

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 6/05/2020 5:46:28 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: NSD215/2019  
File Title: THE OWNERS - STRATA PLAN 87231 v 3A COMPOSITES GMBH & ANOR  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 7/05/2020 7:55:45 AM 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.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 33  
Rule 16.32

**First Respondent's Defence to the Applicant's  
Amended Statement of Claim dated 3 March 2020**

NSD 215 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**

Respondent

For the purposes of German law, the First Respondent (**3A**) formally objects to the jurisdiction of the Federal Court of Australia. All steps taken by 3A in these proceedings are taken under the reservation that 3A does not accept the jurisdiction of the Federal Court of Australia and are taken merely as a precaution without prejudicial effect and do not constitute, nor should they be understood or interpreted as constituting, an acknowledgement or acceptance by 3A of the jurisdiction of the Federal Court of Australia. 3A reserves its rights to raise the lack of jurisdiction as well as further and additional objections should recognition and enforcement proceedings be initiated in Germany or any other jurisdiction.

In response to the Amended Statement of Claim dated 3 March 2020 (**ASOC**), 3A says as follows:

Note: except as otherwise stated, 3A adopts defined terms and headings employed in the ASOC, although by doing so 3A does not admit any allegation of fact contained in or in any way implied by any such defined terms and such headings are adopted for convenience only and do not form part of 3A's pleading.

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Filed on behalf of 3A Composites GmbH, the First Respondent

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Ref: SJD/RJF:608-0041267

## A. PARTIES AND GROUP MEMBERS

### The Group Members

1 As to paragraph 1, 3A:

- (a) admits that the Applicant purported to commence the proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on behalf of itself and certain others referred to as Group Members;
- (b) does not thereby admit that the proceeding is appropriate to be brought as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth);
- (c) as to the expression “Alucobond PE Core Cladding” employed in the ASOC:
  - (i) denies any assertion of fact implied by the expression or its definition at page 51 of the ASOC;
  - (ii) will in this defence employ, as appropriate, the expression or expressions:
    - (A) “Alucobond PE” to refer to aluminium composite materials that have a core that is approximately 100% PE by mass, and that were supplied and/or marketed in Australia by reference to the name “Alucobond” and/or “Alucobond PE”;
    - (B) “Alucobond Plus” to refer to aluminium composite materials that have a core that has more than 70% of mineral content by mass, with the balance of less than 30% being PE or a combination of PE and other non-mineral content, and that were supplied and/or marketed in Australia by reference to the name “Alucobond” and/or “Alucobond Plus”; and
- ((A) and (B) together or separately, “**Relevant Alucobond Products**”);
- (d) says that any building product or system manufactured or produced by a person other than 3A:
  - (i) which incorporates cut, routed, sealed or otherwise transformed, manipulated or fabricated flat sheets of Relevant Alucobond Products together with other products, devices and substances including, without limitation, frames, sealants, adhesives, insulation, and attaching devices (including without limitation the flat stick method depicted on pages 12-14

of the HVG brochure entitled “Alucobond Beyond Facades” being the document particularised under paragraph 4 of the ASOC (“Beyond Facades Brochure”), and any other method); or

- (ii) which comprises cassettes (including building products of the sort described at pages 12-14 of the Beyond Facades Brochure) or other systems (or part thereof) incorporating cut, routed, sealed and folded or otherwise transformed, manipulated or fabricated sheets of Relevant Alucobond Products together with other products, devices and substances including, without limitation, frames, sealants, adhesives, insulation, and attaching devices,

((i) and (ii) together or separately, “**Third Party Products**”)

did not comprise Relevant Alucobond Products and were not manufactured or supplied by 3A;

#### **Particulars**

The identity of the person or persons who manufactured or produced the Third Party Products is not presently known to 3A. Particulars may be provided following discovery and/or upon service of 3A’s evidence.

- (e) denies that any person (whether or not a Group Member) has suffered loss or damage as a result of the matters pleaded in the ASOC; and
- (f) otherwise does not plead to the paragraph on the ground that it does not contain any assertion of fact relevant to a cause of action pleaded against 3A.

2 3A does not know and therefore cannot admit the allegations in paragraph 2.

#### **The Applicant**

3 As to paragraph 3, 3A:

- (a) admits sub-paragraphs (a) and (b);
- (b) as to sub-paragraph (c), says that the Applicant is, and since 24 August 2012 has been, the owners corporation in respect of the strata scheme created upon registration of strata plan 87231 in accordance with the SSFDA and SSDA;
- (c) as to sub-paragraph (d), says that the Applicant is, and since 24 August 2012 has been, the owners corporation in respect of the Shore Building;
- (d) as to sub-paragraph (e), says that the Applicant is, and since 24 August 2012 has been, the owner of the Shore Common Property; and
- (e) otherwise denies the paragraph.

## The Respondent

- 4 As to paragraph 4, 3A:
- (a) admits sub-paragraphs (a) to (c);
  - (b) as to sub-paragraph (d):
    - (i) says it was at all material times and is the manufacturer of the Relevant Alucobond Products;
    - (ii) says it is not a body corporate incorporated within Australia;
    - (iii) says it is not a body corporate that has at any time carried on business within Australia;
    - (iv) says it did not, with respect to any matter relevant to a cause of action pleaded against it, engage in conduct within Australia;
    - (v) says that, by reason of the matters pleaded in sub-paragraphs (ii) to (iv) above, the ACL and TPA have no application to it or to any conduct engaged in by it relevant to any cause of action pleaded against it; and
    - (vi) otherwise denies the sub-paragraph;
  - (c) admits sub-paragraph (e); and
  - (d) denies sub-paragraphs (f) and (g).
- 5 3A admits paragraph 5.

## B. THE GOODS

### ACPs and Alucobond

- 6 As to paragraph 6, 3A:
- (a) admits that the Relevant Alucobond Products are and were goods of a kind commonly known as “Aluminium Composite Panels” (**ACP**);
  - (b) says that:
    - (i) there are and were goods of a kind commonly known as “non-combustible Aluminium Composite Panels” or “non-combustible ACPs” (**NCACP**);
    - (ii) NCACPs can be, and are, distinguished from ACPs by reason of the fact that the latter are combustible;
    - (iii) the Relevant Alucobond Products are and were not commonly known to be NCACPs; and

(c) otherwise denies the paragraph.

7 As to paragraph 7, 3A:

(a) says that at all material times Relevant Alucobond Products, other ACPs, Third Party Products and products transformed, manipulated or fabricated from ACPs were used in Australia as:

- (i) a finish or lining to a wall, or other attachment to a building element;
- (ii) an external surface to a wall or other building element;
- (iii) part of another system (including but not limited to a roofing system or a window system);
- (iv) decorative material; or
- (v) signage,

on:

- (vi) high rise buildings;
- (vii) low rise buildings; or
- (viii) other structures,

where such buildings or structures were intended to be used for purposes including:

- (ix) residential purposes;
- (x) commercial purposes; or
- (xi) public or government administration purposes,

in accordance with designs, plans and specifications prepared, reviewed, approved, certified and/or used by one or more of the following persons (which list is not exhaustive) (**Qualified Professionals**) in accordance with the requirements of the applicable Building Code of Australia (**BCA**) and other applicable legislative and regulatory requirements (**Relevant Building Legislation**) in force at the relevant time:

- (A) persons, including architects and engineers, with appropriate qualifications and experience;
- (B) persons, including fire safety engineers and façade engineers, installers and consultants with appropriate qualifications and experience;

- (C) persons, including consent authorities designated or appointed under legislation of each Australian State and Territory with appropriate qualifications and experience; and/or
- (D) persons, including builders, developers and sub-contractors, with appropriate qualifications and experience to undertake the relevant works;

### Particulars

3A refers to and relies upon the Relevant Building Legislation (including any predecessor Act or regulation) including:

- A. As to any Relevant Building or Relevant Building Part situated in New South Wales, the *Environmental Planning and Assessment Act 1979* (NSW) and *Environmental Planning and Assessment Regulations 2000* (NSW).
- B. As to any Relevant Building or Relevant Building Part situated in Victoria, the *Building Act 1993* (Vic) and the *Building Regulations 2018* (Vic).
- C. As to any Relevant Building or Relevant Building Part situated in Queensland, the *Planning Act 2016* (Qld), *Planning Regulations 2017* (Qld), *Building Act 1975* (Qld) and *Building Regulations 2006* (Qld).
- D. As to any Relevant Building or Relevant Building Part situated in South Australia, the *Development Act 1993* (SA) and the *Development Regulations 2008* (SA).
- E. As to any Relevant Building or Relevant Building Part situated in Western Australia, the *Building Act 2011* (WA) and *Building Regulations 2012* (WA).
- F. As to any Relevant Building or Relevant Building Part situated in Tasmania, the *Building Act 2016* (Tas) and *Building Regulations 2016* (Tas).
- G. As to any Relevant Building or Relevant Building Part situated in Australian Capital Territory, the *Building Act 2004* (ACT) and the *Building (General) Regulation 2008* (ACT).
- H. As to any Relevant Building or Relevant Building Part situated in Northern Territory, the *Building Act 1993* (NT) and the *Building Regulations 1993* (NT).

