultimate Consumers, including either the Applicant and Group Members, or their predecessors in title being Original Consumer Owners and Original Consumer Lessees.

Particulars

- A. The particulars to each of paragraphs 52, 53, 54 and 55 are repeated.
- B. The Relevant Market included architects, engineers, fire safety engineers, façade engineers, installers, consent authorities, builders and sub-contractors.

87. Had the Representations not been made and/or the Misleading Conduct not been engaged in:

- (a) persons in the Relevant Market would not have designed, specified, certified, or used Alucobond PE Core Cladding in the Relevant Buildings or Relevant Building Parts of the Applicant and Group Members; and/or
- (b) Ultimate Consumers would not have acquired Alucobond PE Core Cladding.

88. Further or in the alternative, had 3A and HVG not:

- (a) engaged in the contravening conducted pleaded at paragraph 81; and/or
- (b) engaged in the contravening conducted pleaded at paragraph 82,

the Alucobond PE Core Cladding would not have been purchased and fitted to the Relevant

Buildings and/or Relevant Buildings Parts owned or leased, or formerly owned or leased, (as applicable) by the Applicant and Group Members.

89. By reason of the matters pleaded at paragraphs 86 to 88, the applicant and Group Members have suffered the Loss or Damage by or because of the conduct of 3A and HVG in contravention of ss. 53 and 55 of the TPA and/or ss. 29 and 33 of the ACL.

Particulars

- A. The particulars to paragraph 83 above are repeated.

Date: 9 August 2022



Signed by Bill Petrovski
Lawyer for the Applicant

This pleading was prepared by J K S Entwisle and W A D Edwards, and settled by I Roberts SC, and further amended by J K S Entwisle, and settled by I Roberts SC.

Certificate of lawyer

I Bill Petrovski certify to the Court that, in relation to the Further Amended statement ~~Statement~~ of ~~claim~~ Claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 9 August 2022



Signed by Bill Petrovski
Lawyer for the Applicant

SCHEDULE

No: NSD /2019

Federal Court of Australia

District Registry: NSW

Division: General

Second Respondent:

Halifax Vogel Group Pty Ltd ACN 104 808 853

Registered Office of Second Respondent:

Suite 201
100 New South Head Road
Edgecliff, NSW 2027

DEFINED TERMS

3A Composites means 3A Composites GmbH, District Court Osnabrück HRB 15742, the first respondent.

Acceptable Quality Guarantee has the meaning given to it in paragraph 68 above.

Acceptable Quality Requirement has the meaning given to it in paragraph 69 above.

ACL means the Australian Consumer Law set out in Schedule 2 of the CCA

ACP has the meaning given to it in paragraph 6 above.

Alucobond PE Core Cladding means separately or collectively, Alucobond PE and Alucobond Plus

Alternative Solution has the meaning given to it in paragraph 24(b) above.

Alucobond PE means ACPs that:

- (a) have a PE Core ~~that has greater than 30% of approximately 100%~~ of approximately 100% PE by mass; and
- (b) were at all material times supplied and/or marketed in Australia by reference to the name “Alucobond” and/or “Alucobond PE”.

Alucobond Plus means ACPs that:

- (a) have a PE Core that is comprised of a mixture of Plastic Binders and mineral filler ~~has approximately 70% of mineral content by mass, with the balance of 30% being PE or a combination of PE and other non-mineral content;~~ and
- (b) were at all material times supplied and/or marketed in Australia by reference to the name “Alucobond Plus”.

AS means Australian Standard.

BCA has the meaning given to it in paragraph 18 above.

BCA 2016 Amendment 1 has the meaning given to it in the particulars to paragraph 27 above.

BCA-Related Prohibition Risk Properties has the meaning given to it in paragraph 36 above.

BCA Non-compliance Properties has the meaning given to it in paragraph 35(a) above.

BCA Non-compliance Risk Properties has the meaning given to it in paragraph 35(b) above.

CCA means *Competition and Consumer Act 2010* (Cth).

Class 2 to 9 Buildings means buildings classified as Class 2, Class 3, Class 4, Class 5, Class 6, Class 7, Class 8 or Class 9 as those terms are used in the BCA.

Compliance Representation has the meaning given to it in paragraph 55 above.

Consumer means a consumer within the meaning of:

- (a) s. 3 of the ACL and for the purposes of s. 54 of the ACL; and/or
- (b) s. 4B of TPA and for purposes of s. 74D of the TPA.

Corporations Act has the meaning given to it in paragraph 1(e) above.

Deemed-to-Satisfy Provisions has the meaning given to it in paragraph 24(a) above.

EVA means ethylene vinyl acetate, a copolymer comprised of (poly)ethylene and vinyl acetate.

Fire Resistance Performance Requirements has the meaning given to it in paragraph 22 above.

Fabrication Methods has the meaning given to it in paragraph 53(a) above.

Fabrication and Affixation Representation has the meaning given to it in paragraph 53(b) above.

Fabrication Warning has the meaning given to it in paragraph 56(c) above.

Fire Performance Representation has the meaning given to it in paragraph 54 above.

Fire Risk Warning has the meaning given to it in paragraph 57 above.

Further Resuppliers has the meaning given to it in paragraph 41(a) above.

Future Representations has the meaning given to it in paragraph 81A above.

Group Members means all the persons who, as at the date of this Statement of Claim fulfil the criteria set out in paragraph 1 of this Statement of Claim.

HVG means Halifax Vogel Group Pty Limited ACN 104 808 853, the second respondent.

Limitation of Use Warning has the meaning given to it in paragraph 56(b) above.

Loss and Damage has the meaning given to it in paragraph 83 above.

Material Fire Risk Properties has the meaning given to in paragraph 15 above.

Misleading Conduct has the meaning given to it in paragraph 82 above.

Non-compliance Warning has the meaning given to it in paragraph 58(a) above.

Non-compliance Limitation Warning has the meaning given to it in paragraph 58(b) above.

NSW Ban has the meaning given to it in the particulars to paragraph 16 above.

PE means polyethylene.

~~**PE Core** is the non-aluminium core laminate in an ACP, bonded to the two aluminium cover sheets, comprised, in whole or in part, of PE.~~

Purposes has the meaning given to it in paragraph 51.

Original Consumer Owners has the meaning given to it in paragraph 44(b) above.

