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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 NO 91086 v FAIRVIEW ARCHITECTURAL PTY LTD ACN 111 935 963
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 3/03/2020 12:45:34 PM AEDT

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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AMENDED STATEMENT OF CLAIM



Form 17
Rule 8.05(1)(a)

Amended Statement of Claim

(amended pursuant to leave granted by his Honour Justice Wigney on 26 February 2020)

No. NSD940 of 2019

Federal Court of Australia

District Registry: New South Wales

Division: General

The Owners – Strata Plan No 91086

Applicant

Fairview Architectural Pty Limited (ACN 111 935 963)

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 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 Vitrabond 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 Vitrabond 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 Vitrabond PE Core Cladding was first supplied to a Consumer in the period that commences on 13 June 2009 and ends on 13 June 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 Fairview;

- (ii) a related body corporate (as defined by s. 50 of the Corporations Act) of Fairview;
- (iii) an associated entity (as defined by s 50AAA of the Corporations Act) of Fairview;
- (iv) a director, an officer, or a close associate (as defined by s. 9 of the Corporations Act) of Fairview; 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 91086 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 two residential buildings known as Solis Apartments located at 1 - 3 Bigge Street, Warwick Farm in the State of New South Wales (**Bigge Street Buildings**); and

Particulars

- A. The strata plan as contained at **Appendix 1** was registered on 3 March 2015.
- B. On 6 March 2015, Final Occupation Certificates bearing certificate number OC2013-131DS were issued under the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the Bigge Street Buildings.

- (e) is and at all material times was the registered proprietor of those parts of the Bigge Street Buildings comprising common property as that term is defined under the SSFDA and SSDA (**Bigge Street 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 Bigge Street 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 Bigge Street Common Property is registered in folio CP/SP91086.

A.3 The Respondent

4. Fairview Architectural Pty Limited (**Fairview**):

- (a) is a company incorporated in Australia and capable of being sued in its corporate name; and;
- (b) was at all material times, and is:
 - (i) the corporation that manufactured Vitrabond PE Core Cladding for the purposes of Part V of the TPA by reason of ss. 74A(1), 74A(3) and 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 Vitrabond 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

Particulars

At all material times, Fairview:

- A. Produced, processed or assembled the Vitrabond PE Core Cladding;
- B. Further or in the alternative, to particulars (A) and (C), if Fairview did not produce, process or assemble the Vitrabond PE Core Cladding (which is denied) then Fairview imported the Vitrabond PE Core Cladding into Australia in circumstances where at the time of importation, the manufacturer of Vitrabond PE Core Cladding did not have a place of business in Australia.
- C. Further to particulars (A) and (B) above, Fairview held itself out to the public within Australia as the manufacturer of the Vitrabond PE Core Cladding.
- D. In respect to the matters set out at particulars (A) to (C) above, the Applicant relies on:
 - a. The admissions contained in Fairview's submission to the Committee Secretary, Senate Economics Legislation Committee dated 24 July 2015;
 - b. Fairview's ownership of the registered trademark 1534554 of the word “Vitrabond” in Australia as set out in the extracts from IP Australia contained in Appendix 2 to this statement of claim;
 - c. the fact that Fairview distributed, sold, advertised and otherwise

promoted the Vitrabond PE Core Cladding in Australia as being manufactured by Fairview, including on its public website and product brochures and manuals. In particular, non-exhaustive reference is made to the following:

- i. brochure titled on the front cover "Vitrabond Aluminium Composite Panel by Fairview – Technical Information", published 1 July 2013 referencing the word "Vitrabond" alongside the phrases "Aluminium Composite Panel by Fairview", "Manufactured & Supplied by Fairview Architectural" and "Fairview Architectural specialises in the design, manufacture and distribution of a range of façade products...throughout Australia";
- ii. brochure titled "Vitrabond Aluminium Composite Panel by Fairview – Product Introduction" – referencing, inter alia, pictured projects at "400 George Street Brisbane", "Linnaeus Way & Biology Pl, Acton", "350 Tooronga Rd, Hawthorne East, VIC", "...30-70 Pyrmont Street, Pyrmont NSW and on the last page referencing the word "Vitrabond" alongside the phrases "Aluminium Composite Panel by Fairview", "Manufactured & Supplied by Fairview Architectural"; and
- iii. document titled "VITRABOND ALUMINIUM COMPOSITE PANEL – FAÇADE SYSTEM SPECIFICATION TEMPLATE" bearing the logo "Vitrabond" with the phrase underneath "Aluminium Composite Panel / Manufactured by Fairview" – undated.

E. Further particulars may be provided following discovery and/or service of the Applicant's evidence.

- (c) by reason of the matters pleaded in 4(a) and 4(b) 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 Vitrabond PE Core Cladding distributed in Australia at all material times, including in the Relevant Period.

B. THE GOODS

B.1 ACPs and Vitrabond

5. Vitrabond PE Core Cladding are and were goods of a kind commonly known as "Aluminium Composite Panels" (**ACP**), which consist of three bonded laminates, being two aluminium cover sheets and a core.
6. At all material times, ACPs (including Vitrabond 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 Bigge Street Buildings were and are high rise buildings intended for use for residential purposes and are fitted with Vitrabond PE Core Cladding.
- B. Generally, Vitrabond PE Core Cladding is situated on or around the following parts of the Bigge Street Common Property:
 - a. on the block that has a mailing address of 1-3 Bigge Street, Warwick Farm, New South Wales, 2170, between storeys and around windows at the:
 - i. south elevation from level 1 to roof;
 - ii. west elevation (courtyard level) from level 1 to roof;
 - iii. east elevation from ground to roof and including the first floor awning; and
 - iv. north elevation from ground to roof; and
 - b. on the block that has a mailing address of 2 Browne Parade, Warwick Farm, New South Wales, 2170, between storeys and around windows located at the:
 - i. south elevation from level 5 to roof;
 - ii. west elevation from level ground to roof;
 - iii. east elevation (courtyard level) from level 1 to roof; and
 - iv. north elevation from level 1 to roof.
- C. Further particulars may be provided following the filing of the Applicant's evidence

7. At all material times:

- (a) Vitrabond PE Core Cladding was available in a wide range of sheet sizes, thicknesses and colours;
- (b) Vitrabond PE Core Cladding was lightweight, flat and rigid; and
- (c) Vitrabond PE Core Cladding was the subject of technical support in Australia from Fairview.

Particulars

- A. For example, the Brochure titled "Vitrabond Aluminium Composite Panel by Fairview – Technical Information" published 1 July 2013".
- B. Further particulars may be provided following discovery and/or service of the applicant's evidence.

B.2 ACPs with PE Cores

8. 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.
9. At all material times, the core of Vitrabond PE Core Cladding was comprised of:
- (a) for Vitrabond PE – approximately 100% PE;
 - (b) for Vitrabond FR – approximately 30% PE.

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

C.1 Combustibility and Fire Risk

10. 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.

Particulars

- A. The calorific value of PE is approximately 44 megajoules per kilogram. The calorific value of petrol is approximately 44 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.

11. In the event of a building fire, the aluminium cover sheets of Vitrabond 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, the aluminium cover sheet is often cut or modified in a way that exposes the PE Core; and
 - (c) regardless of the means of fabrication:
 - (i) aluminium has a melting point of around 660°C, which is lower than the typical temperature of approximately 800°C to 900°C in a building fire, and will rapidly degrade in a building fire and expose the PE Core;
 - (ii) further, when subjected to high temperatures, the PE Core can melt so as to cause delamination of the ACP and the further exposure of the PE Core.
12. By reason of the matters pleaded in paragraphs 10 and/or 11 above Vitrabond PE Core Cladding was and is combustible due to its PE Core.

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

13. By reason of the matters pleaded at paragraphs 8, 9, 10, 11 and 12, 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 Vitrabond PE Core Cladding will:
 - (a) cause or contribute to the rapid spread and severity of a fire, including the rapid vertical spread and/or horizontal spread of a fire in the building; and
 - (b) due to the matters set out in paragraph 13(a):
 - (i) increase the risk of loss of life in the event of a building fire;
 - (ii) increase the risk of damage to the building and/or building contents 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

- (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 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 13(b) include the risk of the Vitrabond PE Core cladding delaminating and dropping molten material on other parts of the building, including those to which further Vitrabond PE Core Cladding is attached (exacerbating the risk of the spread of fire) and the ground.
- D. Further particulars may be provided following the filing of the applicant's evidence.

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

C.3 Prohibition Risk Properties

- 15. From around March 2018, Vitrabond PE Core Cladding:
 - (a) has been the subject of safety alerts and regulation in Australia prohibiting or restricting its use in 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 Vitrabond PE Core Cladding fitted to those buildings, to be removed and/or replaced at the cost of the owner or leaseholder (as applicable).

Particulars

- 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**). Pursuant to s 20 of the *Building Products (Safety) Act 2017* (NSW),

relevant enforcement authorities may issue a rectification order in relation to Vitrabond 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.

- 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.
- C. The State of Victoria "*Building Product Safety Alert*" March 2018.
- D. Queensland Development Code, Mandatory Part (MP) 2.5 – "*Use of external cladding*" issued on 18 October 2019. 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.
- 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.
- F. Government of Western Australia, DFES Built Environment Branch Guideline GL-17: "*External Walls and Cladding*" issued in June 2018.
- G. Further particulars may be provided following the filing of the applicant's evidence.

16. By reason of the Material Fire Risk Properties, there was at all material times a material risk that any Vitrabond 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 15 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 Bigge Street Buildings, a legally binding direction to remove and replace the Vitrabond PE Core Cladding fitted to the Bigge Street Common Property has been issued by Liverpool Council.
- C. Further particulars may be provided following the filing of the applicant's evidence.

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

D.1 Non-compliance with BCA

D.1.1 Introduction: Relevant requirements

17. 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. Further particulars may be provided following the filing of the applicant's evidence.

18. 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.

19. 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 Bigge Street Buildings are comprised of one building that has 16 storeys above ground and one building that has 15 storeys above ground, collectively containing 185 apartments and two basement levels of car parking as well as car parking on the ground level, for residential use. The Bigge Street Buildings are therefore "Class 2 buildings" requiring "Type A" construction as those terms are defined in the BCA.
- C. Further particulars may be provided following the filing of the applicant's

evidence.

20. 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.

21. 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:

- (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**).

22. 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

23. 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 23(a) and 23(b) above.

Particulars

- A. A0.5, A0.7, A0.8, A0.9 and A0.10 of the BCA.
- 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.

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

24. At all material times, Vitrabond PE Core Cladding did not and does not pass the combustibility test pursuant to AS1530.1.
25. By reason of the matter pleaded at paragraph 24 above:

- (a) Vitrabond PE Core Cladding is and was a “*combustible*” material as that term is used in the BCA;
- (b) Vitrabond 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 Vitrabond 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 Vitrabond 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.

26. At all material times, Vitrabond PE Core Cladding was not able to be used wherever a “*non-combustible*” material was required by the BCA because:

- (a) Vitrabond 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 Vitrabond 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. Further particulars may be provided following the filing of the applicant’s evidence.

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

27. At all material times until on or about 12 March 2018 (being the date on which BCA 2016

Amendment 1 came into effect), Vitrabond 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 25 above, Vitrabond 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 lining or attachment to 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. Further particulars may be provided following the filing of the applicant’s evidence.

- (c) Vitrabond 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.

28. Further, at all material times, Vitrabond 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 25 above, an external wall constructed in whole or in part of Vitrabond 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(b) (Type A construction); cl 4.1(b) (Type B construction) of the BCA (prior to 2016 version).
- B. C1.9(a)(i) (both Type A and B construction) of the BCA (2016 version).
- C. Further particulars may be provided following the filing of the applicant's evidence.

29. Further or alternatively, at all material times from 12 March 2018 (being the date on which the BCA 2016 Amendment 1 came into effect), Vitrabond 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 25 above, Vitrabond 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 version).
- B. Further particulars may be provided following the filing of the applicant's evidence.

30. Where some or all of the Deemed-to-Satisfy Provisions referred to in paragraphs 27, 28 and/or 29 could not be complied with in order to allow the use of Vitrabond 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

31. Further, at all material times, the use of Vitrabond 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. Vitrabond PE Core Cladding could not, and cannot, meet the Fire Resistance Performance Requirements by an Alternative Solution where:
 - a. Vitrabond 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 Vitrabond 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 Vitrabond 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 Vitrabond 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 Vitrabond PE Core Cladding can hinder the ability of fire brigade vehicles and personnel to access the building;
- B. Vitrabond 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 Bigge Street Buildings;
- C. Many Class 2 to 9 Buildings have the characteristics of the Bigge Street Buildings;
- D. Further particulars may be provided following the filing of the applicant's evidence.

