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Details of Filing

| | |
|------------------|---|
| Document Lodged: | Statement of Claim - Form 17 - Rule 8.06(1)(a) |
| File Number: | NSD1346/2015 |
| File Title: | David Scott Hopkins (as Trustee of the David Hopkins Super Fund) v Macmahon Holdings Limited ACN 007 634 406 |
| Registry: | NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA |



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 1/05/2018 9:01:30 AM AEST

Registrar

Important Information

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Further Amended Statement of Claim

No. NSD 1346 of 2015

Federal Court of Australia

District Registry: New South Wales

Division: General

David Scott Hopkins (as trustee of The David Hopkins Super Fund)

Applicant

Macmahon Holdings Limited

ACN 007 634 406

Respondent

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| | |
|--|---|
| Filed on behalf of (name & role of party) | David Scott Hopkins, Applicant |
| Prepared by (name of person/lawyer) | WAD Edwards with AH Edwards |
| Law firm (if applicable) | ACA Lawyers |
| Tel (02) 9216 9898 | Fax (02) 9216 9850 |
| Email | steven.lewis@acalawyers.com.au |
| Address for service (include state and postcode) | Level 3, 44 Martin Place Sydney NSW 2000 |

| | | |
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NOTE AS TO TERMINOLOGY

In this Further Amended Statement of Claim, the following conventions are used in referring to financial results:

1. FY 2011 and FY 2012 (by way of example) refer to the financial years ended ~~31 July 2011~~ and ~~31 July 2012~~ 30 June 2011 and 30 June 2012;
2. 1H 2012 and 2H 2012 (by way of example) refer to the first and second half of FY 2012 (i.e. the six month period ended 31 December 2011 and the six month period ended ~~31 July 2012~~ 30 June 2011, etc.); and
3. 1Q 2012 and 2Q 2012 (by way of example) refer to the first and second quarters of FY 2012 (i.e. the first three month period ended ~~31~~ 30 September 2011 and the second three month period 31 December 2011, etc.).

The defined terms and document references in this pleading are set out in Schedule 1 to this Further Amended Statement of Claim.

References to subparagraphs include their chapeau and, unless otherwise indicated, references to paragraphs include all of their subparagraphs.

A. INTRODUCTION

I The Applicant and Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**) on behalf of the applicant and all persons who or which:
 - (a) acquired an interest in ordinary shares (**Securities**) in the respondent (**Macmahon**) during the period from 10 April ~~2 May~~ 2012 to 19 September 2012 (the **Relevant Period**);
 - (b) are alleged to have suffered loss or damage by reason of the conduct of Macmahon pleaded in this Further Amended Statement of Claim; and
 - (c) are not any of the following:
 - (i) a related party (as defined by section 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of Macmahon;
 - (ii) a related body corporate (as defined by section 50 of the *Corporations Act*) of Macmahon;
 - (iii) an associated entity (as defined by section 50AAA of the *Corporations Act*) of Macmahon; or
 - (iv) an officer or a close associate (as defined by section 9 of the *Corporations Act*) of Macmahon,

(collectively, **Group Members**).

2. As at the commencement of this proceeding, seven or more Group Members have claims against Macmahon within the meaning of section 33C FCAA of the ~~Federal Court of Australia Act 1976 (Cth)~~.
3. The applicant (in his capacity as trustee of the David Hopkins Super fund):
 - (a) purchased 50,000 of Macmahon's Securities on 11 September 2012;
 - (b) purchased 25,000 of Macmahon's Securities on 13 September 2012; and
 - (c) sold 75,000 of Macmahon's Securities on 12 June 2013,
 on the financial market operated by the Australian Securities Exchange Limited (**ASX**).

Particulars

Details of the applicant's transactions are set out in Schedule 2 to this Further Amended Statement of Claim.

II Macmahon

4. At all material times prior to and during the Relevant Period, Macmahon was, a construction and mining contract company with major projects in Australia and overseas across the marine, transport, water, rail and resource sectors.
5. At all material times prior to and during the Relevant Period:
 - (a) Macmahon's construction business (and Construction West business unit) contributed a significant proportion of Macmahon's annual revenue; and
 - (b) increased irrecoverable costs or losses on any one particular construction projects were capable (having regard to the low margins enjoyed by the construction business) of having a significant adverse impact on Macmahon's profitability (**Construction Business Risk**).

Particulars

As to sub-paragraphs (a) and (b), ~~the~~ revenues and profit before tax margins enjoyed by Macmahon and Macmahon's construction business are set out in:

- (i) *Macmahon's Annual Report for the year ended 30 June 2009, published on 24 September 2009, pp.6, 12.*
- (ii) *Macmahon's Annual Report for the year ended 30 June 2010, published on 27 August 2010 pp.1,6.*
- (iii) *Macmahon's Annual Report for the year ended 30 June 2011 published on 16 August 2011 (the **16 August 2011 Annual Report**), pp.11, 22.*

As to sub-paragraph (b), the Applicant refers to the fact that given the low margins as a percentage of revenue, increases in irrecoverable costs on particular projects were capable of diminishing those margins and/or resulting in adverse profit impacts.;

(iv) Between FY2007 and FY2011, Macmahon's ten worst performing construction projects in Western Australia experienced a total variance to tender of -\$66.2m (Macmahon Construction - Diagnostic Review - Interim Report to Board, 24 November 2010 [MAH.500.001.4943], p 13).

(v) Between FY2009 and FY2011, Macmahon's construction business failed to meet Macmahon's PBT targets for it because of underperformance on projects that would otherwise have realised adequate margin (Macmahon Construction - Diagnostic Review - Interim Report to Board, 24 November 2010 [MAH.500.001.4943], p 13 and Macmahon Construction - Business Review - Complete Report (with Appendices) - December 2010 [MAH.500.025.5865], p 9, "Construction business has struggled to meet budget and experienced deteriorating profits over 2009 and 2010").

(vi) The scope document for the Construction Review (21 October 2010, [MAH.500.004.0544]) stated:

"Reason for review

The performance of the Construction group has failed to meet the Board's expectations over recent years. In the 3 year period from July 08 to June 11 (including 2011 forecast) the Construction business has / will underperform compared to budget by 9% on revenue and 52% on profit, and in all three years the result is below the Minimum Hurdle of 4.25% (Profit before Tax on revenue).

The major failings of the Construction business have been:

- i) significant under-performance on certain projects, with the most significant underperformance being on 4 rail projects in the Pilbara (Gull to Tunkawanna, Newman SOBs, Mesa A and RGP5 Rail North);
- ii) winning insufficient work; and
- iii) inability in all cases (except for the NT) for the individual State business units to deliver sufficient revenue and profit to provide a consistent return after overheads."

(vii) Macmahon Construction - Diagnostic Review - Interim Report to Board, 24 November 2010 [MAH.500.001.4943], stated (pp 4, 1):

"Key Messages – Overview

- The Macmahon Construction business's ("Construction") profitability has consistently fallen short of plan in recent years, declining at 9% CAGR since 2008 with revenue growth offset by declining margins, increasing overheads and a number of large project losses.

- A number of specific issues around BD capabilities, project risk management and control, organisation structure, leadership and organisation culture have been identified.

...

Key Messages – Drivers Of Recent Performance

- The Construction business is caught in transition between:

...:

– Struggling to compete and deliver large projects due to a mediocre track record, weak relationships, and the lack of risk and cost management process required for the increased complexity of projects.

- The review has identified a number of specific issues that appear to be driving recent poor profitability:

- Not delivering projects to tender consistently - highlighted by underperforming contracts in WA that lost a cumulative profit of ~\$66M from FY07 to FY11 or >50% of cumulative profit over this period"

(viii) Macmahon's margins and returns were in the lower end of its industry peer group in FY2011 (Group Business Plan Overview - 2012-2014 - May 2011, p 13 [MAH.500.001.3575].

(ix) Macmahon Audit Committee Papers, August 2011, [MAH.500.004.0402]:

"High Level Risk and Opportunities FY12

| <u>Risks</u> | <u>Mitigation strategy</u> |
|---|---|
| <u>1. Another major project loss like RGP5 (Most likely on large new jobs: e.g. Curtis Island, Hope Downs, CSA)</u> | <ul style="list-style-type: none"> - <u>Engineering reviews of construction tenders (Construction EGMS)</u> - <u>Project reviews by internal project improvement team headed by K Brown (N Bowen)</u> - <u>Assign best people to projects with greatest risk (All)</u> - <u>Apply "lessons learnt" from RGP5 to future construction projects (Construction EGMS)"</u> |

(see also Group Business Plan Overview - 2012-2014 - May 2011 p 28 [MAH.500.001.3575]).

(x) Board Report June 2012, p 9, "Construction West continues to have unacceptably high variances in the month to month results compared to forecast" [MAH.500.001.2829]

(xi) KPMG, Review and EBIT Analytical Review, Construction Division, 30 June 2012 [MAH.500.009.8964]

(xii) Board Report July 2012, Board Memorandum, "The key issues for 2012 were...Western Australia performed very poorly on most jobs... actual results for the 2012 FY have been extremely poor compared to budget ... Options with CBU ... RETAIN ... Disadvantages ... Risk of underperformance and impact on share price,,Risk of RGP5 type disasters and potential to put whole of MAH viability at risk...There are many facts to be considered when evaluating the future direction of the CBU but the issues are:...c) Potential negative impact of a poor contract" [MAH.500.002.5839]

(xiii) Board Report, August 2012, p11 "For both HD4 and Solomon there remains risk/opportunity on the final result depending on how we perform over the September quarter. These two jobs have ramped up significantly...and as such, later/early completion will materially impact results" [MAH.500.001.2954]

Further particulars will be provided when the Applicant serves its expert evidence in chief.

6. Macmahon is, and at all material times was:
- (a) incorporated pursuant to the Corporations Act and capable of being sued;
 - (b) a corporation included in the official list of the financial market operated by ASX and whose securities are ED securities for the purposes of section 111AE of the Corporations Act;
 - (c) subject to and bound by the Listing Rules of the ASX (the **Listing Rules**);
 - (d) a listed disclosing entity within the meaning of section 111AL(1) of the Corporations Act;
 - (e) a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - (f) a corporation within the meaning of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**).

III Section 674(2) of the Corporations Act

7. At all material times, Macmahon was bound by Listing Rules 3.1 and 19.12.
8. At all material times, Listing Rule 3.1 provided that once an entity is, or becomes, aware of any information concerning the entity that a reasonable person would expect to have a material effect on the price or value of the entity's Securities (**Material Information**), the entity must, unless the exceptions in Listing Rule 3.1A apply, tell the ASX the Material Information immediately.
9. At all material times, Listing Rule 19.12 provided that an entity becomes aware of information if a director or executive officer has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a director or officer of that entity.
10. At all material times, section 674(2) of the Corporations Act applied to Macmahon by reason of:
- (a) the matters alleged in paragraphs 7 to 8 above; and
 - (b) sections 111AP(1) and/or 674(1) of the Corporations Act.

(The requirements of Listing Rules 3.1 and 19.12 and section 674(2) of the Corporations Act will be referred to collectively in this Further Amended Statement of Claim as the **Continuous Disclosure Requirements**.)

IIIA Officers of Macmahon

- 10A. At all material times prior to and during the Relevant Period, Mr Nicholas Bowen was Macmahon's Chief Executive Officer and Managing Director.

10B. At all material times during the Relevant Period, Mr Ross Carroll was Macmahon's Chief Operating Officer - Mining.

10C. From no later than 14 July 2011 and until 16 July 2012, Mr Aidan Mullen was:

- (a) Macmahon's Executive General Manager, Construction West;
- (b) a member of Macmahon's Executive Leadership Group; and
- (c) responsible for the overall delivery of an infrastructure project referred to as "Hope Downs 4 – Rail Earthworks and Bridge Construction" (the **HD4 Project**).

Particulars

- (i) Board Meeting Minutes, 27 May 2011, Item 8.2 [MAH.500.004.0197]
- (ii) Minutes of ELG Meeting, 14 July 2011 [MAH.500.004.1454]
- (iii) Email Nick Bowen to Aidan Mullan, "Re: Termination of Employment with Macmahon - Aidan Mullan", 6 July 2012 [MAH.500.007.4141]
- (iv) Hope Downs 4 Rail Project, Proposed Project Management Structure [MAH.500.007.5976].
- (v) The Macmahon Audit Committee Papers, August 2011 [MAH.500.004.0402] stated:

| <u>Opportunities</u> | <u>Capture strategy</u> |
|--|--|
| <u>1. Restore the Macmahon reputation in the Pilbara</u> | <u>Successfully deliver Hope Downs 4 (A Mullan)"</u> |

10D. From 16 July 2012 and during the Relevant Period, Mr Ashley Mason was:

- (a) acting as Macmahon's Executive General Manager, Construction West; and
- (b) a member of Macmahon's Executive Leadership Group; and
- (c) responsible for the overall delivery of the HD4 Project.

Particulars

Email Nick Bowen to Aidan Mullan, "Re: Termination of Employment with Macmahon - Aidan Mullan", 6 July 2012 [MAH.500.007.4141]

10E. By reason of the matters pleaded at paragraphs 10A to 10D above, information of which each or any of:

- (a) Mr Bowen;
- (b) Mr Mullan;
- (c) Mr Carroll; and
- (d) Mr Mason.

became aware, or which ought reasonably to have come into his possession in the performance of his respective duties as an officer of Macmahon, was information of which Macmahon was aware (within the meaning of awareness in ASX Listing Rule 19.12).

B. 19 SEPTEMBER 2012 DISCLOSURES AND THEIR IMPACT

I Macmahon's 19 September 2012 Announcements

11. During the Relevant Period, Macmahon was engaged in the construction of an infrastructure project referred to as "Hope Downs 4 – Rail Earthworks and Bridge Construction" (that is, the HD4 Project).
12. On 17 September 2012, at the request of Macmahon, trading in Macmahon's Securities on the ASX was halted pending the release of a statement by Macmahon in relation to Macmahon's earnings guidance as a result of deteriorating financial performance in the construction business, and increased uncertainty about the outlook for new construction work given recent market volatility.
13. On 19 September 2012, Macmahon made the following public announcements:
 - (a) a document entitled "Earnings Guidance Update" lodged with the ASX and publicly released (the **19 September 2012 Earnings Update**); and
 - (b) a presentation to investment analysts concerning the 19 September 2012 Earnings Update (the **19 September 2012 Analyst Briefing**).

Particulars

The 19 September 2012 Analyst Briefing was given in a conference call conducted by Chairman, Ken Scott-Mackenzie and Chief Executive Officer, Ross Carroll on behalf of Macmahon.