Further particulars may be provided following discovery and/or upon service of 3A's evidence.

- (b) says further that to the extent that HVG supplied any Relevant Alucobond Products for any one or more of the uses referred to in paragraph 7(a) above or the purposes referred to in paragraphs 41(a) and 51(b) below, those products were supplied only to Qualified Professionals in Australia (**Construction Industry Market**); and
- (c) otherwise denies the paragraph.

8 As to paragraph 8, 3A:

- (a) as to each of the Relevant Alucobond Products, admits sub-paragraphs (a) and (b); and

- (b) as to sub-paragraph (c):
  - (i) says the plea is embarrassing as it fails to state any material fact to support the allegation or otherwise define the meaning of the term “technical support”; and
  - (ii) accordingly, does not know and cannot admit the paragraph.

### **ACPs with PE Cores**

- 9 As to paragraph 9, 3A:
  - (a) says that the core of ACPs may comprise PE, a combination of PE and other materials, or other materials, bonded to two aluminium cover sheets;
  - (b) says that the percentage composition of PE, or PE and other materials, or other materials, contained within the core of ACPs may vary; and
  - (c) otherwise denies the paragraph.
- 10 As to paragraph 10, 3A:
  - (a) as to Relevant Alucobond Products, admits sub-paragraph (a);
  - (b) as to Relevant Alucobond Products, says that at all material times the core of Alucobond Plus has constituted less than 30% (by weight) PE or another synthetic thermoplastic polymer; and
  - (c) otherwise denies the paragraph.

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

### **Combustibility and Fire Risk**

- 11 As to paragraph 11, 3A:
  - (a) refers to and repeats paragraphs 9 and 10 above;
  - (b) says that PE is a flammable synthetic thermoplastic polymer;
  - (c) admits sub-paragraph (b);
  - (d) does not know and therefore cannot admit sub-paragraph (c);
  - (e) says that, to the extent the core of an ACP is comprised of PE, or PE and other materials, PE comprises only a component of the ACP; and
  - (f) otherwise denies the paragraph.
- 12 3A denies paragraph 12.
- 13 As to paragraph 13, 3A:



- (a) refers to and repeats its response to paragraphs 1, 6, 11 and 12 above;
- (b) says that the Relevant Alucobond Products were and are combustible within the meaning of that term in the BCA in force at the relevant time and as determined by AS1530.1-1994;
- (c) says that the Relevant Alucobond Products were and are combustible (as defined in the BCA) because of the level of PE which is constituted by or is included in the core;
- (d) says that by reason of the matters pleaded at paragraph 1 above, Third Party Products did not comprise any Relevant Alucobond Product; and
- (e) otherwise denies the paragraph.

#### **Risks associated with use of Alucobond PE Core Cladding**

14 As to paragraph 14, 3A:

- (a) refers to and repeats its response to paragraphs 1, 6, 7 and 9 to 13 above; and
- (b) denies the paragraph.

15 As to paragraph 15, 3A:

- (a) refers to and repeats its response to paragraphs 11 to 14 above; and
- (b) does not otherwise plead to paragraph 15 on the ground that it contains no allegation of material fact relevant to any cause of action pleaded against it.

#### **Prohibition Risk Properties**

16 As to paragraph 16, 3A:

- (a) says that by the documents and the legislation particularised in paragraph 16, ACPs have been the subject of safety alerts and regulation since March 2018 relating to their use in certain States or Territories in Australia;
- (b) will rely upon those documents and that legislation for their full terms, meaning and effect; and
- (c) otherwise denies the paragraph.

17 As to paragraph 17, 3A:

- (a) refers to and repeats its response to paragraphs 11 to 14 above; and
- (b) denies the paragraph.

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

### Non-Compliance with BCA

#### *Introduction: Relevant requirements*

18 As to paragraph 18, 3A:

- (a) says that buildings in Australia were required to be designed and constructed such that they complied with the relevant provisions of the BCA, as applicable in each State or Territory from time to time; and
- (b) otherwise admits the paragraph.

19 As to paragraph 19, 3A:

- (a) says that Volume 1 of the BCA, as applicable in each State or Territory from time to time, contains the requirements for all Class 2 to 9 buildings; and

#### **Particulars**

- A. A1.5 of the versions of the BCA in operation throughout the Relevant Period.
- B. A1.6 of the versions of the BCA in operation throughout the Relevant Period.

- (b) otherwise admits the paragraph.

20 As to paragraph 20, 3A:

- (a) relies on the BCA (and every applicable version thereof) for its full terms, meaning and effect; and
- (b) otherwise admits the paragraph.

21 As to paragraph 21, 3A:

- (a) relies on the BCA (and every applicable version thereof) for its full terms, meaning and effect; and
- (b) otherwise admits the paragraph.

22 As to paragraph 22, 3A:

- (a) admits sub-paragraph (a), and says further that CP2(b) of the BCA provided that the avoidance of the spread of fire referred to was required to be appropriate to:
  - (i) the function or use of the building;
  - (ii) the fire load;
  - (iii) the potential fire intensity;
  - (iv) the fire hazard;
  - (v) the number of storeys in the building;

- (vi) its proximity to other property;
- (vii) any active fire safety systems installed in the building;
- (viii) the size of any fire compartment;
- (ix) fire brigade intervention;
- (x) other elements they support; and
- (xi) the evacuation time.

**Particulars**

CP2(b) of the BCA.

- (b) as to sub-paragraph (b), says that during the Relevant Period, CP4 of the BCA provided that a material and an assembly (and from 1 May 2011, a lining) was required, to the degree necessary, to resist the spread of fire to limit the generation of smoke and heat, and any toxic gases likely to be produced, appropriate to:
  - (i) the evacuation time;
  - (ii) the number, mobility and other characteristics of occupants;
  - (iii) the function or use of the building; and
  - (iv) any active fire safety systems installed in the building.

**Particulars**

CP4 of the versions of the BCA as applicable throughout the Relevant Period.

- (c) admits sub-paragraph (c);
- (d) admits sub-paragraph (d), and says further that the access referred to in CP9 of the BCA was required to be appropriate to:
  - (i) the function or use of the building;
  - (ii) the fire load;
  - (iii) the potential fire intensity;
  - (iv) the fire hazard;
  - (v) any active fire safety systems installed in the building; and
  - (vi) the size of any fire compartment;
- (e) relies on the BCA (and every applicable version thereof) for its full terms, meaning and effect; and

(f) otherwise denies the paragraph.

23 As to paragraph 23, 3A:

- (a) refers to and repeats paragraph 22 above;
- (b) admits that the performance requirements relating to fire resistance set out in the BCA from time to time (as it applied in each State or Territory) applied to all Class 2 to 9 buildings regardless of the type of construction required by the BCA;
- (c) relies on the BCA (and every applicable version thereof) for its full terms, meaning and effect; and
- (d) otherwise denies the paragraph.

*Means of compliance with BCA requirements*

24 As to paragraph 24, 3A:

- (a) refers to and repeats its response to paragraphs 7 and 22 above;
- (b) says that Class 2 to 9 Buildings were able to satisfy the performance requirements relating to fire resistance set out in the BCA by:
  - (i) complying with the “Deemed-to-Satisfy Provisions” of the BCA as in force from time-to-time;
  - (ii) those responsible for the design of such a building devising a solution which complied with the applicable performance requirements otherwise than through compliance with the Deemed-to-Satisfy Provisions (**Alternative Solution**) or which was at least equivalent to the Deemed-to-Satisfy Provisions of the BCA as in force from time-to-time; or
  - (iii) a combination of the methods referred to in sub-paragraphs (b)(i) and (ii) above; and
- (c) otherwise denies the paragraph.