D.1.6 Non-compliance with BCA

32. By reason of the matters pleaded at paragraphs 27, 28, 29, 30 and 31, Vitrabond 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 27, 28, 29, 30 and 31; 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 27, 30 and 31; 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 28, 30 and 31; 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 29, 30 and 31; 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 Bigge Street Buildings were fitted with Vitrabond PE Core Cladding around the period between November 2014 and March 2015.
- B. Generally, the Vitrabond PE Core Cladding was situated on or around the following parts of the Bigge Street Common Property:
 - a. on the block that has a mailing address of 1-3 Bigge Street, Warwick Farm, New South Wales, 2170, between storeys and around windows at the:
 - i. south elevation from level 1 to roof;
 - ii. west elevation (courtyard level) from level 1 to roof;
 - iii. east elevation from ground to roof and including the first floor awning; and
 - iv. north elevation from ground to roof; and
 - b. on the block that has a mailing address of 2 Browne Parade, Warwick Farm, New South Wales, 2170, between storeys and around windows located at the:
 - i. south elevation from level 5 to roof;
 - ii. west elevation from level ground to roof;
 - iii. east elevation (courtyard level) from level 1 to roof; and
 - iv. north elevation from level 1 to roof.
- C. The use of Vitrabond PE Core Cladding on the Bigge Street Common Property did not comply with the BCA (and therefore the Bigge Street Common Property did not comply with the BCA) because:
 - a. it has been used as a lining, and attachment to or as part of a wall or other building element, contrary to the Deemed-to-Satisfy Provisions pleaded in paragraphs 27 to 29 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 31 above.
- D. Further particulars in relation to the non-compliance of Vitrabond 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. Further particulars may be provided following the filing of the applicant's evidence.

- 33. Further or alternatively, by reason of the matters pleaded at paragraphs 27, 28, 29, 30 and/or 31, 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 Vitrabond 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 27, 28, 29, 30 and 31;
- (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 27, 30 and 31;
- (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 28, 30 and 31; 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 29, 30 and 31; 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).

34. The matters pleaded at:

- (a) paragraphs 27 to 31 and 32 above are referred to in this pleading as the “**BCA Non-compliance Properties**” of Vitrabond PE Core Cladding; and
- (b) paragraphs 27 to 31 and 33 are referred to in this pleading as the “**BCA Non-compliance Risk Properties**” of Vitrabond PE Core Cladding.

D.2 BCA-Related Prohibition Risk

35. 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 Vitrabond 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 Bigge Street Buildings, a legally binding direction to remove and replace the Vitrabond PE Core Cladding fitted to the Bigge Street Common Property has been issued by Liverpool Council;
- C. 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))

36. At all material times, Fairview has supplied Vitrabond PE Core Cladding to:

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

Particulars

- A. The classes of persons to whom Vitrabond PE Core Cladding was supplied by Fairview 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 Vitrabond PE Core Cladding was supplied by Fairview who are Ultimate Consumers from Fairview are 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, Fairview supplied the Vitrabond PE Core Cladding fitted on the Bigge Street Common Property to a Further Resupplier (namely, Erector Group Pty Ltd), between about 19 November 2014 and 30 March 2015, who acquired it for the purpose of resupplying it to the prior owner and developer of the Bigge Street Buildings, namely Creyke Pty Ltd (ACN 162 821 016) and/or Coronation Property Co Pty Ltd (ACN 163 703 839) and/or Estmanco Pty Ltd (ACN 135 768 035).

- D. To the extent the Vitrabond 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.

37. The supplies pleaded in paragraph 36 were in trade or commerce.
38. By reason of the matters pleaded in paragraphs 4, and 36 to 37, in respect of the Vitrabond 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, Fairview supplied, in trade or commerce, the Vitrabond PE Core Cladding which it manufactured, or 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 Fairview directly supplied it was an Ultimate Consumer.

Particulars

- A. In respect of the Applicant, Fairview supplied the Vitrabond PE Core Cladding fitted on the Bigge Street Common Property to a Further Resupplier (namely, Erector Group Pty Ltd), between 19 November 2014 and 30 March 2015, who acquired it for the purpose of resupplying it to the prior owner and developer of the Bigge Street Buildings, namely Creyke Pty Ltd (ACN 162 821 016) and/or Coronation Property Co Pty Ltd (ACN 163 703 839) and/or Estmanco Pty Ltd (ACN 135 768 035). Fairview did not directly supply the Vitrabond 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))

39. The Applicant and each Group Member:
- (a) was supplied with Vitrabond 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 Vitrabond 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 Bigge Street Buildings was Creyke Pty Ltd (ACN 162 821 016) and/or Coronation Property Co Pty Ltd (ACN 163 703 839) and/or Estmanco Pty Ltd (ACN 135 768 035).

b. The Applicant:

- i. was supplied with, and acquired, the Vitrabond PE Core Cladding on the Bigge Street 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 Vitrabond PE Core Cladding on the Bigge Street Common Property from Creyke Pty Ltd (ACN 162 821 016) and/or Coronation Property Co Pty Ltd (ACN 163 703 839) and/or Estmanco Pty Ltd (ACN 135 768 035) who was/were the Original Consumer Owners (and as such, a Consumer) or derived title to it through or under Creyke Pty Ltd (ACN 162 821 016) and/or Coronation Property Co Pty Ltd (ACN 163 703 839) and/or Estmanco Pty Ltd (ACN 135 768 035) who was/were the Original Consumer Owners (and as such, a Consumer).

- B. To the extent the Vitrabond 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.

40. Further, or alternatively, at all material times, at the time when Vitrabond 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 Vitrabond 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 Bigge Street Buildings:

- a. each panel of Vitrabond PE Core Cladding was supplied at a unit price of between \$13.20 and \$1,512.87 (with an average unit price of \$142.89);
- b. there were at least 25 individual supplies of panels, with the cost of each supply (as displayed on the invoice, excluding freight, fabrication and other charges) being:
 - i. 19 November 2014, invoice numbered 73780: \$10,244.08;
 - ii. 19 November 2014, invoice numbered 73781: \$13,656.50;
 - iii. 19 November 2014, invoice numbered 73783: \$2,128.72;
 - iv. 19 November 2014, invoice numbered 73786: \$5,903.60;
 - v. 19 November 2014, invoice numbered 73787: \$1,398.10;
 - vi. 19 November 2014, invoice numbered 73788: \$27,087.96;
 - vii. 19 November 2014, invoice numbered 73789: \$4,893.02;
 - viii. 26 November 2014, invoice numbered 73839: \$6,442.45;
 - ix. 27 November 2014, invoice numbered 73875: \$2,854.62;
 - x. 30 November 2014, invoice numbered 73894: \$7,647.16;
 - xi. 30 November 2014, invoice numbered 73896: \$4,656.58;
 - xii. 30 November 2014, invoice numbered 73882: \$3,015.70;
 - xiii. 2 December 2014, invoice numbered 73903: \$2,572.36;

- xiv. 4 December 2014, invoice numbered 73919: \$5,684.09;
- xv. 5 December 2014, invoice numbered 73934: \$5,361.78;
- xvi. 8 December 2014, invoice numbered 73946: \$10,096.58;
- xvii. 15 December 2014, invoice numbered 73979: \$23,488.27;
- xviii. 15 December 2014, invoice numbered 73988: \$374.08;
- xix. 16 December 2014, invoice numbered 73999: \$6,365.89;
- xx. 16 December 2014, invoice numbered 74004: \$1,331.43;
- xxi. 17 December 2014, invoice numbered 74025: \$9,328.48;
- xxii. 18 December 2014, invoice numbered 74041: \$3,426.74;
- xxiii. 7 January 2015, invoice numbered 74072: \$4,695.98;
- xxiv. 22 January 2015, invoice numbered 74150: \$1,752.30; and
- xxv. 30 March 2015, invoice numbered 74290: \$445.50.

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

41. Further, or alternatively to paragraph 40, the Vitrabond 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 46 and 47 below and the particulars therein.

42. Further, at all material times, at the time when Vitrabond 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.
43. By reason of the matters pleaded in paragraphs 40, 41 and 42 the Applicant and each Group Member (or the Original Consumer Owner and each Original Consumer Lessee) are taken to have acquired the Vitrabond 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).

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

Particulars

- A. Vitrabond PE Core Cladding was not generally sold in Australia by way of sale by auction to Consumers, but was instead sold and distributed by Fairview, as pleaded in paragraph 36 above.
- B. In respect to the applicant:
 - a. To the extent the Applicant was supplied with, and acquired, the Vitrabond PE Core Cladding on the Bigge Street 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 Vitrabond PE Core Cladding by way of sale by auction, or
 - b. alternatively, to the extent the Applicant derived title from Creyke Pty Ltd (ACN 162 821 016) and/or Coronation Property Co Pty Ltd (ACN 163 703 839) and/or Estmanco Pty Ltd (ACN 135 768 035) who was/were Original Owners of the Bigge Street Buildings who acquired Vitrabond PE Core Cladding as a Consumer, Creyke Pty Ltd (ACN 162 821 016) and/or Coronation Property Co Pty Ltd (ACN 163 703 839) and/or Estmanco Pty Ltd (ACN 135 768 035) did not acquire the Vitrabond PE Core Cladding by way of sale by auction, but by ordinary sale and purchase from Erector Group Pty Ltd.
- C. Details of the supply and acquisition of Vitrabond 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

45. The Applicant repeats the matters pleaded at paragraphs 5, 6, 7, 8 and 9 above.

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

46. At all material times, having regard to the Relevant Uses, Vitrabond 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 46(a) to 46(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

47. At all material times, Fairview represented that Vitrabond PE Core Cladding was suitable for use for all the Purposes (the **Suitability Representation**):

Particulars

- A. The Suitability Representation was impliedly made by Fairview by means of the images of various types of buildings fitted with Vitrabond PE Core Cladding contained in the documents distributed and/or published by Fairview in Australia during the Relevant Period for the purposes of promoting Vitrabond PE Core Cladding.
- B. Further, the Suitability Representation was made by Fairview expressly and/or impliedly:
 - a. in documents published by Fairview in Australia, including during the Relevant Period for the purposes of promoting Vitrabond PE Core Cladding that included express references to the uses of Vitrabond PE Core Cladding, including *inter alia*, the statements to the effect that Vitrabond PE Core Cladding is "*ideal for facades, fascia, soffits, awnings and many more applications*" and/or "*meet[s] the requirements for every project*" and/or that typical applications for Vitrabond PE Core Cladding include "*low rise architectural*" and "*high rise architectural*" in the following documents:
 - i. "*Vitrabond Aluminium Composite Panel by Fairview – Technical Information*" (current as at 1 July 2013); p. 5;
 - ii. "*Vitrabond Aluminium Composite Panel by Fairview – Product Introduction*" (unknown first date of publication but published on Fairview's public website prior to and as at 4 February 2014) – referencing, *inter alia*, pictured projects at "400 George Street Brisbane", "Linnaeus Way & Biology Pl, Acton", "350 Tooronga Rd, Hawthorne East, VIC", "...30-70 Pyrmont Street, Pyrmont NSW";
 - iii. "*Vitrabond Aluminium Composite Panel manufactured by Fairview*" [FVA.009.001.0048] p. 1;
 - iv. "*Vitrabond Aluminium Composite Panel – Colour chart*" [FVA.009.002.0009] p.2;
 - v. "*Vitracore G2 and Vitrabond – Colour chart edition 7*" [FVA.009.002.0016] p. 2;
 - vi. "*Vitrabond – beyond expectations*" [FVA.009.002.0074] p. 3 and 16;
 - vii. "*Vitrabond Aluminium Composite Panel – Product Introduction manufactured by Fairview*" [FVA.009.002.0102] p. 1;
 - viii. "*Fairview – Product Range*" [FVA.009.002.0122] p. 7;
 - ix. "*Vitrabond Aluminium Composite Panel – Unlimited colour*" [FVA.009.003.0020] p. 4;
 - x. "*Vitrabond Aluminium Composite Panel – Unlimited colour*" [FVA.009.004.0022] p. 5;
 - xi. "*Vitrabond façade and wall cladding solutions by Fairview Architectural Pty Ltd*" [FVA.009.001.2253] and [FVA.00.001.2284], p. 2;
 - b. in folders of promotional materials provided by Fairview to prospective purchasers or users of Vitrabond PE Core Cladding from no later than

2009 (the **Promotional Folders**), which folders included:

- i. Specification data & documentation templates, Construction details, Fabrication details, Colour range information and Warranty information, Vitrabond Concealed Fixing Details and Vitrabond Cassette Fixing Details;
 - ii. showed photographs of building projects on the cladding was used including various types of building; and
 - iii. contained statements to the effect that Vitrabond PE Core Cladding was *"Highly recommended as the best aluminium composite panel on the market, it can be used for facades, parapets, window reveals, columns, soffit linings, awning roofs, ceilings, internal feature walls, balustrade panels and many other applications."*;
 - iv. enclosed physical samples of a Vitrabond PE panel with a sticker labelled "Vitrabond Aluminium Composite Panel" with photographs of various types of cladded buildings;
- c. on Fairview's public website, including:
- i. statements published as at 2 August 2011 that *"Vitrabond is an aluminium composite panel: a light weight cladding material, ideal for facades, fascia's and sun blades...it is increasingly being chosen by architects and builders as the superior cladding solution"* including images of large cladded buildings;
 - ii. the publication of "Project News" referencing specific projects, including photographs of the subject building and details of the ACP used, non-exhaustively the following:
 1. published prior to and as at 3 July 2012, for the XXV Breaker Street Units in Main Beach QLD with the phrases *"Vitrabond Aluminium Composite Panel"*, *"what can't you do with Vitrabond?"* and *"Exterior Cladding Panel"*;
 2. published prior to and as at 3 July 2012, for the Castle Grand – Castle Hill, Sydney NSW apartments with the phrases *"Vitrabond Aluminium Composite Panel"* *"low maintenance, long terms durability and in a colour of choice. We achieved it with Vitrabond"* – *"Project Architect"*; and
 3. published prior to and as at 3 July 2012, for the University of Wollongong Innovation Campus with the phrases *"Vitrabond Aluminium Composite Panel"* and *"what can't you do with Vitrabond?"*;
 - iii. at the same time as the publication of the "Project News" referencing specific projects as set out above, the publication of a "Vitrabond Aluminium Composite Panel Façade System Specification Template" published prior to and as at 3 July 2012, referencing *"3mm polyethylene core"*;
 - iv. statements published prior to and as at 9 April 2013, on the Vitrabond products part of the website after selecting "Australia" as the region, *inter alia*, under a large font heading *"VITRABOND & VITRABOND/FR"* and sub heading *"Aluminium Composite Panel"* the following statements *"Vitrabond is a lightweight composite cladding material, ideal for façades, fasciae, and sun blades."*, *"...we offer our cut-to-size, groove, and special colour services to make it quick and easy for all parties involved in the project. With the available option of an FR core Vitrabond is designed to make it simpler and more effective for you, as well as resolving messy details into clean, striking features."*, *"With the use of Vitrabond on many prestigious projects across Australia, it is chosen by architects and designers as the select composite façade. Please see the Vitrabond project gallery"*. In the "Project Gallery" section it lists various building types along with

pictures and information including, "400 George St Brisbane", "Canberra Airport and Business Park", "ANU – Canberra", "ALDI Head Office – Prestons", "Breaker Street Units Main Beach – QLD", "Brindabella Circuit Project", "Kangara Water Retirement Village", "Kingston Foreshores", "Mercure Liverpool", "Quest Apartments";

- v. statements published prior to and as at 25 January 2014, on the Vitrabond products part of the website, *inter alia*, below what appears as a picture of a residential apartment complex, the website states "a lightweight metal composite cladding panel, ideal for external facades, faciae, & sun blades..." "...Vitrabond consists of two aluminium or other natural metal cover sheets, enclosing a polyethylene or fire rated core..." "...with the use of Vitrabond on many prestigious projects across Australia..." "Please see the Vitrabond project gallery". In the "Project Gallery" section it lists various building types along with pictures and information including, *inter alia*, "400 George Street Brisbane", "Breaker Street Units Main Beach-QLD", "ANU Canberra", "Mercure Liverpool", "Devenport Police Station", "Quest Apartments", "Trilogi Apartments", "National Circuit Lend Lease, Macarthur Shopping Centre", "Merrifield"; and
- vi. statements published prior to and as at 20 December 2014, on the Vitrabond products part of the website, *inter alia*, the following statements "Well established in the market, Vitrabond is recognised by Architects, Builders and Installers as the superior composite panel cladding solution. We have achieved an industry leading CODEMARK certification, allowing you to specify a quality assured product. With our large stock levels, unlimited colour range and a dedication to continual product development, we are readily available to meet any of your aluminium composite panel specifications.", "With the available option of an FR core, Vitrabond is designed to make it simpler and more effective for you. Used on many prestigious projects across Australia as seen in our project gallery, aluminium plastic composite panels from Vitrabond is widely chosen by architects and designers as the select composite façade."

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

C. Further particulars may be provided following discovery and/or service of the applicant's evidence.

48. At all material times, Fairview represented that:

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

- | | |
|-----------------------|------------------|
| (i) cutting; | (v) screwing; |
| (ii) drilling; | (vi) shearing; |
| (iii) gluing; | (vii) clamping; |
| (iv) contour cutting; | (viii) punching; |

- (ix) bonding;
- (x) bending;
- (xi) routing;
- (xii) riveting; or
- (xiii) folding,

(the **Fabrication Methods**); and

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

Particulars

A. The representations in paragraph (a) were expressly and/or impliedly made by Fairview in documents published by Fairview in Australia, including during the Relevant Period for the purposes of promoting Vitrabond PE Core Cladding containing express references to the Fabrication Methods, *including inter alia*, in the Promotional Folders and the following documents:

- a. A silver folder of materials branded "Vitrabond Aluminium Composite Panel" containing Specification data & documentation templates, Construction details, Fabrication details, Colour range information and Warranty information, including Vitrabond Concealed Fixing Details dated January 2009 and Vitrabond Cassette Fixing Details dated December 2009 together with fabrication instruction sheets;
- b. A silver folder of materials branded "Vitrabond Aluminium Composite Panel" containing Specification data & documentation templates, Construction details, Fabrication details, Colour range information and Warranty information, including Vitrabond Concealed Fixing Details dated January 2007;
- c. "Vitrabond – curving and bending" [FVA.009.001.0265], [FVA.009.001.0267], and [FVA.009.001.0385];
- d. "Fairview – Product range key features prefinished façade solutions" [FVA.009.001.0274] p. 2;
- e. "Proposed specification for Fairview Vitrabond FR Aluminium Composite Panel cladding system" [FVA.009.001.2316], p. 3;
- f. "Vitrabond – beyond expectations" [FVA.009.002.0074] p. 3, 9 and 15;
- g. "Vitrabond Aluminium Composite Panel – Colour chart" [FVA.009.002.0009] p.2;
- h. "Fairview – Product Range" [FVA.009.002.0122] p. 7;
- i. "Vitrabond Aluminium Composite Panel – Unlimited colour" [FVA.009.003.0020] p. 10 and 11;
- j. "Vitrabond Aluminium Composite Panel – Unlimited colour" [FVA.009.004.0022] p. 5 and 12-13;
- k. a combination of any one or more of the above.

B. The representations in paragraph (b) were impliedly made by Fairview by making the representations pleaded in paragraph (a) without disclosing the matters in paragraph (b) and/or by making the representations pleaded in paragraph (a) together with the Fire Performance Representation (as pleaded at paragraph 49) and/or Compliance Representation (as pleaded at paragraph 50).

C. Further particulars may be provided following discovery and/or service of the

applicant's evidence.

F.3.2 Representations as to fire performance

49. At all material times, Fairview represented that Vitrabond 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 **Fire Performance Representation**).

Particulars

- A. The Fire Performance Representation was impliedly made by Fairview by making the Suitability Representation (as pleaded at paragraph 47) and/or the Compliance Representation (as pleaded at paragraph 50) without disclosing the Material Fire Risk Properties.
- B. Further or in the alternative, the Fire Performance Representation was made expressly and/or impliedly by Fairview:
 - in documents distributed and/or published by Fairview in Australia during the Relevant Period for the purposes of marketing or promoting Vitrabond PE Core Cladding:
 - a. In respect of both Vitrabond PE and FR: Brochure entitled "*Vitrabond Aluminium Composite Panel – Beyond Expectations*" [FVA.009.002.0074] referencing both products that included statements "*Vitrabond – is a 4mm aluminium composite panel consisting of a fire rated core...fire rated core is standard*"
 - b. In respect to Vitrabond FR: Brochure entitled "*Vitrabond Aluminium Composite Panel manufactured by Fairview*" [FVA.009.001.0048] that included statements to the effect that: "*The 4mm thick composite panel is comprised of a fire rated core, sandwiched between either two aluminium or other natural metal cover sheets*"... "*The core contains a high percentage of non-combustible mineral leading to a high level of fire resistance. The panel does not contribute to the spread of flame and has minimal smoke development*", and referred to fire properties testing results in respect of AS1530.3 and other international standards,
 - c. In respect to Vitrabond FR: Brochure entitled "*Vitrabond Aluminium Composite Panel Manufactured by Fairview – Product Introduction*" [FVA.009.001.0388] that included statements to the effect that: "*The 4mm thick composite panel is comprised of a fire rated core, sandwiched between either two aluminium or other natural metal cover sheets.*"
 - d. In respect to Vitrabond FR: Brochure entitled "*Vitrabond Aluminium Composite Panel – Product Introduction manufactured by Fairview*" [FVA.009.002.0102] that included statements to the effect that: "*The 4mm thick composite panel is comprised of a fire resistant core, sandwiched between either two aluminium or other natural metal cover sheets... The fire resistant core means the panel does not propagate flame in large scale fire testing... Vitrabond is well-equipped to meet the requirements for every project...*"
 - e. In respect to Vitrabond FR: Brochure entitled "*Fairview – Product Range*" [FVA.009.002.0122] (May 2017) that included statements to the effect that: "*Fairview provides aesthetically pleasing and safe facade products to the construction industry*" and the Product Performance Matrix on page 16 evaluating performance stated as to non-combustibility that it was "N/A".
 - f. In respect to Vitrabond FR: Document entitled "*Fairview Architectural – Vitrabond 6mm benefits*" [FVA.009.001.2251] that included

statements to the effect that: it was a “Fire-rated panel”.

- C. Further particulars may be provided following discovery and/or service of the applicant’s evidence.

F.3.3 Representations as to compliance

50. At all material times, Fairview represented that Vitrabond PE Core Cladding:

- (a) had passed all fire safety tests required by all relevant building codes and standards in Australia; and
- (b) was compliant with all relevant building codes and standards for use in all buildings in Australia as part of an external wall or attachment to an external wall or other building element, 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 paragraph (b) are the BCA (as applicable at all relevant dates during the Relevant Period).
- B. The Compliance Representation was made expressly and/or impliedly by Fairview with respect to Vitrabond PE:
 - a. in documents published by Fairview in Australia, including during the Relevant Period for the purposes of promoting Vitrabond PE that referred to fire properties testing results in respect of AS 1530.3 and other international standards, including *inter alia*, statements on Fairview’s public website and in the following documents:
 - i. “Vitrabond Composite Panel – façade system specification template” [FVA.009.001.2235] p. 1, [FVA.009.001.2239] p. 1, [FVA.009.001.2243] p. 1, and [FVA.009.001.2247], p. 1;
 - ii. “Vitrabond – properties of Vitrabond” [FVA.009.001.2335], p. 5.3;
 - iii. “Vitrabond Aluminium Composite Panel by Fairview – Product Introduction” (unknown first date of publication but published on Fairview’s public website prior to and as at 4 February 2014);
 - iv. “Vitrabond Aluminium Composite Panel by Fairview – Technical Information” (current as at 1 July 2013);
 - v. “Vitrabond façade and wall cladding solutions by Fairview Architectural Pty Ltd” [FVA.009.001.2253], p. 19 (“standard Vitrabond boasts certification under AS 1530”);
 - vi. “Fairview Architectural – Vitrabond – manufacturing, shipment, storage, warranty & technical specifications” [FVA.009.001.0381] and [FVA.009.001.0383];
 - b. in documents published by Fairview in Australia, including during the Relevant Period for the purposes of promoting Vitrabond PE that referred to Fairview obtaining Codemark certification for “Vitrabond” without specifying which products this Codemark certification related to, including *inter alia*:
 - i. the document titled “Vitrabond Aluminium Composite Panel –