14. In the 19 September 2012 Earnings Update, Macmahon stated, and it was the fact, that:
 - (a) a further management review of the HD4 Project had been carried out;
 - (b) a number of issues had been identified with earthworks productivities and the order in which work needed to be performed to meet the revised completion program at the HD4 Project;
 - (c) these issues would result in significant additional costs being incurred to ensure that the client's schedule for track laying was met and that the HD4 Project was substantially completed in 1H 2013;
 - (d) the HD4 Project, together with the uncertainties surrounding the commitment and timing of new projects, would have a major impact on Macmahon's pre-tax earnings for its construction business in FY 2013; and

- (e) Macmahon had updated its earning guidance for FY 2013 and now anticipated full year profit after tax to be in the range of \$20 to \$40 million.
15. In the 19 September 2012 Analyst Briefing, Macmahon stated, and it was the fact, that:
- (a) the loss on the HD4 Project and the shortfall in revenue from additional work were significant;
 - (b) the HD4 Project was an extremely complex job and the complexity and rescheduling of the HD4 Project to meet the client's track laying requirements had been underestimated;
 - (c) expenditure on the HD4 Project was about \$500,000 a day with the result that any adjustments to the program would have a significant impact;
 - (d) the complexity of finishing the HD4 Project, including tidying up and demobilising had been underestimated;
 - (e) the extent of resources required for the final period of the program of the HD4 Project had also been underestimated; and
 - (f) the time and cost of additional resources was a compounding effect of the extent of resources required for the final period of the program of the HD4 Project.

Particulars

Transcript of 19 September 2012 Analyst Briefing at pp 3-4.

16. On 19 September 2012:
- (a) Macmahon's Chief Executive Officer and Managing Director, Nick Bowen, resigned from Macmahon, effective immediately;
 - (b) Ross Carroll (who had been Macmahon's Chief Financial Officer for 6 years), was appointed Chief Executive Officer and Managing Director of Macmahon.

Particulars

ASX announcement "Macmahon appoints new CEO" published and lodged with ASX on 19 September 2012.

II Macmahon's share price decline

17. On 19 September 2012 following the publication of the 19 September 2012 Earnings Update, and on and from that day Macmahon's share price declined significantly.

Particulars

Macmahon's share price history from 10 April 2012 ~~2 May 2012~~ to 24 September 2012 is set out in Schedule 3 to this Further Amended Statement of Claim.

- (i) *On 14 September 2012 the closing price of Macmahon's Securities was \$0.53*

- (ii) *On 17 and 18 September 2012, Macmahon Securities did not trade by reason of the trading halt pleaded in paragraph 12*
- (iii) *on 19 September 2012, fell to a low of \$0.28 per share and closed at \$0.32 per share;*
- (iv) *on 20 September 2012, fell to a low of \$0.31 per share and closed at that price;*
- (v) *on 21 September 2012, traded at a low of \$0.31 per share and closed at that price; and*
- (vi) *on 24 September 2012, fell to a low of \$0.30 per share and closed at that price.*

C. THE PRE HD4 PROJECT CONSTRUCTION REVIEW

I The Construction Review

18. In 1H 2011, Macmahon made a net loss after tax of \$13.2 million as a result of a \$48.9 million write down of a construction project known as “RGP5” due to RGP5 failing to deliver its forecast profit due to an escalation in costs to complete RGP5.

Particulars

16 August 2011 Annual Report, p 10.

19. Between about 19 October 2010 and 23 June 2011, Macmahon undertook a full analysis of its construction business comprising an independent review focusing on strategic effectiveness, financial performance, organisation structure and cost and project management systems that was directed to implementing the necessary actions to improve performance (the **Construction Review**).

Particulars

- (i) *Macmahon’s ASX Release published and lodged with ASX dated 19 October 2010 and entitled “Market Update” (the **19 October 2010 Market Update**).*
 - (ii) *Macmahon’s ASX Release published and lodged with ASX dated 26 November 2010 and entitled “2010 Annual General Meeting Chief Executive Officer’s Report”, p 6 (the **26 November 2010 AGM CEO’s Report**).*
 - (iii) *Macmahon’s ASX Release published and lodged with ASX dated 23 June 2011 and entitled “Macmahon Construction management changes” (the **23 June 2011 Media Release**).*
 - (iv) *“Review of the Macmahon Construction Business” scope document (21 October 2010, [MAH.500.004.0544])*
20. By no later than 26 November 2010, by reason of the Construction Review, Macmahon identified that areas of concern existed in, and there were opportunities to improve the performance, of Macmahon’s construction business through more stringent project selection and an improvement in training and development of project staff (**Construction Review Preliminary Findings**).

Particulars

(i) 26 November 2010 AGM CEO's Report, p 7.

(ii) Macmahon Construction - Diagnostic Review - Interim Report to Board, 24 November 2010 [MAH.500.001.4943]

21. As part of the Construction Review, Macmahon undertook a comprehensive analysis of its construction contract styles and structures that was directed to improving Macmahon's contract selection process and commercial management capability across all of Macmahon's projects to ensure that the contracts which Macmahon took on were a best fit with the business (**Construction Review Comprehensive Analysis**).

Particulars

(i) 26 November 2010 AGM CEO's Report, p 7.

(ii) Macmahon Construction - Business Review - Complete Report (with Appendices) - December 2010 [MAH.500.025.5865]

II The Construction Review Implementation

22. As at 23 February 2011, the Construction Review was complete (**Construction Review Completion**) and Macmahon was working towards implementing several key recommendations (**Construction Review Implementation**).

Particulars

Macmahon ASX release published and lodged with ASX dated 23 February 2011, entitled "Interim Financial Report for the six months ended 31 December 2010 issued 23 February 2011 (23 February 2011 ASX Release).

23. As at 23 February 2011, the key recommendations of the Constructions Review which Macmahon was working towards implementing included:

- (a) a stronger focus being applied to project selection;
- (b) improved project selection processes; and
- (c) improved project management controls,

(Construction Review Key Recommendations)

Particulars

(i) 23 February 2011 ASX Release, pp. 9 and 11

(ii) Macmahon Construction - Diagnostic Review - Interim Report to Board, 24 November 2010 [MAH.500.001.4943]

(iii) Macmahon Construction - Business Review - Complete Report (with Appendices) - December 2010 [MAH.500.025.5865]

D. THE HD4 PROJECT

I Award of the contract for the HD4 Project

23A. On 28 February 2011, Macmahon submitted a tender for the HD4 Project.

Particulars

TENDER SUBMISSION Hope Downs 4 Rail Project (Contract No. HD4R/B/CC/1101) [MAH.500.002.4849].

23B. Macmahon's tender submission for the HD4 Project:

- (a) included a construction program that accelerated the tender guideline completion date by four weeks (**Tender Acceleration**); and
- (b) was priced aggressively (**Tender Pricing**).

Particulars

Letter Rob van Kappel to Calibre, 2 May 2011, Hope Downs 4 Rail Project Further Clarification to Access Dates [MAH.500.002.2362]

Estimating Handover to Construction [MAH.500.002.2748]

24. On or around 4 July 2011, Macmahon was awarded three contracts for Hamersley Iron Pty Ltd, a subsidiary of Rio Tinto (together, **Rio Tinto**), known as the Rio Tinto 333 Programme, worth an estimated combined value of \$129 million, including the HD4 Project which was worth \$99 million.

Particulars

- (i) *Macmahon's Media Release dated 4 July 2011 and entitled "Macmahon awarded Rio Tinto Iron Ore Construction Work" (the **4 July 2011 Media Release**).*
- (ii) *16 August 2011 Annual Report, p 22.*
- (iii) *Macmahon's Annual Report for FY 2012 dated 20 August 2012 (the **20 August 2012 Annual Report**), p 24.*

25. The contract for the HD4 Project required Macmahon to construct 52 kilometres of greenfields rail formation and two three-span rail bridges, including earthworks, construction of culverts, open drains, road works and rail crossings.

Particulars

- (i) *4 July 2011 Media Release.*
- (ii) *20 August 2012 Annual Report, p 24.*
- (iii) Hope Downs 4 Rail Project, Conformed Contract for LHR Extension Earthworks Drainage and Bridge Construction (Contract No. HD4R/B/CC/1101) [MAH.500.001.5444] (**HD4 Contract**)

II Features of the HD4 Project and HD4 Contract

26. As at 4 July 2011:

- (a) planning work for the HD4 Project was expected to start immediately;

- (b) site construction works were expected to start in October 2011;
- (c) the HD4 Project was estimated to have a 10 month construction period, being from October 2011 until August 2012; and
- (d) the peak site workforce for the HD4 Project was expected to be approximately 300 people.

Particulars

4 July 2011 Media Release.

26A. The HD4 Contract provided (adopting terms below as defined in the HD4 Contract):

- (a) the Engineer was Calibre Rail Pty Ltd (**Calibre**):
- (b) the Contract Price:
 - (i) was a fixed sum, being the Contract Price of \$90,703,553.28, subject only to formal variations issued by the Engineer (Agreement cl 3, Schedule Item 12, General Conditions cl 44):
 - (ii) would be paid to Macmahon on a monthly basis after submission of a progress claim to Calibre showing the work actually performed by Macmahon and calculated by reference to fixed prices set out in the Remuneration Schedule (General Conditions cl 39, Schedule A – Remuneration Schedule) (together, **Fixed Price Term**).
- (d) the Works comprised the LHR Extension Earthworks and drainage, including construction of two bridges situated at Weeli Wolli and Coondiner, and all other things that are or may be required to be performed by Macmahon under, or in accordance with the HD4 Contract (Schedule Item 4):
- (e) the Works were divided into five Separable Parts, comprising:
 - (i) Separable Part 1 – Hope Downs Junction Ch 452.4 to 457.020 (**SP1**):
 - (ii) Separable Part 2 – Weeli Wolli Section (incl Bridge) Ch 457.020 to 479.135 (**SP2**):
 - (iii) Separable Part 3 – Rhodes Ridge Section Ch 479.135 to 498.014 (**SP3**):
 - (iv) Separable Part 4 – Coondiner Section (incl Bridge) Ch 489.014 to 505.764 (**SP4**):
 - (v) Separable Part 5 – West Angeles Road Re-Alignment (**SP5**),
(Schedule Items 9, 10 and 11):

- (f) Macmahon was required to complete each Separable Part of the Works not later than the Completion Date specified in relation to that Separable Part (cl 5(b), Schedule Item 10);
- (g) Macmahon was to have access to each Separable Part at the Access Date specified in relation to that Separable Part (Schedule Item 9);
- (h) Macmahon was liable to pay Liquidated Damages for each day or part thereof for failure to complete a Separable Part of the Works on or before the applicable Completion Date, set cumulatively at 3.5% of the Contract Price, subject to the caps on Liquidated Damages for which the HD4 Contract provided;
- (i) Macmahon was required to submit a detailed construction schedule to Calibre, which would become the Approved Construction Schedule (General Conditions cl 8) (**Construction Schedule Term**);
- (j) if Calibre formed the opinion that Macmahon would not be able to complete the Works in accordance with the Approved Construction Schedule it would be entitled to instruct Macmahon to work overtime (including night works) and furnish additional labour and resources, without additional cost to Rio Tinto, until it was satisfied Macmahon was abiding by the approved construction schedule (General Conditions cl 9) (**Corrective Action Term**).

26B. In accordance with the terms of the HD4 Contract set out at paragraph 26A above, the applicable Access Dates and Completion Dates for the each of the Separable Parts, and consequent available construction time, were as follows:

| <u>Separable Part</u> | <u>Access Date</u> | <u>Completion Date</u> | <u>Construction Time</u> |
|------------------------------|---------------------------|-------------------------------|---------------------------------|
| <u>SP1</u> | <u>4 January 2012</u> | <u>1 May 2012</u> | <u>118 days</u> |
| <u>SP2</u> | <u>1 October 2011</u> | <u>1 June 2012</u> | <u>244 days</u> |
| <u>SP3</u> | <u>1 October 2011</u> | <u>1 June 2012</u> | <u>244 days</u> |
| <u>SP4</u> | <u>1 October 2011</u> | <u>15 June 2012</u> | <u>258 days</u> |
| <u>SP5</u> | <u>1 October 2011</u> | <u>19 November 2011</u> | <u>49 days</u> |

26C. As at 4 July 2011, Macmahon budgeted that its performance of the HD4 Contract would:

- (a) require \$80,357,214 in direct and indirect costs to complete; and

- (b) realise from the contract price of \$90,703,553 (including provisional sums) a profit margin of 12.9%, or \$10,346,339.

Particulars

C934 HD4 Rail CVR December 2011, "Original Bid" [MAH.500.001.3949]

III Proposal to accelerate the HD4 Contract

- 26D. On 9 August 2011, Calibre directed that the Access Date for each of the Separable Parts of the Works under the HD4 Contract would be delayed.

Particulars

Letter Calibre to Macmahon, 9 August 2011, Hope Downs 4 Rail Project – Revised Access Dates [MAH.500.001.0133]

- 26E. On 30 September 2011, Rio Tinto requested that Macmahon investigate options for accelerating the Completion Date under the HD4 Contract for handover of rail earthworks formations in suitable condition for tracklaying, including complete sub-ballast capping, (Sub-Ballast Handover) by up to three months.

Particulars

Email Steve Piscetek to Aidan Mullan, 30 September 2011, HD4 Meeting – Delay [MAH.500.001.0173]

- 26F. On or about 7 October 2011, Rio Tinto agreed to pay Macmahon a fixed sum of \$59,000 per week in order for Macmahon to retain key staff until the delayed Access Dates to plan the HD4 Project (Staff Retention Payment).

Particulars

Email Steve Piscetek to Anthony Douglass, "HD4 Delayed start - Costs to maintain People and Plant for rapid start up", 7 October 2011 [MAH.500.001.0175]

- 26G. On 14 October 2011, Calibre directed that the Access Date for each of the Separable Parts of the Works under the HD4 Contract would be further delayed to 10 January 2012.

Particulars

Letter Calibre to Macmahon, 14 August 2011, Hope Downs 4 Rail Project – Revised Access Dates (2) [MAH.501.004.0356]

- 26H. On 2 November 2011, Calibre:

- (a) directed that the Access Date for each of the Separable Parts of the Works under the HD4 Contract would be further delayed to 1 March 2012 for SP1, and 1 February 2011 for SP2, SP3, SP4 and SP5; and
- (b) proposed revised Completion Dates for each of the Separable Parts.

