



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Disclosure Log Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

Application Details	
Ref. No.	CMTEDDFOI 2024-272
Date of Application	28 August 2024
Date of Decision	31 October 2024
Processing time (in working days)	45
Fees	N/A
Decision on Access	Partial Release
Information Requested (summary)	Information relating to an email about Owners Corporation of UP3637.
Publication Details	
Original application	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision notice	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Documents and schedule	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision made by Ombudsman	N/A
Additional information identified by Ombudsman	N/A
Decision made by ACAT	N/A
Additional information identified by ACAT	N/A

From: [REDACTED]
To: [Lhuede, Nick](#); [CMTEDD FOI](#); [BPC](#); [AC, EPD Customer Services](#)
Subject: CMTEDDFOI 2024-272 - Application for government information regarding Units Plan 3637 made pursuant to the Freedom of Information Act 2016 (ACT)
Date: Wednesday, 28 August 2024 8:03:52 AM
Attachments: [REDACTED]

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Mr Lhuede,

This email is an application under section 30 of the Freedom of Information Act 2016 (ACT) (FOI Act) for the government information set out below.

I act for and on behalf of the [REDACTED]
[REDACTED]

Under the FOI Act I want to access the following document/s:

In the [attached](#) email dated 10 April 2023, the Assistant Director of the Construction & Planning Investigations, Construction, Utilities and Environment Protection Branch relevantly states:

'At this time, Access Canberra relied on the information provided by the Executive Committee, informing that such a resolution was occurring and agreed to hold off further regulatory action at their request.'

I request access to:

1. The government information referred to in the first half of the above sentence which is stated to have been provided by the Executive Committee;
2. The government information recording '*the request of the Executive Committee*' to '*hold off further regulatory action*' referred to in the second half of the sentence; and
3. All other government information relied upon in the making of the decision recorded in the email to hold off further regulatory action on the stated basis,

being because a resolution was occurring.

In the above request, 'government information' means any document recording government information, including emails, letters, file notes, diary notes, calendar notes, reports, minutes of meetings.

I do not want to access the following documents in relation to my request:

- UP3637 Owners' Corporation documents except those documents that fall within the scope of my FOI request set out above
- Canberra Strata documents
- publicly available documents including legislation and case law
- documents in the possession of ACAT
- documents subject to legal professional privilege
- documents relating to the Emergency Rectification Order (ERO) dated 1 April 2021
- documents relating to the Notice of Intention to issue a Rectification Order (NOI) dated 17 December 2021
- documents classified on their face as commercially sensitive or commercial in confidence
- building approvals, development applications, defects registers, occupancy certificates and reviews of building plans relating to UP3637
- documents requiring consultations with a third party comprising a Minister or Ministers
- documents requiring consultations with a third party comprising a builder or builders other than the builder to whom the above ERO and NOI were addressed
- documents requiring consultations with any other third party operating in the construction/property industry other than the builder to whom the above ERO and NOI were addressed
- documents requiring consultations with any third party property owner or owners other than the 56 individual property owners in UP3637.

Notices under the FOI Act in relation to this application should be sent to me

[Redacted]

I am happy to discuss the scope of the above FOI request to clarify any questions the CMTEDD may have.

[Redacted]



----- Forwarded message -----

From: BPC <BPC@act.gov.au>

Date: Wed, 19 Apr 2023 at 08:07

Subject: RE: Kingston Place Stage One - rectification order

To: [REDACTED]

Cc: BPC <BPC@act.gov.au>, Lhuede, Nick <Nick.Lhuede@act.gov.au>, Sloan, Sean <Sean.Sloan@act.gov.au>, Zuzek, Joe <Joe.Zuzek@act.gov.au>

----- Forwarded message -----

From: BPC <BPC@act.gov.au>

To: [REDACTED]

Cc: BPC <BPC@act.gov.au>, "Lhuede, Nick" <Nick.Lhuede@act.gov.au>, "Sloan, Sean" <Sean.Sloan@act.gov.au>, "Zuzek, Joe" <Joe.Zuzek@act.gov.au>

Bcc:

Date: Mon, 10 Apr 2023 23:57:34 +0000

Subject: Kingston Place Stage 1 - regulatory outcomes

OFFICIAL

Dear [REDACTED]

Re: Kingston Place Stage 1 [SF Case 00200730 / SF Investigation 20210423-23054]

Thank you for your email dated 23 March 2023. I apologise for the delay in my response.

Access Canberra originally received complaints in relation to defective works in December 2020 and March 2021. As a result of the serious building defects identified, an Emergency Rectification Order was issued to the builder in April 2021.

At this time, Access Canberra relied on the information provided by the Executive Committee, informing that such a resolution was occurring and agreed to hold off further regulatory action at their request. Access Canberra encourages the collaborative resolution of disputes and will assist in the process where it can, trying to resolve matters through more informal mechanisms without needing to resort to litigation.

The Construction Occupations Registrar (Registrar) is disappointed to learn that a resolution has not yet been reached; however, the statutory time period in which the Registrar could take further regulatory action against the builder in relation to the defects expired on 22 March 2022. This 10-year time provision is outlined under section 37(d) of the *Construction Occupations (Licensing) Act 2004*.

As the Registrar no longer holds any statutory authority on this matter, and there are no further regulatory avenues available to have the builder undertake these works, the decision has been made to close this investigation.

I appreciate that you may be disappointed with this outcome and that it may not meet your expectations or hopes. If you remain dissatisfied with this response, you may request an internal review. Internal reviews will be considered by a senior officer who was not involved in the original response. As always, you are encouraged to seek independent legal advice regarding what further actions are open to you in regard to achieving a resolution with the builder.

Please note, the Emergency Rectification Order of May 2021 remains in force. The Order, and associated temporary propping, must remain in place until such time as the defects are rectified.

Regards,

**Ellen Collins | Assistant Director, Construction & Planning Investigations
Construction, Utilities and Environment Protection Branch**

Phone: 02 6205 9643 | [REDACTED] | Email: ellen.collins@act.gov.au

Access Canberra | Chief Minister, Treasury and Economic Development Directorate | ACT Government
GPO Box 158, Canberra City ACT 2601 | act.gov.au

**We acknowledge the Traditional Custodians of the ACT, the
Ngunnawal people. We acknowledge and respect their continuing culture
and the contribution they make to the life of this city and this region.**



FREEDOM OF INFORMATION REQUEST – NOTICE OF DECISION

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 28 August 2024.

Specifically, you have sought access to the following information:

"I act for [redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Under the FOI Act I want to access the following document/s:

In the attached email dated 10 April 2023, the Assistant Director of the Construction & Planning Investigations, Construction, Utilities and Environment Protection Branch relevantly states:

'At this time, Access Canberra relied on the information provided by the Executive Committee, informing that such a resolution was occurring and agreed to hold off further regulatory action at their request.'

I request access to:

- 1. The government information referred to in the first half of the above sentence which is stated to have been provided by the Executive Committee;*
- 2. The government information recording 'the request of the Executive Committee' to 'hold off further regulatory action' referred to in the second half of the sentence; and*
- 3. All other government information relied upon in the making of the decision recorded in the email to hold off further regulatory action on the stated basis, being because a resolution was occurring.*

In the above request, 'government information' means any document recording government information, including emails, letters, file notes, diary notes, calendar notes, reports, minutes of meetings.

I do not want to access the following documents in relation to my request:

- *UP3637 Owners' Corporation documents except those documents that fall within the scope of my FOI request set out above*
- *Canberra Strata documents*
- *publicly available documents including legislation and case law*
- *documents in the possession of ACAT*
- *documents subject to legal professional privilege*
- *documents relating to the Emergency Rectification Order (ERO) dated 1 April 2021*
- *documents relating to the Notice of Intention to issue a Rectification Order (NOI) dated 17 December 2021*
- *documents classified on their face as commercially sensitive or commercial in confidence*
- *building approvals, development applications, defects registers, occupancy certificates and reviews of building plans relating to UP3637*
- *documents requiring consultations with a third party comprising a Minister or Ministers*
- *documents requiring consultations with a third party comprising a builder or builders other than the builder to whom the above ERO and NOI were addressed*
- *documents requiring consultations with any other third party operating in the construction/property industry other than the builder to whom the above ERO and NOI were addressed*
- *documents requiring consultations with any third party property owner or owners other than the 56 individual property owners in UP3637.*

Authority

I am an Information Officer appointed by the CMTEDD Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application within 30 days.

As this matter required third party consultation, the decision due date was extended by 15 working days, in accordance with section 40(2) of the Act.

Therefore, a decision is due by **31 October 2024**.

Decision on access

Searches of CMTEDD records have identified 12 documents within the scope of your request.

I have decided to grant **full access** to two documents and **partial access** to ten documents.

The records identified as relevant to your application are listed in the schedule enclosed at **Attachment A**. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

Release of documents

The information being released to you is provided at **Attachment B**.

Statement of Reasons

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below. In reaching my access decisions, I have taken the following into account:

- the Act
- the information that falls within the scope of your request
- third party views
- correspondence with you
- ACT Ombudsman FOI Guidelines
- *Information Privacy Act 2014*
- *Human Rights Act 2004*
- publicly available information

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as per **Schedule 1** of the Act.
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring non-disclosure in **Schedule 2** of the Act.

Exemptions claimed

Schedule 1: Information taken to be contrary to the public interest.

There are no schedule 1 factors therefore this has not been a factor for consideration.

Public Interest Test

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and nondisclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Schedule 2: Factors to be considered when deciding the public interest.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors favouring disclosure (Section 2.1)

- *Section 2.1(a)(i) - promote open discussion of public affairs and enhance the government’s accountability.*
- *Section 2.1(a)(vii) - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with the government.*
- *Section 2.1(a)(viii) - reveal the reason for a government decision and any*

background or contextual information that informed the decision.

I note that the information requested includes correspondence with ACT Government as the regulator concerning the rectification of defects in building works which includes a Unit Plan Owners Corporation as one of the affected parties and therefore the information being released would be likely to reveal the reason of a government decision, being the email chain showing the ongoing deliberations between the parties when dealing with government.

I am satisfied that these factors favouring disclosure carry some weight. However, these factors are to be balanced against the factors favouring nondisclosure.

Factors favouring nondisclosure (Section 2.2)

- *Section 2.2(a)(ii) - prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.*
- *Section 2.2(a)(xi) - prejudice trade secrets, business affairs or research of an agency or person.*

The information requested is not personal information. However, documents located within your requested scope contain personal information of yourself and of third parties, such as mobile numbers, email addresses and personal opinions.

The dictionary section of the Act defines personal information as follows:

personal information—

(a) means information or an opinion (including information forming part of a database), whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; but

(b) for an individual who is or has been an officer of an agency or staff member of a Minister, does not include information about—

- (i) the individual's position or functions as an officer or staff member; or
- (ii) things done by the individual in exercising functions as an officer or staff member.