- Beyond Expectations*" [FVA.009.002.0074];
- ii. the statements on Fairview's public website that "Vitrabond" was "Codemark certified", published no later than 20 December 2014;
 - c. by the lack of reference to all applicable standards in Australia (other than those referred to above) or the non-compliance of Vitrabond PE with such standards, including, *inter alia*, AS1530.1 in any of the aforementioned documents;
 - d. 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 Vitrabond PE, such as sprinklers and/or cavity barriers in any of the aforementioned documents;
 - e. by the making of the Suitability Representation (as pleaded at paragraph 47) and Fire Performance Representation (as pleaded at paragraph 49); and
 - f. a combination of any one or more of the above.
- C. The Compliance Representation was made expressly and/or impliedly by Fairview with respect to Vitrabond FR:
- a. in documents published by Fairview in Australia, including during the Relevant Period for the purposes of promoting Vitrabond FR that referred to fire properties testing results in respect of AS 1530.3 and other international standards and made statements to the effect that Vitrabond FR was "CodeMark certified to the BCA and Australian Standards", including *inter alia*, statements on Fairview's public website and in the following documents:
 - i. "Vitrabond Aluminium Composite Panel manufactured by Fairview" [FVA.009.001.0048];
 - ii. "Vitrabond Aluminium Composite Panel Manufactured by Fairview – Product Introduction" [FVA.009.001.0388];
 - iii. "Proposed specification for Fairview Vitrabond FR Aluminium Composite Panel cladding system" [FVA.009.001.2316];
 - iv. "Vitrabond Aluminium Composite Panel – Product Introduction manufactured by Fairview" [FVA.009.002.0102];
 - v. "Fairview – Product Range" [FVA.009.002.0122];
 - vi. "Fairview Architectural – Vitrabond 6mm benefits" [FVA.009.001.2251];
 - vii. "Comparison Chart" [FVA.009.001.0256], [FVA.009.001.0258], [FVA.009.001.0259], [FVA.009.001.0261];
 - viii. "Vitrabond Composite Panel – façade system specification template" [FVA.009.001.2231];
 - ix. "Vitrabond – properties of Vitrabond" [FVA.009.001.2332];
 - x. "Vitrabond façade and wall cladding solutions by Fairview Architectural Pty Ltd" [FVA.009.001.2253]; and
 - xi. "Vitrabond – properties of Vitrabond" [FVA.009.001.2329];
 - b. by the lack of reference to all applicable standards in Australia (other than those referred to above) or the non-compliance of Vitrabond FR 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 Vitrabond FR, 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 47) and Fire Performance Representation (as pleaded at paragraph 49); and
 - e. a combination of any one or more of the above.
- D. Further particulars may be provided following discovery and/or evidence.

F.4 No warning as to risks

51. At all material times, Fairview did not publicly disclose adequately or at all any of the following matters in connection with the supply of Vitrabond PE Core Cladding in Australia during the Relevant Period:

(a) that Vitrabond 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 Vitrabond 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 Vitrabond 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 Vitrabond PE Core Cladding in a fire was affected in any material way by the application of any of the Fabrication Methods to the relevant Vitrabond PE Core Cladding (the **Fabrication Warning**).

52. At all material times, Fairview did not publicly disclose adequately or at all any of the following matters in connection with the supply of Vitrabond PE Core Cladding in Australia:

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

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

(the **Fire Risk Warning**).

53. At all material times, Fairview did not publicly disclose adequately or at all any of the following matters in connection with the supply of Vitrabond PE Core Cladding in Australia:

(a) that Vitrabond 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 Vitrabond PE Core Cladding could be used in a manner that was compliant with the BCA (which is not admitted), that Vitrabond 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**),
54. The Suitability Warning, Fire Risk Warning and Non-Compliance Warning are referred to in this pleading as the “**Relevant Warnings**”.
55. The Limitation of Use Warning, Fabrication 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

56. Having regard to the matters pleaded at paragraphs 45 and 46, any combination of the matters pleaded in paragraphs 47 to 50, and/or any combination of the matters pleaded in paragraphs 51 to 53, at all material times it was reasonable to expect that, and only regard Vitrabond PE Core Cladding as acceptable if:
- (a) Vitrabond PE Core Cladding was fit for all of the Purposes;
 - (b) Vitrabond PE Core Cladding did not have Material Fire Risk Properties;
 - (c) Vitrabond PE Core Cladding did not have the Prohibition Risk Properties;
 - (d) when used on any building, or for any of the Purposes, Vitrabond 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) Vitrabond PE Core Cladding could be fabricated by applying any of the Fabrication 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 13 above.

F.5.2 Class 2 to 9 buildings

57. Further, having regard to the matters pleaded at paragraphs 45 and 46, any combination of the matters pleaded in paragraphs 47 to 50, and/or any combination of the matters pleaded in paragraphs 51 to 53, at all material times it was reasonable to expect that, and only regard Vitrabond PE Core Cladding as acceptable if:

- (a) Vitrabond 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 Vitrabond 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) Vitrabond PE Core Cladding did not have the BCA Non-compliance Risk Properties; and/or
- (d) Vitrabond 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

58. 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 Vitrabond 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 56).

59. 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 Vitrabond 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 56).

60. 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 Vitrabond 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 57).

61. In the premises, Vitrabond 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.

62. In the further or alternative premises, Vitrabond 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

63. By reason of the matters set out at paragraphs 39 to 44, the Vitrabond PE Core Cladding fitted to the Relevant Buildings and/or Relevant Building Parts (including the Bigge Street 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**).

64. In order for Vitrabond PE Core Cladding to comply with the Acceptable Quality Guarantee,

the Vitrabond 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 64(a) to 64(e) are collectively referred to as the **Acceptable Quality Requirement**).

Particulars

S. 54 (2) of the ACL.

65. 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 Vitrabond 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 56).

66. 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 Vitrabond 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 56).

67. 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 Vitrabond 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 57).

68. In the premises, Vitrabond PE Core Cladding fitted to the Relevant Buildings and/or Relevant Building Parts did not, and does not, satisfy the Acceptable Quality Guarantee.

69. In the further or alternative premises, Vitrabond 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*

70. Each of the:

- (a) Suitability Representation;
- (b) Fabrication Representation;
- (c) Fire Performance Representation; and
- (d) Compliance Representation,

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

were made, in trade or commerce, by Fairview in connexion with the supply or possible supply of Vitrabond PE Core Cladding or in connexion with the promotion of the supply of Vitrabond PE Core Cladding.

71. 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 47 to 50 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 51 to 53 is repeated

72. At all material times, the Suitability Representation:

- (a) was a representation that Vitrabond PE Core Cladding had specified performance characteristics, uses and benefits; and
- (b) was false or misleading because Vitrabond 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.

73. At all material times, the Fabrication Representation:

- (a) was a representation that Vitrabond PE Core Cladding had specified performance characteristics, uses and benefits; and

- (b) was false or misleading to the extent that Vitrabond 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.

74. At all material times, the Fire Performance Representation:

- (a) was a representation that Vitrabond 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 false or misleading because:
 - (i) the aluminium coversheets did not protect the PE Core from fire for the reasons pleaded at paragraph 11 above; and
 - (ii) further or alternatively, Vitrabond PE Core Cladding did have the Material Fire Risk Properties.

75. At all material times, the Compliance Representation:

- (a) was a representation that Vitrabond 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 Vitrabond PE Core Cladding:
 - (i) had not passed all of the fire safety tests required by relevant building codes and standards, including AS1530.1;
 - (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.

76. In the premises, by making the Representations (and each of them), Fairview contravened s. 53 of the TPA and s. 29 of the ACL.

H.2 *Misleading conduct as to the nature of goods*

77. 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 Vitrabond PE Core Cladding was suitable for some uses, failing to give the Relevant Limitation Warnings (and each of them),

(the **Misleading Conduct**)

Fairview 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 Vitrabond 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 Vitrabond 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.

I. LOSS AND DAMAGE

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

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

- (a) not being of merchantable quality as pleaded in paragraph 61 above; and/or
- (b) not complying with the Acceptable Quality Guarantee as pleaded in paragraphs 68 above.

Particulars

A. For the applicant:

- a. The cost of removing and replacing the Vitrabond PE fitted to the Bigge Street Common Property.
- b. Further or alternatively to A(a), if the Vitrabond PE fitted to the Bigge Street 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 Bigge Street Buildings caused by:
 - i. the non-compliance of the Vitrabond PE with the Acceptable Quality Guarantee; and/or
 - ii. the Vitrabond PE not being of merchantable quality; and
- c. Further and other costs and/or losses due to the Vitrabond PE being fitted to the Bigge Street 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. 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 the Vitrabond PE Core Cladding fitted to the Relevant Building and/or Relevant Building Part.
- b. Further or alternatively to B(a), if the Vitrabond 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 Vitrabond PE Core Cladding with the Acceptable Quality Guarantee; and/or
 - ii. the Vitrabond 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 Vitrabond PE Core Cladding fitted on such building or part of building.
- d. Further and other costs and/or losses due to the Vitrabond 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.

(the **Loss and Damage**).

79. By reason of the matters pleaded in paragraphs 3, 4, 6, 8, 9, 10, 11, 13, 16, 32, 35, 36, 46, and 47 to 57, 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.
80. By reason of the matters pleaded in paragraph 39, 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 Fairview 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 Vitrabond 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 Vitrabond PE Core Cladding fitted to the Relevant Buildings and/or Relevant Building Parts (as applicable) from, or derives title to such Vitrabond PE Core Cladding through or under, the Consumer to whom such Vitrabond was supplied,
- and is entitled to be compensated by Fairview for the Loss and Damage in accordance with s. 74D of the TPA.

1.2 Entitlement to statutory compensation for misleading representations

81. 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 Vitrabond 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 47, 48, 49 and 50 are repeated.
 - B. The Relevant Market included architects, engineers, fire safety engineers, façade engineers, installers, consent authorities, builders and sub-contractors.
82. 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 Vitrabond 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 Vitrabond PE Core Cladding.

83. Further or in the alternative, had Fairview not:

(a) engaged in the contravening conduct pleaded at paragraph 75(b)(iii); and/or

(b) engaged in the contravening conduct pleaded at paragraph 77,

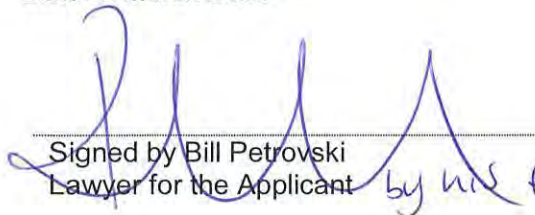
the Vitrabond PE Core Cladding would not have been purchased and fitted to the Relevant Buildings and/or Relevant Buildings Parts owned or leased, or formerly owned or leased, (as applicable) by the Applicant and Group Members.

84. By reason of the matters pleaded at paragraph 81 to 83, the applicant and Group Members have suffered the Loss or Damage by or because of the conduct of Fairview 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 78 above are repeated.

Date: 2 March 2020


Signed by Bill Petrovski
Lawyer for the Applicant by his fellow principal, Robert Ishak

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

Certificate of lawyer

I Bill Petrovski certify to the Court that, in relation to the Amended statement of 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: 2 March 2020

Signed by Bill Petrovski
Lawyer for the Applicant

by his fellow principal, Robert Ishak

DEFINED TERMS

Acceptable Quality Guarantee has the meaning given to it in paragraph 63 above.

Acceptable Quality Requirement has the meaning given to it in paragraph 64 above.

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

ACP has the meaning given to it in paragraph 5 above.

Alternative Solution has the meaning given to it in paragraph 23(b) above.

AS means Australian Standard.

BCA has the meaning given to it in paragraph 17 above.

BCA 2016 Amendment 1 has the meaning given to it in the particulars to paragraph 26 above.

BCA-Related Prohibition Risk Properties has the meaning given to it in paragraph 35 above.

BCA Non-compliance Properties has the meaning given to it in paragraph 34(a) above.

BCA Non-compliance Risk Properties has the meaning given to it in paragraph 34(b) above.

Bigge Street Buildings has the meaning given to it in paragraph 3(d) above.

Bigge Street Common Property has the meaning given to it in paragraph 3(e) 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 50 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
- (a) 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 23(a) above.

Fire Resistance Performance Requirements has the meaning given to it in paragraph 21 above.

Fabrication Methods has the meaning given to it in paragraph 48(a) above.

Fabrication Representation has the meaning given to it in paragraph 48(b) above.

Fabrication Warning has the meaning given to it in paragraph 51(c) above.

Fairview means Fairview Architectural Pty Limited ACN 111 935 963, the respondent.

Fire Performance Representation has the meaning given to it in paragraph 49 above.

Fire Risk Warning has the meaning given to it in paragraph 52 above.

Further Resuppliers has the meaning given to it in paragraph 36(a) 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.

Limitation of Use Warning has the meaning given to it in paragraph 51(b) above.

Loss and Damage has the meaning given to it in paragraph 78 above.

Material Fire Risk Properties has the meaning given to in paragraph 14 above.

Misleading Conduct has the meaning given to it in paragraph 77 above.

Non-compliance Warning has the meaning given to it in paragraph 53(a) above.

Non-compliance Limitation Warning has the meaning given to it in paragraph 53(b) above.

NSW Ban has the meaning given to it in the particulars to paragraph 15 above.

Original Consumer Owners has the meaning given to it in paragraph 39(b) above.