Particulars

(i) Letter Calibre to Macmahon, 2 November 2011, Hope Downs 4 Rail Project – Revised Access Dates (3) and Completion Dates [MAH.500.001.9263]

(ii) Hope Downs 4 Rail Project, Project Status Report, November 2011 [MAH.500.001.3852]

26I. On 18 November 2011, Macmahon in a presentation to Rio Tinto:

- (a) proposed a number of initiatives that could be adopted in order to bring forward tracklaying; and
- (b) informed Rio Tinto that achieving an Interim Track Ready Stage by 10 September 2011, whilst challenging, was achievable.

Particulars

(i) Hope Downs 4 Rail Project – Options to Accelerate the Rail Earthworks Construction Schedule [MAH.500.001.0001]

(ii) Email Johan Bell to Anthony Douglass, 12 December 2011, Acceleration of Works (and attachments) [MAH.500.001.9218]

26J. On 12 December 2011, Macmahon provided to Rio Tinto and Calibre an offer for the terms of a variation to the HD4 Contract to achieve an accelerated Interim Track Ready Stage (**Proposed Acceleration Variation**), which included an assessment of the cost to Macmahon of delivering the Acceleration Variation in the terms proposed, being \$7,689,682 (**Acceleration Payment**).

Particulars

Email Johan Bell to Anthony Douglass, 12 December 2011, Acceleration of Works (and attachments) [MAH.500.001.9218]

26K. On 11 January 2012, Macmahon provided to Rio Tinto and Calibre a revised offer for the Proposed Acceleration Variation, which included the Acceleration Payment.

Particulars

Letter Johan Bell to Steve Wilshaw, 11 January 2012, Acceleration Variation Proposal (and attachments) [MAH.500.001.0079]

26L. At some time after 11 January 2012, Rio Tinto agreed to the Proposed Acceleration Variation and the HD4 Contract was formally varied accordingly (**Acceleration Variation**).

Particulars

Hope Downs 4 Rail Project, Contact Variation #5 [MAH.500.001.0238]

IV Features of the Accelerated HD4 Contract

26M. On 15 February 2012, Macmahon provided and Calibre approved a construction schedule for the delivery of the HD4 Project in accordance with the proposed terms of the Acceleration Variation (**Baseline Construction Schedule**).

Particulars

- (i) Letter Johan Bell to Steve Wilshaw, 15 February 2012, Completed Construction Schedule (and attachments) [MAH.500.001.0093]
- (ii) Letter Steve Wilshaw to Johan Bell, 15 February 2012, Approved Construction Schedule [MAH.500.002.8720]

26N. The Acceleration Variation:

- (a) was executed by Rio Tinto on 27 February 2012;
- (b) was executed by Macmahon on 7 March 2012;
- (c) had an effective date of 21 February 2012;
- (d) provided for the payment of the Acceleration Payment to Macmahon; and
- (e) effected a final adjustment for any and all amounts and/or changes to the Completion Dates in connection with the changes required by the Acceleration Variation.

Particulars

Hope Downs 4 Rail Project, Contact Variation #5 [MAH.500.001.0238]

26O. The Acceleration Variation varied the HD4 Contract (**Accelerated HD4 Contract**) in that:

- (a) the Access Date for SP1 was delayed to 1 March 2012, and for SP2, SP3, SP4 and SP5 to 1 February 2011;
- (b) SP1, SP2, SP3 and SP4 were each divided into two sub-sections with separate Completion Dates comprising:
 - (i) Sub-Ballast Handover (SP1a, SP2a, SP3a, and SP4a);
 - (ii) completion of all remaining works (SP1b, SP2b, SP3b, and SP4b);
- (c) the Completion Date for each Sub-Ballast Handover was brought forward; and
- (d) the majority of Liquidated Damages were allocated to failure to complete each Sub-Ballast Handover by the respective Completion Dates.

Particulars

Hope Downs 4 Rail Project, Contact Variation #5 [MAH.500.001.0238]

26P. In accordance with the terms of the Accelerated HD4 Contract set out at paragraph 26O above, the applicable Access Dates and Completion Dates for the each of the sub-

sections of Separable Parts, and consequent available construction time and acceleration, were as follows:

| <u>Separable Part</u> | <u>Access Date</u> | <u>Completion Date</u> | <u>Construction</u> | <u>Acceleration</u> |
|-----------------------|------------------------|--------------------------|---------------------|---------------------|
| <u>SP1a</u> | <u>1 March 2012</u> | <u>22 June 2012</u> | <u>113</u> | <u>5 days</u> |
| <u>SP1b</u> | <u>1 March 2012</u> | <u>26 June 2012</u> | <u>117</u> | <u>-</u> |
| <u>SP2a</u> | <u>1 February 2012</u> | <u>23 August 2012</u> | <u>204</u> | <u>41 days</u> |
| <u>SP2b</u> | <u>1 February 2012</u> | <u>3 October 2012</u> | <u>245</u> | <u>-</u> |
| <u>SP3a</u> | <u>1 February 2012</u> | <u>25 August 2012</u> | <u>206</u> | <u>7 days</u> |
| <u>SP3b</u> | <u>1 February 2012</u> | <u>1 September 2012</u> | <u>213</u> | <u>-</u> |
| <u>SP4a</u> | <u>1 February 2012</u> | <u>13 September 2012</u> | <u>225</u> | <u>29 days</u> |
| <u>SP4b</u> | <u>1 February 2012</u> | <u>12 October 2012</u> | <u>254</u> | <u>-</u> |
| <u>SP5</u> | <u>1 February 2012</u> | <u>1 May 2012</u> | <u>254</u> | <u>-</u> |

Particulars

Hope Downs 4 Rail Project, Contact Variation #5 [MAH.500.001.0238]

26Q. As at 21 February 2012, Macmahon:

- (a) required \$88,937,028 in direct and indirect costs to complete the HD4 Project under the Accelerated HD4 Contract (**Post-Acceleration Forecast CTC**); and
- (b) projected to realise from the contract price of \$100,710,352 a profit margin of 11.7%, or \$11,773,324 (**Post-Acceleration Forecast Margin**).

Particulars

- (i) Expert Report of Colin Fox, Section 6.1.2.
- (ii) C934 HD4 Rail CVR February 2012 [MAH.500.001.8658]

D1. MATERIAL RISKS TO HD4 PROJECT

I Complexity

- 27. At all material times as and from 4 July 2011, or alternatively from no later than on or about 7 March 2012 (when the Acceleration Variation was executed by Macmahon), the HD4 Project was extremely complex (**HD4 Project Complexity**).

Particulars

- (i) 19 Sept 2012 Analyst Briefing, p.3
- (ii) Letter Rob van Kappel to Calibre, 2 May 2011, Hope Downs 4 Rail Project Further Clarification to Access Dates [MAH.500.002.2362]
- (iii) Estimating Handover to Construction [MAH.500.002.2748]
- (iv) Letter Johan Bell to Steve Wilshaw, 11 January 2012, Acceleration Variation Proposal (and attachments) [MAH.500.001.0079]
- (v) The complexity of the HD4 Project was increased by the Construction Technique Change, and the particulars to paragraph 26R are repeated.

II Tight contract timeframe

28. At all material times, as and from 4 July 2011, by reason of the Tender Acceleration and the matters pleaded in paragraph 26(c), the project timeframe for the HD4 Project (**HD4 Contract Timeframe**) was tight.

Particulars

- (i) Macmahon's ASX Release dated 9 November 2012 and entitled "ASX Release: 2012 Annual General Meeting" (9 November 2012 ASX Announcement), p 3.
 - (ii) Risks and Opportunities, Hope Downs 4 Rail Project, 10 July 2011 [MAH.500.002.5569]
- 28A. At all material times, as and from no later than 7 March 2012 (when the Acceleration Variation was executed by Macmahon), the Accelerated HD4 Contract involved a significantly more demanding and risky project timeframe than the HD4 Contract Timeframe, including in that:
- (a) the applicable Completion Dates for the each of the sub-sections of Separable Parts except SP5 were brought forward as set out in paragraph 26P and consequently there was less construction time;
 - (b) it involved additional acceleration to the Tender Acceleration, and thus was exponentially exposed to increased cost and risk;
 - (c) there was no significant float in the construction period;
 - (d) there was no period for mobilisation after the Access Dates,
- (together, **Accelerated HD4 Contract Timeframe**).

Particulars

- (i) Macmahon's ASX Release dated 9 November 2012 and entitled "ASX Release: 2012 Annual General Meeting" (9 November 2012 ASX Announcement), p 3.
- (ii) Risks and Opportunities, Hope Downs 4 Rail Project, 10 July 2011 [MAH.500.002.5569]

(iii) Macmahon Presentation, "Hope Downs 4 Rail Project Options to Accelerate the Rail Earthworks Construction Schedule", 6 December 2011, "A general relationship exists between accelerating a construction program and costs/risks – typically it is exponential" [MAH.500.001.0001]

(iv) The author of a document entitled "Hope Downs 4 - Project Summary (20 August 2012)" [MAH.500.004.0275] stated:

"There are several key areas that could have been managed better and they are:

- Macmahon should have maintained the 4-6 week mobilisation period originally allowed for in the Tender programme and should have added this time in the revised Construction Schedule from 1 February 2012."

29. At all material times, as from 4 July 2011, by reason of the matters pleaded in paragraph 28, or alternatively 7 March 2012 (when the Acceleration Variation was executed by Macmahon) by reason of the matters pleaded in paragraph 28A, Macmahon's required expenditure associated with the HD4 Project was high (of approximately \$500,000 per day during the peak construction period (Peak Construction Costs)).

Particulars

(i) 19 Sept 2012 Analyst Briefing p.3.

(ii) 9 November 2012 ASX Announcement, p 3.

(iii) Risks and Opportunities, Hope Downs 4 Rail Project, 10 July 2011 [MAH.500.002.5569].

(iv) HD4 Contract, Schedule D – Cash Flow Forecast, Forecast value of contractor's progress claim for Nov-11 to Mar-12 [MAH.500.001.5746].

(v) The required expenditure of approximately \$500,000 per day applied for each day of the five-month peak of the rail embankment construction and bridge works.

30. At all material times as and from ~~4 July 2011~~ 7 March 2012, in the circumstances pleaded in paragraphs ~~28 and 27~~ to 29 above:

(a) any material failure by Macmahon to meet the Baseline Construction Schedule (resulting in adjustments to the construction program) would have a significant adverse impact on the time to complete and/or cost of the HD4 Project; and/or

(b) any material failure by Macmahon to meet the Baseline Construction Schedule would have a significant adverse impact on Macmahon's ability to complete the HD4 Project within the Post-Acceleration Forecast CTC, and to realise the Post-Acceleration Forecast Margin,

~~(b) a relatively small delay in programming could have a sudden adverse effect on the profit or loss on the HD4 Project,~~

(such impacts or effects being HD4 Contract Adverse Impacts).

Particulars

- (i) 19 Sept 2012 Analyst Briefing. p.3
- (ii) 9 November 2012 ASX Announcement, p.3

III Plant and operator shortages

30A. At all material times from shortly before on or about 7 March 2012 (when Macmahon executed the Acceleration Variation Schedule), the delivery of the HD4 Project in accordance with the Accelerated HD4 Contract and the Baseline Construction Schedule depended upon Macmahon being in a position to:

- (a) deploy appropriate earthworks equipment and other plant; and
- (b) engage appropriately qualified personnel to supervise, operate and maintain the earthworks equipment and other plant,

so as to commence the Works immediately at the Access Dates and rapidly ramp up earthworks production (Mobilisation Requirement).

Particulars

- (i) Email Steve Piscetek to Anthony Douglass, "HD4 Delayed start - Costs to maintain People and Plant for rapid start up", 7 October 2011 [MAH.500.001.0175]
- (ii) C934 - Hope Downs 4 Rail Project - Project Status Report - January 2012, p 10 [MAH.500.001.3987]
- (iii) The projected personnel and plant requirements as at 7 March 2012 are contained in the documents Macmahon Preliminary Manning Forecast to End of July 2012 [MAH.500.001.3954], Macmahon Preliminary Plant Mobilisation Forecast [MAH.500.001.9247] and Project Baseline Manning - Actual vs Forecast 24 Feb 12 [MAH.501.005.1830].(iv) The author of a document entitled "Hope Downs 4 - Project Summary (20 August 2012)" [MAH.500.004.0275] stated:

"In our negotiations with the Client we stressed that HD4 was in a good position to commence the project if it were to commence on the 1 October 2011. This was largely due to the fact that Solomon was starting after HD4 and that it would be given preference over Solomon. We stressed to the Client that should there be any delays in starting the project then the situation would reverse itself and that Solomon would become Macmahon's focus.

Macmahon raised the following concerns with the Client regarding delayed start date:

- Cannot guarantee that the plant and equipment would be available to commence the work on time. Macmahon purchased key (NEW) plant of for the project which the Client would pay for to secure the plant for start 1 February 2012;

- Key personnel assigned to the project would be made available to other Macmahon projects if the delay was significant;

- Operator skill set would be impacted. Macmahon had identified in excess of 40 experienced operators for the project but the Client was not prepared to retain the personnel for the duration of the delay."

- (v) Expert Report of John Brady, Section 10.1.

- 30B. At all material times from shortly before on or about 7 March 2012 (when Macmahon executed the Acceleration Variation Schedule), the construction industry in Western Australia was experiencing shortages in the availability of labour and equipment resources (WA Shortages).

Particulars

- (i) Macmahon's ASX Release dated 9 November 2012 and titled "2012 Annual General Meeting, Chairman's Address", p 3; and
- (ii) A presentation at the WA Construction Quarterly Review Meeting dated on or about 18 January 2012 [MAH.500.001.3958] stated that (p 12): "There is a concern that the plant and equipment requirements for the project will not be met as there is a shortage of resources at present."

- 30C. At all material times from shortly before on or about 7 March 2012 (when Macmahon executed the Acceleration Variation Schedule), Macmahon had a large amount of construction work in Western Australia (Macmahon's High Work Volume).

Particulars

- (i) 23 June 2011 Media Release, p.1.
- (ii) 4 July 2011 Media Release.
- (iii) Macmahon's 2011 Annual Report, pp.20-22.
- (iv) Macmahon ASX announcement dated 16 August 2011 entitled "Macmahon preferred contractor for \$300 million FMG Solomon Rail Spur construction".
- (vi) Macmahon ASX announcement dated 16 August 2011 entitled "Investor Presentation", pp.22-23. 29
- (vii) Macmahon ASX announcement dated 1 September 2011 entitled "Macmahon wins \$170 million Pilbara ISA contract"
- (viii) Macmahon ASX announcement dated 3 November 2011 entitled "2011 Annual General Meeting: Chairman's Address", p.3 (referring to the Gladstone LNG project, the Karara Mining project and the Rio Tinto project (including the HD4 Project)
- (ix) Macmahon ASX announcement dated 21 December 2012 entitled "Fortescue Solomon Rail Spur Contract",

- 30D. By reason of Macmahon's High Work Volume, following the delayed commencement of the HD4 Project, Macmahon, despite the Staff Retention Payment, diverted its experienced staff to the Solomon Project (Macmahon's Resource Diversion).