Having reviewed the information, I consider that the protection of an individual's right to privacy, is a significant factor. Release of information concerning individuals working within the ACT Public Service is generally not considered to prejudice the protection of an individual's right to privacy. However, where mobile phone numbers may be used for home and work purposes, this information is redacted, as it could or would reasonably be expected to prejudice an individual's right to privacy under the *Human Rights Act 2004*.

I note that the majority of documents within your requested scope includes correspondence, such as emails, and the attachments. Accordingly, I have decided to give moderate weight to personal privacy and have made redactions to personal information such as mobile numbers and the email addresses of third parties.

Businesses undertaking development activities in the ACT may expect that any sensitive business information they provide to the Government will be held in confidence.

However, businesses that provide information to government do so with the knowledge that government held information may be subject to an access application made under Freedom of Information legislation.

I have considered the factor of confidential business information but have given this factor little weight and made no redactions to the material on this basis.

As the material within scope of your requests includes correspondence and attachments known to both parties, I have decided that the release of this information to you is not contrary to the public interest to release, which includes personal and business information of third parties.

I note that during the processing of the request you confirmed that you no longer have access to the email address contained on the documents within scope of your request. I note that the documents contain personal contact information and confidential business information of yourself and third parties.

Accordingly, I have decided to release information to you but when the information is published on the disclosure log, your personal contact information and contact information of third parties, will be redacted.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Charges

Processing charges are not applicable for this request because the number of pages released to you is below the charging threshold of 50.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a [disclosure log](#).

Your original access application and my decision will be published on the CMTEDD disclosure log. Your personal contact details will not be published.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is provided to you, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact the Information Access Team by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely



Emma Hotham
Information Officer
Chief Minister, Treasury and Economic Development Directorate

31 October 2024



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference No.

CMTEDDFOI 2024-272

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- documents requiring consultations with any third party property owner or owners other than the 56 individual property owners in UP3637.*

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-2	Email chain, Subject: "FW_CASE #201216-001527 CRM-21830"	12/04/2021	Partial	Sch 2, s 2.2 (a)(ii)	Yes

2	3-11	Attachment - Notice of intention to make a rectification order	17/12/2021	Full		Yes
3	12-14	Email chain: Subject: "Fwd: Kingston Place Stage 1 - Notice of intention to make a rectification order"	15/02/2022	Full		Yes
4	15	Email, Subject: "Kingston Place Stage One"	17/03/2022	Full		Yes
5	16-18	Email chain, Subject: "RE: Kingston Place Stage One follow-up"	05/04/2022-21/07/2022	Full		Yes
6	19-22	Email chain, Subject "FW: [REDACTED] Response to the Construction Occupation's Registrar's Notice of Intention to Make a Rectification Order Kingston Place Stage 1"	05/04/2022-30/08/2022	Full		Yes
7	23	Email, Subject: "Kingston Place Stage One follow-up"	05/04/2021	Full		Yes
8	24	Email attachment - Document - list of structural engineer reports	undated	Full		Yes
9	25-26	Email chain, Subject: "RE: [REDACTED] Response to the Construction Occupation's Registrar's Notice of Intention to Make a Rectification Order Kingston Place Stage 1"	24/02/2022-21/07/2022	Full		Yes
10	27-31	Attachment to email – template form	undated	Full		Yes
11	32-34	Email chain, Subject: "FW: [REDACTED] Response to the Construction Occupation's Registrar's Notice of Intention to Make a Rectification Order Kingston Place Stage 1 [To Applicant]"	05/04/2021-30/08/2022	Full		Yes
12	35	Email, Subject: "Kingston Place Stage 1 - regulatory outcomes"	11/04/2023	Partial	Sch 2, s 2.2 (a)(ii)	Yes
Total No of Docs						
12						

From: [Sheargold, Andrew](#)
To: [Harrold, Andrew](#)
Cc: [Marler, Brad](#)
Subject: FW: CASE #201216-001527 CRM-21830
Date: Monday, 12 April 2021 3:16:56 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)

OFFICIAL

From: Sch 2.2(a)(ii)
Sent: Monday, 12 April 2021 3:16 PM
To: BPC <BPC@act.gov.au>
Cc: Pryce, David <David.Pryce@act.gov.au>; Green, Ben <Ben.Green@act.gov.au>; Sheargold, Andrew <Andrew.Sheargold@act.gov.au>; [REDACTED]
Subject: CASE #201216-001527 CRM-21830

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Registrar,

CASE DETAILS #201216-001527 CRM-21830

We are writing on behalf of the Owners' Corporation of Kingston Place Stage One (UP3637) (OC) to request the immediate suspension of the 1 April 2021 Emergency Rectification Order (ERO) issued to Morris Property Group (MPG), until further notice.

The reasons for this request are as follows:

- The OC consider the issue of the ERO to MPG be demonstrably premature.
- We issued the ASD report and cost proposal to the ACT Government to primarily preserve our position in relation to statutory timeframes and liability requirements ie. the 10 year limit. Our intention has always been to avoid unnecessary litigation and court proceedings if possible.
- At this time, we don't have 100% confidence in the ASD findings and as such, are not convinced that the installation of props is indeed the solution and/or in the interests of the OC.
- For your information, we had a without prejudice and good faith meeting with MPG this morning who have undertaken to have a third party engineering report to review ASD's position. We have then agreed to commission a separate engineering firm, to peer review the findings. Analysis of all findings will then be discussed between MPG and the OC.

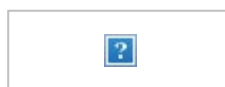
Based on the rationale detailed above, we seek your urgent action by COB Wednesday 14 April 2021, to suspend the current ERO and issue notice confirming same to MPG and the Owners Corporation.

In the interim, we note that Access Canberra representative, Andrew Sheargold, inspected the complex on 4 February 2021 and advised a number of construction items

were deemed to be non-compliant. We seek your urgent confirmation on what these items are and how they are to be rectified.

With Regards,

Sch 2.2(a)(ii)



This e-mail message is intended only for the addressee (s) and contains information which may be confidential. If this e-mail has been sent to you in error, please delete this e-mail and any copies or links to this e-mail from your system. This e-mail and its attachments are prepared by and remain copyright of [redacted] and are to be viewed by the intended recipient (s) only. This e-mail shall not be used, reproduced or otherwise distributed without the express permission of the sender.



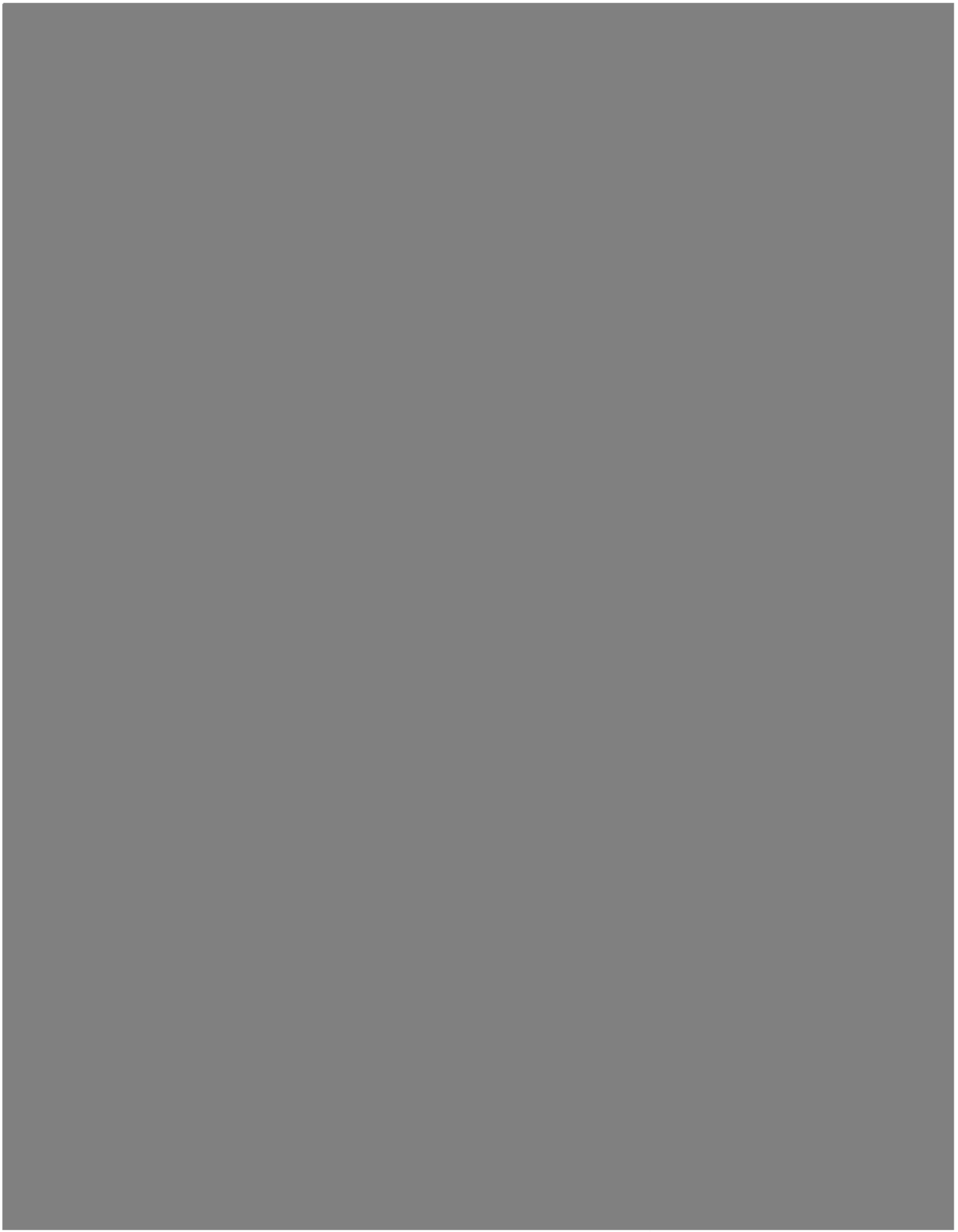
[REDACTED]
Morris Property Group
Ground Floor – 50 Blackall Street
BARTON ACT 2600