*Alucobond PE Core Cladding is “combustible” within the meaning of the BCA*

25 As to paragraph 25, 3A:

- (a) admits that Relevant Alucobond Products are and were combustible within the meaning of that term in the BCA in force at the relevant time and as determined by AS1530.1-1994;
- (b) does not know and therefore cannot admit that Third Party Products are and were combustible within the meaning of that term in the BCA in force at the relevant time and as determined by AS1530.1-1994; and

- (c) otherwise denies the paragraph.
- 26 As to paragraph 26, 3A:
- (a) as to Relevant Alucobond Products, admits sub-paragraphs (a) and (b);
  - (b) as to Third Party Products, does not know and cannot admit sub-paragraphs (a) and (b); and
  - (c) otherwise denies the paragraph.
- 27 As to paragraph 27, 3A:
- (a) as to Relevant Alucobond Products:
    - (i) as to sub-paragraph (a), admits that Relevant Alucobond Products could comprise a “bonded laminated material” as that term is and was used in C1.12 of the BCA; and
    - (ii) says that C1.12 of the BCA provided at all material times that bonded laminated materials may be used wherever a non-combustible material is required where each laminate is non-combustible;
  - (b) as to Third Party Products:
    - (i) does not know and cannot admit sub-paragraphs (a) and (c); and
    - (ii) says that C1.12 of the BCA provided at all material times that bonded laminated materials may be used wherever a non-combustible material is required where each laminate is non-combustible; and
  - (c) otherwise denies the paragraph.

### **Particulars**

- A. 3A relies on the BCA (and every applicable version thereof as it applied in each of the States or Territories) for its full terms, meaning and effect including the following paragraphs:
- (i) A0.4 of the versions of the BCA in operation from the start of the Relevant Period to 1 May 2016.
  - (ii) A0.1 of the versions of the BCA in operation from 1 May 2016 to the end of the Relevant Period.
  - (iii) A0.5 of the versions of the BCA in operation from the start of the Relevant Period to 1 May 2016.
  - (iv) A0.2 of the versions of the BCA in operation from 1 May 2016 to the end of the Relevant Period.
  - (v) A2.2 of the versions of the BCA in operation throughout the Relevant Period.
  - (vi) C1.5 of the versions of the BCA in operation throughout the Relevant Period.

- (vii) C1.9 of the versions of the BCA in operation from 12 March 2018 to the end of the Relevant Period.
  - (viii) C1.10 of the versions of the BCA in operation throughout the Relevant Period.
  - (ix) C1.12 of the versions of the BCA in operation from the start of the Relevant Period to 12 March 2018.
  - (x) C1.14(b) to (m) of the versions of the BCA in operation from 12 March 2018 to the end of the Relevant Period.
  - (xi) Clause 2.4 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xii) Clause 2.5 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xiii) Clause 3.4 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xiv) Clause 3.5 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xv) Clause 3.10 of Specification C1.1 in operation throughout the Relevant Period.
  - (xvi) Clause 4.3 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xvii) Clause 5 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xviii) Specification C1.10 of the versions of the BCA in operation throughout the Relevant Period.
  - (xix) Specification C1.10a of the versions of the BCA in operation from the start of the Relevant Period to 1 May 2011.
- B. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022.
- C. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022 (Rev 1) revised May 2014.
- D. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022 (Rev 2) revised May 2015.
- E. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PLUS for the period 12 July 2013 to 12 July 2016, CMA-CM40032.
- F. Certificate of Conformity issued to certificate holder Alucobond Architectural for Alucobond PLUS for the period 12 July 2016 to 12 July 2019, GM CM 30070 Rev A.
- G. Certificate of Conformity issued to certificate holder Alucobond Architectural for Alucobond PLUS for the period 20 July 2017 to 12 July 2019, CM 30070 Rev 2.

Further particulars may be provided following discovery and/or upon service of 3A's evidence.

*Alucobond PE Core Cladding is “combustible” within the meaning of the BCA*

28 As to paragraph 28, 3A:

- (a) refers to and repeats its response to paragraphs 7, 11 to 14, and 18 to 27 above;
- (b) says that it was the relevant Building Solution (as that term is used in the BCA) which might comply, or not comply, with the Deemed-to-Satisfy Provisions; and
- (c) denies the paragraph.

**Particulars**

- A. 3A relies on the BCA (and every applicable version thereof as it applied in each of the States or Territories) for its full terms, meaning and effect including the following paragraphs:
  - (i) A0.4 of the versions of the BCA in operation from the start of the Relevant Period to 1 May 2016.
  - (ii) A0.1 of the versions of the BCA in operation from 1 May 2016 to the end of the Relevant Period.
  - (iii) A0.5 of the versions of the BCA in operation from the start of the Relevant Period to 1 May 2016.
  - (iv) A0.2 of the versions of the BCA in operation from 1 May 2016 to the end of the Relevant Period.
  - (v) A2.2 of the versions of the BCA in operation throughout the Relevant Period.
  - (vi) C1.5 of the versions of the BCA in operation throughout the Relevant Period.
  - (vii) C1.10 of the versions of the BCA in operation throughout the Relevant Period.
  - (viii) C1.12 of the versions of the BCA in operation from the start of the Relevant Period to 12 March 2018.
  - (ix) Clause 2.4 of Specification C1.1 of the versions of the BCA in operation from the start of the Relevant Period to 12 March 2018.
  - (x) Clause 2.5 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xi) Clause 3.4 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xii) Clause 3.5 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xiii) Clause 3.10 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xiv) Clause 4.3 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xv) Clause 5 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xvi) Specification C1.10 of the versions of the BCA in operation throughout the Relevant Period.

- (xvii) Specification C1.10a of the versions of the BCA in operation from the start of the Relevant Period to 1 May 2011.
- B. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022.
- C. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022 (Rev 1) revised May 2014.
- D. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022 (Rev 2) revised May 2015.
- E. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PLUS for the period 12 July 2013 to 12 July 2016, CMA-CM40032.
- F. Certificate of Conformity issued to certificate holder Alucobond Architectural for Alucobond PLUS for the period 12 July 2016 to 12 July 2019, GM CM 30070 Rev A.
- G. Certificate of Conformity issued to certificate holder Alucobond Architectural for Alucobond PLUS for the period 20 July 2017 to 12 July 2019, CM 30070 Rev 2.

Further particulars may be provided following discovery and/or upon service of 3A's evidence.

29 As to paragraph 29, 3A:

- (a) refers and repeats its response to paragraphs 7, 11 to 14 and 18 to 27 above;
- (b) says that it was the relevant Building Solution (as that term is used in the BCA) which might comply, or not comply, with the Deemed-to-Satisfy Provisions; and
- (c) denies the paragraph.

#### **Particulars**

- A. 3A relies on the BCA (and every applicable version thereof as it applied in each of the States or Territories) for its full terms, meaning and effect including the following paragraphs:
  - (i) A0.4 of the versions of the BCA in operation from the start of the Relevant Period to 1 May 2016.
  - (ii) A0.1 of the versions of the BCA in operation from 1 May 2016 to the end of the Relevant Period.
  - (iii) A0.5 of the versions of the BCA in operation from the start of the Relevant Period to 1 May 2016.
  - (iv) A0.2 of the versions of the BCA in operation from 1 May 2016 to the end of the Relevant Period.
  - (v) A2.2 of the versions of the BCA in operation throughout the Relevant Period.
  - (vi) C1.5 of the versions of the BCA in operation throughout the Relevant Period.



- (vii) C1.9 of the versions of the BCA in operation from 12 March 2018 to the end of the Relevant Period.
  - (viii) C1.10 of the versions of the BCA in operation throughout the Relevant Period.
  - (ix) C1.12 of the versions of the BCA in operation from the start of the Relevant Period to 12 March 2018.
  - (x) Clause 2.4 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xi) Clause 2.5 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xii) Clause 3.10 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xiii) Clause 4.3 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xiv) Clause 5 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xv) Specification C1.10 of the versions of the BCA in operation throughout the Relevant Period.
  - (xvi) Specification C1.10a of the versions of the BCA in operation from the start of the Relevant Period to 1 May 2011.
  - (xvii) C1.14(b) to (m) of the versions of the BCA in operation from 12 March 2018 to the end of the Relevant Period.
- B. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022.
  - C. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022 (Rev 1) revised May 2014.
  - D. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022 (Rev 2) revised May 2015.
  - E. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PLUS for the period 12 July 2013 to 12 July 2016, CMA-CM40032.
  - F. Certificate of Conformity issued to certificate holder Alucobond Architectural for Alucobond PLUS for the period 12 July 2016 to 12 July 2019, GM CM 30070 Rev A.
  - G. Certificate of Conformity issued to certificate holder Alucobond Architectural for Alucobond PLUS for the period 20 July 2017 to 12 July 2019, CM 30070 Rev 2.