Particulars

- (i) C934 - Hope Downs 4 Rail Project - Project Status Report - September 2011 [MAH.500.001.3797]
- (ii) Email B Picton to A Mullan et al, "Implications of Delayed Project Start Rev3" 13 September 2011 containing attachment [MAH.500.001.0162], which stated, p 9:

"Due to the delay in starting the project Macmahon has taken the decision to reassign some of the resources from HD4 Rail to one of its other project.

This will mitigate some of the costs for staff to the project from October 2011 to January 2012. The downside is that Macmahon will have to recruit to replace these resources. Macmahon has also recruited some resources from overseas of which a certain number were assigned to Hope Downs 4 Rail project. The majority of the staff resources were due to come from the Karara Rail project, however due to the delay in starting the Hope Downs 4 Rail Project, Macmahon has reassigned a large number of these resources to one of its other project. The result of these changes is that Hope Downs 4 Rail will now be reliant on the overseas recruits."

(iii) The author of a document entitled "Hope Downs 4 - Project Summary (20 August 2012)" [MAH.500.004.0275] stated:

"Based on the delayed start date for the project Macmahon made the following decisions:

- Released/transferred the 40 operators to Solomon;

- Released the Superintendent to Solomon. The Superintendent has extensive knowledge of the project and had been working on the planning for some time.

- Cancelled the plant (On Hold) with suppliers (Smaller plant (40t excavators, dozers, dump trucks, rollers, water carts).

- Reassigned Staff coming of other Macmahon projects to Solomon. These resources were from Karara and were very experienced in Rail Construction.

- Ceased negotiations with suppliers and sub-contractors. We had to secure ROG (Drill and Blast sub- contractor) as they were the only company who priced the work at HD4. □ Released some of the HSEQ Staff to assist with Solomon

...

There are several key areas that could have been managed better and they are:

- Macmahon should have maintained the 4-6 week mobilisation period originally allowed for in the Tender programme and should have added this time in the revised Construction Schedule from 1 February 2012. The Client has questioned what happened in the period 1 October 2012 to 1 February 2012 which they paid an amount of money for Staff to plan the works and that they did NOT get value for money. We need to keep in mind that the key Staff (Engineering) available from October to December 2011 was Marius Nel and myself, we had no Superintendent to assist in the planning of the works and the engineering support started to arrive mid January 2012."

30E. At all material times as and from no later than 7 March 2012, any failure by Macmahon to achieve the Mobilisation Requirement would:

(a) cause delay and/or require and adjustment to the Baseline Construction Schedule;
and

(b) thereby, by reason of the matters pleaded in paragraph 30, increase the risk that Macmahon would experience HD4 Contract Adverse Impacts.

30F. As at 7 March 2012, the WA Shortages and Macmahon's Resource Diversion gave rise to a material risk that Macmahon would fail to achieve the Mobilisation Requirement, and that this would:

- (a) cause delay and/or require and adjustment to the Baseline Construction Schedule;
and
- (b) thereby, by reason of the matters pleaded in paragraph 30, increase the risk that
Macmahon would experience HD4 Contract Adverse Impacts.

IV Productivity requirements

- 30G. At all material times from 7 March 2012, the successful delivery of the HD4 Project in
accordance with the Accelerated HD4 Contract and the Baseline Construction Schedule
required that Macmahon meet its forecast productivity rates in relation to plant and
personnel (Productivity Requirement).

Particulars

- (i) Baseline Construction Schedule.
- (ii) Hope Downs 4 - Project Summary (20 August 2012), p 4
[MAH.500.004.0275]
- (iii) 9 November 2012 ASX Announcement, p 3.
- (iv) Expert Report of John Brady, Section 10.1.
- 30H. At all material times as and from no later than 7 March 2012, any prolonged failure by
Macmahon to comply with the Productivity Requirement would:
- (a) cause delay and/or require and adjustment to the Baseline Construction Schedule;
and
- (b) thereby, by reason of the matters pleaded in paragraph 30, increase the risk that
Macmahon would experience HD4 Contract Adverse Impacts.

V III—Macmahon’s suitability for the HD4 Project

31. ~~As at 4 July 2014~~ 7 March 2012 and continuing up to and throughout the Relevant Period,
the Accelerated HD4 Project was not well matched to the management capabilities of
Macmahon’s Western Australian construction business.

Particulars

9 November 2012 ASX Announcement, p 3.

32. ~~As at July 2014~~ 7 March 2012 and continuing up to and throughout the Relevant Period,
Macmahon had underestimated the complexity of the Accelerated HD4 Project.

Particulars

19 September 2012 Analyst Briefing

D2. HD4 PROJECT EXECUTION

I V Commencement of construction of HD4 Project and Mobilisation Failure

33. ~~[Not used] The Western Australian Government did not grant approval for the construction of the railway component of the HD4 Project until December 2011.~~
34. Construction work did not commence on the HD4 Project until in or about ~~some time between late December 2011 and mid February 2012.~~

Particulars

- (i) *Transcript of a conference call presentation to investment analysts conducted by Nick Bowen on behalf of Macmahon concerning Macmahon's Interim Financial Report for 6 Months Ended 31 December 2011, p 2.*
- (ii) *Macmahon's slide presentation dated 21 February 2012 and entitled "Macmahon 2012 Half Year Results", p 7 (the **21 February 2012 Half Year Results**).*
35. ~~[Not used] The Western Australian Government did not grant Hamersley Iron Pty Ltd a special railway licence in relation to the HD4 Project until 1 March 2012.~~
36. On and from 1 February 2012 Macmahon failed to meet the Mobilisation Requirement (**Mobilisation Failure**). ~~Preliminary earthworks on the HD4 Project did not commence until March 2012.~~

Particulars

Macmahon did not in fact commence work on site at the HD4 Project on the 1 February 2012 Access Date to the extent required to achieve a "hard start" on the Works as programmed by the Baseline Construction Schedule:

- (i) On or about 1 February 2012, Macmahon's Project Manager Johan Bell distributed a document entitled "C934 - Hope Downs 4 Rail Project - Project Status Report - January 2012" [MAH.500.001.3987] in which he stated:

"There is a "real risk" that plant and equipment will not be readily available to allow the work on site to commence on the 1 February 2012 (Fast Track Start). There needs to be a concerted effort from all parties within Macmahon to ensure that the plant and equipment required for the project is procured and delivered to site in a timely manner. We need to be conscious that the Client has agreed to pay \$1,336,013.00 to secure critical items of plant to guarantee the 1 February 2012 start. The Client has paid \$771,771.12 to date.

...

The Construction Schedule remains outstanding. There have been several workshops with the Client in an attempt to finalise the Construction Baseline Schedule. The Schedule has had to be adjusted to incorporate the Acceleration of the works and this has delayed the finalisation of the Schedule. It is hoped that the Schedule will be presented by Macmahon in early February 2012 and approved by the Client.

...

There are concerns that the progress on site is being compromised/ hindered as personnel are taking too long to get through the mobilisation process. There is a lack of Supervision on site at the end of January 2012. There needs to be a concerted effort from HR in Perth in consultation with the Site Team to get the Supervisors through the training and courses as quickly as possible. Regular phone conferences are planned over the coming weeks to foster and improve communication between site Perth HR team and site."

(ii) On or about 1 March 2012, Mr Bell distributed a document entitled "C934 - Hope Downs 4 Rail Project - Project Status Report - February 2012" [MAH.500.001.4034] in which he stated (pp 10-11):

The Construction Schedule has been updated on a weekly basis as per the Contractual requirements and submitted to the Client.

The current schedule show that we are behind schedule.

There are several reasons for this:

- Delivery of critical plant to site to allow clear and grub operations to commence in SP1, 2, 3, 4 and 5 has not occurred. Clearing and grubbing has commenced in SP1, 2 and 5.

- Setting up of workshop at Rhodes Ridge has been hampered by the availability of a crane for setting up/lifting of sea containers from haulage trucks, setting up of site offices and facilities and generally of loading equipment on site.

- Construction and setting up of Turkey's nests on site has also been a battle over the past few weeks. Turkey's nest 3 is fully operational and Turkey's Nest 1 will be operational in early March 2012.

- Recruitment and lack of the availability of Supervision on site has restricted the amount of work fronts that could be opened up. Leading Hands were appointed to assist in this area.

- Adequate Supervision (Workshop Supervisor) on site along with fitters has caused delays in planning and setting up the workshop. Steve O'Hara resigned from Macmahon placing extreme pressure on Bob Picton to find a replacement. Tony Gammage is now on board and things seem to be improving.

- Lack of Superintendent on site when the works commenced. Brian Chivers was assigned to the project from July 2011 and was involved in early planning of the project. He was released to go to Solomon in August 2011. The works on site (office establishment) started in early January 2012 without a Superintendent and this hampered the planning of site works for "Hard Start" on 1 February 2012.

(iii) On or about 1 April 2012, Mr Bell distributed a document entitled "C934 - Hope Downs 4 Rail Project - Project Status Report - March 2012" [MAH.500.001.4097] in which he stated (p 11):

"Due to various factors, production levels have not been as per the schedule and we need to show the client what we are doing to do get back on track to targeted base line program.

The current schedule show that we are behind schedule. There are several reasons for this:

- Delivery of critical plant to site...

- Setting up of the workshop at Rhodes Ridge has been slow and maintenance on the machines has suffered due to this...

- Recruitment and lack of the availability of Supervision on site has restricted the amount of work fronts that could be opened up...

(iv) On 18 June 2012, Aidan Mullan email to Nick Bowen a document entitled "Project Briefing Paper, C934 – HD4, 18 June 2012" [MAH.500.002.5714] in which he stated:

"In the early days of the project on site, i.e. in February and March 2012, and into April and May 2012, the project team did not deal with issues of mobilization of plant and personnel to site effectively and, as a result of lack of maintenance personnel, plant availability was an issue."

(v) The author of a document entitled "Hope Downs 4 - Project Summary (20 August 2012)" [MAH.500.004.0275] stated:

"There are several key areas that could have been managed better and they are:

- Macmahon should have maintained the 4-6 week mobilisation period originally allowed for in the Tender programme and should have added this time in the revised Construction Schedule from 1 February 2012. The Client has questioned what happened in the period 1 October 2012 to 1 February 2012 which they paid an amount of money for Staff to plan the works and that they did NOT get value for money. We need to keep in mind that the key Staff (Engineering) available from October to December 2011 was Marius Nel and myself, we had no Superintendent to assist in the planning of the works and the engineering support started to arrive mid January 2012."

37. The Mobilisation Failure was partly caused by the WA Shortages. At the time when Macmahon commenced construction of the HD4 Project, the construction industry in Western Australia was experiencing shortages in the availability of labour and equipment resources (WA Shortages).

Particulars

Macmahon's ASX Release dated 9 November 2012 and titled "2012 Annual General Meeting, Chairman's Address", p 3.

38. The Mobilisation Failure was partly caused by Macmahon's High Work Volume, and Macmahon's Resource Diversion. At the time when Macmahon commenced construction of the HD4 Project, Macmahon had a large amount of construction work in Western Australia (Macmahon's High Work Volume).

Particulars

(i) 23 June 2011 Media Release, p.1.

(ii) 4 July 2011 Media Release.

(iii) Macmahon's 2011 Annual Report, pp.20-22.

(iv) Macmahon ASX announcement dated 16 August 2011 entitled "Macmahon preferred contractor for \$300 million FMG Solomon Rail Spur construction".

- ~~(vi) Macmahon ASX announcement dated 16 August 2011 entitled "Investor Presentation", pp.22-23.29~~
- ~~(vii) Macmahon ASX announcement dated 1 September 2011 entitled "Macmahon wins \$170 million Pilbara ISA contract"~~
- ~~(viii) Macmahon ASX announcement dated 3 November 2011 entitled "2011 Annual General Meeting: Chairman's Address", p.3 (referring to the Gladstone LNG project, the Karara Mining project and the Rio Tinto project (including the HD4 Project))~~
- ~~(ix) Macmahon ASX announcement dated 21 December 2012 entitled "Fortescue Solomon Rail Spur Contract"~~

II Productivity Failure

38A. By 27 February 2012, progress on reportable quantities of Works for the HD4 Project was two weeks behind the Baseline Construction Schedule.

Particulars

- (i) Letter Derek Clucas to Johan Bell, "Contractor Schedule Delay", 27 February 2012 [MAH.500.002.8722]
- (ii) C934 - Hope Downs 4 Rail Project - Project Status Report - January 2012, p 10 [MAH.500.001.3987]

38B. On 27 February 2012, as a result of Macmahon being behind schedule, Calibre required Macmahon to provide a mitigation strategy to demonstrate what actions it intended to undertake to recover the lost productivity.

Particulars

Letter Derek Clucas to Johan Bell, "Contractor Schedule Delay", 27 February 2012 [MAH.500.002.8722]

38C. On 23 March 2012, Calibre:

- (a) informed Macmahon that it had failed to demonstrate any mitigation strategy or implementation of controls to comply with the Baseline Construction Schedule;
- (b) stated its view that Macmahon was falling further behind the Baseline Construction Schedule; and
- (c) activated the Corrective Action Term (**Corrective Action Direction**).

Particulars

Letter Derek Clucas to Johan Bell, "Weekly Construction Schedule Reporting", 23 March 2012 [MAH.500.002.8723]

38D. By no later than 23 March 2012, Macmahon was experiencing a prolonged failure to meet the Productivity Requirement, and that failure continued throughout the Relevant Period (**Productivity Failure**).

Particulars

- (i) 9 November 2012 Announcement, p 3.

- (ii) Hope Downs 4 - Project Summary (20 August 2012), p 4 [MAH.500.004.0275].

III The April 2012 Recovery Schedule

- 38E. On 10 April 2012, Macmahon submitted to Calibre for approval a revised version of the Baseline Construction Schedule (Recovery Schedule).

Particulars

- (i) Email Marius Nel to Alan Day, "C934 – Recovery Schedule – 10-04-2012", 11 April 2012 [MAH.500.001.5254]
- (ii) Email Ronan McAleer to Calibre, "C934 – Recovery Schedule Re-submitted", 18 April 2012 [MAH.500.001.5252]
- (iii) Letter Derek Clucas to Johan Bell, "Failure to Provide Details of Recovery", 18 April 2012 [MAH.500.002.8725]

- 38F. The Recovery Schedule:

- (a) included increased earthworks construction rates, the deployment of additional earthworks plant teams, and the operation of night shifts in accordance with the Corrective Action Direction; and
- (b) was not realistically resourced or programmed.