Original Consumer Lessees has the meaning given to it in paragraph 44(b) above.

PE means polyethylene.

PE Core is the non-aluminium core laminate in an ACP, bonded to the two aluminium cover sheets, comprised, in whole or in part, of PE and/or Plastic Binders.

Plastic Binders has the meaning given to it in paragraph 10(b)(i) above.

Plus Composition Representation has the meaning given to it in paragraph 52A above.

Plus Composition Warning has the meaning given to it in paragraph 57A above.

Prohibition Risk Properties has the meaning given to it in paragraph 0 above.

Relevant Building has the meaning given to it in paragraph 1(a)(i) above.

Relevant Building Part has the meaning given to it in paragraph 1(a)(i) above.

Relevant Period has the meaning given to it in paragraph 1(d) above.

Relevant Uses has the meaning given to it in paragraph 7.

Relevant Warnings has the meaning given to it in paragraph 59 above.

Relevant Limitation Warnings has the meaning given to it in paragraph 60 above.

Representations has the meaning given to it in paragraph 75 above.

Senate Report has the meaning given to it in the particulars paragraph 11 above.

Shore Building has the meaning given to it in paragraph 3(d) above.

Shore Common Property has the meaning given to it in paragraph 3(e) above.

SSDA has the meaning given to it in paragraph 3(c) above.

SSFDA has the meaning given to it in paragraph 3(c) above.

SSMA has the meaning given to it in paragraph 3(a) above.

Suitability Representation has the meaning given to it in paragraph 52 above.

Suitability Warning has the meaning given to it in paragraph 56 above.

TPA means *Trade Practices Act 1974* (Cth).

Trademark has the meaning given to it in paragraph 4(b) above.

Ultimate Consumers has the meaning given to it in paragraph 41(b) above.

Federal Court of Australia
District Registry: New South Wales
Division: Commercial & Corporations

No. of 2019

The Owners – Strata Plan No 87231
Applicant

3A Composites GmbH and others named in the schedule
Respondents

APPENDIX 1

Req:R917748 /Doc:SP 0087231 P /Rev:27-Aug-2012 /Sts:SC.OK /Pgs:ALL /Prt:06-Feb-2019 18:33 /Seq:1 of 6
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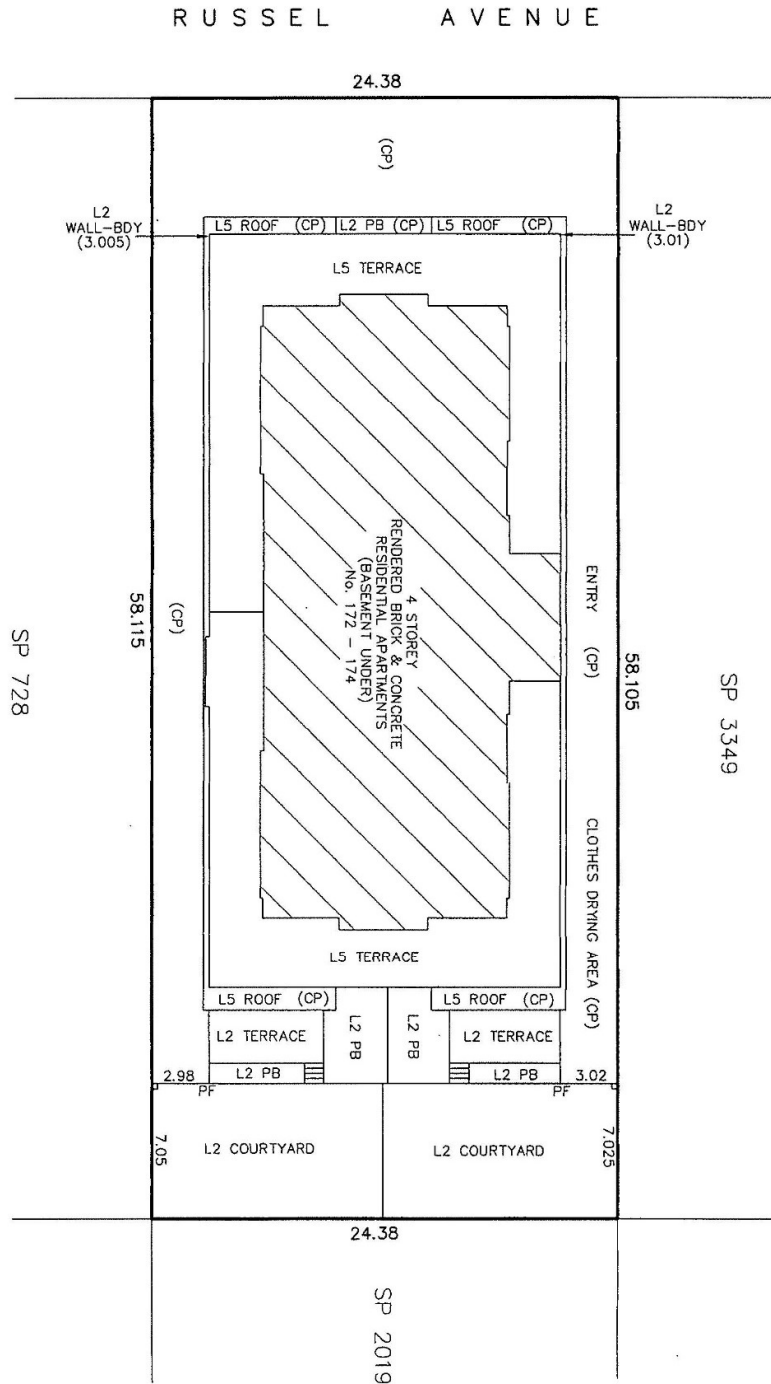
STRATA PLAN FORM 2 (A3)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet No. 1 of 4 Sheets

~~FLOOR PLAN~~

MGA



LOCATION PLAN

L DENOTES LEVEL
 PB DENOTES PLANTER BOX
 CP DENOTES COMMON PROPERTY
 h DENOTES RIGHT ANGLE (90 DEGREES)
 PF DENOTES PROLONGATION OF FACE OF WALL

10 20 30 40 50 60 70 80 90 100 110 120 130 140 150

Total of mm

Surveyor: JOHN P. BALLENDEN
 Surveyor's Ref: 20110064
 Subdivision No: SC1854
 Lengths are in metres. Reduction Ratio 1:200