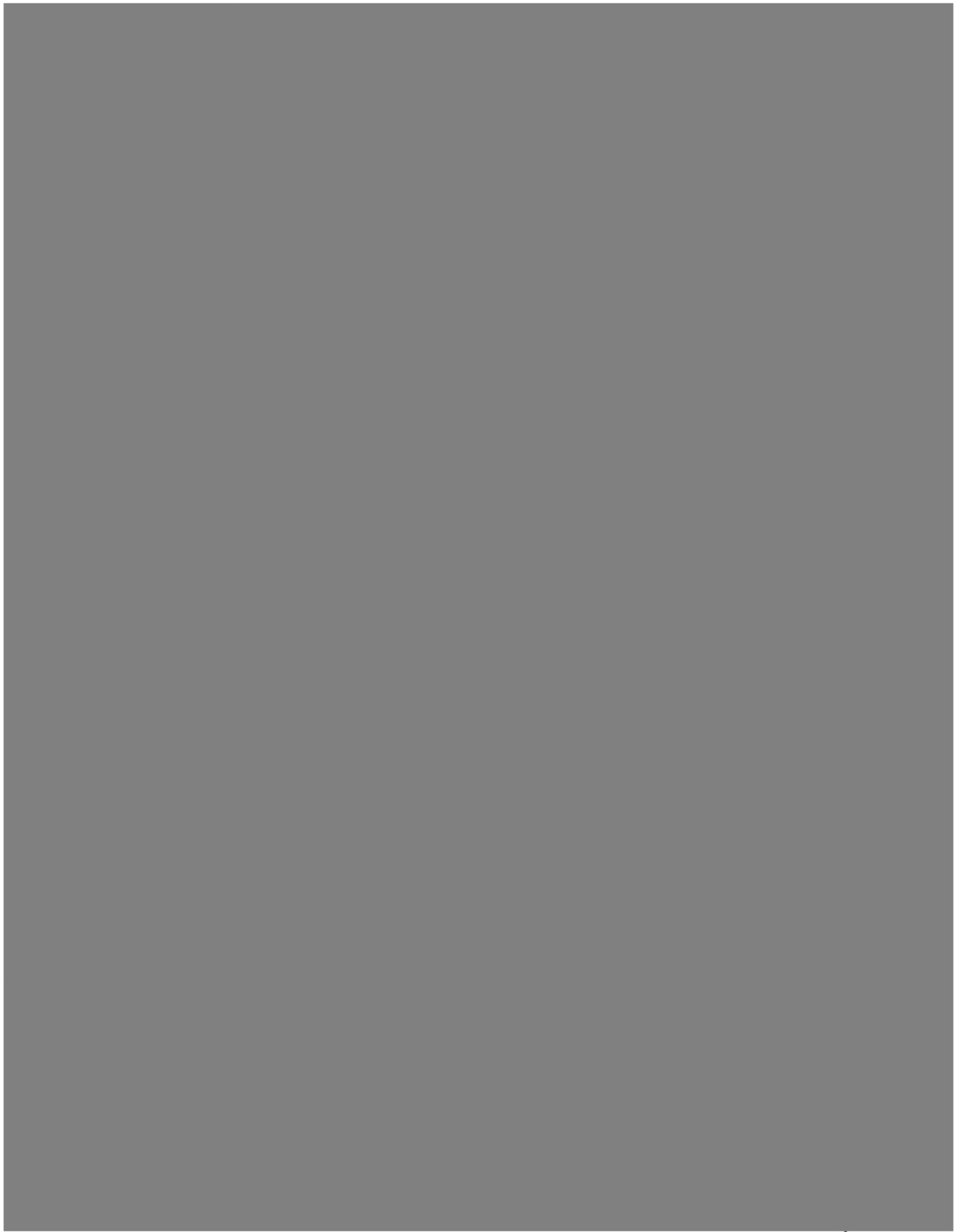
Dear [REDACTED]

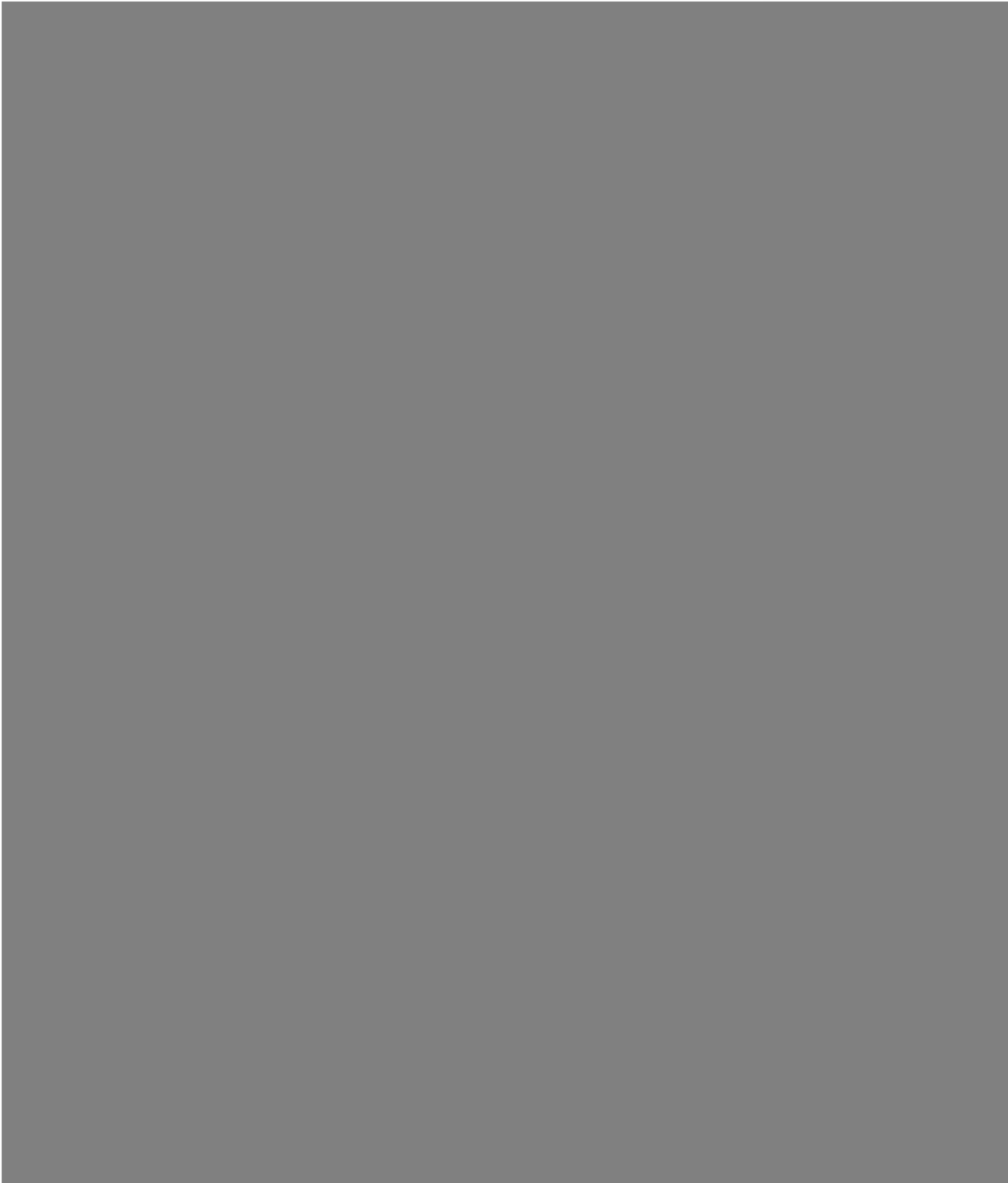
Notice of intention to make a rectification order pursuant to section 38 of the *Construction Occupations (Licensing) Act 2004*

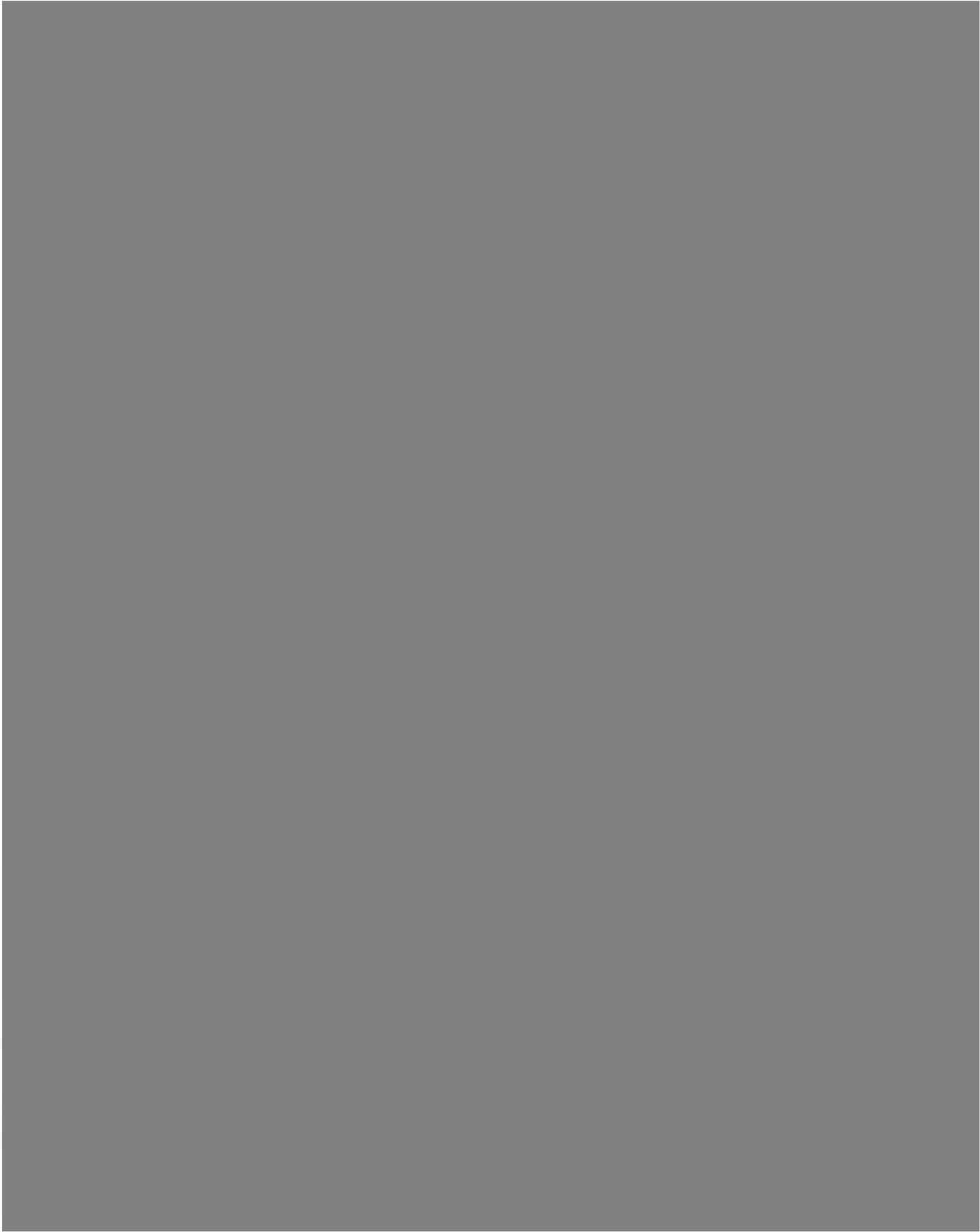
1. This notice (**Notice**) confirms that the Construction Occupations Registrar (**Registrar**) intends to make a rectification order under section 38 of the *Construction Occupations (Licensing) Act 2004* (**COLA**) in relation to Morris Construction Corporation, in its capacity as a licensed builder.
2. Morris Construction Corporation Pty Ltd (**MCC**) ACN 136 947 834 provided construction services for Kingston Place Stage 1 at Block 3 Section 18 KINGSTON (**the Premises**).
3. Under a Class A builder licence (No. 2009969) pursuant to section 31 of COLA, MCC was responsible for supervising its construction services. MCC was also responsible for ensuring that the relevant construction services complied with COLA and the operational Acts (as defined by section 16 of COLA).
 - A Building Approval (B20103080) was issued on 12 November 2010
 - A Building Commencement Notice (B20103080) was issued on 26 November 2010.