Particulars

- (i) Recovery Schedule (as attached to [MAH.500.001.5252])
- (ii) Email John Carlisle to Aidan Mullan, "Steering Meeting on Thursday", 1 May 2012, "the Recovery Schedule shows greatly increased planned [sic] construction rates (m3 moved) and assumes additional teams + night shifts" [MAH.500.028.9962]
- (iii) On 18 June 2012, Aidan Mullan email to Nick Bowen a document entitled "Project Briefing Paper, C934 – HD4, 18 June 2012" [MAH.500.002.5714] in which he stated:

"Any re-programming which had been done merely compressed the remaining work into the original milestone dates to a point where the work required was not possible to achieve."

- (iv) Expert Report of John Brady, Section 11.1.

IV The May 2012 Revised Recovery Schedule

- 38G. By no later than 14 May 2012, Mr Bowen required that he be provided with all regular progress reporting relating to the HD4 Project.

Particulars

- Email Aidan Mullan, "FW: Weekly Reports", 14 May 2012 [MAH.500.007.6733]

- 38H. By no later than 24 May 2012, Mr Bowen:

- (a) required that he receive a daily production update for the HD4 Project; and
- (b) was, with Mr Mullan, directly reporting progress to Rio Tinto in relation to the HD4 Project.

Particulars

Email Nick Bowen to Steve Piscetek, "Re: HD4 Update", 24 May 2012 [MAH.500.007.5209]

Email Johan Bell to David Kinsella, "FW: HD4 Daily Production Updates", 6 June 2012 [MAH.500.014.2840]

- 38I. On 25 May 2012, Macmahon submitted to Calibre for approval a revised version of the Recovery Schedule (**Revised Recovery Schedule**).

Particulars

Email Johan Bell to Geoff Swann, "Revised Construction Schedule", 25 May 2012 and attachments [MAH.500.036.7878]

- 38J. The preparation of the Revised Recovery Schedule was necessary because of Macmahon's poor performance on the HD4 Project, namely its failure to achieve the Productivity Requirement so as to comply with the Recovery Schedule.

Particulars

Board Report June 2012, p 10 [MAH.500.001.2829]

- 38K. The Revised Recovery Schedule:

- (a) included increased earthworks construction rates over the Recovery Schedule; and
- (b) was not realistically resourced or programmed.

Particulars

(i) Revised Recovery Schedule (as attached to [MAH.500.036.7878])

(ii) Email John Carlisle to Aidan Mullan, "Steering Meeting on Thursday", 1 May 2012, "the Recovery Schedule shows greatly increased planned [sic] construction rates (m3 moved) and assumes additional teams + night shifts" [MAH.500.028.9962]

(iii) On 18 June 2012, Aidan Mullan email to Nick Bowen a document entitled "Project Briefing Paper, C934 – HD4, 18 June 2012" [MAH.500.002.5714] in which he stated:

"Any re-programming which had been done merely compressed the remaining work into the original milestone dates to a point where the work required was not possible to achieve."

(iv) Expert Report of John Brady, Section 12.

V The June 2012 Major Costs Revisions

- 38L. On 6-8 June 2012, Macmahon employees Andrew Moore and Kevyn Brown conducted on Mr Mullan's instructions a construction review of the HD4 Project and concluded:
- (a) the HD4 Project was behind schedule and "it is expected that there will be bad news on dates especially for Separable Portion 3";
 - (b) the Baseline Construction Schedule had included an optimistic front-end launch that was not achieved;
 - (d) the Recovery Schedule and Revised Recovery Schedule were fundamentally flawed and not achievable;
 - (e) the HD4 Project still had insufficient plant and personnel on site;
 - (f) the productivity of the plant that was on site was "woeful" because of poor planning and mass haul programming; and
 - (g) the issues affecting the HD4 Project were compounded by a lack of leadership at the corporate level to review, provide guidance and take corrective action on programming issues.

Particulars

Construction Review for Hope Downs 4 Project, 6-8 June 2012 [MAH.500.002.6876]

VI The June-July 2012 replacement of management on the HD4 Project

- 38M. On 8 June 2012, Calibre instructed the removal from the HD4 Project of Macmahon's Project Manager, Johan Bell.

Particulars

Project Briefing Paper, C934 – HD4, 18 June 2012 [MAH.500.002.5714]

- 38N. On 29 June 2012, Mr Bowen asked Mr Mullan to resign as Executive General Manager – Construction West.

Particulars

Email Nick Bowen to Aidan Mullan, "Re: Termination of Employment with Macmahon - Aidan Mullan", 6 July 2012 [MAH.500.007.4141]

- 38O. On 12 July 2012, Mr Mullan tendered his resignation effective immediately and was replaced as Executive General Manager – Construction West by Mr Mason.

Particulars

(i) Email Nick Bowen to Aidan Mullan, "Re: Termination of Employment with Macmahon - Aidan Mullan", 6 July 2012 [MAH.500.007.4141]

(ii) Board Report, August 2012, p13 [MAH.500.001.2954]

VII The status of the HD4 Project as at September 2012

38P. As at 9 September 2012, Macmahon:

- (a) had incurred on the HD4 Project \$88,258,243.60 in costs to date;
- (b) following a review by Mr Carroll, projected that its performance of the Accelerated HD4 Contract would:
 - (i) require \$42,810,969 in further direct and indirect costs to complete (a total cost of \$131,069,212); and
 - (ii) realise from the revised contract price of \$98,482,578.34 a loss of \$32,586,633;
- (c) added to its projected loss a total of \$10,914,064 in additional costs that it was likely to incur relating to liquidated damages, wet weather, its rail interface with Calibre, rehabilitation and industrial action.

Particulars

- (i) Email Fred Vanderline to Ashley Mason, "HD4 – Cost to complete", 9 September 2012 [MAH.500.019.2240]
- (ii) Email Ken Scott-Mackenzie to Ross Carroll, "Re: Latest Developments", 16 September 2012 [MAH.500.041.9504]

38Q. As at 9 September 2012, Macmahon added to its projected loss a risk amount of \$3,075,873 because it considered that Rio Tinto was contractually entitled to decline to make any further instalment of the Acceleration Payment because of Macmahon's performance on the HD4 Project.

Particulars

Email John Gidis to Ashley Mason, "Draft HD4 review for discussion purposes only", 18 September 2012 [MAH.500.041.9381] and attached CVR.

D3. MANAGEMENT OF THE HD4 PROJECT

I ♡ Macmahon's management of the HD4 Project

39. At all material times during the course of the HD4 Project, Macmahon carried out regular monthly reviews of its operations (including its construction business and the progress of particular construction projects, including the HD4 Project).

Particulars

- (i) Macmahon's letter to ASX dated 21 September 2012, p.1 (Answer 2(a)).
- (ii) Macmahon employees and/or officers prepared at least the following documents on a monthly basis in relation to the HD4 Contract specifically:
 - Contract Valuation Reports (CVRs); and
 - Project Status Reports.

(iii) Macmahon employees and/or officers prepared at least the following documents on a monthly basis in relation to the overall business, which featured data on HD4 and specific updates from time to time:

- Board Reports;
- Construction West Australia State Monthly Reports; and
- Performance Reports.

II VI Macmahon's management inadequacy in relation to the HD4 Project

40. At all material times during the course of the HD4 Project, Macmahon's culture, systems and processes were inadequate to enable Macmahon to identify and address problems on the HD4 Project early, and to prevent those problems from getting worse throughout the course of the HD4 Project (**Macmahon's Project Management Inadequacy**).

Particulars

- (i) Statements made by Macmahon's Chief Executive Officer, Ross Carroll, and quoted in The Australian in an article by Sarah Jane Tasker dated 24 September 2012.
- (ii) Board Report June 2012, p 5, "The Board noted ... the lack of evidence to suggest that past problems were now behind CW. Action: The Board requested a paper demonstrating CW's capability in improved project delivery." [MAH.500.001.2829]
- (iii) Construction Review for Hope Downs 4 Project, 6-8 June 2012 [MAH.500.002.6876];
- (iv) Hope Downs 4 - Project Summary (20 August 2012) [MAH.500.004.0275]
- (v) Email Ken Scott-Mackenzie to Ross Carroll, "Re: Latest Developments", 16 September 2012 [MAH.500.041.9504]

41. At all material times during the course of the HD4 Project, Macmahon's systems and processes were inadequate to enable Macmahon's Chief Financial Officer to identify and quantify the loss on the HD4 Project before September 2012.

Particulars

- (i) 9 November 2012 ASX Announcement, p 3.
- (ii) Statements made by Macmahon's Chief Executive Officer, Ross Carroll, and quoted in The Australian in an article by Sarah Jane Tasker dated 24 September 2012.
- (iii) Email Ken Scott-Mackenzie to Ross Carroll, "Re: Latest Developments", 16 September 2012 [MAH.500.041.9504].

D4. REASONS FOR FAILURE OF HD4 PROJECT

I VI Time impacts on Progress of the HD4 Project

42. The WA Shortages, ~~and~~ Macmahon's High Work Volume and/or Macmahon's Resource Diversion:

- (a) adversely affected the quality of operators and equipment on the HD4 Project (Resourcing Impact), which in turn:

- ~~(b)~~ ~~(a)~~ adversely affected productivities on the HD4 Project (including because the required earthworks productivities were not achieved by Macmahon) **(Productivity Impact)**;
- ~~(c)~~ ~~(b)~~ adversely affected programming on site for the HD4 Project **(Programming Impact)**; and
- ~~(d)~~ ~~(c)~~ led to a significant delay in the HD4 Project **(Delay Impact)**,
each a **Time Impact**.

Particulars

- (i) 19 September 2012 Earnings Update
- (ii) 9 November 2012 Announcement, p 3.
- (iii) Email Bob Picton to Aidan Mullan, "RE: HD4 Update", 3 May 2012 [MAH.500.006.2599]
- (iv) Email Steve Piscetek to Aidan Mullan, "RE: Steering Meeting on Thursday", 4 May 2012 [MAH.500.006.6026]
- (v) Email and attachment Nick Bowen to Aiden Mullen, "Lessons Learnt", 7 May 2012 [MAH.500.007.7486]
- (vi) Notes of Hope Downs 4 Site Visit – 17th & 18th May 12 [MAH.500.006.6009].
- (vii) Construction Review for Hope Downs 4 Project, 6-8 June 2012 [MAH.500.002.6876].
- (viii) Project Briefing Paper, C934 – HD4, 18 June 2012 [MAH.500.002.5714].
- (ix) Board Memorandum, "Hope Downs 4 Update", 2 August 2012 [MAH.500.002.6681].
- (x) The author of a document entitled "Hope Downs 4 - Project Summary (20 August 2012)" [MAH.500.004.0275] stated in relation to the Macmahon Resource Diversion:

"The implications of taking the above mitigation strategy had a significant impact on the project in that:

- The recruitment of experienced operators for the project proved difficult and the standard of operator both in quality and production outputs were significantly lower than originally anticipated.

- The project did not have a Superintendent on site for the first 4-6 weeks. Brian Chivers was reassigned to HD4 by chance as he had had a few problems on Solomon. HR also struggled to employ Supervisors for the project and early in the project we had two inexperienced Supervisors on site (One Earthworks and one structures).

- A large proportion of the plant and equipment supplied to HD4 was in poor mechanical condition and placed a large burden on the workshop staff who were also undermanned at the time. The workshop Supervisor had been released to Solomon and was not replaced for 6 weeks into the project.

- 95% of the Engineering support for the project were Irish employees who had been in Australia less than 6 weeks and were unfamiliar with Macmahon systems and the contracting way of life.

- A lot of suppliers and subcontractors reassigned their resources due to the delay and Macmahon had to renegotiate term and conditions with them as well as prices."

42A. Further, as pleaded in paragraphs 37 and 38, the WA Shortages, Macmahon's High Work Volume and Macmahon's Resource Diversion were causes of the Mobilisation Failure, which in turn materially contributed to:

- (a) the Resourcing Impact;
- (b) the Programming Impact; and
- (c) the Delay Impact.

Particulars

- (i) Construction Review for Hope Downs 4 Project, 6-8 June 2012 [MAH.500.002.6876].
- (ii) Project Briefing Paper, C934 – HD4, 18 June 2012 [MAH.500.002.5714].
- (iii) Board Memorandum, "Hope Downs 4 Update", 2 August 2012 [MAH.500.002.6681].
- (iv) Hope Downs 4 - Project Summary (20 August 2012)" [MAH.500.004.0275].

42B. Further, the Productivity Failure materially contributed to:

- (a) the Productivity Impact;
- (b) the Programming Impact; and
- (c) the Delay Impact.

Particulars

- (i) 9 November 2012 ASX Announcement, p 3, "that loss being due to the cumulative effects of lower than forecast productivity rates and subsequent acceleration costs to meet the client's program."
- (ii) Construction Review for Hope Downs 4 Project, 6-8 June 2012 [MAH.500.002.6876].
- (iii) Project Briefing Paper, C934 – HD4, 18 June 2012 [MAH.500.002.5714].
- (iv) Board Memorandum, "Hope Downs 4 Update", 2 August 2012 [MAH.500.002.6681].
- (v) Hope Downs 4 - Project Summary (20 August 2012)" [MAH.500.004.0275].

43. By reason of the matters pleaded in paragraphs 36 35 to 38, 38A to 38F and 42 to 42B the Time Impacts, or alternatively the Productivity Impact, Programming Impact and/or the Delay Impact commenced by no later than 10 April 2012 ~~March 2012~~.