Registered
 24-8-2012

SP87231P

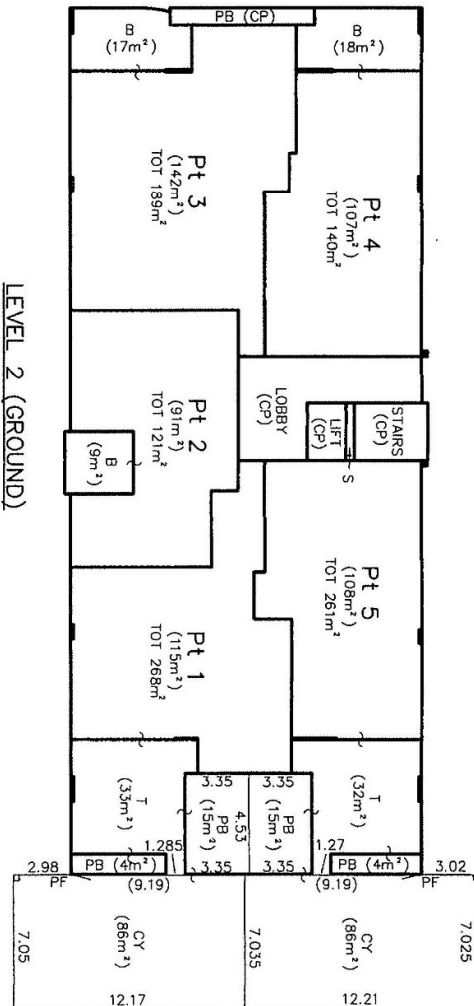
PLAN AMENDED (REFERENCE TO FLOOR PLAN RULED THROUGH) IN LPI PRIOR TO REGISTRATION AT SURVEYOR'S REQUEST

STRATA PLAN FORM 2 (A3)

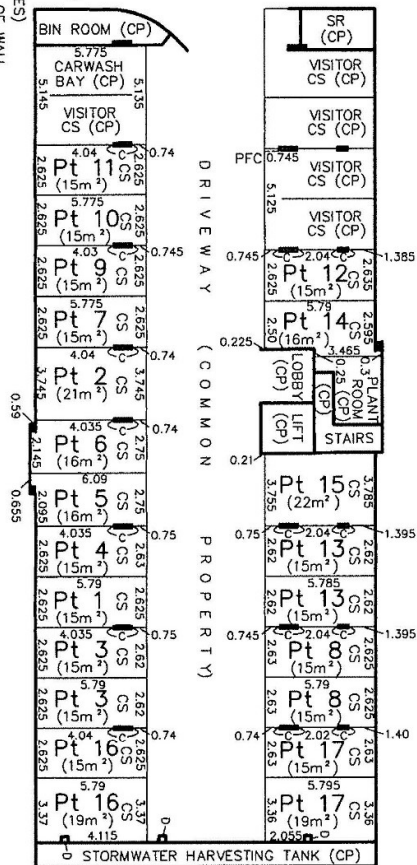
WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet No. 2 of 4 Sheets

FLOOR PLAN



LEVEL 2 (GROUND)



TIMBER DECKING ON A BALCONY
OR A TERRACE FORMS PART OF
THE LOT.

MGA

CP DENOTES COMMON PROPERTY

B DENOTES BALCONY
T DENOTES TERRACE

PB DENOTES PLANTER BOX

DENOTES COURTYARD

SR DENOTES SERVICES ROOM
CS DENOTES CARSPACE

S DENOTES SERVICE CUPBOARD (CP)

C DENOTES CENTRELIN OF COLUMN

DENOTES RIGHT ANGLE (90 DEGREE)

PF DENOTES PROLONGATION OF FACE OF WALL

FC DENOTES PROLONGATION OF FACE OF COLUMN

INTER ROYCE TERRACES & COURTYARDS WHERE N

TO THE UNDERSIDE OF THE CEILING OF THEIR RESPECTIVE UNITS. BALCONIES ARE COVERED.

COURTYARDS ARE LIMITED IN DEPTH TO THREE METRES BELOW THE UPPER SURFACE OF THE FLOOR OF THEIR RESPECTIVE ADJOINING TERRACES.

10	20	30	40	50	60	Table of mm	90	100	110	120	130	140	150
----	----	----	----	----	----	-------------	----	-----	-----	-----	-----	-----	-----

LEVEL 1 (BASEMENT)

Surveyor: JOHN P. BALLENDEN
Surveyor's Ref: 20110064
Subdivision No: 5C 1854

Registered

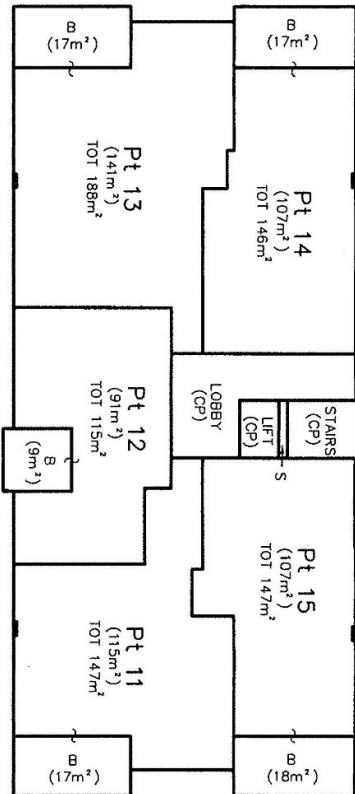
SP87231

STRATA PLAN FORM 2 (A3)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

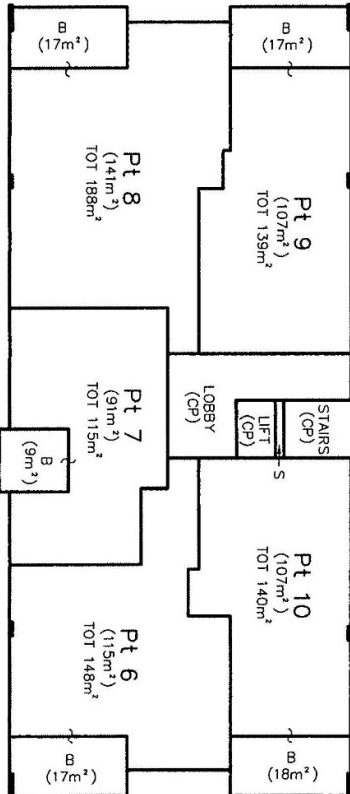
Sheet No. 3 of 4 Sheets

FLOOR PLAN



LEVEL 4 (SECOND FLOOR)

MGA



LEVEL 3 (FIRST FLOOR)

THICKER DECKING ON A BALCONY
 DENOTES PART OF THE LOT
 S DENOTES SERVICE CUPBOARD (CP)
 B DENOTES BALCONY
 CP DENOTES COMMON PROPERTY
 BALCONIES ARE COVERED.