Further particulars may be provided following discovery and/or upon service of 3A's evidence.

30 As to paragraph 30, 3A:

- (a) refers and repeats its response to paragraphs 7, 11 to 14, and 18 to 27 above;

- (b) says that it was the relevant Building Solution (as that term is used in the BCA) which might comply, or not comply, with the Deemed-to-Satisfy Provisions; and
- (c) denies the paragraph.

### **Particulars**

- A. 3A relies on the BCA (and every applicable version thereof as it applied in each of the States or Territories) for its full terms, meaning and effect including the following paragraphs:
  - (i) A0.1 of the versions of the BCA in operation from 1 May 2016 to the end of the Relevant Period.
  - (ii) A0.2 of the versions of the BCA in operation from 1 May 2016 to the end of the Relevant Period.
  - (iii) A2.2 of the versions of the BCA in operation throughout the Relevant Period.
  - (iv) C1.5 of the versions of the BCA in operation throughout the Relevant Period.
  - (v) C1.9 of the versions of the BCA in operation from 12 March 2018 to the end of the Relevant Period.
  - (vi) C1.10 of the versions of the BCA in operation throughout the Relevant Period.
  - (vii) C1.14(b) to (m) of the versions of the BCA in operation from 12 March 2018 to the end of the Relevant Period.
  - (viii) Clause 2.4 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (ix) Clause 2.5 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (x) Clause 3.4 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xi) Clause 3.5 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xii) Clause 3.10 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xiii) Clause 4.3 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xiv) Clause 5 of Specification C1.1 of the versions of the BCA in operation throughout the Relevant Period.
  - (xv) Specification C1.10 of the versions of the BCA in operation throughout the Relevant Period.
- B. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022.
- C. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022 (Rev 1) revised May 2014.

- D. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022 (Rev 2) revised May 2015.
- E. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PLUS for the period 12 July 2013 to 12 July 2016, CMA-CM40032.
- F. Certificate of Conformity issued to certificate holder Alucobond Architectural for Alucobond PLUS for the period 12 July 2016 to 12 July 2019, GM CM 30070 Rev A.
- G. Certificate of Conformity issued to certificate holder Alucobond Architectural for Alucobond PLUS for the period 20 July 2017 to 12 July 2019, CM 30070 Rev 2.

Further particulars may be provided following discovery and/or upon service of 3A's evidence.

31 As to paragraph 31, 3A:

- (a) refers to and repeats its response to paragraphs 28 to 30 above; and
- (b) denies the paragraph.

*Inability to form part of a compliant Alternative Solution*

32 As to paragraph 32, 3A:

- (a) refers to and repeats its response to paragraphs 18 to 24 above;
- (b) says that it was the relevant Building or Building Part which might comply, or not comply, with the Fire Resistance Performance Requirements by means of an Alternative Solution; and
- (c) denies the paragraph.

**Particulars**

- A. 3A relies on the BCA (and every applicable version thereof as it applied in each of the States or Territories) for its full terms, meaning and effect including the following paragraphs:
  - (i) A0.4 of the versions of the BCA in operation from the start of the Relevant Period to 1 May 2016.
  - (ii) A0.1 of the versions of the BCA in operation from 1 May 2016 to the end of the Relevant Period.
  - (iii) A0.5 of the versions of the BCA in operation from the start of the Relevant Period to 1 May 2016.
  - (iv) A0.2 of the versions of the BCA in operation from 1 May 2016 to the end of the Relevant Period.
  - (v) A2.2 of the versions of the BCA in operation throughout the Relevant Period.
- B. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022.

- C. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022 (Rev 1) revised May 2014.
- D. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PE for the period 12 July 2013 to 12 July 2016, CMA-CM40022 (Rev 2) revised May 2015.
- E. Certificate of Conformity issued to certificate holder Alucobond Architectural A Division of Halifax Vogel Group Limited for Alucobond PLUS for the period 12 July 2013 to 12 July 2016, CMA-CM40032.
- F. Certificate of Conformity issued to certificate holder Alucobond Architectural for Alucobond PLUS for the period 12 July 2016 to 12 July 2019, GM CM 30070 Rev A.
- G. Certificate of Conformity issued to certificate holder Alucobond Architectural for Alucobond PLUS for the period 20 July 2017 to 12 July 2019, CM 30070 Rev 2.

Further particulars may be provided following discovery and/or upon service of 3A's evidence.

*Non-compliance with BCA*

33 As to paragraph 33, 3A:

- (a) refers to and repeats its response to paragraphs 7 and 28 to 32 above; and
- (b) denies the paragraph.

34 As to paragraph 34, 3A:

- (a) refers to and repeats its response to paragraphs 7 and 28 to 32 above; and
- (b) denies the paragraph.

35 As to paragraph 35, 3A:

- (a) refers to and repeats its response to paragraphs 28 to 34 above; and
- (b) does not otherwise plead to paragraph 35 on the ground that it contains no allegation of material fact relevant to any cause of action pleaded against it.

**BCA Related Prohibition Risk**

36 As to paragraph 36, 3A:

- (a) refers and repeats its response to paragraphs 28 to 35 above; and
- (b) denies the paragraph.

**E. SUPPLY OF THE GOODS**

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

*Supply by 3A Composites for resupply*

- 37 As to paragraph 37, 3A:
- (a) refers to and repeats paragraph 41 below;
  - (b) says that such Relevant Alucobond Products as are pleaded to have been supplied by HVG in paragraph 41(a) below, were supplied to HVG by 3A;
  - (c) refers to and repeats paragraph 1 above and says that 3A did not supply Third Party Products; and
  - (d) otherwise does not know and therefore cannot admit the paragraph.
- 38 As to paragraph 38:
- (a) says that the supply of Relevant Alucobond Products in Australia by HVG as pleaded in paragraph 41(a) below was in trade or commerce;
  - (b) refers to and repeats paragraph 4(b) above and denies that the supply of Relevant Alucobond Products by 3A to HVG as pleaded in paragraph 37 above was in trade or commerce for the purposes of the TPA or ACL; and
  - (c) otherwise does not know and therefore cannot admit the paragraph.
- 39 As to paragraph 39, 3A:
- (a) admits that its exclusive distributor in Australia acquired the Relevant Alucobond Products for purposes which included the purpose of re-supplying Relevant Alucobond Products;
  - (b) says that any supply of Third Party Products was not a re-supply of any Relevant Alucobond Products; and
  - (c) otherwise does not know and cannot admit the paragraph.
- 40 As to paragraph 40, 3A:
- (a) says that the paragraph is embarrassing to the extent it makes allegations as to Relevant Buildings and/or Relevant Building Parts other than the Shore Common Property;
  - (b) does not know and therefore cannot admit that any Relevant Alucobond Product was fitted on the Relevant Buildings and/or Relevant Building Parts owned, previously owned, leased or previously leased by the Applicant and each Group Member;
  - (c) refers to and repeats paragraphs 37 to 39 above;
  - (d) refers to and repeats paragraph 1 above and says that if, which is not admitted, any Third Party Products were fitted on the Relevant Buildings and/or Relevant

Building Parts owned, previously owned, leased or previously leased by the Applicant and each Group Member:

- (i) such Third Party Products did not comprise Relevant Alucobond Products; and
- (ii) any Relevant Alucobond Products employed to produce or manufacture such Third Party Products were not the subject of any relevant supply or re-supply;

**Particulars of sub-paragraph (ii)**

Any such Relevant Alucobond Products were acquired for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land, within the meaning of s3(2) of the ACL and s4B(1) of the TPA, or were otherwise transformed such that they did not comprise Relevant Alucobond Products.

- (e) refers to and repeats paragraph 4(b) above; and
- (f) otherwise denies the paragraph.