44. Further to paragraph 43, by reason of the matters pleaded in paragraphs 35 to 38, 38A to 38F, 38G to 38L and 42 to 42B, the Time Impacts, or alternatively the Productivity Impact, Programming Impact and/or the Delay Impact continued, and worsened, after

~~10 April 2012. By no later than 15 May 2012, by reason of the Productivity Impact, the Programming Impact and/or the Delay Impact, Macmahon to accelerate works on the HD4 Project to meet the client's program (**HD4 Acceleration**).~~

Particulars

~~Statement published on Macmahon's website on or about 15 May 2012.~~

~~9 November 2012 ASX Announcement, p 3.~~

45. ~~[Not used] By reason of the matters pleaded in paragraphs 35 to 38, 36 to 38 and 42 to 44, the Programming Impact and/or the Delay Impact commenced by no later than a time on or about shortly before 15 May 2012.~~

II VII Increased Costs on the HD4 Project

46. The Time Impacts ~~HD4 Acceleration~~ resulted in Macmahon incurring or being required to incur increased costs.

Particulars

~~The Applicant does not with his present state of knowledge know the quantum of the increased costs, but says that i~~ Increased costs associated with "acceleration" included costs of:

- ~~(i) engaging additional resources and equipment;~~
- ~~(ii) overtime payments; and~~
- ~~(iii) reprogramming and redesigning the works; and~~
- ~~(iv) labour, resources and equipment maintained for longer on site than forecast (including the Peak Construction Costs).~~

~~in connection with Macmahon seeking to meet the production required by the Baseline Construction Schedule, the Recovery Schedule and Revised Recovery Schedule. The increased costs were those identified in the 9 November 2012 ASX Announcement, p 3 as "subsequent acceleration costs" to the Productivity Failure (Expert Report of Colin Fox, Section 8).~~

~~Further particulars may be provided with the Applicant's expert evidence~~

47. ~~[Not used] Further, by no later than on or about shortly before 15 May 2012, by reason of or in association with the HD4 Acceleration, Macmahon agreed to use mechanical wet mixing techniques for sub ballast capping in order to achieve the high rate of progress required to accelerate works to complete the HD4 Project by October 2012 (**Construction Technique Change**).~~

Particulars

~~Statement published on Macmahon's website on or about 15 May 2012.~~

~~9 November 2012 ASX Announcement, p 3.~~

48. ~~[Not used] The Construction Technique Change resulted in Macmahon incurring increased costs.~~

Particulars

~~Sub-ballast capping is the layer of aggregates (crushed stone) between the subgrade (ie ground) and the ballast (ie the top layer of material in which the sleepers are embedded), and is typically composed of well-graded medium to coarse granular fills, the purpose of which includes to prevent interpenetration of the subgrade and the ballast (ie to prevent the finer material in the subgrade migrating upwards), form a drainage layer, and reduce traffic-induced stress at the bottom of the ballast level.~~

~~Dry mixing involves using binding the aggregates without the addition of water. Wet mixing involves using liquid to mix the aggregates into a slurry (similar to bitumen, or asphalt). Wet mixed sub-ballast is more expensive to process, and/or more expensive to transport to the construction site, and/or more expensive to lay and compact.~~

~~Wet mixing is a more complex and expensive construction technique than dry-mixing for sub-ballast capping.~~

~~Further particulars may be provided with the Applicant's expert evidence.~~

49. By reason of the matters pleaded in:

(a) paragraph 46, ~~the HD4 Acceleration; and/or~~

(b) ~~paragraph 48, the Construction Technique Change,~~

~~each resulted in Macmahon was required to incurring costs, which it would not otherwise have incurred, which by reason of the Fixed Price Term, Construction Schedule Term and Corrective Action Term Macmahon would bear (**Projected Acceleration Costs**).~~

Particulars

(i) 9 November 2012 ASX Announcement, p 3.

(ii) The particulars to paragraph 46 are repeated.

(iii) Macmahon did not during the Relevant Period meet the production on the HD4 Project required by the Baseline Construction Schedule, the Recovery Schedule and Revised Recovery Schedule and, accordingly, was likely to incur "subsequent acceleration costs" (in the sense described by Mr Carroll on 19 September 2011 and in the 9 November 2012 ASX Announcement, p 3.

(iv) Statements made by Macmahon's Chief Executive Officer, Ross Carroll, on Sky News on 19 September 2012 ([MAH.500.041.9862], p 3), including:

"ROSS CARROLL: Well, with the sequencing I guess as you go through a construction project there are different phases to the project, and if you get behind in the first phase then you need to keep going. And the problem is if you get behind that can then throw the rest of the sequence of the job out of line. Now, in this case with the project we have just reported having the difficulty with, we've had to bring in extra people and extra people and extra equipment to make up that time, and that's what's costing us the extra money. Then the extra money means that obviously we're not going to realise the profit on that project."

~~The Acceleration Costs comprised the costs pleaded in paragraphs 46 and/or 48~~

~~The Applicant does not with his present state of knowledge know the amount of the Acceleration Costs.~~

50. By reason of the matters pleaded in paragraphs 44 to 49, Macmahon commenced to incur Projected Acceleration Costs by no later than on or about shortly before 10 April 2012 or, alternatively, 2 May 2012.
51. By reason of the matters pleaded in paragraphs 38 and 38 and 42 to 50, at all times after on or about shortly before 10 April 2012 or, alternatively, 2 May 2012, Macmahon was likely to continue to incur Projected Acceleration Costs for the duration of Macmahon's construction of the HD4 Project (**Ongoing Projected Acceleration Costs**).

Particulars

By reason of the Time Impacts and/or the Cost Impacts, the projected total construction cost the HD4 Project executed using the resources available to Macmahon, being the Projected Acceleration Cost was:

(i) at 10 April 2012, approximately \$135.9m (Expert Report of Colin Fox, Section 1.3.1);

(i) at 2 May 2012, approximately \$133.4m (Expert Report of Colin Fox, Section 1.3.2);

(iii) at 25 May 2012, approximately \$130.0m (Expert Report of Colin Fox, Section 1.3.3),

compared to the Post-Acceleration CTC.

E. WHAT MACMAHON KNEW OR OUGHT TO HAVE KNOWN AS AT 2 MAY 2012

I Macmahon's awareness of the features of the HD4 Project

- 51A. At all material times from no later than 4 July 2011, officers of Macmahon with responsibility for Macmahon's construction business ought reasonably to have been aware of the Construction Business Risk.

Particulars

Mr Bowen, Mr Carroll, Mr Mullan and (from 16 July 2012) Mr Mason, ought reasonably to have been aware of the Construction Business Risk because:

(i) it was inherent in Macmahon's construction business;

(ii) because the Construction Business Risk had eventuated in respect of the RGP5 Project; and

(iii) each was actually aware of the particulars subjoined to paragraph 5 and ought reasonably to have been aware of the Construction Business Risk from those facts.

52. By no later than 4 July 2011 2 May 2012, Macmahon was aware of the matters relating to the HD4 Contract pleaded in paragraphs 23A to 26C.

Particulars

Macmahon was actually aware of the information because:

- (i) it published the 4 July 2011 Media Release; and
- (ii) Mr Bowen executed the HD4 Contract, Mr Carroll as CFO ought reasonably to have been aware of its terms, and Mr Mullan as directly responsible for the HD4 Project ought reasonably to have familiarised himself with the terms of HD4 Contract.
- (iii) From 16 July 2012, Mr Mason ought reasonably have been aware of the information by reason of his assuming Mr Mullan's role in the circumstances of Macmahon's underperformance on the HD4 Project.

52A. By no later than 7 March 2012, officers of Macmahon with responsibility for Macmahon's construction business ought reasonably to have been aware of the matters relating to the acceleration of the HD4 Contract, and the Accelerated HD4 Contract pleaded in paragraphs 26D to 26Q.

Particulars

- (i) Mr Bowen, Mr Mullan and Mr Carroll ought reasonably to have been aware of the matters pleaded in paragraphs 26D to 26R because:
 - (A) the HD4 Project was a major project;
 - (B) the Acceleration Variation was a major variation to the HD4 Project;
 - (C) the Acceleration Variation had been set out in the presentation relating to the HD4 Project at the WA Construction Quarterly Review meeting held on or about 16 January 2012 [MAH.500.001.3949];
- (ii) Officers of Macmahon with responsibility for Macmahon's construction business and the HD4 Project specifically (namely Mr Mullan) ought to have become aware of the matters pleaded in paragraphs 26D to 26R in the course of negotiating the Acceleration Variation.
- (iii) From 16 July 2012, Mr Mason ought reasonably have been aware of the information by reason of his assuming Mr Mullan's role in the circumstances of Macmahon's underperformance on the HD4 Project.

53. By no later than 10 April 2012~~May 2012~~, Macmahon and/or officers of Macmahon with responsibility for Macmahon's construction business ought reasonably to have been aware of:

- (a) the HD4 Project Complexity (the matters pleaded in paragraph 27);
- (b) the HD4 Contract Timeframe (the matters pleaded in paragraph 28);
- (c) the Accelerated HD4 Contract Timeframe (the matters pleaded in paragraph 28A);
- and
- (d) the Peak Construction Costs (the matters pleaded in paragraph 29)

Particulars

- (i) As to subparagraphs (a), (b) and (c), Mr Bowen, Mr Carroll and/or Mr Mullan ought reasonably to have been aware of the information

because of what they ought reasonably to have been aware about the HD4 Contract, and the Accelerated HD4 Contract, as pleaded in paragraphs 52 and 52A

- (ii) As to subparagraph (d), Mr Mullan ought reasonably to have been aware of the information because he was responsible for the delivery of the HD4 Project as pleaded at paragraph 10C; and, or alternatively
- (iii) Officers of Macmahon with responsibility for Macmahon's construction business (including Mr Mullan and, from 16 July 2012, Mr Mason) ought, by reason of the improved project management controls pleaded in paragraph 23(c) have become aware of these matters in the course of regular monthly meetings pleaded in paragraph 39.

54. By no later than 10 April 2 May 2012, by reason of the matters pleaded in paragraphs 4 and/or 18 to 23 and 26 and 51A to 53 52 to 53, Macmahon and/or officers of Macmahon with responsibility for Macmahon's construction business ought reasonably to have been aware of the matters pleaded in paragraph 30(a) and 30(b).

Particulars

- (i) Mr Bowen, Mr Carroll, Mr Mullan and (from 16 July 2012) Mr Mason, ought reasonably to have been aware of the information because:
 - (A) of the Construction Business Risk (of which they ought reasonably to have been aware, as pleaded in paragraph 51A);
 - (B) of what they ought reasonably to have been aware about the HD4 Contract, and the Accelerated HD4 Contract, as pleaded in paragraphs 52 and 52A,
- and thereby they ought to have become aware of the potential for HD4 Contract Adverse Impacts to be experienced.

II Macmahon's awareness of the causes of the HD4 Project Impacts

55. By no later than 10 April 2012, or alternatively 2 May 2012, Macmahon was aware of the WA Shortages.

Particulars

Macmahon was actually aware of the information because it published the:

- (i) Interim Financial Report for the six months ended 31 December 2011, issued 21 February 2012, p 9; and
- (ii) 21 February 2012 Half Year Results, pp 3 and 15.

Macmahon was actually aware of the information because it was contained in its Group Business Plan Overview - 2012-2014 - May 2011, "People, Equipment and Funding will be limiting factors ... Increasingly difficult to get equipment for both mining and construction. Capital requirements to deliver growth projections are substantial" p 4 and "Lead times for new gear continue to increase. Commitments to forward orders will need to be made to secure new gear" p 24 [MAH.500.001.3575].

In Macmahon's slide presentation dated 2 May 2012 presented at the Macquarie Australia Conference 2012 and lodged with the ASX (the 2 May 2012

~~**Presentation**), p.29, Macmahon stated “People and equipment key risks to sustaining growth”~~

~~; and/or by reason of the matters pleaded in paragraphs 4 and/or 18 to 23 and 38, officers of Macmahon with responsibility for Macmahon’s construction business ought reasonably to have been aware of the WA Shortages.~~

56. By no later than 10 April 2 May 2012, by reason of the matters pleaded in paragraphs 4 and/or 18 to 23 and 38, Macmahon was aware of Macmahon’s High Work Volume.

Particulars

Macmahon was actually aware of the information because it published each of the documents particularised in the particulars to paragraph 38.

- 56A. By no later than 10 April 2012, Macmahon was aware of Macmahon’s Resource Diversion.

Particulars

Mr Mullan was actually aware of Macmahon’s Resource Diversion because:

- (i) he was informed that unless Rio Tinto were willing to pay to keep all plant and equipment on site because of the delay in commencement “everything is being transferred to FMG Solomon” (email S Piscetek to A Millan, “HD4 Meeting – Delay”, 20 September 2011 [MAH.500.001.0173];
- (ii) it was stated as having occurred in C934 - Hope Downs 4 Rail Project - Project Status Report - October 2011, p 7 [MAH.500.001.3825].

Macmahon was actually aware of the information because its Board was informed of the Macmahon’s Resource Diversion on 3 November 2011, (Board Report November 2011, p 23, “Macmahon has mitigated all costs resulting from this delay by transferring resources (people and equipment) to the Solomon Project” [MAH.500.001.2005])

- 56B. By no later than 10 April 2012, Macmahon was aware of the Mobilisation Failure.

Particulars

- (i) Mr Mullan was actually aware of the Mobilisation Failure by 10 April 2012 because it was described in:
 - (A) C934 - Hope Downs 4 Rail Project - Project Status Report - January 2012, p 10 [MAH.500.001.3987];
 - (B) C934 - Hope Downs 4 Rail Project - Project Status Report - February 2012, pp 10-11 [MAH.500.001.4034]; and
 - (C) C934 - Hope Downs 4 Rail Project - Project Status Report - March 2012, pp 8 and 11 [MAH.500.001.4034].
- (ii) Further or in the alternative, Macmahon ought reasonably to have been aware of the information because officers of Macmahon with responsibility for Macmahon’s construction business (including Mr Mullan and, from 16 July 2012, Mr Mason) ought, by reason of the improved project management controls pleaded in paragraph 23(c) have become aware of these matters in the course of regular monthly meetings pleaded in paragraph 39, including by review of the documents identified at particular (i).

56C. By no later than 10 April 2012, 2 May 2012 or, alternatively, 25 May 2012, Macmahon was aware of the commencement of the Productivity Failure.

Particulars

The Applicant relies upon Macmahon's knowledge of the Mobilisation Failure pleaded and particularised in paragraph 56B and says further that:

- (i) on or before 10 April 2012:
 - (A) Mr Mullan was actually aware of the Productivity Failure because he was aware of the Mobilisation Failure;
 - (B) Macmahon ought reasonably to have been aware of the information because Mr Mullan ought, by reason of the improved project management controls pleaded in paragraph 23(c) have become aware of these matters in the course of reviewing the preparation of the Recovery Schedule;
 - (C) Mr Mullan ought reasonably in the course of performing his duties have been aware of Calibre's communications pleaded in paragraphs 38B and 38C that contained the information;
- (ii) on or before 2 May 2012 (in addition to particular (i)):
 - (A) Mr Mullan was actually aware that the Productivity Failure persisted after the issue of the Recovery Schedule because he was informed it was the fact by Mr Piscetek on 24 April 2012 (MAH.500.006.2599);
 - (B) Mr Mullan was actually aware that the Productivity Failure persisted after the issue of the Recovery Schedule because he was informed it was the fact by Mr Carlisle on 1 May 2012 (MAH.500.028.9962);
- (iii) on or before 25 May 2012 (in addition to particulars (i) and (ii)):
 - (A) Mr Mullan was actually aware that the Productivity Failure persisted after the issue of the Recovery Schedule because he was informed it was the fact by Mr Carlisle 7 May 2012 [MAH.500.006.1911];
 - (B) Mr Bowen was actually aware of the Productivity Failure on or before 25 May 2012 by reason of his being informed of it by Mr Mullan on 9 May 2012 [MAH.500.007.7475] and 22 May 2012 [MAH.500.033.7463] and receiving daily reports as pleaded at paragraph 38H;
 - (C) Mr Bowen ought reasonably in the course of performing his duties have been aware of the Productivity Failure on or before 25 May 2012 by reason of his receiving daily reports as pleaded at paragraph 38H;
 - (D) Mr Mullan ought, by reason of the improved project management controls pleaded in paragraph 23(c) have become aware of the Productivity Failure in the course of reviewing the preparation of the the Revised Recovery Schedule.