10 20 30 40 50 60 70 80 90 100 110 120 130 140 150
 Table of mm

Surveyor: JOHN P. BALLENDEN
 Surveyor's Ref: 20110064
 Subdivision No: SC 1854
 Lengths are in metres. Reduction Ratio 1:200

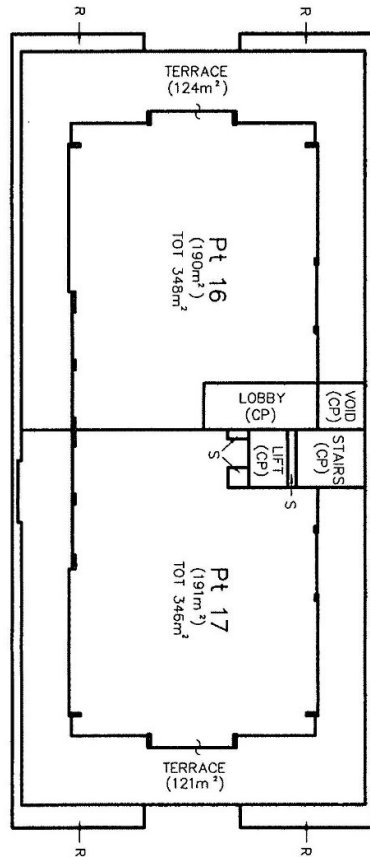
Registered
 24-8-2012

SP87231

STRATA PLAN FORM 2 (A3)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

Sheet No. 4 of 4 Sheets

FLOOR PLAN

MGA

TIMBER DECKING ON A TERRACE
 FORMS PART OF THE LOT.

LEVEL 5 (THIRD FLOOR)

R DENOTES ROOF (CP)
 S DENOTES SERVICE DUCT (CP)
 CP DENOTES COMMON PROPERTY

TERRACES WHERE NOT COVERED ARE LIMITED IN HEIGHT
 TO THE UNDERSIDE OF THE CEILING OF THEIR RESPECTIVE UNITS

10 20 30 40 50 60 70 80 90 100 110 120 130 140 150

Total of mm



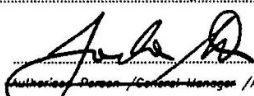
Surveyor: JOHN P. BALLENDEN
 Surveyor's Ref: 20110064
 Subdivision No: 5C1854
 Lengths are in metres. Reduction Ratio 1:200

Registered
 24-8-2012

SP87231

STRATA PLAN FORM 3 (PART 1)

WARNING: Creasing or folding will lead to rejection

STRATA PLAN ADMINISTRATION SHEET		Sheet 1 of 2 Sheet(s)
Name of, and address for service of notices on, the Owners Corporation. (Address required on original strata plan only) THE OWNERS - STRATA PLAN No. 87231 172-174 RUSSELL AVENUE, DOLLS POINT NSW 2219	<div style="text-align: right;">Use Only</div>  <p style="text-align: center; font-size: 24pt; font-weight: bold;">SP87231 S</p>	
	<div style="text-align: right;">Office Use Only</div> Registered:  24-8-2012 Purpose: STRATA PLAN	
PLAN OF SUBDIVISION OF LOT 1 IN DP 1149039		
<p>* Model By-laws adopted for this scheme</p> <p>Keeping of Animals: Option A/B/C</p> <p>* Schedule of By-laws in <u>16</u> sheets filed with plan</p> <p>* No By-Laws apply 17</p> <p>* Strike out whichever is inapplicable</p>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p style="text-align: center;">Strata Certificate</p> <p>* (1) The Council of <u>GORDON WREN</u> The Accredited Certifier <u>BPB 0447</u> has made the required inspections and is satisfied that the requirements of: (a) Section 37 or 37A Strata Schemes (Freehold Development) Act 1973 and clause 29A Strata Schemes (Freehold Development) Regulation 2007. (b) Section 66 or 66A Strata Schemes (Leasehold Development) Act 1986 and clause 30A of the Strata Schemes (Leasehold Development) Regulation 2007. have been complied with and approves of the proposed strata plan illustrated in the plan with this certificate.</p> <p>* (2) The Accredited Certifier is satisfied that the plan is consistent with a relevant development consent in force, and that all conditions of the development consent that by its terms are required to be complied with before a strata certificate may be issued, have been complied with.</p> <p>* (3) The strata plan is part of a development scheme. The council or accredited certifier is satisfied that the plan is consistent with any applicable conditions of the relevant development consent and that the plan gives effect to the stage of the strata development control to which it relates.</p> <p>* (4) The building encroaches on a public place and (a) The Council does not object to the encroachment of the building beyond the alignment of _____ (b) The Accredited Certifier is satisfied that the building complies with the relevant development consent which is in force and allows the encroachment.</p> <p>* (5) This approval is given on the condition that lot(s) _____ are created as utility lots in accordance with section 39 of the Strata Schemes (Freehold Development) Act 1973 or section 68 of the Strata Schemes</p> <p>Date <u>17TH AUGUST 2012</u> Subdivision No <u>SC 1854</u> Relevant Development Consent No <u>2010/354</u> issued by <u>ROCKDALE COUNCIL</u></p> <p style="text-align: center;"> _____ Authorised Person / Council Manager / Accredited Certifier</p> <p>* Strike through if inapplicable. ~ Insert lot numbers of proposed utility lots.</p> </div> <div style="width: 45%;"> <p>L.G.A.: ROCKDALE Locality: DOLLS POINT Parish: ST GEORGE County: CUMBERLAND</p> <p style="text-align: center;">Surveyors Certificate</p> <p>I, <u>JOHN BALLENDEN</u> of <u>BALLENDEN SURVEYORS</u> <u>C1, 102-106 BOYCE ROAD, MAROUBRA, 2035</u> a surveyor registered under the Surveying and Spatial Information Act 2002, hereby certify that:</p> <p>(1) each applicable requirement of * Schedule 1A to the Strata Schemes (Freehold Development) Act 1973 * Schedule 1A to the Strata Schemes (Leasehold Development) Act 1986 has been met;</p> <p>(2) (a) the building encroaches on a public place; * (b) the building encroaches on land (other than a public place), and an appropriate easement has been created by _____ to permit the encroachment to _____ remain.</p> <p>(3) * the survey information recorded in the accompanying location plan is accurate.</p> <p>Signature: <u>J.P. Ballenden</u> Date: <u>22.5.2012</u></p> <p>* Strike through if inapplicable. * Insert the Deposited Plan Number or Dealing Number of the instrument that created the easement.</p> <p>SURVEYOR'S REFERENCE: 20110064</p> <p>Use STRATA PLAN FORM 3A for additional certificates, signatures and seals</p> </div> </div>		