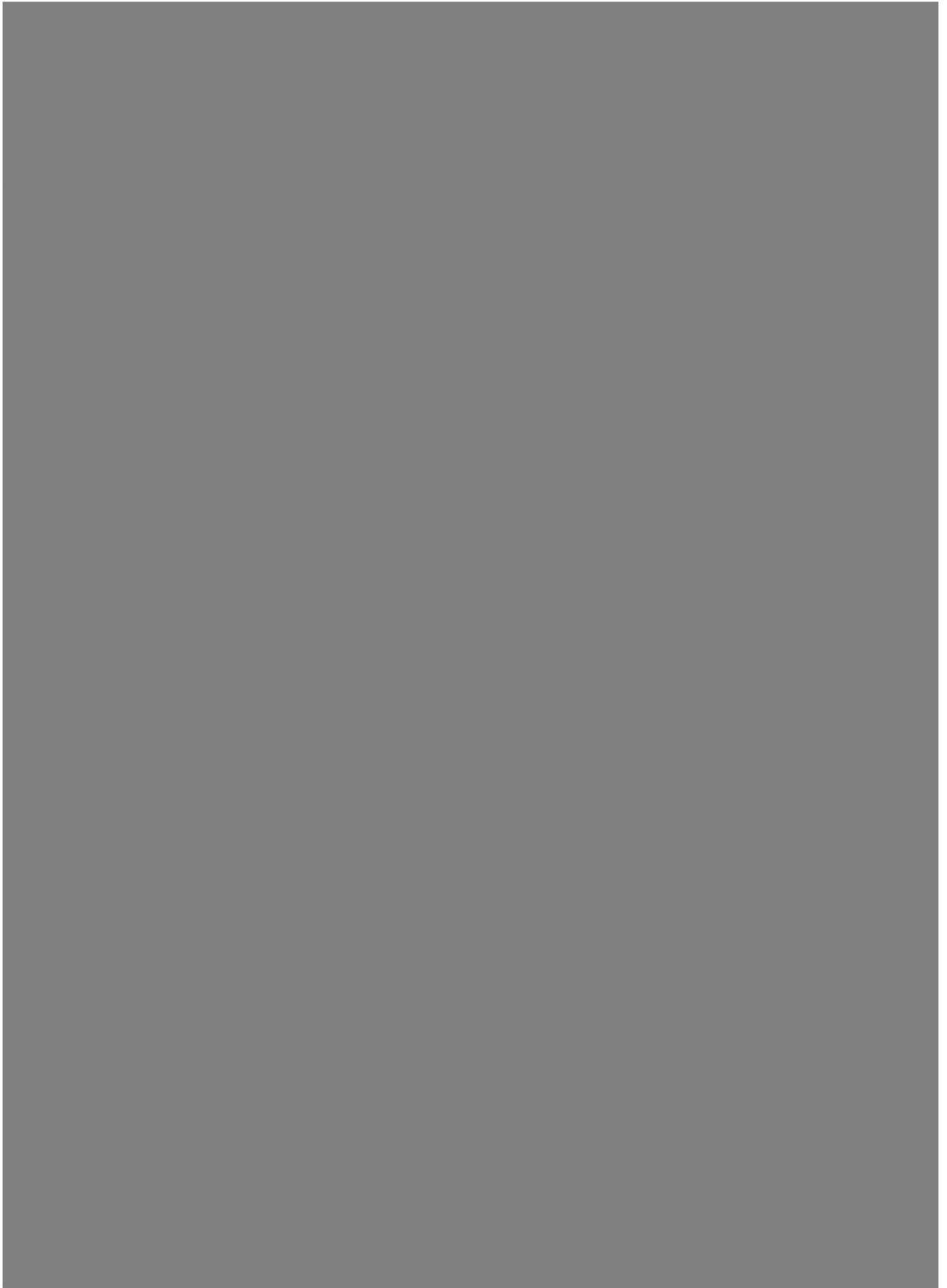


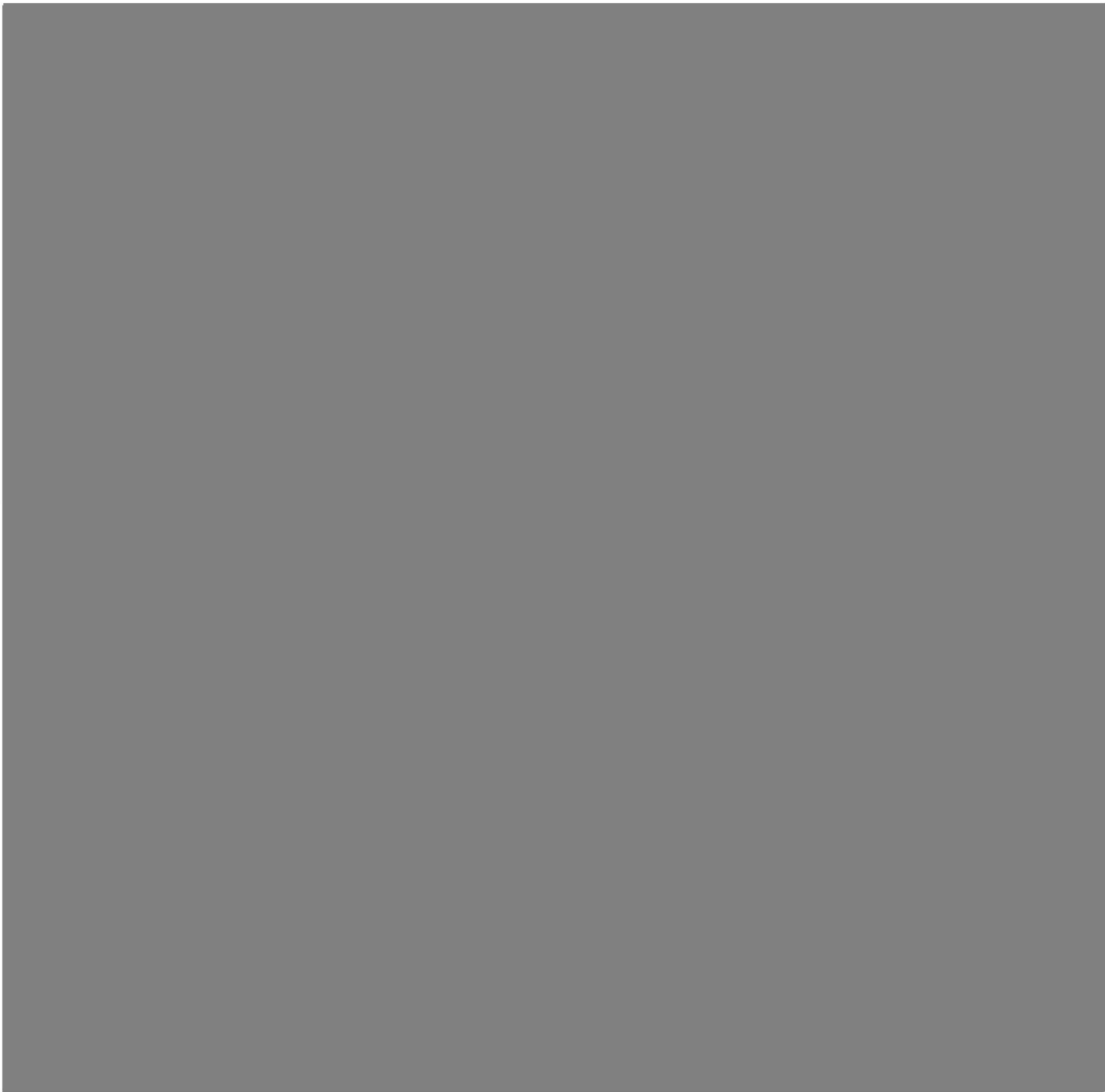












Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Muir', is written over a light grey rectangular background.

Richard Muir
Deputy Construction Occupations Registrar
17 December 2021

Encl.

- Attachment A:** 2021-04-27 Quadsday Pty Ltd Structural Review – 27 April 2021
- Attachment B:** Northrop Structural Engineering Review – 3 May 2021
- Attachment C:** ASD Punching Shear Ground Floor and Levels 1,2 & 3 - March 2021
- Attachment D:** Waugh Consulting Pty Ltd Structural Report on Basement and Ground Floor Slabs and Columns – 21 November 2021
- Attachment E:** Emergency Rectification Order – 1 April 2021
- Attachment F:** ACAT Varied Emergency Rectification Order – 13 May 2021

From: [REDACTED]
To: [BPC](#)
Cc: [REDACTED]
Subject: Fwd: Kingston Place Stage 1 - Notice of intention to make a rectification order
Date: Tuesday, 15 February 2022 3:03:41 PM
Attachments: [image001.png](#)
[2021-12-17 Notice of intention to make a rectification order.pdf](#)

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon,

I am writing to express my concern and dismay at apparent bad faith acts and omissions by BPC in relation to the Kingston Place Stage One structures and owners on and from 17 December 2021.

In this regard, I draw to your attention the attached Notice of Intention received today from [REDACTED]; today being the first occasion on which I have received any detail of its substance.

While I received an email from you on 17 December 2021 of the regulator's Notice of Intention, you did not at that time inform me of the details of any defects to which the Notice of Intention referred. I then asked you on 14 January 2021 what the [REDACTED] response to the Notice of Intention was, and [REDACTED] subsequently advised me on 25 January 2021 that your Notice of Intention had not been received [REDACTED].

You have now re-issued the Notice of Intention as if it had been sent and received by the [REDACTED] on 17 December 2021 *but that is legally and factually not the case*. On 22 December 2021 I lodged with you - and you confirmed receipt by email to me dated 27 January 2022 - the expert peer review report prepared by [REDACTED] [REDACTED] dated 21 December 2021 for Kingston Place Stage One owners. That report was prepared and lodged with you before the Christmas shutdown at the specific request of [REDACTED].