*Supply by HVG for resupply*

41 As to paragraph 41, 3A:

- (a) says that HVG has supplied the Relevant Alucobond Products to Qualified Professionals who acquired them including for the purpose of:
  - (i) transforming, manipulating or fabricating them, or partially doing so, into Third Party Products, which did not comprise Relevant Alucobond Products; and/or
  - (ii) using them up or transforming them, in trade or commerce:
    - (A) in the course of a process of production of manufacture; or
    - (B) in the course of repairing or treating other goods or fixtures on land; and
- (b) otherwise does not know and therefore cannot admit the paragraph.

42 As to paragraph 42, 3A:

- (a) refers to and repeats paragraph 41 above;
- (b) says that the supplies pleaded in paragraph 41(a) above were in trade or commerce; and
- (c) otherwise does not know and therefore cannot admit the paragraph.

43 As to paragraph 43, 3A:

- (a) says that the paragraph is embarrassing to the extent it makes allegations as to Relevant Buildings and/or Relevant Building Parts other than the Shore Common Property;
- (b) does not know and therefore cannot admit that any Relevant Alucobond Product was fitted on the Relevant Buildings and/or Relevant Building Parts owned, previously owned, leased or previously leased by the Applicant and each Group Member;
- (c) refers to and repeats paragraphs 41 and 42 above;
- (d) refers to and repeats paragraph 1 above and says that if, which is not admitted, any Third Party Products were fitted on the Relevant Buildings and/or Relevant Building Parts owned, previously owned, leased or previously leased by the Applicant and each Group Member:
  - (i) such Third Party Products did not comprise Relevant Alucobond Products; and
  - (ii) any Relevant Alucobond Products employed to produce or manufacture such Third Party Products were not the subject of any relevant supply or resupply; and

**Particulars of sub-paragraph (ii)**

3A refers to and repeats the particulars under paragraph 40(d)(ii) above.

- (e) otherwise does not know and cannot admit the paragraph.

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

44 As to paragraph 44, 3A:

- (a) says that the paragraph is embarrassing to the extent it makes allegations as to persons other than the Applicant;
- (b) refers to and repeats its response to paragraphs 40 to 43 above and paragraphs 45 and 46 below;
- (c) as to the Applicant:
  - (i) denies that any Relevant Alucobond Products were fitted to the Shore Building;

**Particulars of sub-paragraph (i)**

Any ACPs fitted to the Shore Building which were derived from any Relevant Alucobond Product comprise Third Party Products.

- (ii) says further that if (which is denied) any Relevant Alucobond Products were fitted to the Shore Building, the Applicant did not, within the meaning of the ACL or TPA, “acquire” any Relevant Alucobond Products (whether as a Consumer, from a Consumer or otherwise);
- (iii) says that if (which is denied) any Relevant Alucobond Products were acquired by the Applicant, denies that the Applicant acquired those Relevant Alucobond Products as or from a Consumer or that it derived title to the Relevant Alucobond Products through or under a Consumer;

**Particulars of sub-paragraphs (ii) and (iii)**

- A. Upon registration of strata plan 87231, the Shore Common Property (including any Relevant Alucobond Products) vested in the Applicant as common property of the Shore Building pursuant to s18(1) of the *Strata Schemes (Freehold Development) Act 1973* (NSW) without any act on the part of the Applicant or on the part of any other person including any “supply” within the meaning of the ACL or TPA.
- B. Neither Ronnstar Pty Limited nor Lawtow Pty Limited was a Consumer, as it did not acquire any Relevant Alucobond Products and acquired any Third Party Products for the purpose of re-supply, or for the purposes of using them up, in trade or commerce, in the course of repairing or treating other goods or fixtures on land.
- C. HVG supplied the Alucobond PE panels to Modernise Installations, who acquired the panels for the purpose of re-supply within the meaning of s 3(2)(a) of the ACL, further or in the alternative, for the purpose of transforming, manipulating or fabricating them into Third Party Products and/or using up or transforming that Alucobond PE within the meaning of s 3(2)(b) of the ACL.
- D. Further particulars may be provided following discovery and/or upon service of 3A’s evidence.

(iv) otherwise denies the paragraph; and

(d) as to Group Members does not know and therefore cannot admit the paragraph.

45 As to paragraph 45, 3A:

- (a) refers to and repeats its response to paragraphs 40 to 44 above; and
- (b) otherwise does not know and therefore cannot admit the paragraph.

46 3A denies paragraph 46.

47 As to paragraph 47, 3A:

- (a) refers to and repeats its response to paragraphs 40 to 44 above;
- (b) says that the paragraph is embarrassing to the extent it makes allegations as to persons other than the Applicant;
- (c) as to the Applicant, denies the paragraph; and



(d) as to Group Members, does not know and therefore cannot admit the paragraph.

48 As to paragraph 48, 3A:

(a) refers to and repeats its response to paragraphs 44 to 47 above;

(b) says that the paragraph is embarrassing to the extent it makes allegations as to persons other than the Applicant;

(c) as to the Applicant, denies the paragraph; and

(d) as to Group Members, does not know and therefore cannot admit the paragraph.

49 As to paragraph 49, 3A:

(a) refers to and repeats its response to paragraph 48 above;

(b) says that the paragraph is embarrassing to the extent it makes allegations as to persons other than the Applicant;

(c) as to the Applicant, admits the paragraph; and

(d) as to Group Members, does not know and therefore cannot admit the paragraph.

## **F. REASONABLE EXPECTATION AS TO QUALITY OF GOODS**

### **The kind and nature of the goods**

50 As to paragraph 50, 3A refers to and repeats its response to paragraphs 6 to 10 above.

### **Purposes for which goods were commonly supplied in Australia**

51 As to paragraph 51, 3A:

(a) refers to and repeats its response to paragraph 7 above;

(b) says that at all material times, the purpose for which Relevant Alucobond Products were commonly bought or supplied in Australia was to produce or manufacture Third Party Products for use as:

(i) a finish or lining to a wall, or other attachment to a building element;

(ii) an external surface to a wall or other building element;

(iii) part of another system (including but not limited to a roofing system or a window system);

(iv) decorative material; or

(v) signage

on:

(vi) high rise buildings;

- (vii) low rise buildings; or
- (viii) other structures; and

where such buildings were intended to be used for:

- (ix) residential purposes;
- (x) commercial purposes; or
- (xi) public or government administration purposes,

in accordance with designs, plans and specifications prepared, reviewed, approved, certified and/or used by one or more Qualified Professionals as referred to in paragraph 7 above in accordance with the requirements of the BCA and Relevant Building Legislation in force at the relevant time; and

### **Particulars**

3A refers to and relies upon the particulars under paragraph 7 above.

- (c) otherwise denies the paragraph.

### **Representations about the goods**

#### *Representations as to quality and use of goods*

52 As to paragraph 52, 3A:

- (a) says that the paragraph is embarrassing and that save as set out below, 3A is unable to plead to it;
- (b) denies that the alleged Suitability Representation was made expressly in, or is to be implied from, any of the documents referred to in the particulars under paragraph 52 or any image or words contained therein;
- (c) says that any representations conveyed by the said documents were conveyed only to the Construction Industry Market;
- (d) says that the said documents represented expressly or by implication that one or both of the Relevant Alucobond Products (or Third Party Products derived therefrom) was capable of being used for the purposes listed in paragraph 51(b)(i) to (xi) above in accordance with designs, plans and specifications prepared, reviewed, approved, certified and/or used by one or more Qualified Professionals as referred to in paragraph 7 above in compliance with the requirements of the BCA and Relevant Building Legislation in force at the relevant time;

**Particulars of sub-paragraph (c)**

The representation was made expressly by the following documents referred to in the particulars under paragraphs 52 to 55 of the ASOC:

- A. 3AC.600.001.4025, Alucobond Vision Materialized: Alucobond at a glance.
- B. 3AC.600.001.4794, Alucobond Flying High.
- C. 3AC.600.001.4830, Alucobond Facade Fascination.
- D. 3AC.600.001.4857, Alucobond Facade Fascination.
- E. 3AC.600.001.4936, Alucobond Facade Fascination.
- F. 3AC.600.001.4963, Alucobond Facade Fascination.
- G. 3AC.601.001.0021, Alucobond At a Glance.
- H. 3AC.600.001.4053, Alucobond At a Glance.
- I. 3AC.600.001.5413, Alucobond: Create the Difference.
- J. 3AC.600.001.0115, Alucobond Facade Fascination.
- K. 3AC.601.001.0047, Product Information: Alucobond at a Glance.
- L. 3AC.600.001.5093, Alucobond - Documentation of Suppliers Façade.
- M. 3AC.600.001.0115, Alucobond At a Glance.
- N. 3AC.600.001.4055, Alucobond At a Glance.
- O. 3AC.600.001.4065, Alucobond At a Glance.
- P. 3AC.600.001.4075, Alucobond At a Glance.
- Q. 3AC.600.001.4095, Alucobond At a Glance.
- R. 3AC.600.001.4105, Alucobond At a Glance.
- S. 3AC.600.001.4011, Alucobond At A Glance.
- T. 3AC.601.001.0023, Alucobond: Fire Retardancy and ALUCOBOND".
- U. 3AC.600.001.4085, Alucobond: At A Glance.
- V. 3AC.600.001.4767, Alucobond Facade Fascination.
- W. Alucobond: Vision Materialised, Undated (file created 22 October 2010).
- X. "Alucobond Façade Fascination", dated September 2012.
- Y. "Alucobond Fire Product Information Guide", dated 6 October 2017.
- Z. "Alucobond Vision Materialised", dated 22 October 2010.
- AA. "Alucobond: At a Glance", undated (file created 27 February 2014).
- BB. "Alucobond: Beyond Facades", undated (file created 24 August 2017) [HV5450 Alucobond Beyond Facades 2017 compressed].

To the extent the representation was implied, it was implied from express statements within those documents.

- (e) otherwise relies on the documents particularised under paragraph 52 of the ASOC for their full terms, meaning and effect; and
- (f) denies the paragraph.

53 As to paragraph 53, 3A:

- (a) refers to and repeats its response to paragraph 52 above;
- (b) says that the paragraph is embarrassing and that save as set out below, 3A is unable to plead to it;
- (c) says that the documents referred to in particulars A and B under paragraph 53 of the ASOC contain the representation referred to in sub-paragraph 53(a) in respect of Relevant Alucobond Products;

- (d) relies on the documents referred to in the particulars under paragraph 53 of the ASOC for their full terms, meaning and effect; and
- (e) otherwise denies the paragraph.

*Representations as to fire performance*

54 As to paragraph 54, 3A:

- (a) refers to and repeats its response to paragraph 52 above and paragraph 55 below;
- (b) says that the paragraph is embarrassing and that save as set out below, 3A is unable to plead to it;
- (c) relies on the documents referred to in the particulars under paragraph 54 of the ASOC for their full terms, meaning and effect; and
- (d) otherwise denies the paragraph.

*Representations as to compliance*

55 As to paragraph 55, 3A:

- (a) refers to and repeats its response to paragraphs 52 and 54 above;
- (b) says that the paragraph is embarrassing and that save as set out below, 3A is unable to plead to it;
- (c) denies that the alleged representation is made expressly or is to be implied from any of the documents referred to in the particulars under paragraph 55 of the ASOC, any statement contained therein or if (which is denied) the Suitability Representation and/or the Fire Performance Representation was made, from such representation;
- (d) says that the representation sought to be implied is inconsistent with the contents of the documents particularised under paragraph 55 of the ASOC;
- (e) relies on the documents referred to in the particulars under paragraph 55 of the ASOC for their full terms, meaning and effect; and
- (f) otherwise denies the paragraph.

**No warning as to risks**

56 As to paragraph 56, 3A:

- (a) refers to and repeats its response to paragraphs 51 to 55 above;

- (b) does not know and therefore cannot admit that the behaviour of the Relevant Alucobond Products in any Relevant Building or Building Part in a fire was or is necessarily affected in any material way by the application of any of the Fabrication Methods to the Relevant Alucobond Products;
- (c) denies that either it or HVG was required to publicly disclose any of the Suitability Warning, Limitation of Use Warning or Fabrication Warning;
- (d) says further and in the alternative that at all material times the following were matters of common knowledge within the Construction Industry Market in Australia:

- (i) that Relevant Alucobond Products had not been tested under AS 1530.1 and/or could not pass the AS 1530.1 combustibility test;

**Particulars of sub-paragraph (d)(i)**

3A relies upon the documents referred to in the particulars under paragraphs 52 to 55 of the ASOC for their full terms, meaning and effect.

- (ii) that, if any product proposed to be used in respect of a Class 2 to 9 Building of either Type A and/or Type B construction, then it could be used in accordance with designs, plans and specifications prepared, reviewed, approved, certified and/or used by Qualified Professionals in accordance with the requirements of the applicable BCA and Relevant Building Legislation in force at the relevant time;
- (iii) that the fire behaviour of Alucobond PE and/or Alucobond Plus would (or could) be affected by matters including the type of building or construction for purposes of the BCA and the location or manner in which the products had been treated, fabricated and/or installed (including without limitation the Fabrication Methods) and/or any other building products or materials used on the particular building,  
  
(collectively, **Known Fire Properties**); and
- (e) says further that at all material times it was reasonable to expect that Qualified Professionals in the Construction Industry were aware of the Known Fire Properties in relation to Relevant Alucobond Products;
- (f) says further that, in any event, the representations and information substantially to the same effect as the Suitability Warning and Limitation of Use Warning were sufficiently conveyed by reason of the matters pleaded in paragraph 52(c) above and 3A relies on the documents there particularised for their full terms, meaning and effect; and

(g) denies the paragraph.

57 As to paragraph 57, 3A:

- (a) refers to and repeats its response to paragraphs 11 to 14 and 52 to 56 above;
- (b) denies that the aluminium coversheets on the Relevant Alucobond Products did not protect the PE Core from igniting in a building fire and that the Relevant Alucobond Products had the Material Fire Risk Properties;
- (c) says that documents particularised under paragraphs 52 to 55 of the ASOC disclosed that the Relevant Alucobond Products were combustible and were not NCACPs and 3A relies on those documents for their full terms, meaning and effect;

**Particulars of sub-paragraph (c)**

- A. 3AC.600.001.5087, Alucobond plus: For greater protection against fire.
  - B. 3AC.600.001.4025, Alucobond Vision Materialized: Alucobond at a glance.
  - C. 3AC.600.001.0115, Alucobond Facade Fascination.
  - D. 3AC.600.001.4830, Alucobond Facade Fascination.
  - E. 3AC.600.001.4115, Alucobond Dibond showing identity.
  - F. 3AC.600.001.4857, Alucobond Facade Fascination.
  - G. 3AC.600.001.4936, Alucobond Facade Fascination.
  - H. 3AC.600.001.4963, Alucobond Facade Fascination.
  - I. 3AC.600.001.4794, Alucobond Flying High.
  - J. 3AC.601.001.0021, Alucobond At a Glance.
  - K. 3AC.600.001.0115, Alucobond At a Glance.
  - L. 3AC.600.001.4053, Alucobond At a Glance.
  - M. 3AC.600.001.4055, Alucobond At a Glance.
  - N. 3AC.600.001.4065, Alucobond At a Glance.
  - O. 3AC.600.001.4075, Alucobond At a Glance.
  - P. 3AC.600.001.4095, Alucobond At a Glance.
  - Q. 3AC.600.001.4105, Alucobond At a Glance.
  - R. 3AC.600.001.4011, Alucobond At A Glance.
  - S. 3AC.601.001.0023, Alucobond: Fire Retardancy and ALUCOBOND.
  - T. 3AC.600.001.4085, Alucobond: At A Glance.
  - U. 3AC.600.001.4767, Alucobond Facade Fascination.
  - V. 3AC.600.001.5157, Alucobond: Processing and Technical Data.
  - W. 3AC.600.001.5203, Alucobond: Processing and Technical Data.
  - X. 3AC.600.001.5227, Alucobond: Processing and Technical Data.
  - Y. 3AC.600.001.5343, Alucobond: Processing and Technical Data.
  - Z. 3AC.600.001.5389, Alucobond: Processing and Technical Data.
  - AA.3AC.600.001.5105, Alucobond: Processing and Technical Data.
  - BB.“Alucobond Fire Product Information Guide”, dated 6 October 2017.
  - CC. “Alucobond Façade Fascination”, dated September 2012.
  - DD. “Alucobond: At a Glance”, undated (file created 27 February 2014).
- (d) denies that either it or HVG was required to publicly disclose the Fire Risk Warning; and
  - (e) denies the paragraph.