Req:R917/48 /Doc:SP 008/231 P /Rev:2/7-Aug-2012 /Sts:SC.OK /Pgs:ALL /Prt:06-Feb-2019 18:33 /Seq:6 of 6
 Ref:af04300063 /Src:P

STRATA PLAN FORM 3 (PART 2) WARNING: Creasing or folding will lead to rejection

STRATA PLAN ADMINISTRATION SHEET		Sheet 2 of 2 Sheet(s)																																						
PLAN OF SUBDIVISION OF LOT 1 IN DP 1149039	<div style="text-align: right; font-size: small;">Only</div> <div style="text-align: center; font-size: 24px; font-weight: bold; margin: 10px 0;">SP87231</div> <div style="display: flex; justify-content: space-between; align-items: center;"> <div>Registered: </div> <div>24-8-2012</div> <div style="text-align: right; font-size: small;">Office Use Only</div> </div>																																							
Strata Certificate Details: Subdivision No: SC1854 Date: 17TH AUGUST 2012																																								
SCHEDULE OF UNIT ENTITLEMENT (If space insufficient use additional annexure sheet)																																								
<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="width: 30%;">LOT No.</th> <th style="width: 70%;">UNIT ENTITLEMENT</th> </tr> </thead> <tbody> <tr><td>1</td><td>6</td></tr> <tr><td>2</td><td>4</td></tr> <tr><td>3</td><td>6</td></tr> <tr><td>4</td><td>5</td></tr> <tr><td>5</td><td>6</td></tr> <tr><td>6</td><td>5</td></tr> <tr><td>7</td><td>4</td></tr> <tr><td>8</td><td>6</td></tr> <tr><td>9</td><td>5</td></tr> <tr><td>10</td><td>5</td></tr> <tr><td>11</td><td>5</td></tr> <tr><td>12</td><td>4</td></tr> <tr><td>13</td><td>7</td></tr> <tr><td>14</td><td>5</td></tr> <tr><td>15</td><td>5</td></tr> <tr><td>16</td><td>11</td></tr> <tr><td>17</td><td>11</td></tr> <tr> <td>TOTAL</td> <td>100</td> </tr> </tbody> </table>			LOT No.	UNIT ENTITLEMENT	1	6	2	4	3	6	4	5	5	6	6	5	7	4	8	6	9	5	10	5	11	5	12	4	13	7	14	5	15	5	16	11	17	11	TOTAL	100
LOT No.	UNIT ENTITLEMENT																																							
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15	5																																							
16	11																																							
17	11																																							
TOTAL	100																																							
Signatures, seals and statements of intention to create easements, restrictions on the use of land or positive covenants. (If space insufficient use additional annexure sheet)																																								
<div style="text-align: center;"> <p>PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919, AS AMENDED, IT IS INTENDED TO CREATE:</p> <p>1. POSITIVE COVENANT</p> <p>2. POSITIVE COVENANT</p> </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>Executed for and on behalf of Australia and New Zealand Banking Group Limited ABN 11 005 357 522 under Power of Attorney dated 18th November 2002 and registered in 24376 No 410 NSW.</p> <p><u>JOHN LESLIE BRYANT</u> who certifies that he/she is a Senior Manager/ Manager and that he/she has not received notice of revocation of that Power.</p> </div> <div style="width: 45%;"> <p>Signed on behalf of RONNSTAR PTY. LTD. ACN 085 480 646</p> <p><u>Tony Hatzianthou</u> Signature of Attorney in the presence of <u>JOICIA SHAWLES</u> Signature of Witness Print name of Witness 13/20 Martin Place SYDNEY NSW 2000 Address of Witness</p> <p>Signed on behalf of LAWTON PTY. LTD. ACN 085 480 691</p> <p><u>J.R.T.</u> Signature of Attorney in the presence of SOLE COMPANY DIRECTOR AND SECRETARY JEFF ROBERT BARTON</p> </div> </div>																																								
SURVEYOR'S REFERENCE: 20110064																																								

Federal Court of Australia
District Registry: New South Wales
Division: Commercial & Corporations

No. of 2019

The Owners – Strata Plan No 87231
Applicant

3A Composites GmbH and others named in the schedule
Respondents

APPENDIX 2



Australian Government
IP Australia

Trade mark 307067

Words ALUCOBOND

Image

Image description

Status Registered: Registered/Protected

Priority date 10 May 1977 (Filing)

Class 6

Kind Word

Dates

Renewal due 10 May 2028

Filing 10 May 1977

Registered from 10 May 1977

Owner

3A Composites GmbH
Kiefernweg 10
D-49090 Osnabruck GERMANY

Address for service

PHILLIPS ORMONDE FITZPATRICK
PO Box 323 Collins Street West, VIC, 8007
AUSTRALIA

Goods & Services

Class 6: Blocks, panels, sheets, strips, films, foils, bars, tubes, sections, building materials, containers included in Class 6 and number plates; signs and signal panels included in Class6; all the aforesaid goods being made of aluminium or aluminium alloys bonded with other materials, the aluminium or aluminium alloys predominating