Original Consumer Lessees has the meaning given to it in paragraph 39(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.

Purposes has the meaning given to it in paragraph 46.

Prohibition Risk Properties has the meaning given to it in paragraph 16 above.

Promotional Folders has the meaning given to it in the particulars to paragraph 47 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 Market has the meaning given to it in paragraph 81(a) above.

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

Relevant Uses has the meaning given to it in paragraph 6.

Relevant Warnings has the meaning given to it in paragraph 54 above.

Relevant Limitation Warnings has the meaning given to it in paragraph 55 above.

Representations has the meaning given to it in paragraph 70 above.

Senate Report has the meaning given to it in the particulars paragraph 10 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 47 above.

Suitability Warning has the meaning given to it in paragraph 51 above.

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

Ultimate Consumers has the meaning given to it in paragraph 36(b) above.

Vitrabond PE Core Cladding means separately or collectively, Vitrabond PE and Vitrabond FR.

Vitrabond PE means ACPs that:

- (a) have a PE Core that has greater than 30% PE by mass; and
- (b) were at all material times supplied and/or marketed in Australia by reference to the name "Vitrabond" and/or "Vitrabond PE".

Vitrabond FR means ACPs that:

- (a) have a PE Core that 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 "Vitrabond FR".

No. NSD940 of 2019

Federal Court of Australia

District Registry: New South Wales

Division: General

The Owners – Strata Plan No 91086

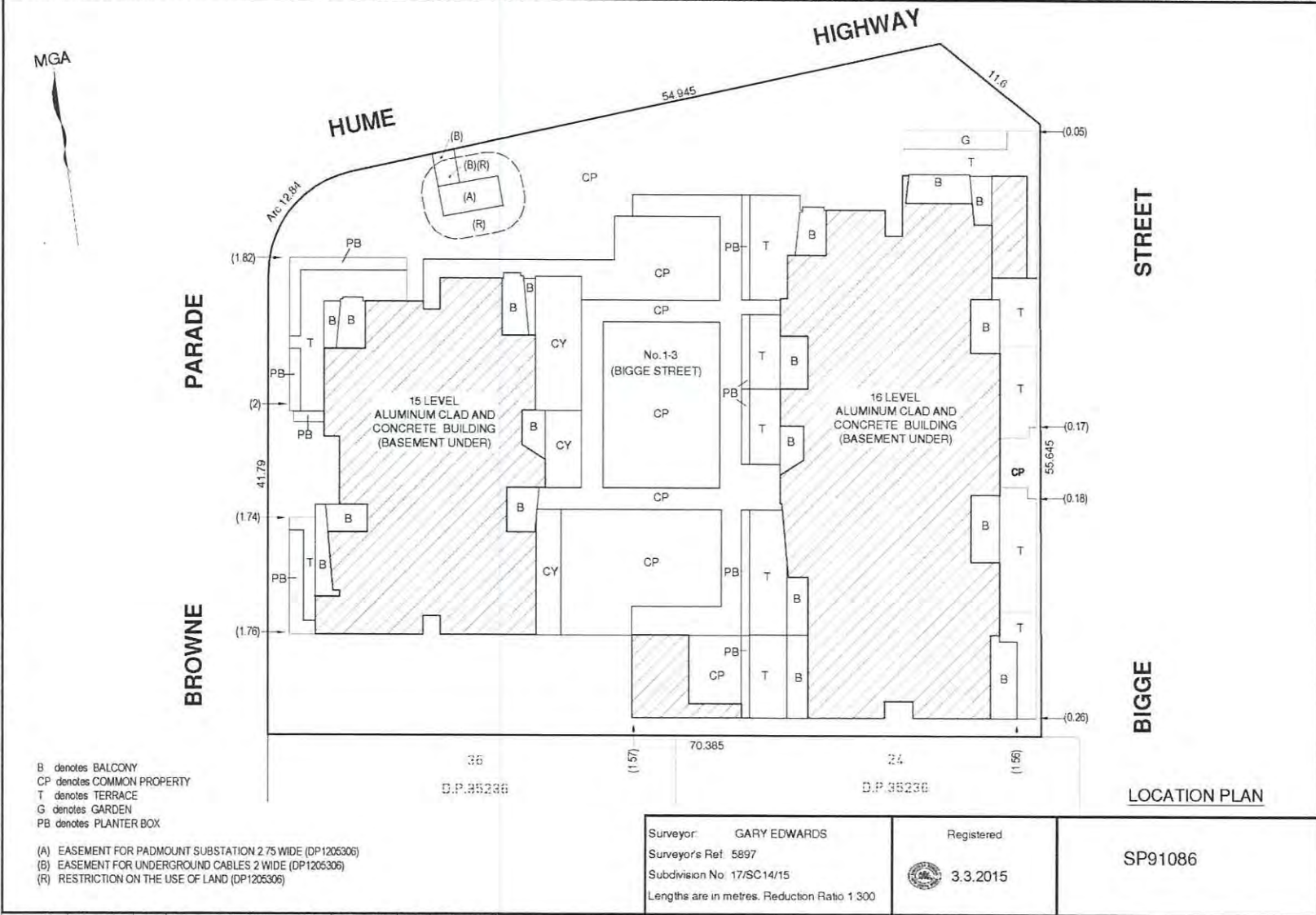
Applicant

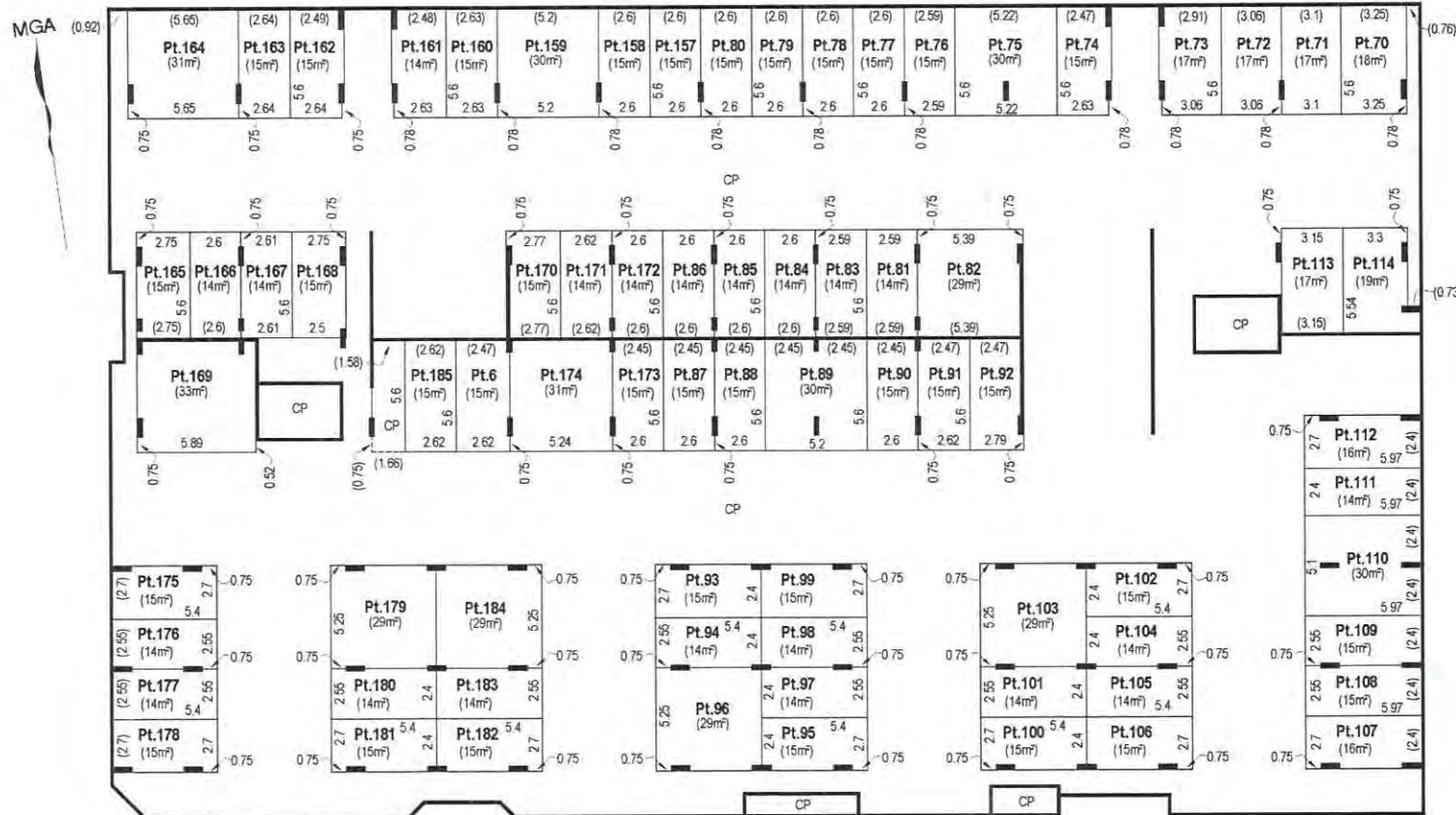
Fairview Architectural Pty Limited (ACN 111 935 963)

Respondents

APPENDIX 1

Reg: R124611 / Doc: SP 0091086 P / Rev: 04-Mar-2015 / Sts: SC OK / Ppt: 04-Mar-2015 14:23 / Pgs: ALL / Seq: 1 of 23
Ref: Network Strata Services Pty Ltd / Src: P



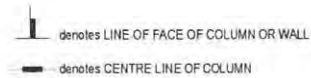


NOTES:-

1 ANY SERVICE LINE WITHIN ONE LOT
SERVICING ANY OTHER LOT IS COMMON
PROPERTY

2 AREAS ARE APPROXIMATE AND FOR THE
PURPOSES OF STRATA SCHEMES (FREEHOLD
DEVELOPMENT) ACT 1973

CP denotes COMMON PROPERTY



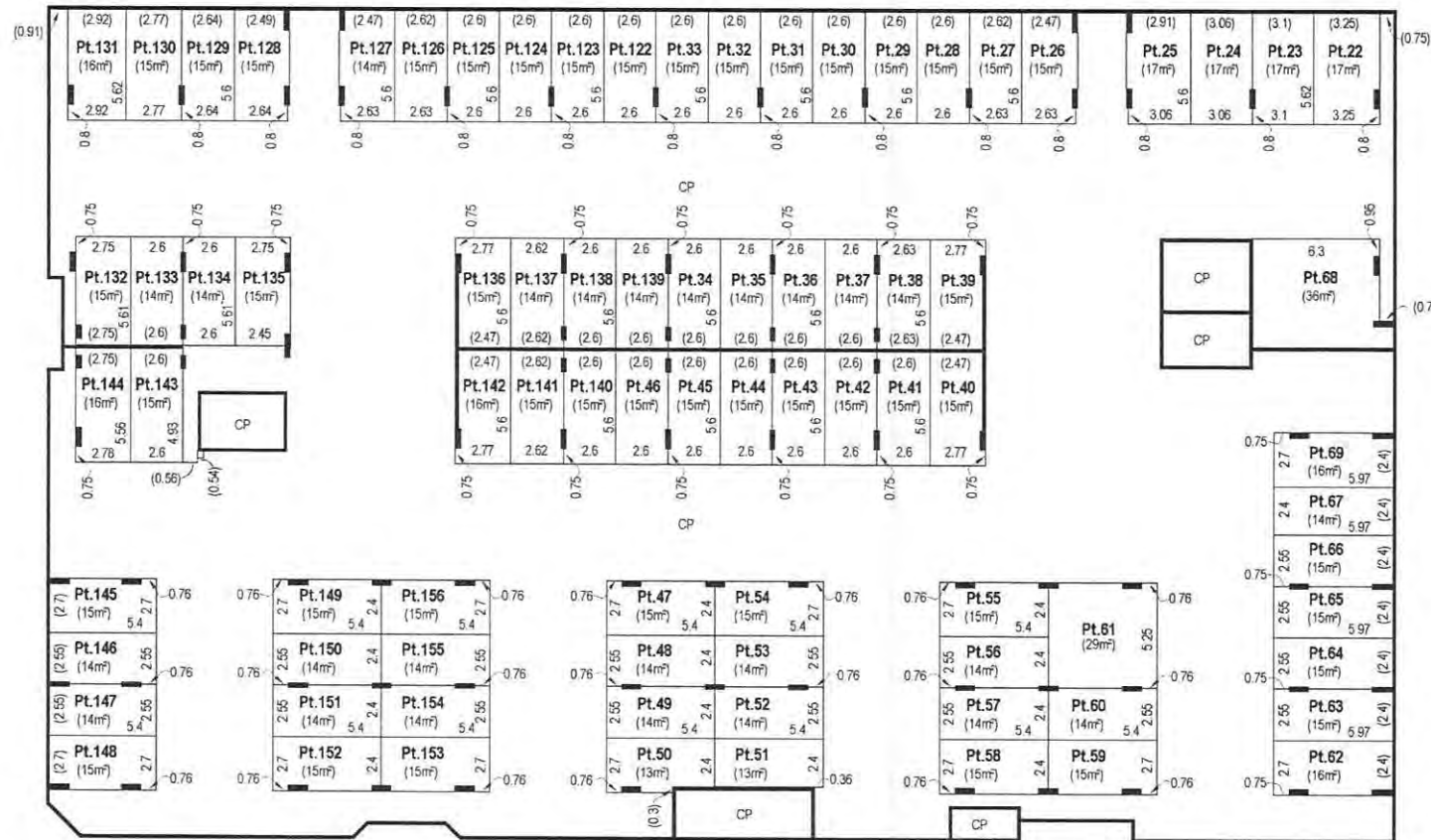
BASEMENT LEVEL 2

Surveyor: GARY EDWARDS
Surveyor's Ref: 5897
Subdivision No: 17/SC14/15
Lengths are in metres. Reduction Ratio 1:200