At [REDACTED] request, [REDACTED] expert peer review report dated 21 December 2021 assessed potential punching shear issues in the Kingston Place Stage One structures with reference to the report prepared by the [REDACTED] [REDACTED], dated 3 May 2021 and lodged by [REDACTED] in ACAT proceedings initiated by the builder on 9 April 2021 (ACAT 37/2021) seeking administrative review of the ERO issued on 1 April 2021.

The subsequent ACAT Varied ERO on 13 May 2021 exclusively referenced [REDACTED] [REDACTED] report insofar as it addressed potential punching shear issues and the necessity for further and more comprehensive engineering testing to establish conclusively if they existed or not.

I now discover - in relation to defects No. 1 (punching shear) and No. 2 (balustrades) in the Notice of Intention - that you have reverted back to the discredited engineering assessments of [REDACTED] in the ASD report dated March 2021 that the ACAT set aside in sum and substance *with the consent of the regulator*.

I say discredited because *the regulator agreed to amend the ERO* as to abandon in their entirety [REDACTED] propping recommendations, and to replace them with those recommended by [REDACTED]. If the regulator did not accept [REDACTED] professional engineering assessment then as to the paramount safety and well-being of our residents in such exigent circumstances, why is the regulator now

identifying punching shear as conclusively established when we and the builder have been co-operating since that date on the basis that punching shear required further and more comprehensive investigation by [REDACTED] with the potential involvement of [REDACTED]?)

Your actions on and from 17 December 2021 appear to me to be utterly ill-considered and ill-founded. They are also totally at odds with assurances given to me by BPC that it would support and encourage such co-operation between the parties as would optimise scope for a mutually-agreeable outcome. Those assurances were *specifically* contingent on [REDACTED] expert peer review report of [REDACTED] 3 May 2021 report for [REDACTED] p being lodged with you before the end of 2021.

On the basis of those assurance, I now propose as follows:

1. The Notice of Intention dated 17 December 2021 to be withdrawn pending your full and proper consideration of [REDACTED] expert peer review report dated 21 December 2021 as requested by [REDACTED] and lodged by our owners in the expectation that it would be considered by you on a good faith basis.
2. Your specific regard to [REDACTED] proposal in that report for invasive testing by the builder's engineers (with [REDACTED] assistance if agreed) of an upper level column of the Kingston Place Stage One structures to assess possible punching shear issues, with a view to establishing conclusively if they exist or not. Please note I would expect any *bona fide* assessment of this proposal to be based on the professional engineering judgement of [REDACTED] as relied upon and applied by the ACAT rather than the demonstrably discredited professional engineering judgement of [REDACTED] noting also that [REDACTED] and [REDACTED] are broadly in agreement with their engineering assessments of potential punching shear and how to investigate it.
3. Further and better particulars as to why balustrades are identified as an established defect solely on the basis of the discredited engineering judgement of [REDACTED] when neither [REDACTED] nor [REDACTED] ever mention it and, in the absence of any expert professional opinion from an engineer other than [REDACTED], the withdrawal of balustrades as a rectification item.
4. Your specific regard to our ongoing relationship with the builder: we have arranged for [REDACTED] as the builder's engineer to inspect the last two of our balcony floor slabs scheduled for remediation (weather permitting) after the tiles are lifted and before they are re-laid, as will enable identification of stress cracks (if any) in the slabs but noting none have been identified in the last ten years during any previous rectifications of balcony floors to address fall and waterproofing issues.

Please respond **within 48 hours** of the date of this email, which I am copying to [REDACTED] and the [REDACTED].

[REDACTED]
 Chair
 Executive Committee
 Owners' Corporation UP3637

----- Forwarded message -----

From: [REDACTED] <[\[REDACTED\]@morrispropertygroup.com.au](mailto:[REDACTED]@morrispropertygroup.com.au)>

Date: Tue, Feb 15, 2022 at 11:27 AM

Subject: Kingston Place Stage 1 - Notice of intention to make a rectification order

To: [REDACTED] <[\[REDACTED\]@gmail.com](mailto:[REDACTED]@gmail.com)>

Dear [REDACTED]

Please find **attached** the registrar's notice of intention to make a rectification order.

Regards,

[REDACTED] Morris Property Group

[EMAILMPG40years_colour_black](#)



property investment • asset management • development • construction

ACT Ground Floor, 50 Blackall Street, Barton ACT 2600

QLD 3 Glenelg Avenue, Mermaid Beach QLD 4218 | +61 7 5570 9666

PO Box 57, Mermaid Beach QLD 4218

M [REDACTED] **E** [REDACTED] [morrispropertygroup.com.au](mailto:[REDACTED]@morrispropertygroup.com.au) **W** www.morrispropertygroup.com.au



From: [REDACTED]
To: [BPC](#)
Cc: [Harrold, Andrew](#); [Marler, Brad](#); [REDACTED]
Subject: Kingston Place Stage One
Date: Thursday, 17 March 2022 12:36:11 PM

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon Mr Marler and Mr Harrold,

I have left VM messages asking each of you to ring me as soon as possible so I can establish where we are at given the parties are in close consultations with the aim of agreeing a scope of work for the rectification of Stage One defects within a 12 month period, being defects identified and assessed by our respective engineers: [REDACTED] (you have his report responding to the registrar's notice of intention to issue a rectification order) and [REDACTED] for Stage One owners (you will have his report next week responding to Mr Bland's report in response to the registrar's notice of intention to issue a rectification order).

More particularly, I wish to put on the table a suggested approach first raised with me by [REDACTED] whereby the parties could, through a consultative approach, agree a binding undertaking or deed of agreement (or some similar legal mechanism) under COLA on the scope of works for the rectification of agreed Stage One defects within a 12 month period.

As I anticipate the sum and substance of both of the above expert reports from [REDACTED] to agree the scope of such Stage One rectification works as are necessary to ensure compliance with the applicable standard, I seek your endorsement of this approach.

Your agreement will enable [REDACTED] (copied) and myself to continue our consultations and I would propose advising the Minister to this effect.

Kind regards

[REDACTED]
Chair
Owners Corporation UP3637
m: [REDACTED]

From: [Shima, Jean-Marie](#)
To: [REDACTED]
Cc: [Zuzek, Joe](#); [Collins, Ellen](#); [Muir, Richard](#); [REDACTED]@morrispropertygroup.com.au
Subject: RE: Kingston Place Stage One follow-up
Date: Thursday, 21 July 2022 4:26:00 PM
Attachments: [Rectification Undertaking S 47B - Template 2.docx](#)

OFFICIAL

Dear [REDACTED],

Re: AC 20210423-23054, B03 S18 18 Kennedy St & 19 Leichhardt St - Kingston Place Stage 1

I am the new case officer taking carriage of this matter and I would like to touch base regarding a couple of things.

I refer to your email dated 5 April 2022.

In that correspondence, you brought to the Registrar's attention that Morris Construction Corporation Pty Ltd (MCC) is prepared, in principle, to consider giving the Registrar rectification undertakings under Division 4.3 of the Construction Occupations (Licensing) Act 2004 (COLA) on the terms outlined in that letter and subject to mutual agreement between the Registrar, MCC and the Owners Corporation.

Further you advised that [REDACTED] and yourself are consulting with a view to agreeing draft rectification undertakings for the registrar's consideration.

I was instructed to reply to your request as follows:

Under section 47B (4) of the COLA, the Registrar or a person may suggest draft undertakings before a rectification undertaking is given by an entity under subsection (1).

The Registrar would first like to see the draft undertaking which the MCC and the Owners Corporation agreed to before considering it. I suggest also including a schedule of works, as the Registrar would also need to be satisfied that the identified defects will be rectified in a timely manner.

The undertaking should be carefully considered, with particular attention paid to ensuring that::

- The scope of the works as outlined in the undertaking is complete, and there are no works that have been missed
- The timeframes outlined in the undertaking are appropriate,
- Appropriate quality assurance measures have been built into the undertaking

Please be advised that the Registrar would reserve any decision, with regards to the making of a rectification order, until after consideration of any agreed draft rectification undertaking.

Within one calendar month of the date of this email, you are to provide the Registrar with a draft undertaking notice for his consideration. If no further response is provided by 21 August 2022, the Registrar would consider issuing a Rectification Order.

I have attached a template for your reference.

Should have any questions, please contact me via email: BPC@act.gov.au.

Kind regards

Jean-Marie Nshimirimana | Investigator | Construction and Planning Investigations Team
Construction, Utilities and Environment Protection Branch

From: [REDACTED]
Sent: Tuesday, 5 April 2022 2:06 PM
To: Marler, Brad <Brad.Marler@act.gov.au>; Harrold, Andrew <Andrew.Harrold@act.gov.au>
Cc: BPC <BPC@act.gov.au>; [REDACTED] <[\[REDACTED\]@morrispropertygroup.com.au](mailto:[REDACTED]@morrispropertygroup.com.au)>
Subject: Fwd: Kingston Place Stage One follow-up

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Brad and Andrew,

For the sake of complete clarity, the reference in my email below to "the current emergency rectification order" is a reference to the ACAT order dated 13 May 2021 (AT 37/2021) made by Presidential Member H Robinson with the consent of the parties varying the registrar's emergency rectification order relating to Kingston Place Stage One.

Kind regards

----- Forwarded message -----

From: [REDACTED]
Date: Tue, 5 Apr 2022 at 11:07
Subject: Kingston Place Stage One follow-up
To: Marler, Brad <brad.marler@act.gov.au>, Harrold, Andrew <andrew.harrold@act.gov.au>, BPC <BPC@act.gov.au>
Cc: [REDACTED] <[\[REDACTED\]@morrispropertygroup.com.au](mailto:[REDACTED]@morrispropertygroup.com.au)>, <Cheyne@act.gov.au>

Dear Brad and Andrew,

Thank you very much for attending onsite on Monday 28 March 2022 to inspect the Kingston Place Stage One structures.

I am writing to put on record your oral assurances to me during the course of your

inspection that the registrar would have regard to - and take into account under the COLA process now in train - all engineering assessments provided to you subsequent to the issue to the builder on 17 December 2021 of the registrar's notice of intention to issue a rectification order.

To that end, please find attached the list of structural engineering reports provided to you to date by the parties regarding the Kingston Place Stage One structures.

For the sake of certainty and clarity, I would be obliged if you would kindly confirm your oral assurances to me - as outlined above - that all engineering assessments in the attached list dated after 17 December 2021 will now be considered by the registrar.