Indexing constituents**Word**

ALUCOBOND

Image**History and publication details**

Date	Description
14 Dec 2017	Trade Marks Renewal Published
05 Dec 2017	Renew Trade Mark
04 Dec 2017	Renewal of Registration (Electronic) - 1 Class
10 May 2017	Registration Status Change
08 May 2015	Amendment to Application/Registration
16 Dec 2010	Full Assignment - Subsequent Owner Registered Published

16 Dec
2010 IP Right Name Amendment Published

01 Dec
2010 Amend Name/Address

Event description

Owner's Request

Previous details

Data as before the amendment: Amend No 17 Occurrence 1 <AMEND
NAME> <NAME ID> 818977 New Name ID: 887530 <PERSON TYPE>
C <NAME FIXED> Alcan Kapa GmbH Occurrence 2 <LINKED TMS>
<NAME ID> 818977 <NAME ID, TM
NO>818977,00307068,818977,00307069,818977,00307070,

New details

29 Nov
2010 Full Assignment

Event description

Requested

Previous details

Data as before the amendment: Amend No 16 Occurrence 1

<ADDRESS FOR SERVICE/CLASSES> <ATTORNEY CODE>300780

<CLASSES> 6 Occurrence 2 <ASSIGNED FROM> <NAME ID> 624361

<NAME PREFIX> C <REMAINDER> Alcan Singen GmbH D-78221

Singen/Hohentwiel Occurrence 3 <REPETITIONS > <TM NO,AMEND

#>00307068,016,00307069,016,00307070,016, Occurrence 4

<ASSIGNED TO> <NAME ID> 818977 <NAME PREFIX> C

<REMAINDER> Alcan Kapa GmbH Kiefernweg 10 D-49090 Osnabruck

Occurrence 5 <ASSIGNMENT> By copy of Deed of Trade Mark

Assignment dated 27 November 2009

New details

16 Nov 2010	Amend Trade Mark Registration Particulars
16 Nov 2010	Application for Assignment
11 Jan 2010	Request for Certified Copies
19 May 2008	Amend Trade Mark Registration Particulars
15 May 2008	Trade Marks Renewal Published
06 May 2008	Return to Sender

01 May 2008	Renew Trade Mark
28 Apr 2008	Renewal of Registration (1 class)
15 May 2007	Registration Status Change
15 Nov 2001	IP Right Name Amendment Published
29 Oct 2001	Amend Name/Address

Event description

Owner's Request

Previous details

Data as before the amendment: Amend No 11 Occurrence 1 <AMEND
NAME> <NAME ID> 505413 New Name ID: 624361 <PERSON TYPE>
C <NAME FIXED> Alusuisse Singen GmbH Occurrence 2 <LINKED
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NO>505413,00307068,505413,00307069,505413,00307070,

New details

22 Oct 2001	Amend Trade Mark Registration Particulars
07 May 1998	Trade Marks Renewal Published
17 Apr 1998	Renew Trade Mark

14 Apr 1998	Renewal of Registration (1 class)
12 May 1997	Registration Status Change
19 Dec 1996	IP Right Name Amendment Published
05 Dec 1996	Amend Name/Address

Event description

Owner's Request

Previous details

Data as before the amendment: Amend No 4 Occurrence 1 <AMEND
NAME> <NAME ID> 133141 <PERSON TYPE> C <NAME FIXED>
Alusingen GmbH Occurrence 2 <LINKED TMS> <NAME ID> 133141
<TM NO,AMEND #>00307070,004,00307069,004,00307068,004,

New details

03 Dec 1996	Amend Trade Mark Registration Particulars
11 Nov 1993	Full Assignment - Subsequent Owner Registered Published
28 Oct 1993	Assign a Trade mark

Requested

[illegible]

New details

Assignment

This mark was registered under the Trade Marks Act 1955 in Part A



Australian Government
IP Australia

Trade mark 307068

Words ALUCOBOND

Image

Image description

Status Registered: Registered/Protected

Priority date 10 May 1977 (Filing)

Class 17

Kind Word

Dates

Renewal due 10 May 2028

Filing 10 May 1977

Registered from 10 May 1977

Owner

3A Composites GmbH
 Kiefernweg 10
 D-49090 Osnabruck GERMANY

Address for service

PHILLIPS ORMONDE FITZPATRICK
 PO Box 323 Collins Street West, VIC, 8007
 AUSTRALIA

Goods & Services

Class 17: Sheets (non-textile), strips, foils, films and sections made of plastics bonded with aluminium or aluminium alloys, the plastics predominating, and all for use in manufacture

Indexing constituents**Word**

ALUCOBOND

Image**History and publication details**

Date	Description
21 Dec 2017	Trade Marks Renewal Published
11 Dec 2017	Renew Trade Mark
10 Dec 2017	Renewal of Registration (Electronic) - 1 Class
10 May 2017	Registration Status Change
08 May 2015	Amendment to Application/Registration
16 Dec 2010	Full Assignment - Subsequent Owner Registered Published
16 Dec 2010	IP Right Name Amendment Published
01 Dec 2010	Amend Name/Address

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Amendment : Amend No 17 Occurrence 1 <REPEATED FROM>

<TM NO> 307067 <AMEND NO> 17 <NAME ID> 818977

Occurrence 2 <AMEND NAME> <NAME ID> 818977 <PERSON TYPE> C <NAME FIXED> Alcan Kapa GmbH

New details

29 Nov 2010 Full Assignment

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Data as before the amendment: Amend No 16 Occurrence 1

<ADDRESS FOR SERVICE/CLASSES> <ATTORNEY

CODE>300780 <CLASSES> 17 Occurrence 2 <ASSIGNED

FROM> <NAME ID> 624361 <NAME PREFIX> C <REMAINDER>

Alcan Singen GmbH D-78221 Singen/Hohentwiel Occurrence 3

<REPEATED FROM> <HEAD CASE> 307067 <AMEND NO> 16

Occurrence 4 <ASSIGNED TO> <NAME ID> 818977 <NAME

PREFIX> C <REMAINDER> Alcan Kapa GmbH Kiefernweg 10 D-

49090 Osnabruck Occurrence 5 <ASSIGNMENT> By copy of Deed of Trade Mark Assignment dated 27 November 2009

New details

16 Nov 2010 Amend Trade Mark Registration Particulars

16 Nov 2010 Application for Assignment

19 May 2008	Amend Trade Mark Registration Particulars
15 May 2008	Trade Marks Renewal Published
06 May 2008	Return to Sender
01 May 2008	Renew Trade Mark
28 Apr 2008	Renewal of Registration (1 class)
15 May 2007	Registration Status Change
15 Nov 2001	IP Right Name Amendment Published
29 Oct 2001	Amend Name/Address