Registered
3.3.2015

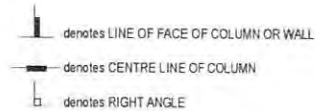
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NOTES:

1. ANY SERVICE LINE WITHIN ONE LOT SERVING ANY OTHER LOT IS COMMON PROPERTY
 2. AREAS ARE APPROXIMATE AND FOR THE PURPOSES OF STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT 1973
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BASEMENT LEVEL 1

Surveyor: GARY EDWARDS
 Surveyor's Ref: 5897
 Subdivision No. 17/SC14/15
 Lengths are in metres. Reduction Ratio 1:200

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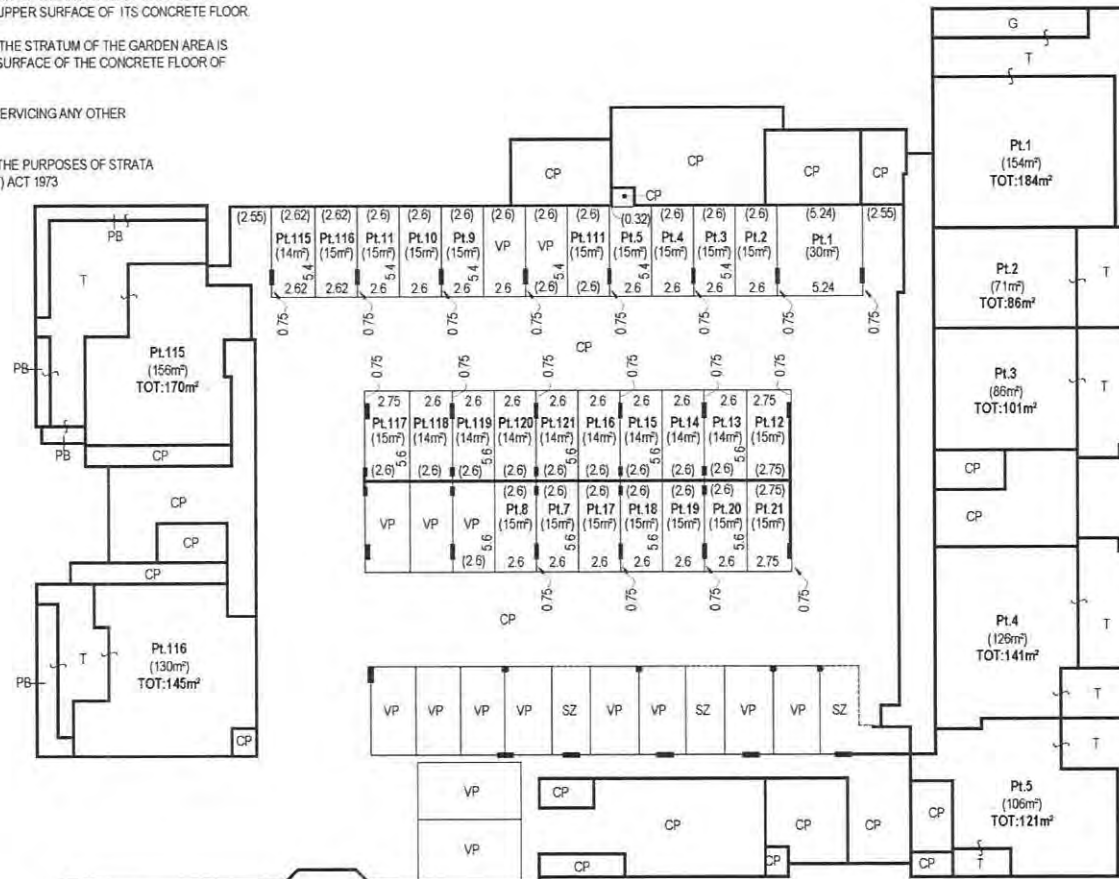
STRATA PLAN FORM 2

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

ePlan Sheet No. 4 of 19 Sheets

NOTES:-

1. WHERE NOT COVERED THE UPPER LIMIT OF THE STRATUM OF EACH TERRACE AND PLANTER BOX IS 2.5 ABOVE THE UPPER SURFACE OF ITS CONCRETE FLOOR.
2. WHERE NOT COVERED THE LIMIT OF THE STRATUM OF THE GARDEN AREA IS 2.5 ABOVE AND 2 BELOW THE UPPER SURFACE OF THE CONCRETE FLOOR OF THE ADJOINING UNIT.
3. ANY SERVICE LINE WITHIN ONE LOT SERVING ANY OTHER LOT IS COMMON PROPERTY
4. AREAS ARE APPROXIMATE AND FOR THE PURPOSES OF STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT 1973



CP denotes COMMON PROPERTY

T denotes TERRACE

G denotes GARDEN

PB denotes PLANTER BOX

VP denotes VISITOR PARKING (CP)

SZ denotes SHARED ZONE (CP)

— denotes LINE OF FACE OF COLUMN OR WALL
 — denotes CENTRE LINE OF COLUMN

GROUND FLOOR

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Surveyor's Ref: 5897

Subdivision No: 17/SC14/15

Lengths are in metres. Reduction Ratio 1:250

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NOTES:-

- WHERE NOT COVERED THE UPPER LIMIT OF THE STRATUM OF EACH TERRACE, BALCONY AND PLANTER BOX IS 25 ABOVE THE UPPER SURFACE OF ITS CONCRETE FLOOR.
- ANY SERVICE LINE WITHIN ONE LOT SERVICING ANY OTHER LOT IS COMMON PROPERTY
- AREAS ARE APPROXIMATE AND FOR THE PURPOSES OF STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT 1973

B denotes BALCONY
 CP denotes COMMON PROPERTY
 T denotes TERRACE
 PB denotes PLANTER BOX

LEVEL 1

Surveyor: GARY EDWARDS
 Surveyor's Ref: 5897
 Subdivision No: 17/SC14/15
 Lengths are in metres. Reduction Ratio 1:250



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 3.3.2015

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STRATA PLAN FORM 2

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

ePlan Sheet No. 6 of 19 Sheets

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NOTES:-

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- ANY SERVICE LINE WITHIN ONE LOT SERVICING ANY OTHER LOT IS COMMON PROPERTY
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B denotes BALCONY
CP denotes COMMON PROPERTY

LEVEL 2

Surveyor: GARY EDWARDS
Surveyor's Ref: 5897
Subdivision No: 17/SC14/15
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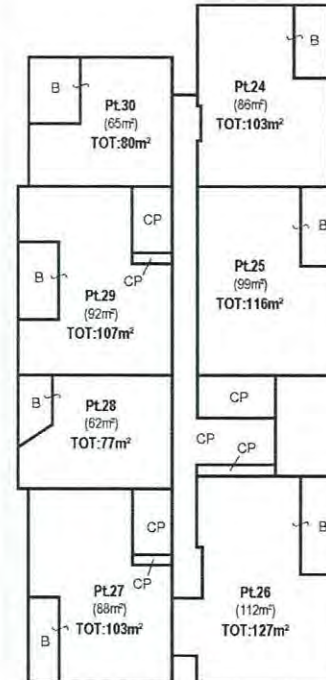
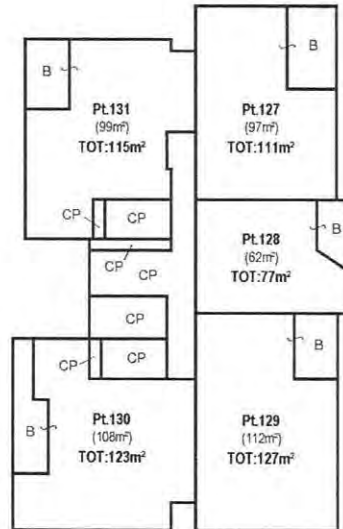


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3.3.2015

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LEVEL 3

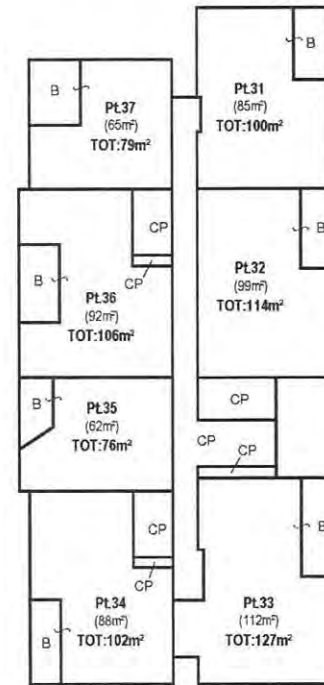
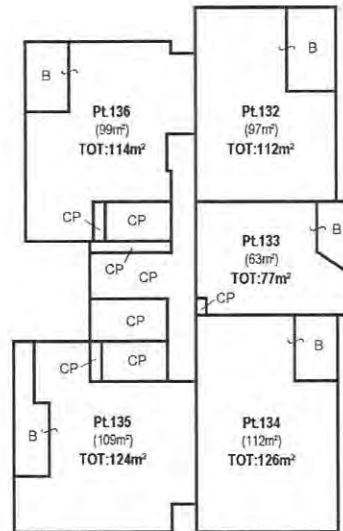
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LEVEL 4

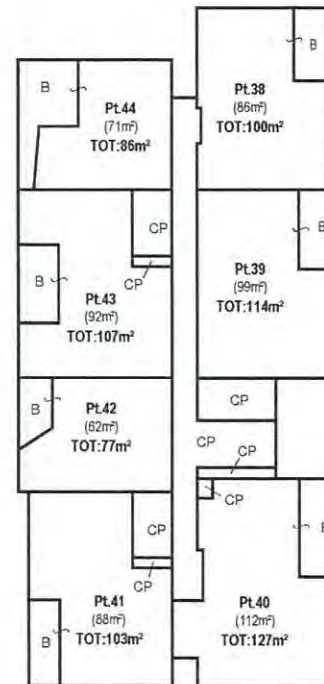
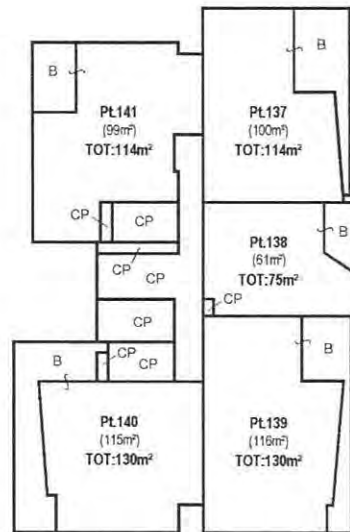
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LEVEL 5

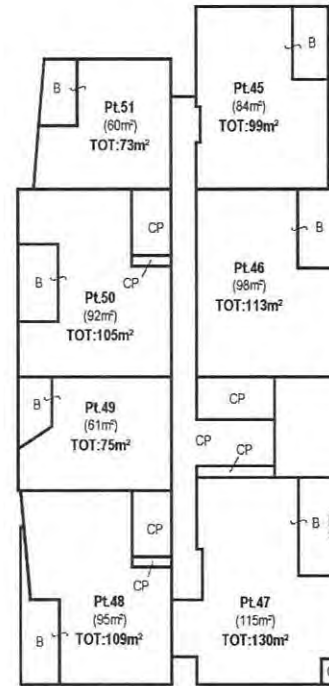
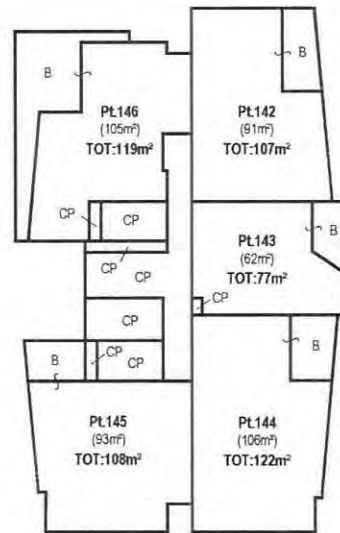
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LEVEL 6