- 58 As to paragraph 58, 3A:
- (a) refers to and repeats its response to paragraphs 7, 18 to 36 and 51 to 57 above;
  - (b) denies sub-paragraph (a)(i);
  - (c) denies that the Relevant Alucobond Products were not compliant, or there was a material risk that they were not compliant, with the BCA, including the performance requirements relating to fire resistance set out in the BCA, applicable to all buildings, or when used for the purposes and in the manner pleaded in paragraphs 7 and 51(b)(i) to (xi) above in accordance with designs, plans and specifications prepared, reviewed, approved, certified and/or used by one or more Qualified Professionals in compliance with the requirements of the BCA and Relevant Building Legislation in force at the relevant time;
  - (d) denies that either it or HVG was required to publicly disclose the Non-compliance Warning or the Non-compliance Limitation Warning;
  - (e) says further that the documents referred to in its response to paragraphs 52 to 57 above, disclosed the matters there pleaded and particularised;
  - (f) says that by reason of the matters stated in sub-paragraph (e) above the Non-Compliance Limitation Warning was given; and
  - (g) otherwise denies the paragraph.
- 59 3A does not plead to paragraph 59 on the ground that it contains no allegation of material fact relevant to any cause of action pleaded against it.
- 60 3A does not plead to paragraph 60 on the ground that it contains no allegation of material fact relevant to any cause of action pleaded against it.

### **Reasonable expectation as to fitness of goods**

#### *All buildings*

- 61 As to paragraph 61, 3A:
- (a) refers to and repeats its response to paragraphs 7 to 17 and 50 to 58 above; and
  - (b) denies the paragraph.

#### *Class 2 to 9 buildings*

- 62 As to paragraph 62, 3A:
- (a) refers to and repeats its response to paragraphs 7, 18 to 36 and 50 to 58 above; and
  - (b) denies the paragraph.

## **G. GOODS NOT OF MERCHANTABLE OR ACCEPTABLE QUALITY**

### **Goods not of merchantable quality**

63 As to paragraph 63, 3A:

- (a) refers to and repeats its response to paragraphs 11 to 17 and 61 above; and
- (b) denies the paragraph.

64 As to paragraph 64, 3A:

- (a) refers to and repeats its response to paragraphs 18 to 36 and 61 above; and
- (b) denies the paragraph.

65 As to paragraph 65, 3A:

- (a) refers to and repeats its response to paragraphs 18 to 36 and 62 above; and
- (b) denies the paragraph.

66 As to paragraph 66, 3A:

- (a) refers to and repeats its response to paragraphs 4, 44 to 49 and 61 to 65 above and paragraph 90 below;
- (b) says the plea is embarrassing to the extent it refers to any specific use of Relevant Alucobond Products in the design or construction of any Relevant Building and/or Relevant Building Part whether as part of a Deemed-to-Satisfy solution, an Alternative Solution, or a combination of both;
- (c) says further and in the alternative that the plea is embarrassing to the extent it refers to Alucobond Plus;
- (d) says further and in the alternative that the plea is embarrassing to the extent it makes allegations in respect of:
  - (i) any product other than Alucobond PE if (which is denied) it was fitted to the Shore Building; and/or
  - (ii) any Relevant Building and/or Relevant Building Part other than the Shore Building,
 as the ASOC pleads no material facts in support of those alleged claims;
- (e) denies the paragraph;
- (f) in the alternative, says that if (which is denied), s74D of the TPA did apply to the Relevant Alucobond Products, the Relevant Alucobond Products were required by reason of s74D of the TPA, to be fit for the purpose or purposes for which



goods of that kind, as described in paragraph 51(b)(i) to (xi) above, are commonly bought as it is reasonable to expect having regard to the matters in s74D(3) of the TPA and at all material times the Relevant Alucobond Products complied with the requirement to be of merchantable quality as described above; and

- (g) in the alternative, says that if (which is denied), any Relevant Alucobond Products were required to be (but were not) of merchantable quality, the only reason or reasons why those goods were not of merchantable quality:
- (i) were by reason of an act or default of a person or persons other than 3A (or a servant or agent of 3A) or a cause independent of human control, occurring after the goods had left the control of 3A;
  - (ii) were specifically drawn to any relevant consumer's attention before the making of the contract for the supply of goods to the consumer; or
  - (iii) were revealed or ought reasonably to have been revealed to any relevant consumers acquiring the goods through their examination of the goods before the making of the contract for the supply of goods to the consumer,

such that s74D(1) of the TPA does not and did not apply to those goods.

### **Particulars**

3A refers to and relies upon paragraphs 1, 7 and 51 to 58 above.

67 As to paragraph 67, 3A:

- (a) refers to and repeats paragraphs 61 to 66 above; and
- (b) denies the paragraph.

### **Non-compliance with acceptable quality guarantee**

68 As to paragraph 68, 3A:

- (a) refers to and repeats its response to paragraphs 37 to 49 above; and
- (b) denies the paragraph.

69 As to paragraph 69, 3A:

- (a) refers to and repeats its response to paragraphs 4, 44 to 49 and 68 above and paragraph 90 below;

(b) in the alternative, says that if (which is denied), the Acceptable Quality Guarantee did apply to the Relevant Alucobond Products, the Relevant Alucobond Products were required, by reason of s54(2) of the ACL, to be:

- (i) fit for all the purposes for which goods of that kind, as described in paragraph 51(b)(i) to (xi) above, are commonly supplied;
- (ii) acceptable in appearance and finish;
- (iii) free from defects;
- (iv) safe; and
- (v) durable,

as a reasonable consumer fully acquainted with the state and condition of the Relevant Alucobond Products (including any hidden defects of the goods), would regard as acceptable having regard to the matters in s54(3) of the ACL, and at all material times the Relevant Alucobond Products complied with the requirement to be of acceptable quality as described above; and

(c) denies the paragraph.

70 As to paragraph 70, 3A:

- (a) refers to and repeats its response to paragraphs 11 to 17, 61, 68 and 69 above; and
- (b) denies the paragraph.

71 As to paragraph 71, 3A:

- (a) refers to and repeats its response to paragraphs 18 to 36, 61, 68 and 69 above; and
- (b) denies the paragraph.

72 As to paragraph 72, 3A:

- (a) refers to and repeats its response to paragraphs 18 to 36, 62, 64, 68 and 69 above; and
- (b) denies the paragraph.

73 As to paragraph 73, 3A:

- (a) refers to and repeats its response to paragraphs 68 to 72 above; and
- (b) says the plea is embarrassing to the extent it refers to any specific use of Relevant Alucobond Products in the design or construction of any Relevant

Building and/or Relevant Building Part whether as part of a Deemed-to- Satisfy solution, an Alternative Solution, or a combination of both;

- (c) says further and in the alternative that the plea is embarrassing to the extent it refers to Alucobond Plus;
- (d) says further and in the alternative that the plea is embarrassing to the extent it makes allegations in respect of:
  - (i) any product other than Alucobond PE if (which is denied) it was fitted to the Shore Building; and/or
  - (ii) any Relevant Building and/or Relevant Building Part other than the Shore Building,

as the ASOC pleads no material facts in support of those alleged claims;

- (e) says further and in the alternative that if (which is denied), the Acceptable Quality Guarantee did apply to the Relevant Alucobond Products and if (which is denied) those products did not comply with the Acceptable Quality Guarantee, the only reason or reasons why that was so:
  - (i) were by reason of an act or default of a person or persons other than 3A (or a servant or agent of 3A), or a cause independent of human control occurring after the goods had left the control of 3A;
  - (ii) were specifically drawn to any relevant consumer's attention before such consumer agreed to the supply; or
  - (iii) were revealed or ought reasonably to have been revealed to any relevant consumers acquiring the goods through their examination of the goods before agreeing to the supply,

such that s54 of the ACL does not and did not apply to those goods.

### **Particulars**

3A refers to and relies upon paragraphs 1, 7 and 51 to 58 above.

- (f) denies the paragraph.

74 As to paragraph 74, 3A:

- (a) refers to and repeats its response to paragraph 73 above; and
- (b) denies the paragraph.