I also wish to draw to your particular regard the builder's agreement to consider [REDACTED]

In that context, I now advise that [REDACTED] I are consulting with a view to agreeing draft rectification undertakings for the registrar's consideration. I would be grateful if you would please confirm my understanding that mutually-agreed rectification undertakings would overtake and/or pre-empt a rectification order i.e. any future rectification order and the current emergency rectification order now in place.

I am copying this letter to Minister Cheyne's office for her awareness, noting with appreciation her response to me dated 1 April 2022 in relation to the regulatory options available to the registrar and in respect of which you have given me the oral assurances outlined above.

Thank you once again for your ongoing assistance. I look forward to hearing from you at your earliest convenience.

Kind regards

[REDACTED]
Chair
[REDACTED]

From: [Shima, Jean-Marie](#)
To: [REDACTED]
Cc: [Zuzek, Joe](#); [Collins, Ellen](#); [Muir, Richard](#); [REDACTED]@morrispropertygroup.com.au
Subject: FW: Kingston Place Stage One follow-up
Date: Tuesday, 30 August 2022 2:52:00 PM
Attachments: [Rectification Undertaking S 47B - Template 2.docx](#)

OFFICIAL

Dear [REDACTED]

I am just writing to follow up on the below email.
A response was expected by 21 August 2022, but I haven't heard back.
Could you please get back to me by COB Friday 6th September 2022?

Kind regards

Jean-Marie Shima

From: Shima, Jean-Marie
Sent: Thursday, 21 July 2022 4:27 PM
To: [REDACTED]
Cc: [Zuzek, Joe <Joe.Zuzek@act.gov.au>](mailto:Joe.Zuzek@act.gov.au); [Collins, Ellen <Ellen.Collins@act.gov.au>](mailto:Ellen.Collins@act.gov.au); [Muir, Richard <Richard.Muir@act.gov.au>](mailto:Richard.Muir@act.gov.au); [REDACTED]@morrispropertygroup.com.au
[REDACTED]@morrispropertygroup.com.au
Subject: RE: Kingston Place Stage One follow-up

OFFICIAL

Dear [REDACTED],

Re: AC 20210423-23054, B03 S18 18 Kennedy St & 19 Leichhardt St - Kingston Place Stage 1

I am the new case officer taking carriage of this matter and I would like to touch base regarding a couple of things.

I refer to your email dated 5 April 2022.

In that correspondence, you brought to the Registrar's attention that Morris Construction Corporation Pty Ltd (MCC) is prepared, in principle, to consider giving the Registrar rectification undertakings under Division 4.3 of the Construction Occupations (Licensing) Act 2004 (COLA) on the terms outlined in that letter and subject to mutual agreement between the Registrar, MCC and the Owners Corporation.

Further you advised that [REDACTED] and yourself are consulting with a view to agreeing draft rectification undertakings for the registrar's consideration.

I was instructed to reply to your request as follows:

Under section 47B (4) of the COLA, the Registrar or a person may suggest draft undertakings before a rectification undertaking is given by an entity under subsection (1).

The Registrar would first like to see the draft undertaking which the MCC and the Owners Corporation agreed to before considering it. I suggest also including a schedule of works, as the Registrar would also need to be satisfied that the identified defects will be rectified in a timely manner.

The undertaking should be carefully considered, with particular attention paid to ensuring that::

- The scope of the works as outlined in the undertaking is complete, and there are no works that have been missed
- The timeframes outlined in the undertaking are appropriate,
- Appropriate quality assurance measures have been built into the undertaking

Please be advised that the Registrar would reserve any decision, with regards to the making of a rectification order, until after consideration of any agreed draft rectification undertaking.

Within one calendar month of the date of this email, you are to provide the Registrar with a draft undertaking notice for his consideration. If no further response is provided by 21 August 2022, the Registrar would consider issuing a Rectification Order.

I have attached a template for your reference.

Should have any questions, please contact me via email: BPC@act.gov.au.

Kind regards

Jean-Marie Nshimirimana | Investigator | Construction and Planning Investigations Team
Construction, Utilities and Environment Protection Branch

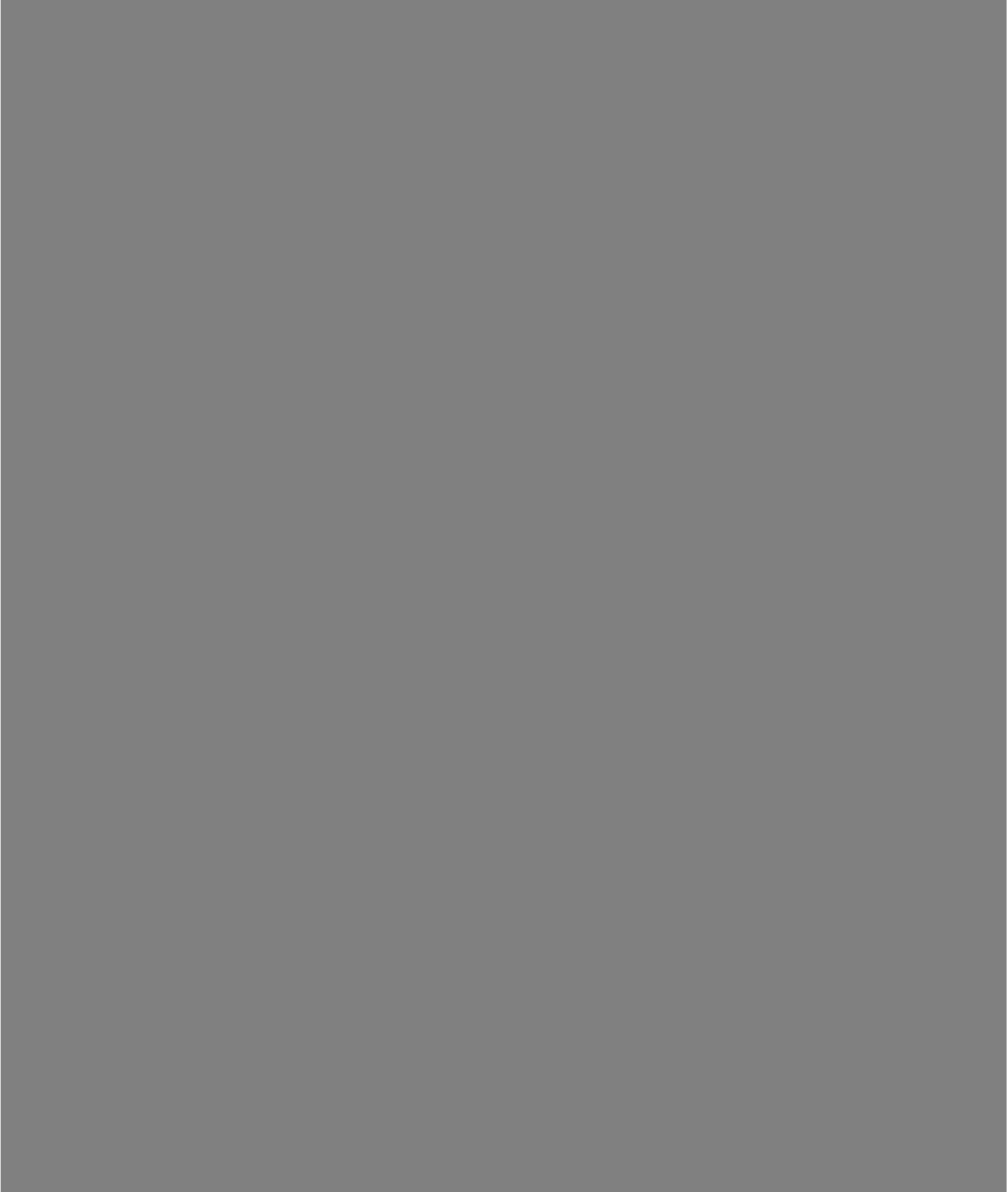
From: [REDACTED] >
Sent: Tuesday, 5 April 2022 2:06 PM
To: Marler, Brad <Brad.Marler@act.gov.au>; Harrold, Andrew <Andrew.Harrold@act.gov.au>
Cc: BPC <BPC@act.gov.au>; [REDACTED] <[\[REDACTED\]@morrispropertygroup.com.au](mailto:[REDACTED]@morrispropertygroup.com.au)>
Subject: Fwd: Kingston Place Stage One follow-up

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Brad and Andrew,

For the sake of complete clarity, the reference in my email below to "the current emergency rectification order" is a reference to the ACAT order dated 13 May 2021 (AT 37/2021) made by Presidential Member H Robinson with the consent of the parties varying the registrar's emergency rectification order relating to Kingston Place Stage One.

Kind regards





From: [REDACTED]
To: [Marler, Brad](#); [Harrold, Andrew](#); [BPC](#)
Cc: [REDACTED]; [CHEYNE](#)
Subject: Kingston Place Stage One follow-up
Date: Tuesday, 5 April 2022 11:08:13 AM
Attachments: [Kingston Place Stage One Structural Engineering Reports_05 April 2022.docx](#)

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Dear Brad and Andrew,

Thank you very much for attending onsite on Monday 28 March 2022 to inspect the Kingston Place Stage One structures.

I am writing to put on record your oral assurances to me during the course of your inspection that the registrar would have regard to - and take into account under the COLA process now in train - all engineering assessments provided to you subsequent to the issue to the builder on 17 December 2021 of the registrar's notice of intention to issue a rectification order.

To that end, please find attached the list of structural engineering reports provided to you to date by the parties regarding the Kingston Place Stage One structures.

For the sake of certainty and clarity, I would be obliged if you would kindly confirm your oral assurances to me - as outlined above - that all engineering assessments in the attached list dated after 17 December 2021 will now be considered by the registrar.

I also wish to draw to your particular regard the builder's agreement to consider *in principle* and without admissions (Mr Abdel-Massih's letter to the registrar dated 24 February 2022 refers) rectification undertakings under Division 4.3 of the COLA, subject to mutual agreement between the registrar's office, the builder, and the owners' corporation.

In that context, I now advise that Mr Abdel-Massih (copied) and I are consulting with a view to agreeing draft rectification undertakings for the registrar's consideration. I would be grateful if you would please confirm my understanding that mutually-agreed rectification undertakings would overtake and/or pre-empt a rectification order i.e. any future rectification order and the current emergency rectification order now in place.