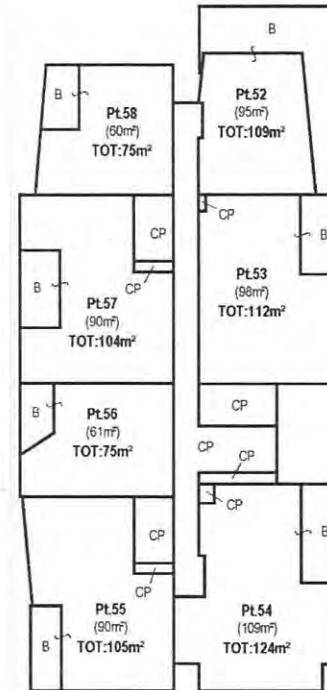
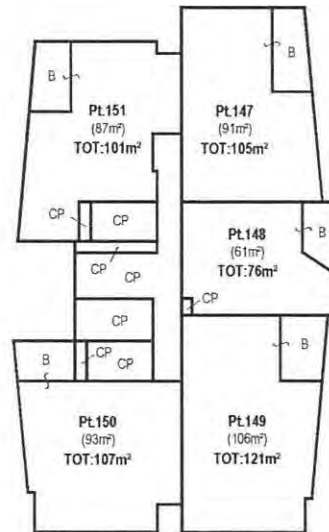
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LEVEL 7

Surveyor: GARY EDWARDS

Surveyor's Ref: 5897

Subdivision No: 17/SC14/15

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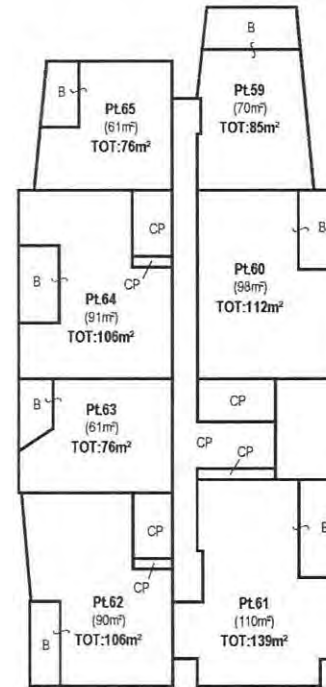
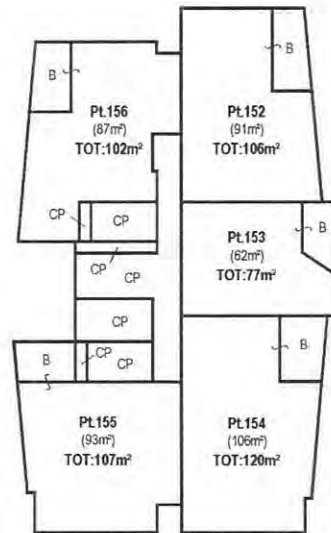


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LEVEL 8

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Subdivision No. 17/SC14/15
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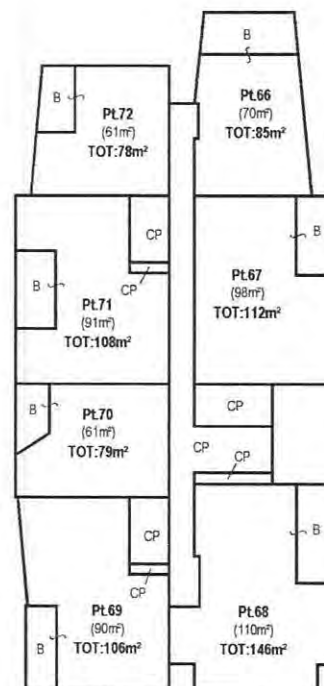
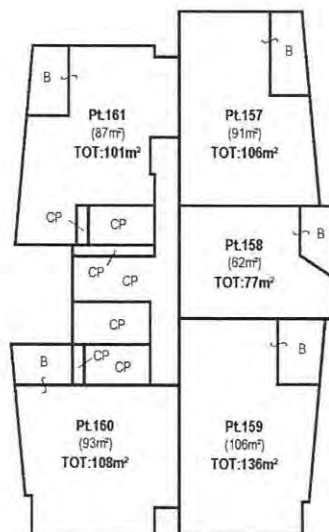


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LEVEL 9

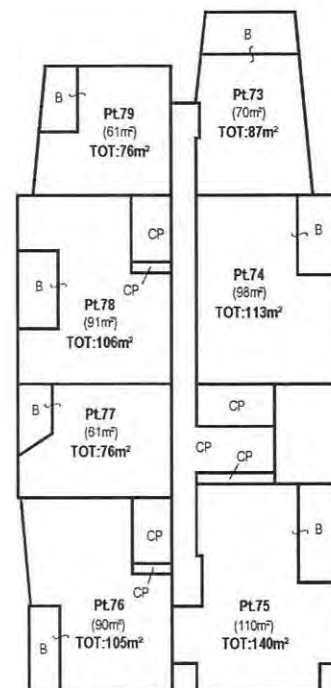
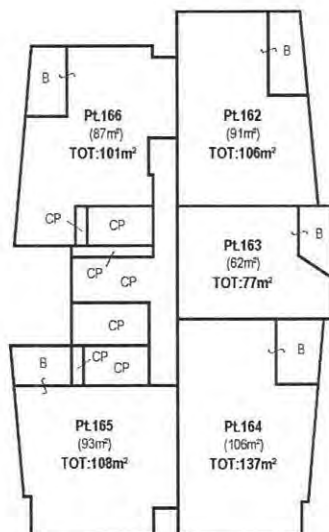
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3.3.2015

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LEVEL 10

NOTES:-

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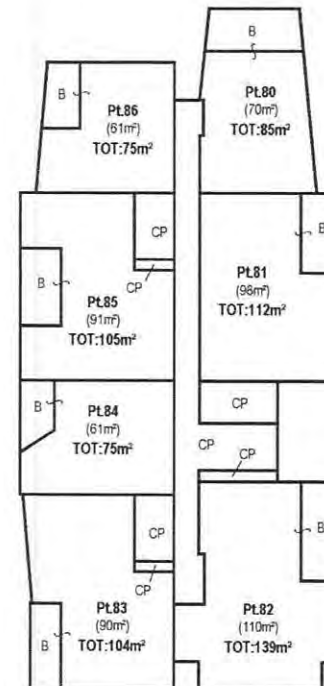
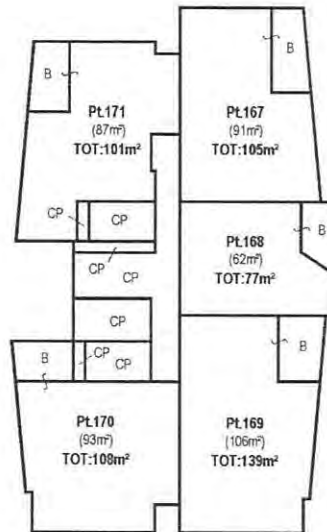


Registered
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SP91086

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LEVEL 11

Surveyor GARY EDWARDS
Surveyor's Ref: 5897
Subdivision No: 17/SC14/15
Lengths are in metres. Reduction Ratio 1:250

Registered

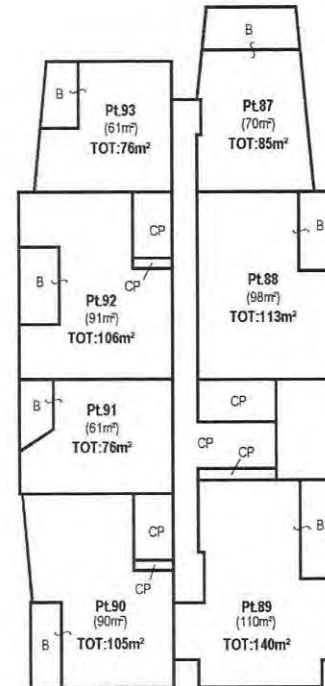
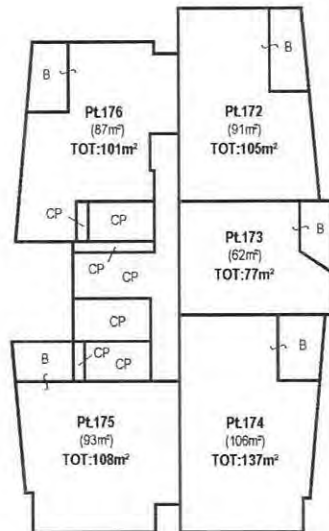


3.3.2015

SP91086

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

MGA



NOTES:-

1. WHERE NOT COVERED THE UPPER LIMIT OF THE STRATUM OF EACH BALCONY IS 2.5 ABOVE THE UPPER SURFACE OF ITS CONCRETE FLOOR.
2. ANY SERVICE LINE WITHIN ONE LOT SERVICING ANY OTHER LOT IS COMMON PROPERTY
3. AREAS ARE APPROXIMATE AND FOR THE PURPOSES OF STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT 1973

B denotes BALCONY
CP denotes COMMON PROPERTY

LEVEL 12

Surveyor: GARY EDWARDS
 Surveyor's Ref: 5897
 Subdivision No. 17/SC14/15
 Lengths are in metres. Reduction Ratio 1:250

Registered

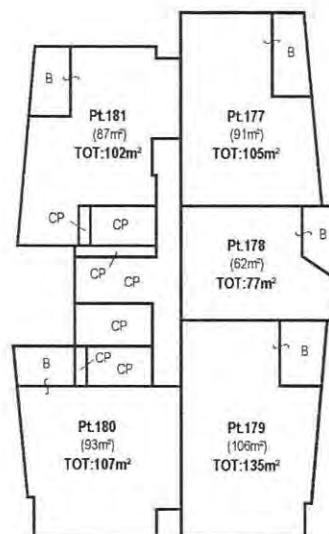


3.3.2015

SP91086

10 20 30 40 50 Table of mm 80 100 110 120 130 140

MGA



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LEVEL 13

Surveyor GARY EDWARDS
Surveyor's Ref: 5897
Subdivision No: 17/SC14/15
Lengths are in metres. Reduction Ratio 1:250

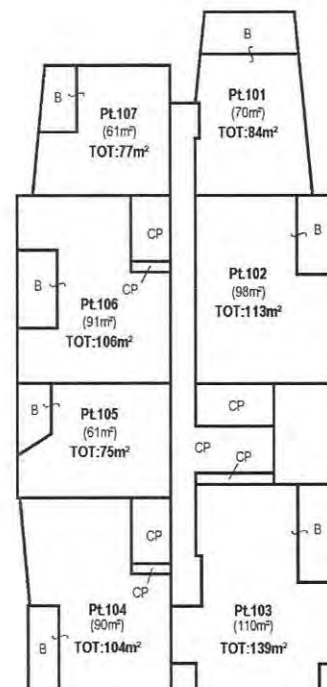
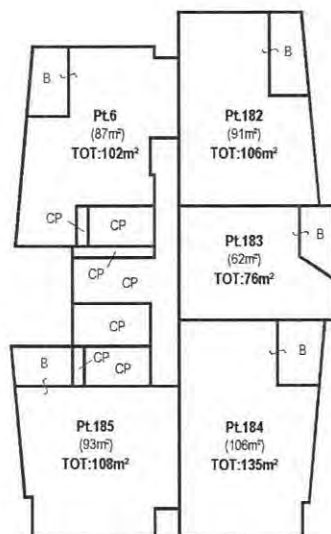


Registered
3.3.2015

SP91086

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MGA



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LEVEL 14

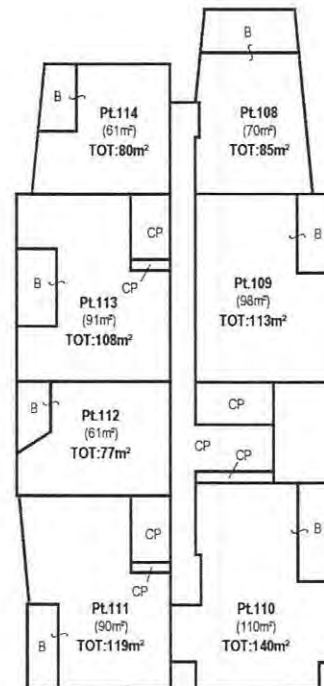
Surveyor: GARY EDWARDS
Surveyor's Ref: 5897
Subdivision No: 17/SC14/15
Lengths are in metres. Reduction Ratio 1:250

Registered
3.3.2015

SP91086

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

MGA



LEVEL 15

NOTES:-

1. WHERE NOT COVERED THE UPPER LIMIT OF THE STRATUM OF EACH BALCONY IS 2.5 ABOVE THE UPPER SURFACE OF ITS CONCRETE FLOOR.
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3. AREAS ARE APPROXIMATE AND FOR THE PURPOSES OF STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT 1973.