56D. By on or shortly before 10 April 2012, Macmahon was aware that the Recovery Schedule was not realistically resourced or programmed (as pleaded in paragraph 38F(b)).

Particulars

(i) Macmahon ought reasonably to have been aware of the information because as at 10 April 2012 Mr Mullan was aware of:

(A) the WA Shortages, and paragraph 55 is repeated;

(B) Macmahon's High Work Volume, and paragraph 56 is repeated;

(C) Macmahon's Resource Diversion, and paragraph 55A is repeated;

(D) the Mobilisation Failure, and paragraph 55B is repeated;

(E) the Productivity Failure, and paragraph 55C is repeated;

and ought in the circumstances, including by reason of the Construction Business Risk and the improved project management controls pleaded in paragraph 23(c), have been aware that the Recovery Schedule was unrealistic.

(ii) A reasonable construction manager who was aware of the matters referred to in (i) (A) to (E) above, would have been aware that the Recovery Schedule was not realistically resourced or programmed (Expert Report of John Brady, Sections 14.1.1 and 14.1.3).

56E. By on or shortly before 25 May 2012, Macmahon was aware the Revised Recovery Schedule was not realistically resourced or programmed (as pleaded in paragraph 38K(b)).

Particulars

(i) Macmahon ought reasonably to have been aware of the information because as at 25 May 2012, Mr Mullan and Mr Bowen were aware of:

(A) the WA Shortages, and paragraph 55 is repeated;

(B) Macmahon's High Work Volume, and paragraph 56 is repeated;

(C) Macmahon's Resource Diversion, and paragraph 55A is repeated;

(D) the Mobilisation Failure, and paragraph 55B is repeated;

(E) the Productivity Failure, and paragraph 55C is repeated;

and ought in the circumstances, including by reason of the Construction Business Risk and the improved project management controls pleaded in paragraph 23(c), have been aware that the Revised Recovery Schedule was unrealistic.

(ii) A reasonable construction manager who was aware of the matters referred to in (i) (A) to (E) above, would have been aware that the Revised Recovery Schedule was not realistically resourced or programmed (Expert Report of John Brady, Sections 14.1.1 and 14.1.4).

III Macmahon's awareness that the HD4 Project was likely to be impacted

57. By no later than 10 April 2012, 2 May 2012 or, alternatively, 25 May 2012, by reason of the matters pleaded in paragraphs 52 to 56 56E, officers of Macmahon with responsibility for Macmahon's construction business ought reasonably to have been aware that ~~there was a material risk that~~ the HD4 Project was affected by HD4 Contract Adverse Impacts, namely the Time Impacts.

Particulars

The applicant repeats the pleadings and particulars set out in paragraphs 52 to 56C and says further that:

- (i) by reason of the Time Impacts, the completion date for the HD4 Project using the resources available to Macmahon was realistically:
 - (A) at 10 April 2012, mid March 2013 (Expert Report of John Brady, Section 13.1);
 - (B) at 25 May 2012, mid February 2013 (Expert Report of John Brady, Section 13.2);

compared to the contractual completion date of 12 October 2012.
- (ii) the effect of the Time Impacts were apparent in the issue of the:
 - (A) Corrective Action Direction on 23 March 2012;
 - (B) Recovery Schedule on 10 April 2012; and/or
 - (C) Revised Recovery Schedule on 25 May 2012;
- (iii) Mr Mullan ought to have been aware of the circumstances of the Corrective Action Direction, Recovery Schedule and Revised Recovery Schedule on the dates each occurred by reason of his role pleaded at paragraphs 10C; and, or alternatively
- (iv) Mr Bowen was aware of the circumstances of Macmahon's issuing of the Revised Recovery Schedule on 25 May 2012 by reason of his receiving daily reports as pleaded at paragraph 38H.
- (v) Mr Mullan, Mr Bowen and Mr Carroll ought to have been aware of the information because the connection between a failure to effectively mobilise and time delays was where Macmahon's construction business "invariably" got in trouble, Statements made by Mr Carroll, on Sky News on 19 September 2012 ([MAH.500.041.9862], p 2:

"ROSS CARROLL: Our earnings have been inconsistent and particularly on the construction side where - we have managed to keep it consistent on the mining side, but construction has been inconsistent, and that's a valid point. And that's something we have to get over. So, certainly for any future work we're tendering now, we'll have extra controls in place at the start of the tender process and particularly during the ramp up process when these projects go from being a tender to a real job. Invariably that's where we've got ourselves in a little bit of trouble in that the ramp up hasn't gone as expected and then the project can get out of sequence, and then once you get out of sequence and get behind, it starts to become very difficult, and that's what's happened to us in this latest instance. So we'll be focusing on that.

58. By no later than 10 April 2012, 2 May 2012 or, alternatively, 25 May 2012, by reason of the matters pleaded in paragraphs 52 to 57, officers of Macmahon with responsibility for Macmahon's construction business ought reasonably to have been aware that ~~there was a material risk that~~ the Time Impacts would have a significant impact on the cost of the HD4 Project (**Costs Impacts**).

Particulars

The applicant repeats the pleadings and particulars set out in paragraph 52 and 57 and says further that by reason of its awareness of those matters, Mr Mullan and Mr Bowen ought to have known that:

- (i) the liquidated damages for which Macmahon would be liable for in the event of late completion amounted to 3.5% of the HD4 Contract sum, being approximately \$3,174,624 (HD4 Contract, Agreement Schedule, Item 11); and
- (ii) the Costs Impacts were those costs identified in paragraphs 38P(c) and 38Q.

59. Further, or alternatively, by a time on or around shortly before 10 April 2012, 2 May 2012 or, alternatively, 25 May 2012, by reason of the matters pleaded in paragraphs 46 to 50, officers of Macmahon with responsibility for Macmahon's construction business ought reasonably to have been aware that ~~there was a material risk that~~ the HD4 Project would be affected by the Ongoing Projected Acceleration Costs (**Projected Acceleration Costs Impacts**).

Particulars

The applicant repeats the pleadings and particulars set out in paragraphs 52 to 56C and says further that:

- (i) Mr Bowen and Mr Carroll were actually aware a that significant contributor to the RGP5 write down had been productivity and a failure to recognise 'early warnings': ("Management were notified in June 2009 and October 2009 of significant issues of plant and labour utilisation, lack of program, lack of cost management, significant delays and told not to overreact" Macmahon Construction - Diagnostic Review - Interim Report to Board, 24 November 2010 [MAH.500.001.4943], p 14);
- (ii) Mr Bowen and Mr Carroll were actually aware that an increase in completion date for a major construction project would lead to a rapid and significant increase in costs because it was inherent in the nature of Macmahon's business and had occurred on RGP5:

Q: Your statutory accounts were signed and lodged on the 27th of August. You came out with a profit warning in mid-October. How could it deteriorate so quickly?

A – This is a very large and complex brownfields rail contract which has many factors influencing its performance. From September onwards a number of factors combined to increase the complexity of the contract which pushed out the project completion date. On this job the majority of the cost is labour and plant and as such any extension of the completion date increases costs significantly.

(Question and Answer - 2011 Annual General Meeting, 24 November 2010, [MAH.500.071.4297], p4); and, or alternatively

(iii) Mr Mullan ought to have been aware of the matters in the above particulars because his role as EGM – Construction West was created as a result of the Construction Review and was his responsibility to “Apply “lessons learnt” from RGP5 to future construction projects” (Macmahon Audit Committee Papers, August 2011, [MAH.500.004.0402]).

60. Officers of Macmahon with responsibility for Macmahon’s construction business ought reasonably to have been aware by:

- (a) no later than 10 April 2012, 2 May 2012 or, alternatively, 25 May 2012, by reason of the matters pleaded in paragraphs 57 to 58, that the Time Impacts and/or the Cost Impacts; and/or
- (b) no later than 10 April 2012, 2 May 2012 or, alternatively, 25 May 2012 ~~by a time on or around shortly before 15 May 2012~~, by reason of the matters pleaded in paragraph 59, that the Projected Acceleration Costs Impact,

would have an adverse effect on the profitability of the HD4 Project (**HD4 Project Profit Impairment Information**).

Particulars

The applicant repeats the pleadings and particulars set out in paragraphs 5, 18 and 57 to 59.

By reason of the Time Impacts and/or the Cost Impacts, the projected total construction cost the HD4 Project executed using the resources available to Macmahon, being the Projected Acceleration Cost was:

- (i) at 10 April 2012, approximately \$136.1m (Expert Report of Colin Fox, Section 1.3.1);
- (i) at 2 May 2012, approximately \$133.4m (Expert Report of Colin Fox, Section 1.3.2);
- (iii) at 25 May 2012, approximately \$129.7m (Expert Report of Colin Fox, Section 1.3.3).

compared to the Post-Acceleration CTC, not including any exposure of Macmahon to liquidated damages or other costs as a result of the Time Impacts (being those costs identified in paragraph 59).

61. ~~[Not used] Further, or alternatively, officers of Macmahon with responsibility for Macmahon’s construction business ought reasonably to have been aware:~~

- ~~(a) by 2 May 2012, by reason of the matters pleaded in paragraphs 57 to 58, that there was a material risk and/or likelihood that the Time Impacts and/or the Cost Impacts; and/or~~
- ~~(b) by a time on or around shortly before 15 May 2012, by reason of the matters pleaded in paragraph 59, that there was a material risk and/or likelihood that the Acceleration Costs Impact,~~

~~would have a adverse effect on the profitability of the HD4 Project (HD4 Project Profit Impairment Risk Information).~~

F. CONTINUOUS DISCLOSURE CONTRAVENTIONS AS FROM 10 APRIL 2012 OR 2 MAY 2012

62. By reason of the matters pleaded in paragraphs 59 to ~~60~~ 64, as at by no later than 10 April 2012, 2 May 2012 or, alternatively, 25 May 2012, Macmahon was aware within the meaning of Listing Rule 19.12 of:
- (a) the HD4 Project Profit Impairment Information; ~~and/or~~
 - (b) ~~the HD4 Project Profit Impairment Risk Information.~~
63. During the Relevant Period, the HD4 Project Profit Impairment Information ~~and/or the HD4 Project Profit Impairment Risk Information~~ was information that:
- (a) was not generally available within the meaning of section 676 of the Corporations Act;
 - (b) affected the assessment of the financial performance of Macmahon and the likely future financial performance of Macmahon;
 - (c) was material to the assessment of the value of Macmahon and the value of Macmahon's Securities;
 - (d) a reasonable person would expect, if it was generally available, to have a material effect on the price or value of Macmahon's Securities within the meaning of Listing Rule 3.1 and section 677 of the Corporations Act; and
 - (e) would be likely to influence persons who commonly invest in Securities in deciding whether to acquire or dispose of Macmahon's Securities.
64. By reason of the matters pleaded in paragraphs 62 and 63, Macmahon became obliged pursuant to Listing Rule 3.1 to tell the ASX the HD4 Project Profit Impairment Information ~~and/or the HD4 Project Profit Impairment Risk Information~~ by no later than 10 April 2012, on or about 2 May 2012, or alternatively on or about ~~25~~ May 2012.
65. Throughout the Relevant Period, Macmahon did not tell the ASX the HD4 Project Profit Impairment Information ~~and/or the HD4 Project Profit Impairment Risk Information~~ immediately as it became aware of it.
66. In the premises, Macmahon contravened section 674(2) of the Corporations Act by not telling the ASX the HD4 Project Profit Impairment Information ~~and/or the HD4 Project Profit Impairment Risk Information~~ on or about 10 April 2012, 2 May 2012, or alternatively on or about ~~25~~ May 2012. (the **Continuous Disclosure Contraventions**).

67. The Continuous Disclosure Contraventions were continuing contraventions until 19 September 2012.

G. REPRESENTATIONS MADE TO THE AFFECTED MARKET AS FROM 10 APRIL 2012 OR 2 MAY 2012

I Macmahon's Relevant Publications, Announcements and Disclosures.

68. Leading up to and throughout the Relevant Period, Macmahon made the following public announcements and released the following publications in a manner which was likely to result in their publication to the class of people and entities comprising investors and potential investors in Macmahon's Securities (the **Affected Market**):
- (a) the 19 October 2010 Market Update;
 - (b) the 26 November 2010 AGM CEO's Report;
 - (c) the 23 February 2011 ASX Release;
 - (d) the 23 June 2011 Media Release;
 - (e) the 16 August 2011 Annual Report;
 - (f) Macmahon's ASX release entitled "2011 Annual General Meeting, Chairman's Address" and dated 3 November 2011 (the **3 November 2011 AGM Chairman's Address**);
 - (g) Macmahon's ASX release entitled "2011 Annual General Meeting, Chief Executive Officer's Report" and dated 3 November 2011 (the **3 November 2011 AGM CEO's Report**);
 - (h) the 21 February 2012 Half Year Results;
 - (i) Macmahon's Interim Financial Report for the six months ended 31 December 2011 issued on 21 February 2012 (the **21 February 2012 Interim Financial Report**);
and
 - (j) the 2 May 2012 Presentation;

II Construction Review Disclosures

69. On 19 October 2010, Macmahon informed the Affected Market that it was undertaking the Construction Review.

Particulars

The particulars to paragraph 22 are repeated.

70. On 26 November 2010:
- (a) Macmahon informed the Affected Market of the Construction Review Preliminary Findings.

Particulars

The particulars to paragraph 20 are repeated.

- (b) Macmahon informed the Affected Market that it was conducting the Construction Review Comprehensive Analysis.

Particulars

The particulars to paragraph 21 are repeated.

- (c) Macmahon further stated that improvement plans would be implemented over the following six to nine months.

Particulars

26 November 2010 AGM CEO's Report, p 7.

- 71. On 23 February 2011, Macmahon informed the Affected Market of:
 - (a) the Construction Review Completion; and
 - (b) the Construction Review Implementation.