## **H. MISLEADING OR DECEPTIVE REPRESENTATIONS AND CONDUCT**

### **False or misleading representations about goods**

75 As to paragraph 75, 3A:

- (a) refers to and repeats its response to paragraphs 52 to 55 above; and
- (b) denies the paragraph.

76 As to paragraph 76, 3A:

- (a) refers to and repeats its response to paragraphs 56 to 58 and 75 above; and
- (b) denies the paragraph.

77 As to paragraph 77, 3A:

- (a) refers to and repeats its response to paragraph 75 above; and
- (b) denies the paragraph.

78 As to paragraph 78, 3A:

- (a) refers to and repeats its response to paragraph 75 above; and
- (b) denies the paragraph.

79 As to paragraph 79, 3A:

- (a) refers to and repeats its response to paragraph 75 above; and
- (b) denies the paragraph.

80 As to paragraph 80, 3A:

- (a) refers to and repeats its response to paragraph 75 above; and
- (b) denies the paragraph.

81 As to paragraph 81, 3A:

- (a) refers to and repeats its response to paragraphs 75 to 80 above; and
- (b) denies the paragraph.

### **Misleading conduct as to the nature of goods**

82 As to paragraph 82, 3A:

- (a) refers to and repeats its response to paragraphs 56 to 60 and 75 above; and
- (b) denies the paragraph.

## I. LOSS AND DAMAGE

### Entitlement to compensation for non-compliance with consumer guarantees

83 As to paragraph 83, 3A:

- (a) says that to the extent paragraph 83 makes allegations in respect of Group Members, the ASOC contains no factual allegations in respect of those persons such that paragraph 83 is embarrassing;
- (b) refers to and repeats its response to paragraphs 63, 66, 73 and 74 above and denies that the Applicant and each Group Member has suffered any loss and damage as alleged; and
- (c) in the alternative, says that the Applicant and Group Members have not suffered loss and damage as alleged to the extent that they could successfully apply to State government agencies for funding for the replacement of ACPs on a Relevant Building or Relevant Building Part.

#### Particulars to sub-paragraph (c)

- A. Cladding Safety Victoria rectification funding guidelines reviewed 19 December 2019.
- B. Victorian government cladding rectification agreements.
- C. Further particulars will be provided following discovery and/or the upon service of evidence.

84 As to paragraph 84, 3A:

- (a) refers to and repeats its response to paragraphs 4, 5, 7, 9, 10, 11, 12, 14, 17, 33, 36, 37, 41, 51 and 52 to 62 above; and
- (b) denies the paragraph.

85 As to paragraph 85, 3A:

- (a) refers to and repeats its response to paragraphs 44, 63, 66, 73, 74 and 81 to 83 above;
- (b) says that if (which is denied), Relevant Alucobond Products were required to (and did not) comply with the Acceptable Quality Guarantee, that:
  - (i) the reason the Acceptable Quality Guarantee was not complied with is only because of an act, default or omission of, or any representation made by, a person or persons (whose identity is presently unknown to 3A) not being 3A or an employee or agent of 3A;

- (ii) by reason of the matters pleaded in paragraph 85(b)(i) above, s271(1) of the ACL does not apply to any claim for loss or damage by the Applicant or any Group Member; and
- (iii) 3A is not liable for damages under s271 of the ACL;
- (c) says further that if (which is denied), Relevant Alucobond Products were required to be (and were not) of merchantable quality, that:
  - (i) the Relevant Alucobond Products were not of merchantable quality by reason of an act or default of any person or persons (whose identity is presently unknown to 3A) not being 3A or a servant or agent of 3A, occurring after the Relevant Alucobond Products have left 3A's control;
  - (ii) by reason of the matters pleaded in paragraph 85(c)(i) above, s74D(1) of the TPA does not apply to any claim for loss or damage by the Applicant or any Group Member;
  - (iii) 3A is not liable for damages under s74D(1) of the TPA; and

**Particulars to sub-paragraphs (b) and (c)**

- A. In respect of the Applicant (if which is denied), any Relevant Alucobond Products were fitted as a part of the Shore Common Property, the persons responsible for designing, planning, specifying, certifying, installing and/or using Relevant Alucobond Products on the Shore Common Property were Qualified Professionals who undertook the tasks referred to in paragraphs 7 and 51 above.
- B. 3A refers to and relies upon paragraphs 1, 7 and 51 to 58 above.
- C. Further particulars will be provided following discovery and/or upon the service of evidence.
- (d) denies the paragraph.

**Entitlement to compensation for non-compliance with consumer guarantees**

86 As to paragraph 86, 3A:

- (a) refers to and repeats its response to paragraphs 52 to 58, 75 and 82 above; and
- (b) denies the paragraph.

87 As to paragraph 87, 3A:

- (a) refers to and repeats its response to paragraphs 4, 44 to 49 and 86 above and paragraph 90 below; and
- (b) denies the paragraph.

88 As to paragraph 88, 3A:

- (a) refers to and repeats its response to paragraphs 81 and 82 above; and
- (b) denies the paragraph.

89 As to paragraph 89, 3A:

- (a) refers to and repeats its response to paragraphs 86 to 88 above;
- (b) says that state government schemes may wholly or partly provide compensation or other funding for costs associated with rectification of ACPs including Relevant Alucobond Products and/or Third Party Products; and

**Particulars to sub-paragraph (b)**

- A. Cladding Safety Victoria rectification funding guidelines reviewed 19 December 2019.
- B. Victorian government cladding rectification agreements.
- C. Further particulars will be provided following discovery and/or the upon service of evidence.

- (c) denies the paragraph.

90 In further answer to the whole of the ASOC, 3A:

- (a) refers to and repeats paragraph 4(b) above; and
- (b) says by reason of the matters pleaded in sub-paragraph (a) above, that the ACL and TPA have no application to it or to any conduct engaged in by it relevant to any cause of action pleaded against it.

**J. CLAIMS ARE TIME BARRED**

91 If the Applicant or any Group Member suffered loss or damage as a result of any of the matters alleged in paragraphs 83 to 85 of the ASOC (which is denied), then by no later than 3 March 2017, or alternatively, 14 February 2016, the Applicant or any Group Member was aware or ought reasonably to have become aware, that (which is denied) the Acceptable Quality Guarantee had not been complied with or that the goods were not of merchantable quality.

**Particulars**

- A. The Applicant and Group Members were aware, or ought reasonably to have become aware, that the Acceptable Quality Guarantee had not been complied with by reason of information in the public domain concerning the fire at Lacrosse Tower on La Trobe St, Melbourne on 25 November 2014 and the public hearings of the Senate Economic References Committee inquiry into non-conforming building products in November 2015.
- B. Further particulars may be provided following discovery and/or upon service of 3A's evidence.

- 92 By reason of s273 of the ACL, no action can be brought after 3 years from the date on which the affected person first became aware, or ought reasonably to have become aware, that the guarantee to which the action relates has not been complied with and, in those premises, the Applicant's and Group Members' claims under s271 of the ACL are barred by s273 of the ACL.
- 93 By reason of s74J(1) of the TPA, no action can be brought after 3 years from the date on which the consumer or a person who acquired the goods from, or derived title to the goods through or under, the consumer, first became aware, or ought reasonably to have become aware, that the goods were not of merchantable quality and, in those premises, the Applicant's and Group Members' claims under s74D of the TPA are barred by s74J(1) of the TPA.
- 94 Further, if and to the extent the claim of the Applicant or any Group Member concerns or arises from Relevant Alucobond Products which were first supplied to a Consumer (whether the Group Member or otherwise) on or prior to 3 March 2010, 3A relies on s74J(3) of the TPA and says that the claim is not maintainable.
- 95 Further, if and to the extent that a cause of action under ss 53 or 55 of the TPA and/or ss 29 or 33 of the ACL in respect of any Group Member accrued before 3 March 2014, 3A relies on ss 82(2) and 87(1CA) of the TPA, and ss 236(2) and 237(3) of the ACL and says that the cause of action is not maintainable.

Date: 6 May 2020



.....  
Sam Dundas  
Lawyer for the First Respondent  
King & Wood Mallesons

This pleading was prepared by King & Wood Mallesons and settled by Matthew Darke SC and Amelia Smith of counsel.



**Certificate of lawyer**

I, Sam Dundas certify to the Court that, in relation to the defence filed on behalf of the First Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 6 May 2020



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Lawyer for the First Respondent