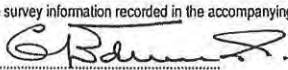
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Surveyor GARY EDWARDS
Surveyor's Ref: 5897
Subdivision No: 17/SC 14/15
Lengths are in metres. Reduction Ratio 1:250


Registered
3.3.2015

SP91086


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

STRATA PLAN ADMINISTRATION SHEET		Sheet 1 of 4 sheet(s)	
Office Use Only		Office Use Only	
Registered:  3.3.2015 Purpose: STRATA PLAN	SP91086		
PLAN OF SUBDIVISION OF LOT 1 IN DP 1201055	LGA: LIVERPOOL Locality: WARWICK FARM Parish: ST LUKE County: CUMBERLAND		
<p>Strata Certificate (Approved Form 5)</p> <p>(1) The Council of *The Accredited Certifier: IAN BAKER Accreditation number: BPB0017 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 30 Strata Schemes (Freehold Development) Regulation 2012, * (b) Section 66 or 66A Strata Schemes (Leasehold Development) Act 1986 and clause 31 of the Strata Schemes (Leasehold Development) Regulation 2012, 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 contract 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) ^A 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 (Leasehold Development) Act 1986.</p> <p>Date: 7 FEBRUARY 2015 Subdivision number: 17/SC14/15 Relevant Development Consent number: 17/CDP03/15 Issued by: IAN BAKER Signature:  Authorised Person / General Manager / Accredited Certifier</p> <p>* Strike through if inapplicable. ^A Insert lot numbers of proposed utility lots.</p>	<p>Name of, and address for service of notices on, the Owners Corporation. (Address required on original strata plan only)</p> <p>The Owners – Strata Plan No 91086 1-3 BIGGE STREET WARWICK FARM NSW 2170</p> <p>The adopted by-laws for the scheme are: * ^A Residential Model By-laws * together with, Keeping of animals: Option *A/*B/*C * By-laws in sheets filed with plan. * Strike out whichever is inapplicable ^A Insert the type to be adopted (Schedules 2 - 7 SSM Regulation 2010)</p>		
<p>Surveyor's Certificate (Approved Form 3)</p> <p>I, GARY EDWARDS of SDG LAND DEVELOPMENT SOLUTIONS PTY LTD a surveyor registered under the Surveying and Spatial Information Act 2002, hereby certify that:</p> <p>(1) Each applicable requirement of * Schedule 1A of the Strata Schemes (Freehold Development) Act 1973 has been met * Schedule 1A of 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 ^A to permit the encroachment to remain.</p> <p>* (3) The survey information recorded in the accompanying location plan is accurate.</p> <p>Signature:  Date: 17-1-2015</p> <p>* Strike through if inapplicable. ^A Insert the Deposited Plan Number or Dealing Number of the instrument that created the easement</p>		<p>Use STRATA PLAN FORM 3A for certificates, signatures and seals</p> <p>Surveyor's Reference: 5897</p>	


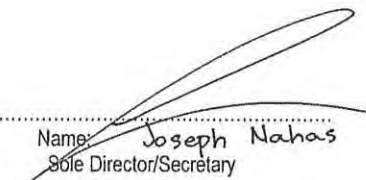
Req:R124611 /Doc:SP 0091086 P /Rev:04-Mar-2015 /Sts:SC.OK /Prt:04-Mar-2015 14:23 /Pgs:ALL
 Res:Network2Strata Services Pty Ltd /Src:P
 STRATA PLAN ADMINISTRATION SHEET (Part 2) (Rev 14/1/2014) - Transmitted. Cancellation or removal will lead to rejection.

STRATA PLAN ADMINISTRATION SHEET				Sheet 2 of 4 sheet(s)			
Registered:  3.3.2015		Office Use Only		Office Use Only		<h1 style="margin: 0;">SP91086</h1>	
PLAN OF SUBDIVISION OF LOT 1 IN DP 1201055				This sheet is for the provision of the following information as required: <ul style="list-style-type: none"> A Schedule of Unit Entitlements. Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i>. Signatures and seals - see 195D <i>Conveyancing Act 1919</i>. Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets. 			
Subdivision Certificate number: <u>17/SC14/15</u>				Date of endorsement: <u>7 FEBRUARY 2015</u>			
<h3>SCHEDULE OF UNIT ENTITLEMENT</h3>							
LOT No.	UNIT ENTITLEMENT	LOT No.	UNIT ENTITLEMENT	LOT No.	UNIT ENTITLEMENT	LOT No.	UNIT ENTITLEMENT
1	72	31	55	61	69	91	46
2	45	32	55	62	57	92	57
3	48	33	62	63	44	93	47
4	48	34	54	64	54	94	48
5	45	35	42	65	45	95	60
6	58	36	52	66	46	96	72
7	53	37	43	67	58	97	59
8	54	38	55	68	69	98	47
9	54	39	56	69	57	99	57
10	41	40	62	70	45	100	48
11	42	41	55	71	55	101	49
12	58	42	42	72	45	102	61
13	42	43	53	73	46	103	72
14	42	44	43	74	58	104	60
15	44	45	56	75	70	105	47
16	54	46	56	76	58	106	58
17	54	47	63	77	45	107	48
18	55	48	55	78	56	108	49
19	42	49	43	79	46	109	61
20	41	50	53	80	47	110	73
21	53	51	44	81	59	111	60
22	61	52	45	82	71	112	48
23	41	53	57	83	58	113	58
24	54	54	64	84	46	114	49
25	55	55	56	85	56	115	58
26	61	56	43	86	46	116	66
27	54	57	54	87	48	117	59
28	41	58	44	88	60	118	44
29	52	59	45	89	71	119	57
30	42	60	57	90	59	120	63
If space is insufficient use additional annexure sheet.							
Surveyor's Reference: 5897							

Req:R124611 /Doc:SP 0091086 P /Rev:04-Mar-2015 /Sts:SC.OK /Prt:04-Mar-2015 14:23 /Pgs:ALL
 Res:Network23 Strata Services Pty Ltd /Src:P

STRATA PLAN ADMINISTRATION SHEET				Sheet 3 of 4 sheet(s)																																																																																																																																											
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<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>LOT No.</th> <th>UNIT ENTITLEMENT</th> <th>LOT No.</th> <th>UNIT ENTITLEMENT</th> <th>LOT No.</th> <th>UNIT ENTITLEMENT</th> </tr> </thead> <tbody> <tr><td>121</td><td>52</td><td>143</td><td>43</td><td>165</td><td>55</td></tr> <tr><td>122</td><td>52</td><td>144</td><td>66</td><td>166</td><td>55</td></tr> <tr><td>123</td><td>41</td><td>145</td><td>53</td><td>167</td><td>57</td></tr> <tr><td>124</td><td>52</td><td>146</td><td>53</td><td>168</td><td>46</td></tr> <tr><td>125</td><td>63</td><td>147</td><td>55</td><td>169</td><td>69</td></tr> <tr><td>126</td><td>52</td><td>148</td><td>43</td><td>170</td><td>56</td></tr> <tr><td>127</td><td>53</td><td>149</td><td>67</td><td>171</td><td>56</td></tr> <tr><td>128</td><td>41</td><td>150</td><td>54</td><td>172</td><td>58</td></tr> <tr><td>129</td><td>64</td><td>151</td><td>54</td><td>173</td><td>46</td></tr> <tr><td>130</td><td>64</td><td>152</td><td>56</td><td>174</td><td>70</td></tr> <tr><td>131</td><td>52</td><td>153</td><td>44</td><td>175</td><td>57</td></tr> <tr><td>132</td><td>54</td><td>154</td><td>67</td><td>176</td><td>57</td></tr> <tr><td>133</td><td>42</td><td>155</td><td>54</td><td>177</td><td>58</td></tr> <tr><td>134</td><td>65</td><td>156</td><td>54</td><td>178</td><td>47</td></tr> <tr><td>135</td><td>65</td><td>157</td><td>56</td><td>179</td><td>71</td></tr> <tr><td>136</td><td>52</td><td>158</td><td>44</td><td>180</td><td>57</td></tr> <tr><td>137</td><td>54</td><td>159</td><td>68</td><td>181</td><td>57</td></tr> <tr><td>138</td><td>42</td><td>160</td><td>55</td><td>182</td><td>59</td></tr> <tr><td>139</td><td>65</td><td>161</td><td>55</td><td>183</td><td>47</td></tr> <tr><td>140</td><td>53</td><td>162</td><td>57</td><td>184</td><td>71</td></tr> <tr><td>141</td><td>53</td><td>163</td><td>45</td><td>185</td><td>58</td></tr> <tr><td>142</td><td>55</td><td>164</td><td>69</td><td>AGGREGATE</td><td>10000</td></tr> </tbody> </table>						LOT No.	UNIT ENTITLEMENT	LOT No.	UNIT ENTITLEMENT	LOT No.	UNIT ENTITLEMENT	121	52	143	43	165	55	122	52	144	66	166	55	123	41	145	53	167	57	124	52	146	53	168	46	125	63	147	55	169	69	126	52	148	43	170	56	127	53	149	67	171	56	128	41	150	54	172	58	129	64	151	54	173	46	130	64	152	56	174	70	131	52	153	44	175	57	132	54	154	67	176	57	133	42	155	54	177	58	134	65	156	54	178	47	135	65	157	56	179	71	136	52	158	44	180	57	137	54	159	68	181	57	138	42	160	55	182	59	139	65	161	55	183	47	140	53	162	57	184	71	141	53	163	45	185	58	142	55	164	69	AGGREGATE	10000
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 Req:Network2Strata Services Pty Ltd /Src:P

STRATA PLAN ADMINISTRATION SHEET		Sheet 4 of 4 sheet(s)
<div style="display: flex; justify-content: space-between;"> <div> Registered:  3.3.2015 </div> <div style="text-align: right; font-size: small;">Office Use Only</div> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> PLAN OF SUBDIVISION OF LOT 1 IN DP 1201055 </div> <div style="margin-top: 5px;"> Subdivision Certificate number: <u>17/SC14/15</u> Date of endorsement: <u>7 FEBRUARY 2015</u> </div>	<div style="text-align: center; font-size: 2em; font-weight: bold; margin-bottom: 10px;">SP91086</div> <div style="font-size: x-small;"> Office Use Only This sheet is for the provision of the following information as required: • A Schedule of Unit Entitlements. • Statements of intention to create and release affecting interests in accordance with section 88B <i>Conveyancing Act 1919</i>. • Signatures and seals - see 195D <i>Conveyancing Act 1919</i>. • Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets. </div>	
<div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 40%;"> EXECUTED by) Creyke Pty Ltd) ACN 162 821 016) in accordance with s127 of) the Corporations Act 2001) </div> <div style="width: 50%; text-align: center;">  Name: <u>Joseph Nahas</u> Sole Director/Secretary </div> </div> <div style="text-align: center; margin-top: 20px; font-size: x-small;"> If space is insufficient use additional annexure sheet. </div>		
Surveyor's Reference: 5897		

District Registry: New South Wales

Division: General

The Owners – Strata Plan No 91086

Applicant

Fairview Architectural Pty Limited (ACN 111 935 963)

Respondents

APPENDIX 2

Appendix 2

6/18/2019

Details view | IP Australia | Trade Mark Search



Australian Government
IP Australia

Trade mark 1534554

Words	Vitrabond
Image	
Image description	
Status	Registered: Registered/Protected
Priority date	08 Jan 2013 (Filing)
Class	6
Kind	Word

Dates

Renewal due	08 Jan 2023
Registration advertised	18 Jul 2013
Entered on Register	10 Jul 2013
Acceptance advertised	02 May 2013
Acceptance	22 Mar 2013
Filing	08 Jan 2013

Owner

Fairview Architectural Pty Ltd

Address for service

Peter Maxwell & Associates

Goods & Services

Class 6: Cladding of metal for facades; Facade construction components of metal; Facade elements of metal; Facade facings of metal; Facades of metal; Frames of metal for curtain wall facades; Metal double skinned heat insulated facade constructions; Metallic building facade elements; Metallic facade elements for buildings; Plates of metal for building facades; Wall facades of metal; Window facades of metal

6/18/2019

Details view | IP Australia | Trade Mark Search

Indexing constituents**Word**

VITRABOND

Image