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Amendment : Amend No 11 Occurrence 1 <REPEATED FROM>

<TM NO> 307067 <AMEND NO> 11 <NAME ID> 505413

Occurrence 2 <AMEND NAME> <NAME ID> 505413 <PERSON
TYPE> C <NAME FIXED> Alusuisse Singen GmbH

New details

22 Oct 2001	Amend Trade Mark Registration Particulars
07 May 1998	Trade Marks Renewal Published
17 Apr 1998	Renew Trade Mark
14 Apr 1998	Renewal of Registration (1 class)

12 May 1997	Registration Status Change
19 Dec 1996	IP Right Name Amendment Published
05 Dec 1996	Amend Name/Address

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Amendment : Amend No 4 Occurrence 1 <REPEATED FROM>

<TM NO> 307067 <AMEND NO> 4 <NAME ID> 133141

Occurrence 2 <AMEND NAME> <NAME ID> 133141 <PERSON
TYPE> C <NAME FIXED> Alusingen GmbH**New details**

03 Dec 1996	Amend Trade Mark Registration Particulars
11 Nov 1993	Full Assignment - Subsequent Owner Registered Published
28 Oct 1993	Assign a Trade mark

Event description

Requested

Previous details

Data as before the amendment: Amend No 3 Occurrence 1 Schweizerische Aluminium AG. Occurrence 2 Alluminio Svizzero S.A. Occurrence 3 Swiss Aluminium Ltd. Occurrence 4 Aluminium Suisse S.A. Occurrence 5 SCHWEIZERISCHE ALUMINIUM AG 3965 Chippis VALAIS SWITZERLAND Occurrence 6 Occurrence 7 Transfer to : ALUSINGEN GMBH of D78221 Singen, Germany by Deed of Assignment dated 27 September 1993 to ALUSUISSE SCHWEIZERISCHE ALUMINIUM AG and subsequent Deed of Assignment dated 24 September 1993. Occurrence 8 307067 3 Occurrence 9 IRN 307070

New details

14 Oct 1993 Assignment

This mark was registered under the Trade Marks Act 1955 in Part A



Australian Government
IP Australia

Trade mark 307069

Words ALUCOBOND

Image

Image description

Status Registered: Registered/Protected

Priority date 10 May 1977 (Filing)

Class 19

Kind Word

Dates

Renewal due 10 May 2028

Filing 10 May 1977

Registered from 10 May 1977

Owner

3A Composites GmbH
Kiefernweg 10
D-49090 Osnabruck GERMANY

Address for service

PHILLIPS ORMONDE FITZPATRICK
PO Box 323 Collins Street West, VIC, 8007
AUSTRALIA

Goods & Services

Class 19: Building elements included in Class 19 made of non-metallic materials bonded with aluminium or aluminium alloys, the non-metallic materials predominating.

Indexing constituents**Word**

ALUCOBOND

Image**History and publication details**

Date	Description
21 Dec 2017	Trade Marks Renewal Published
11 Dec 2017	Renew Trade Mark
10 Dec 2017	Renewal of Registration (Electronic) - 1 Class
10 May 2017	Registration Status Change
08 May 2015	Amendment to Application/Registration
16 Dec 2010	Full Assignment - Subsequent Owner Registered Published
16 Dec 2010	IP Right Name Amendment Published
01 Dec 2010	Amend Name/Address

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Amendment : Amend No 17 Occurrence 1 <REPEATED FROM>

<TM NO> 307067 <AMEND NO> 17 <NAME ID> 818977

Occurrence 2 <AMEND NAME> <NAME ID> 818977 <PERSON TYPE> C <NAME FIXED> Alcan Kapa GmbH

New details

29 Nov 2010 Full Assignment

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Data as before the amendment: Amend No 16 Occurrence 1

<ADDRESS FOR SERVICE/CLASSES> <ATTORNEY

CODE>300780 <CLASSES> 19 Occurrence 2 <ASSIGNED

FROM> <NAME ID> 624361 <NAME PREFIX> C <REMAINDER>

Alcan Singen GmbH D-78221 Singen/Hohentwiel Occurrence 3

<REPEATED FROM> <HEAD CASE> 307067 <AMEND NO> 16

Occurrence 4 <ASSIGNED TO> <NAME ID> 818977 <NAME

PREFIX> C <REMAINDER> Alcan Kapa GmbH Kiefernweg 10 D-

49090 Osnabruck Occurrence 5 <ASSIGNMENT> By copy of Deed of Trade Mark Assignment dated 27 November 2009

New details

16 Nov 2010 Amend Trade Mark Registration Particulars

16 Nov 2010 Application for Assignment

19 May 2008	Amend Trade Mark Registration Particulars
15 May 2008	Trade Marks Renewal Published
06 May 2008	Return to Sender
01 May 2008	Renew Trade Mark
28 Apr 2008	Renewal of Registration (1 class)
15 May 2007	Registration Status Change
15 Nov 2001	IP Right Name Amendment Published
29 Oct 2001	Amend Name/Address

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Amendment : Amend No 11 Occurrence 1 <REPEATED FROM>

<TM NO> 307067 <AMEND NO> 11 <NAME ID> 505413

Occurrence 2 <AMEND NAME> <NAME ID> 505413 <PERSON

TYPE> C <NAME FIXED> Alusuisse Singen GmbH

New details

22 Oct 2001	Amend Trade Mark Registration Particulars
07 May 1998	Trade Marks Renewal Published
17 Apr 1998	Renew Trade Mark
14 Apr 1998	Renewal of Registration (1 class)

12 May 1997	Registration Status Change
19 Dec 1996	IP Right Name Amendment Published
05 Dec 1996	Amend Name/Address

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Amendment : Amend No 4 Occurrence 1 <REPEATED FROM>
 <TM NO> 307067 <AMEND NO> 4 <NAME ID> 133141
 Occurrence 2 <AMEND NAME> <NAME ID> 133141 <PERSON
 TYPE> C <NAME FIXED> Alusingen GmbH