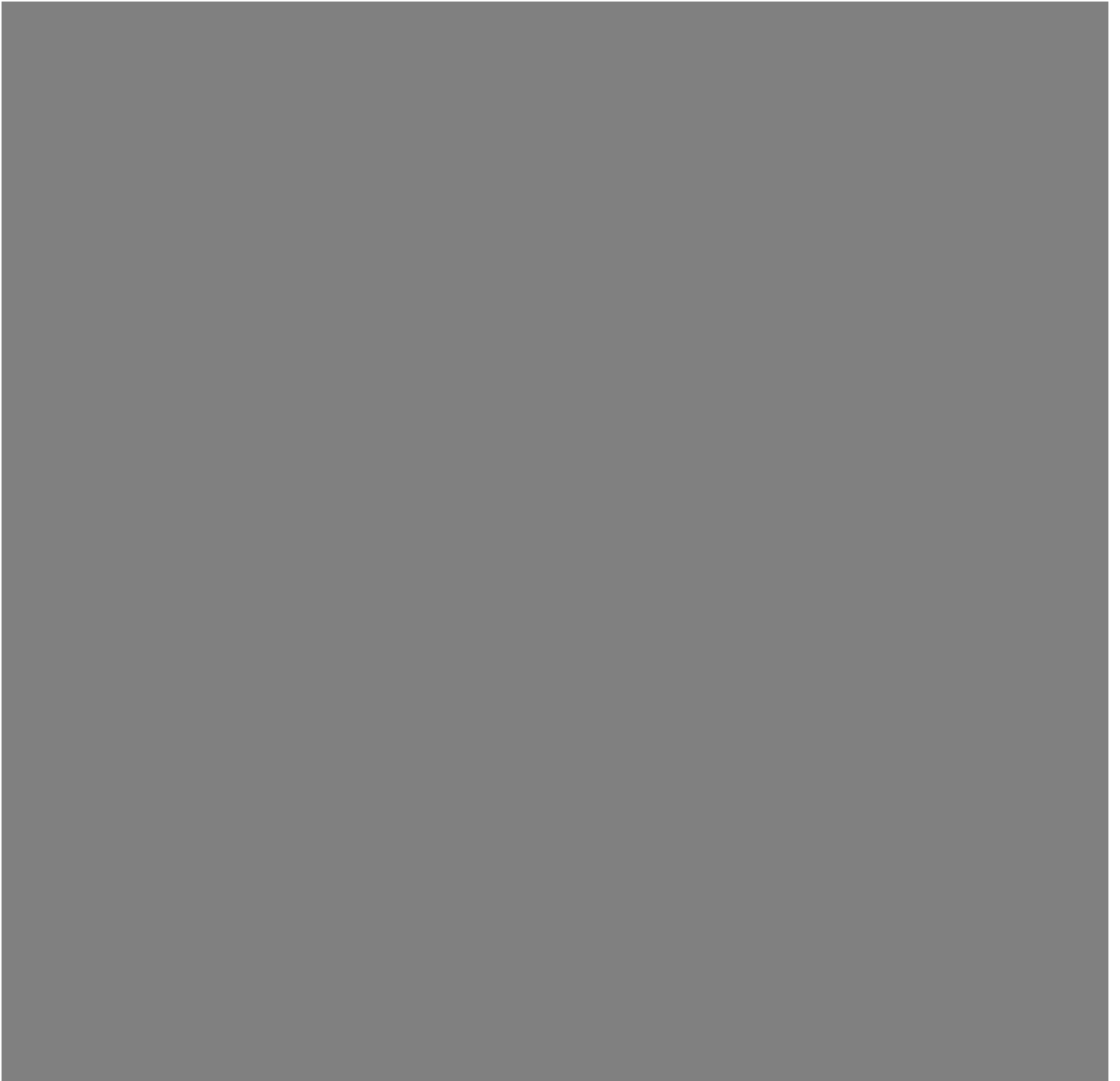
I am copying this letter to Minister Cheyne's office for her awareness, noting with appreciation her response to me dated 1 April 2022 in relation to the regulatory options available to the registrar and in respect of which you have given me the oral assurances outlined above.

Thank you once again for your ongoing assistance. I look forward to hearing from you at your earliest convenience.

Kind regards

[REDACTED]
Owners' Corporation UP3637
[REDACTED]

**KINGSTON PLACE STAGE ONE
STRUCTURAL ENGINEERING REPORTS
2021 - 2022**



From: [Shima, Jean-Marie](#)
To: [REDACTED]
Cc: [REDACTED]@morrispropertygroup.com.au; [Collins, Ellen](#); [Zuzek, Joe](#); [Muir, Richard](#); [REDACTED]
Subject: RE: Morris Construction Corporation Pty Ltd Response to the Construction Occupation's Registrar's Notice of Intention to Make a Rectification Order Kingston Place Stage 1
Date: Thursday, 21 July 2022 4:20:00 PM
Attachments: [image001.png](#)
[Rectification Undertaking S 47B - Template 2.docx](#)

OFFICIAL

Dear [REDACTED],

Re: AC 20210423-23054, B03 S18 18 Kennedy St & 19 Leichhardt St - Kingston Place Stage 1

I am the new case officer taking carriage of this matter and I would like to touch base regarding a couple of things.

I refer to your response dated 24th February 2022 to the Notice of Intention to make Rectification Order (NOI) of 27 January 2022.

In that response, you noted that Morris Construction Corporation Pty Ltd (MCC) is prepared, in principle, to consider giving the Registrar rectification undertakings under Division 4.3 of the Construction Occupations (Licensing) Act 2004 (COLA) on the terms outlined in that letter and subject to mutual agreement between the Registrar, MCC and the Owners Corporation, as represented by [REDACTED].

I have been instructed to reply to your request as follows:

Under section 47B (4) of COLA, the Registrar or a person may suggest draft undertakings before a rectification undertaking is given by an entity under subsection (1). The Registrar would first like to see the draft undertaking which the MCC and the Owners Corporation agreed to before considering it. I suggest also including a schedule of works, as the Registrar would also need to be satisfied that the identified defects will be rectified in a timely manner.

The undertaking should be carefully considered, with particular attention paid to ensuring that:

- The scope of the works as outlined in the undertaking is complete, and there are no works that have been missed
- The timeframes outlined in the undertaking are appropriate,
- Appropriate quality assurance measures have been built into the undertaking

Please be advised that the Registrar would reserve any decision, with regards to the making of a rectification order, until after consideration of any agreed draft rectification undertaking.

Within one calendar month of the date of this email, you are to provide the Registrar with a draft undertaking notice for his consideration. If no further response is provided by 21 August 2022, the Registrar would consider issuing a Rectification Order.

I have attached a template for your reference.

Should have any questions, please contact me via email: BPC@act.gov.au.

Kind regards

Jean-Marie Nshimirimana | Investigator | Construction and Planning Investigations Team
Construction, Utilities and Environment Protection Branch

From: [REDACTED]@morrispropertygroup.com.au
Sent: Thursday, 24 February 2022 5:01 PM
To: BPC <BPC@act.gov.au>; Lhuede, Nick <Nick.Lhuede@act.gov.au>; Harrold, Andrew <Andrew.Harrold@act.gov.au>; Marler, Brad <Brad.Marler@act.gov.au>
Cc: [REDACTED]@morrispropertygroup.com.au; James Morris [REDACTED]@morrispropertygroup.com.au; [REDACTED]
Subject: Morris Construction Corporation Pty Ltd Response to the Construction Occupation's Registrar's Notice of Intention to Make a Rectification Order Kingston Place Stage 1
Importance: High

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Registrar,

1. I confirm I act as General Counsel for Morris Property Group, as represented by Morris Construction Corporation Pty Ltd.
2. Please find **attached** submissions of today's date in response to your notice of intention to make a rectification order in relation to Kingston Place Stage 1, dated 17 December 2021.
3. I look forward to hearing from you at your earliest convenience.

Regards,

[REDACTED] | Morris Property Group

EMAILMPG40years_colour_black



property investment ▪ asset management ▪ development ▪ construction

ACT Ground Floor, 50 Blackall Street, Barton ACT 2600

QLD 3 Glenelg Avenue, Mermaid Beach QLD 4218 | +61 7 5570 9666

PO Box 57, Mermaid Beach QLD 4218

M [REDACTED] **E** ram@morrispropertygroup.com.au **W** www.morrispropertygroup.com.au

Legal Privilege Notice

This email is confidential and may be privileged. If you are not the intended recipient, please note that any disclosure, copying, distribution or use of the contents of this email is prohibited, so please delete this email and notify me promptly.

RECTIFICATION UNDERTAKING

Issued pursuant to s47B of the *Construction Occupations (Licensing) Act 2004*

Place in relation to which this notice applies
Block [...] Section [...] Suburb (otherwise known as '...') – referred to as “the Premises”
Name of the lessee(s)
[insert exact name(s)]

Proposed by	[Insert Builder’s name] ACN: [...]
Address	
Construction Occupation	Builder
Occupation Class	Class [...]
License Number	
License Expiry Date	

Section 1	Undertaking acceptance
------------------	-------------------------------

Pursuant to the *Construction Occupations (Licensing) Act 2004* (COLA), section 47B, [Builder’s name] proposes a rectification undertaking to be accepted by the Construction Occupations Registrar (Registrar).

[Builder] understands that in the Registrar accepting this undertaking is enforceable pursuant to the provisions set out in COLA and agrees to be bound by the undertaking.

[Builder] recognises the Registrar’s concern in relation to the alleged contravention of COLA and the *Building Act 2004*, as set out in the Notice of Intention of [date].

[Builder] understands that the details of the rectification undertaking may be included on a public register if the Registrar deems it necessary or desirable to protect the public.

Section 2	Timing of when the undertaking becomes enforceable
------------------	---

This rectification undertaking takes effect and becomes enforceable when the Registrar’s decision to accept the undertaking is given, and this undertaking is signed by a delegate of the Registrar.

Section 3

Undertaking

Item 1 – [Defect 1]

- [State the details of proposed rectification work, how it addresses the defect and timeframes]

Item 2 – [Defect 2]

- [State the details of proposed rectification work, how it addresses the defect and timeframes]

Item 3 – [Defect 3]

- [State the details of proposed rectification work, how it addresses the defect and timeframes]

Item 4 – [Defect 4]

- [State the details of proposed rectification work, how it addresses the defect and timeframes]

Item 5 – [Defect 1]

- [State the details of proposed rectification work, how it addresses the defect and timeframes]

Item 6 – Notification of delay

Where a delay of more than 7 days occurs in relation to any of the timeframes outlined in this undertaking, [Builder] must provide written notice and reasons to the lessee and the Registrar within 14 days of the delay occurring. The Registrar will then consider whether or not it is appropriate to vary the undertaking in accordance with section 47E(1)(b) of COLA.

Item 7 – General terms in complying with the undertaking

In complying with the undertaking, {builder} must:

- comply with all applicable Territory laws, including but not limited to the *Building Act 2004* and COLA;
- ensure all work is to be done in a proper and skilful manner using new materials suitable for the purpose for which they are to be used and which comply with the standards

under the Building Codes of Australia and National Construction Code applicable at the time of use;

- (c) pay all costs associated with compliance with the undertaking, including but not limited to the cost of materials, plant, labour, a building surveyor, any additional engineering or specialist advice or sign off/approval/certifications (including as required by a building surveyor), and any additional engineering or specialist advice or sign off (including as required by a building surveyor).

Note: It is reasonable that a building surveyor may determine that additional stage and/or hold point inspections are required to ensure works are compliant with the Building Act. The full costs of the entire private certification and building surveying processes are to be borne by PBS Building.

- (d) provide a building surveyor all relevant approvals, certificates and reports required under the Building Act 2004 within 5 working days of them being obtained, to enable the Registrar, if satisfied, to issue a Certificate of Occupancy and Use under the Building Act 2004 in respect of the completed rectification work;
- (e) during the completion of works required by this order, [Builder] must give reasonable notice of work involving loud noise, vibration or unpleasant odours to the lessees, and shall refrain from seeking access to residential units to perform those works unless there are no other options reasonably available.
- (f) if works required by the order prevent access to any residential unit or render any residential unit unable to be occupied, [Builder] must immediately, and for the duration of those works or until access to any such unit is restored:
- i. provide and pay for equivalent furnished residential accommodation to the residents of such units in the suburbs of [insert here]
 - ii. provide and pay for, so far as reasonably necessary to prevent loss and damage, the removal and return of furnishings and possessions within such a unit to a commercial storage provider; and
 - iii. provide and pay for the storage of such furnishings and possessions with a commercial storage provider;
- (g) re-instate or make good any damage to the premises, services and equipment as a result of rectification work; and
- (h) remove and dispose of all waste generated by the rectification work.

Section 4	Contravention of Rectification Undertaking
------------------	---

Section 47H of the *Construction Occupations (Licensing) Act 2004*

- (1) This section applies if the registrar—

- (a) believes on reasonable grounds that an entity has contravened a rectification undertaking; and
- (b) has not—
 - (i) authorised someone to take action under section 37 (3) in relation to the work stated in the rectification undertaking; or
 - (ii) made a rectification order in relation to the entity that gave the rectification undertaking requiring the entity to take the action stated in the undertaking.
- (2) The registrar may apply to the Magistrates Court for an order under subsection (3).
- (3) If the Magistrates Court is satisfied that the rectification undertaking has been contravened, the court may make 1 or more of the following orders:
 - (a) an order requiring the entity that gave the undertaking to ensure that the undertaking is not contravened;
 - (b) an order requiring the entity that gave the undertaking to pay to the Territory the amount assessed by the court as the value of the benefits anyone derived, directly or indirectly, from the contravention of the undertaking;
 - (c) an order that the court considers appropriate requiring the entity that gave the undertaking to compensate someone who has suffered loss or damage because of the contravention of the undertaking;
 - (d) an order discharging the undertaking.
- (4) In addition to the orders mentioned in subsection (3), the court may make any other order the court considers appropriate in the circumstances, including orders directing the entity that gave the undertaking to pay to the Territory—
 - (a) the costs of the proceeding; and
 - (b) the reasonable costs of the registrar in monitoring compliance with the undertaking in the future.

(Insert a signature in handwriting above)
(Name)

(Date Month Year)

TRANSLATION AND INTERPRETER SERVICES

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TRANSLATING AND INTERPRETING SERVICE	
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Canberra and District - 24 hours a day, seven days a week	

From: [Shima, Jean-Marie](#)
To: [REDACTED]
Cc: [REDACTED]@morrispropertygroup.com.au; [REDACTED]; [Collins, Ellen](#); [Zuzek, Joe](#); [Muir, Richard](#)
Subject: FW: Morris Construction Corporation Pty Ltd Response to the Construction Occupation's Registrar's Notice of Intention to Make a Rectification Order Kingston Place Stage 1
Date: Tuesday, 30 August 2022 2:43:00 PM
Attachments: [image001.png](#)
[Rectification Undertaking S 47B - Template 2.docx](#)

OFFICIAL

Dear [REDACTED]

I am just writing to follow up on the below email.
A response was expected by 21 August 2022, but I haven't heard back.
Could you please get back to me by COB Friday 6th September 2022

Kind regards

Jean-Marie Shima

From: Shima, Jean-Marie
Sent: Thursday, 21 July 2022 4:20 PM
To: [REDACTED]@morrispropertygroup.com.au
Cc: [REDACTED]@morrispropertygroup.com.au; [Collins, Ellen <Ellen.Collins@act.gov.au>](mailto:Ellen.Collins@act.gov.au); [Zuzek, Joe <Joe.Zuzek@act.gov.au>](mailto:Joe.Zuzek@act.gov.au); [Muir, Richard <Richard.Muir@act.gov.au>](mailto:Richard.Muir@act.gov.au); [REDACTED]
Subject: RE: Morris Construction Corporation Pty Ltd Response to the Construction Occupation's Registrar's Notice of Intention to Make a Rectification Order Kingston Place Stage 1

OFFICIAL

Dear [REDACTED]

Re: AC 20210423-23054, B03 S18 18 Kennedy St & 19 Leichhardt St - Kingston Place Stage 1

I am the new case officer taking carriage of this matter and I would like to touch base regarding a couple of things.

I refer to your response dated 24th February 2022 to the Notice of Intention to make Rectification Order (NOI) of 27 January 2022.

In that response, you noted that Morris Construction Corporation Pty Ltd (MCC) is prepared, in principle, to consider giving the Registrar rectification undertakings under Division 4.3 of the Construction Occupations (Licensing) Act 2004 (COLA) on the terms outlined in that letter and subject to mutual agreement between the Registrar, MCC and the Owners Corporation, as represented by [REDACTED].

I have been instructed to reply to your request as follows:

Under section 47B (4) of COLA, the Registrar or a person may suggest draft undertakings before a rectification undertaking is given by an entity under subsection (1). The Registrar would first like

to see the draft undertaking which the MCC and the Owners Corporation agreed to before considering it. I suggest also including a schedule of works, as the Registrar would also need to be satisfied that the identified defects will be rectified in a timely manner.

The undertaking should be carefully considered, with particular attention paid to ensuring that:

- The scope of the works as outlined in the undertaking is complete, and there are no works that have been missed
- The timeframes outlined in the undertaking are appropriate,
- Appropriate quality assurance measures have been built into the undertaking

Please be advised that the Registrar would reserve any decision, with regards to the making of a rectification order, until after consideration of any agreed draft rectification undertaking.

Within one calendar month of the date of this email, you are to provide the Registrar with a draft undertaking notice for his consideration. If no further response is provided by 21 August 2022, the Registrar would consider issuing a Rectification Order.

I have attached a template for your reference.

Should have any questions, please contact me via email: BPC@act.gov.au.

Kind regards

Jean-Marie Nshimirimana | Investigator | Construction and Planning Investigations Team
Construction, Utilities and Environment Protection Branch

From: [REDACTED] <[\[REDACTED\]@morrispropertygroup.com.au](mailto:[REDACTED]@morrispropertygroup.com.au)>
Sent: Thursday, 24 February 2022 5:01 PM
To: BPC <BPC@act.gov.au>; Lhuede, Nick <Nick.Lhuede@act.gov.au>; Harrold, Andrew <Andrew.Harrold@act.gov.au>; Marler, Brad <Brad.Marler@act.gov.au>
Cc: [REDACTED] <[\[REDACTED\]@morrispropertygroup.com.au](mailto:[REDACTED]@morrispropertygroup.com.au)>; James Morris <[\[REDACTED\]@morrispropertygroup.com.au](mailto:[REDACTED]@morrispropertygroup.com.au)>; [REDACTED] <[\[REDACTED\]@morrispropertygroup.com.au](mailto:[REDACTED]@morrispropertygroup.com.au)>
Subject: Morris Construction Corporation Pty Ltd Response to the Construction Occupation's Registrar's Notice of Intention to Make a Rectification Order Kingston Place Stage 1
Importance: High

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Registrar,

1. I confirm I act as General Counsel for Morris Property Group, as represented by Morris Construction Corporation Pty Ltd.
2. Please find **attached** submissions of today's date in response to your notice of intention to make a rectification order in relation to Kingston Place Stage 1, dated 17 December 2021.

3. I look forward to hearing from you at your earliest convenience.

Regards,

 Morris Property Group

EMAILMPG40years_colour_black



property investment ▪ asset management ▪ development ▪ construction

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PO Box 57, Mermaid Beach QLD 4218

M  **E**  [@morrispropertygroup.com.au](mailto:info@morrispropertygroup.com.au) **W** www.morrispropertygroup.com.au

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From: [BPC](#)
To: [REDACTED]
Cc: [BPC](#); [Lhuede, Nick](#); [Sloan, Sean](#); [Zuzek, Joe](#)
Subject: Kingston Place Stage 1 - regulatory outcomes
Date: Tuesday, 11 April 2023 9:57:40 AM
Attachments: [image001.png](#)

OFFICIAL

Dear Owners (Units Plan 3637),

Re: Kingston Place Stage 1 [SF Case 00200730 / SF Investigation 20210423-23054]

Thank you for your email dated 23 March 2023. I apologise for the delay in my response. Access Canberra originally received complaints in relation to defective works in December 2020 and March 2021. As a result of the serious building defects identified, an Emergency Rectification Order was issued to the builder in April 2021.

At this time, Access Canberra relied on the information provided by the Executive Committee, informing that such a resolution was occurring and agreed to hold off further regulatory action at their request. Access Canberra encourages the collaborative resolution of disputes and will assist in the process where it can, trying to resolve matters through more informal mechanisms without needing to resort to litigation.

The Construction Occupations Registrar (Registrar) is disappointed to learn that a resolution has not yet been reached; however, the statutory time period in which the Registrar could take further regulatory action against the builder in relation to the defects expired on 22 March 2022. This 10-year time provision is outlined under section 37(d) of the *Construction Occupations (Licensing) Act 2004*.

As the Registrar no longer holds any statutory authority on this matter, and there are no further regulatory avenues available to have the builder undertake these works, the decision has been made to close this investigation.

I appreciate that you may be disappointed with this outcome and that it may not meet your expectations or hopes. If you remain dissatisfied with this response, you may request an internal review. Internal reviews will be considered by a senior officer who was not involved in the original response. As always, you are encouraged to seek independent legal advice regarding what further actions are open to you in regard to achieving a resolution with the builder.

Please note, the Emergency Rectification Order of May 2021 remains in force. The Order, and associated temporary propping, must remain in place until such time as the defects are rectified.

Regards,

**Ellen Collins | Assistant Director, Construction & Planning Investigations
Construction, Utilities and Environment Protection Branch**

Phone: 02 6205 9643 | [Sch 2.2\(a\)\(ii\)](#) | Email: ellen.collins@act.gov.au

Access Canberra | Chief Minister, Treasury and Economic Development Directorate | ACT Government

GPO Box 158, Canberra City ACT 2601 | act.gov.au

We acknowledge the Traditional Custodians of the ACT, the Ngunnawal people. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