New details

03 Dec 1996	Amend Trade Mark Registration Particulars
11 Nov 1993	Full Assignment - Subsequent Owner Registered Published
28 Oct 1993	Assign a Trade mark

Event description

Requested

Previous details

Data as before the amendment: Amend No 3 Occurrence 1
 Schweizerische Aluminium A.G. Occurrence 2 Aluminium Suisse
 S.A. Occurrence 3 Alluminio Svizzero S.A. Occurrence 4 Swiss
 Aluminium Ltd. Occurrence 5 SCHWEIZERISCHE ALUMINIUM
 A.G. 3965 Chippis VALAIS SWITZERLAND Occurrence 6
 Occurrence 7 Transfer to : ALUSINGEN GMBH of D78221 Singen,
 Germany by Deed of Assignment dated 27 September 1993 to
 ALUSUISSE SCHWEIZERISCHE ALUMINIUM AG and
 subsequent Deed of Assignment dated 24 September 1993.
 Occurrence 8 307067 3 Occurrence 9 IRN 307070

New details

14 Oct 1993 Assignment

This mark was registered under the Trade Marks Act 1955 in Part A



Australian Government
IP Australia

Trade mark 307070

Words ALUCOBOND

Image

Image description

Status Registered: Registered/Protected

Priority date 10 May 1977 (Filing)

Class 20

Kind Word

Dates

Renewal due 10 May 2028

Filing 10 May 1977

Registered from 10 May 1977

Owner

3A Composites GmbH
Kiefernweg 10
D-49090 Osnabruck GERMANY

Address for service

PHILLIPS ORMONDE FITZPATRICK
PO Box 323 Collins Street West, VIC, 8007
AUSTRALIA

Goods & Services

Class 20: Furniture, parts of furniture and containers, all included in Class 20, and made wholly or principally of laminated materials

Indexing constituents**Word**

ALUCOBOND

Image**History and publication details**

Date	Description
14 Dec 2017	Trade Marks Renewal Published
05 Dec 2017	Renew Trade Mark
04 Dec 2017	Renewal of Registration (Electronic) - 1 Class
10 May 2017	Registration Status Change
08 May 2015	Amendment to Application/Registration
16 Dec 2010	Full Assignment - Subsequent Owner Registered Published
16 Dec 2010	IP Right Name Amendment Published
01 Dec 2010	Amend Name/Address

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Amendment : Amend No 17 Occurrence 1 <REPEATED FROM>

<TM NO> 307067 <AMEND NO> 17 <NAME ID> 818977

Occurrence 2 <AMEND NAME> <NAME ID> 818977 <PERSON TYPE> C <NAME FIXED> Alcan Kapa GmbH

New details

29 Nov 2010 Full Assignment

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Data as before the amendment: Amend No 16 Occurrence 1

<ADDRESS FOR SERVICE/CLASSES> <ATTORNEY

CODE>300780 <CLASSES> 20 Occurrence 2 <ASSIGNED

FROM> <NAME ID> 624361 <NAME PREFIX> C <REMAINDER>

Alcan Singen GmbH D-78221 Singen/Hohentwiel Occurrence 3

<REPEATED FROM> <HEAD CASE> 307067 <AMEND NO> 16

Occurrence 4 <ASSIGNED TO> <NAME ID> 818977 <NAME

PREFIX> C <REMAINDER> Alcan Kapa GmbH Kiefernweg 10 D-

49090 Osnabruck Occurrence 5 <ASSIGNMENT> By copy of Deed of Trade Mark Assignment dated 27 November 2009

New details

16 Nov 2010 Amend Trade Mark Registration Particulars

16 Nov 2010 Application for Assignment

19 May 2008	Amend Trade Mark Registration Particulars
15 May 2008	Trade Marks Renewal Published
06 May 2008	Return to Sender
01 May 2008	Renew Trade Mark
28 Apr 2008	Renewal of Registration (1 class)
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15 Nov 2001	IP Right Name Amendment Published
29 Oct 2001	Amend Name/Address

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Amendment : Amend No 11 Occurrence 1 <REPEATED FROM>
 <TM NO> 307067 <AMEND NO> 11 <NAME ID> 505413
 Occurrence 2 <AMEND NAME> <NAME ID> 505413 <PERSON
 TYPE> C <NAME FIXED> Alusuisse Singen GmbH

New details

22 Oct 2001	Amend Trade Mark Registration Particulars
07 May 1998	Trade Marks Renewal Published
17 Apr 1998	Renew Trade Mark
14 Apr 1998	Renewal of Registration (1 class)

12 May 1997	Registration Status Change
19 Dec 1996	IP Right Name Amendment Published
05 Dec 1996	Amend Name/Address

Event description

TM NUMBER 307067 IS THE HEAD CASE

Previous details

Amendment : Amend No 4 Occurrence 1 <REPEATED FROM>

<TM NO> 307067 <AMEND NO> 4 <NAME ID> 133141

Occurrence 2 <AMEND NAME> <NAME ID> 133141 <PERSON
TYPE> C <NAME FIXED> Alusingen GmbH

New details

03 Dec 1996	Amend Trade Mark Registration Particulars
11 Nov 1993	Full Assignment - Subsequent Owner Registered Published
28 Oct 1993	Assign a Trade mark

Event description

Requested

Previous details

Data as before the amendment: Amend No 3 Occurrence 1

Schweizerische Aluminium A.G. Occurrence 2 Aluminium Suisse

S.A. Occurrence 3 Alluminio Svizzero S.A. Occurrence 4 Swiss

Aluminium Ltd Occurrence 5 SCHWEIZERISCHE ALUMINIUM

A.G. 3965 Chippis VALAIS SWITZERLAND Occurrence 6

Occurrence 7 Transfer to : ALUSINGEN GMBH of D78221 Singen,

Germany by Deed of Assignment dated 27 September 1993 to

ALUSUISSE SCHWEIZERISCHE ALUMINIUM AG and

subsequent Deed of Assignment dated 24 September 1993.

Occurrence 8 307067 3 Occurrence 9 IRN 307070

New details

14 Oct 1993 Assignment

This mark was registered under the Trade Marks Act 1955 in Part A