Particulars

The particulars to paragraph 22 are repeated.

- 72. On 23 June 2011, Macmahon informed the Affected Market that:
 - (a) it had completed the implementation of the recommendations resulting from the Construction Review; and
 - (b) Macmahon had undertaken a restructure of its construction business aimed at positioning Macmahon to better respond to the opportunities which arose by reason of the high level of construction tendering and a large pipeline of construction work, and a much improved performance was ensured for 2012.

Particulars

23 June 2011 Media Release, p.1

- 73. By reason of the matters pleaded in paragraphs 69 to 72, on 23 June 2011, Macmahon represented to the Affected Market that it had completed the implementation of the Construction Review Key Recommendations.

Particulars

The representation was partly express and partly implied.

Insofar as it was express, the Applicant refers to the 23 February 2011 ASX Release and the 23 June 2011 Media Release.

Insofar as it was implied, the Applicant refers to the 23 June 2011 Media Release in the context of each of those parts of the 19 October 2010 Market Update, the 26 November 2010 AGM CEO's Report, and the 23 February 2011 ASX Release

pleaded in paragraphs 18 to 23 in the form, and the order in which they were disclosed to the Affected Market as pleaded in paragraphs 69 to 73.

III Representations concerning the selection of the HD4 Project

74. On 23 June 2011, by reason of the matters pleaded in paragraphs 69 to 73, Macmahon represented to the Affected Market that it now had:

- (a) stringent and improved project selection processes;
- (b) improved commercial management capability to ensure that the contracts which Macmahon took on were a best fit with the business,

(Improved Project Selection Environment)

Particulars

The representation is to be implied from:

- (i) *the matters pleaded in paragraphs 20, 21, 22, 23(a)-(b), 70 and 70(b) (which related to Macmahon's disclosures of identification of issues with its existing, and implementation of improved, project management controls) and;*
- (ii) *paragraphs 72 and 73 (which relate to Macmahon's disclosures that the Construction Review Implementation was complete).*

75. Further, on 23 June 2011, by reason of the matters pleaded in paragraphs 19 to 73, Macmahon represented to the Affected Market that it now had:

- (a) improved project management controls; and/or
- (b) improved training and staff such that those improved management controls would be complied with,

(Improved Management Control Environment).

Particulars

The representation is to be implied from:

- (i) *the matters pleaded in paragraphs 20, 21, 22, 23(c), 70 and 70(b) (which related to Macmahon's disclosures of identification of issues with its existing, and implementation of improved, project selection processes) and;*
- (ii) *paragraphs 72 and 73 (which relate to Macmahon's disclosures that the Construction Review Implementation was complete).*

76. On 4 July 2011, Macmahon informed the Affected Market of the award of the HD4 Project.

Particulars

The particulars to paragraph 19 are repeated.

77. By reason of the matters pleaded in paragraphs 69 to 74 and 76, on and from 4 July 2011, Macmahon represented to the Affected Market that it had selected the HD4 Project in

accordance with the Improved Project Selection Environment (**HD4 Project Selection Representation**).

Particulars

The representation is to be implied from:

- (i) *the matters pleaded in paragraph 74; and*
- (ii) *the absence of any disclosure by Macmahon that the Improved Project Selection Environment had not applied to the selection of the HD4 Project.*

IV Representations concerning the management of the HD4 Project

78. By reason of the matters pleaded in paragraphs 69 to 73 and 75 to 76, on and from 4 July 2011 Macmahon represented to the Affected Market that it would manage and monitor the HD4 Project in accordance with the Improved Management Control Environment.

Particulars

The representation is to be implied from:

- (i) *the matters pleaded in paragraph 75; and*
- (ii) *the absence of any disclosure by Macmahon that the Improved Management Control Environment did not apply to the HD4 Project.*

79. By reason of the matters pleaded in paragraph 78, on and from 4 July 2011, Macmahon represented to the Affected Market that it was able to manage and monitor the HD4 Project in accordance with the Improved Management Control Environment (**HD4 Project Management Representation**).

Particulars

The representation in sub-paragraph (a) is to be implied from the matters pleaded in paragraph 81, and the absence of any disclosure by Macmahon prior to or during the Relevant Period that the Improved Management Control Environment did not apply to the HD4 Project.

80. In the 3 November 2011 AGM Chairman's Address, Macmahon stated that:
- (a) a review of Macmahon's construction business had been completed; and
 - (b) that review recommended, and Macmahon implemented, the development of clearer lines of accountability, streamlined overhead costs and improved strategic alignment across Macmahon's operations.

Particulars

3 November 2011 AGM Chairman's Address, p 3.

81. In the 3 November 2011 AGM CEO's Report, Macmahon stated that:
- (a) over the preceding 12 months, Macmahon had refined its approach to risk management as a result of recent poor financial performance;

- (b) Macmahon was looking to meet five key requirements for managing risk, being:
 - (i) ensuring accountability for risk at all levels of Macmahon by driving awareness, ownership and management of risk deeper into the organisation;
 - (ii) complying with rigorous project selection and tendering procedures, including independent technical reviews and clearer risk guidelines;
 - (iii) having a strong focus on project performance through people and systems;
 - (iv) applying lessons learnt from previous projects; and
 - (v) monitoring and responding to external factors; and
- (c) that these revised procedures were not simply a tick the box exercise, but were aimed at ensuring operation and business risks were managed by the people in Macmahon's business that have accountability and responsibility.

Particulars

3 November 2011 AGM CEO's Report, pp 6-7.

82. In the 21 February 2012 Interim Financial Report, Macmahon stated that:
- (a) following the restructure of Macmahon's construction business in FY 2011, Macmahon had implemented considerable changes to its group-wide risk management policy, focusing on the identification and management of Macmahon's material risks;
 - (b) internal policies and procedures had been supplemented with a stringent assessment of the project selection and tendering procedures, in addition to heightened controls and reviews across project execution and reporting and the incorporation of ongoing risk reporting; and
 - (c) internal quarterly reviews across Macmahon's construction business would be further supplemented by independent external project audits for major projects.

Particulars

21 February 2012 Interim Financial Report, p 7.

83. In the 21 February 2012 Half Year Results, Macmahon stated that:
- (a) risk management improvements and new organisation structure were delivering value;
 - (b) the HD4 Project was mobilised;
 - (c) Macmahon's strategy delivery forecast included margin improvement and a target 20% earnings per share growth in FY 2013;

- (d) Macmahon had already secured \$946 million of its order book for FY 2013;
- (e) Macmahon forecast a profit of \$55 - \$60 million for FY 2012; and
- (f) Macmahon's outlook included further profit growth in FY 2013.

Particulars

21 February 2012 Half Year Results, pp 7, 22 and 24.

84. In the 2 May 2012 Presentation, Macmahon stated that:

- (a) work had commenced on the HD4 Project;
- (b) Macmahon's strategy included 20% return on equity and 20% year on year earnings per share growth for shareholders;
- (c) Macmahon was on track for profit in the range of \$55 - \$60 million in FY 2012;
- (d) Macmahon had achieved record revenue of \$1.8 billion for FY 2012; and
- (e) Macmahon had secured \$1.2 billion of revenue for FY 2013.

Particulars

2 May 2012 Presentation, pp 4, 13-14 and 20.

V 2 May Representations

85. As at 10 April 2012, or alternatively 2 May 2012, the HD4 Project Selection Representation was continuing, and continued through the Relevant Period.

Particulars

The HD4 Project Selection Representation was a continuing representation.

The HD4 Project Selection Representation was continuing on and after 10 April 2012, or alternatively 2 May 2012 in circumstances in which:

- (i) *Macmahon had, prior to 4 July 2011 (on which date it announced that it had been awarded the HD4 Project), made the statements pleaded in paragraphs 68(a) to (d) and 69 to 76 above in documents lodged with the ASX (and published on its company announcements website);*
- (ii) *after 4 July 2011, Macmahon made the statements pleaded in paragraphs 68(e) to (j) and 80 to 84 above in documents lodged with the ASX (and published on its company announcements website);*
- (iii) *Macmahon did not, at any time between the time of making the statements referred to in particulars (i) and (ii) and 10 April 2012 or the publication of the 2 May 2012 Presentation, contradict or qualify them in any document lodged with the ASX or otherwise;*
- (iv) *in order to comply with the Continuous Disclosure Requirements, the board of Macmahon was obliged to maintain a reasonable level of familiarity with the state of its business (including the progress of and adherence to timetables of its major construction projects and its participation in any construction projects which were proving to be beyond the management capabilities of the business) and to make reasonable enquiries into such*

matters prior to making any public announcement and to disclose to the ASX any Material Information as soon as it became aware of it;

- (v) *Macmahon had previously made statements to the effect that it complied with the Continuous Disclosure Requirements, those statements being contained at p 50 of the 16 August 2011 Annual Report; and*
- (vi) *by reason of the matters particularised in (i)-(v) above (or having regard to any, or any combination, of those matters), the Affected Market could reasonably have expected that any information of which Macmahon was 'aware' within the meaning of Listing Rule 19.12 which contradicted the statements pleaded in paragraphs 69 to 76 and 80 to 84 above to be disclosed in the Relevant Period ~~2 May 2012 Presentation~~.*

86. As 10 April 2012, or alternatively 2 May 2012, the HD4 Project Management Representation was continuing, and continued through the Relevant Period.

Particulars

The HD4 Project Management Representation was a continuing representation.

The HD4 Project Management Representation was continuing on and after ~~2 May~~ 10 April 2012 in circumstances in which:

- (i) *Macmahon had, prior to 4 July 2011 (on which date it announced that it had been awarded the HD4 Project), made the statements pleaded in paragraphs 68(a) to (d) and 69 to 76 above in documents lodged with the ASX (and published on its company announcements website);*
- (ii) *after 4 July 2011, Macmahon made the statements pleaded in paragraphs 68(e) to (j) and 80 to 84 above in documents lodged with the ASX (and published on its company announcements website);*
- (iii) *Macmahon did not, at any time between the time of making the statements referred to in particulars (i) and (ii) and 10 April 2012 or the publication of the 2 May 2012 Presentation, contradict or qualify them in any document lodged with the ASX or otherwise;*
- (iv) *in order to comply with the Continuous Disclosure Requirements, the board of Macmahon was obliged to maintain a reasonable level of familiarity with the state of its business (including the progress of and adherence to timetables of its major construction projects and its participation in any construction projects which were proving to be beyond the management capabilities of the business) and to make reasonable enquiries into such matters prior to making any public announcement and to disclose to the ASX any Material Information as soon as it became aware of it;*
- (v) *Macmahon had previously made statements to the effect that it complied with the Continuous Disclosure Requirements, those statements being contained at p 50 of the 16 August 2011 Annual Report; and*
- (vi) *by reason of the matters particularised in (i)-(v) above (or having regard to any, or any combination, of those matters), the Affected Market could reasonably have expected that any information of which Macmahon was 'aware' within the meaning of Listing Rule 19.12 which contradicted the statements pleaded in paragraphs 69 to 76 and 80 to 84 above to be disclosed in the Relevant Period ~~2 May 2012 Presentation~~.*

87. Further, as at 10 April 2012, or alternatively 2 May 2012, by reason of the HD4 Project Management Representation and/or the matters pleaded in paragraphs 81(b)(i), (ii) and

(v), and/or 82(b) and/or 83(a), Macmahon represented to the Affected Market that Macmahon had appropriate internal reporting systems within its construction business to enable it to reliably monitor the progress and adherence to timelines and budgets of its major construction projects, including the HD4 Project (**Reporting Systems Representation**).

Particulars

The Reporting Systems Representation was implied by silence on and after 10 April 2012, or alternatively 2 May 2012 in circumstances in which:

- (i) *Macmahon had, prior to 4 July 2011 (on which date it announced that it had been awarded the HD4 Project), made the statements pleaded in paragraphs 68(a) to (d) and 69 to 76 above in documents lodged with the ASX (and published on its company announcements website);*
- (ii) *after 4 July 2011, Macmahon made the statements pleaded in paragraphs 68(e) to (j) and 80 to 84 above in documents lodged with the ASX (and published on its company announcements website), which included statements concerning the progress of the HD4 Project made on 2 May 2012;*
- (iii) *Macmahon did not, at any time between the time of making the statements referred to in particulars (i) and (ii) and 10 April 2012 or the publication of the 2 May 2012 Presentation, contradict or qualify them in any document lodged with the ASX or otherwise;*
- (iv) *in order to comply with the Continuous Disclosure Requirements, the board of Macmahon was obliged to maintain a reasonable level of familiarity with the state of its business (including the progress of and adherence to timetables of its major construction projects and its participation in any construction projects which were proving to be beyond the management capabilities of the business) and to make reasonable enquiries into such matters prior to making any public announcement and to disclose to the ASX any Material Information as soon as it became aware of it;*
- (v) *Macmahon had previously made statements to the effect that it complied with the Continuous Disclosure Requirements, those statements being contained at p 50 of the 16 August 2011 Annual Report; and*
- (vi) *by reason of the matters particularised in (i)-(v) above (or having regard to any, or any combination, of those matters), the Affected Market could reasonably have expected that any information of which Macmahon was 'aware' within the meaning of Listing Rule 19.2 which contradicted the statements pleaded in paragraphs 69 to 76 and 80 to 84 above to be disclosed in the Relevant Period 2 May 2012 Presentation.*

88. The Reporting Systems Representation was a continuing representation in the Relevant Period.

H. MISLEADING OR DECEPTIVE CONDUCT AS FROM 10 APRIL 2012 OR 2 MAY 2012

I HD4 Project Selection Representation Contravention

89. By reason of the matters pleaded in paragraph 85, by making and/or failing to qualify the HD4 Project Selection Representation Macmahon engaged in conduct in the Relevant Period:

- (a) in relation to a financial product or a financial service within the meaning of section 1041H(1) of the Corporations Act;
 - (b) in trade or commerce in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
 - (c) in trade or commerce within the meaning of section 18 of the Australian Consumer Law.
90. By reason of the matters pleaded in paragraphs 31 and/or 32:
- (a) the HD4 Project and/or the Accelerated HD4 Contract had not been selected by Macmahon in accordance with the Improved Project Selection Environment; and/or
 - (b) the Improved Project Selection Environment did not contain:
 - (i) stringent and improved project selection processes; and/or
 - (ii) improved commercial management capability to ensure that the contracts which Macmahon took on were a best fit with the business,
91. By reason of the matters pleaded in paragraphs 89 and 90, during the Relevant Period, Macmahon engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:
- (a) section 1041H(1) of the Corporations Act;
 - (b) section 12DA(1) of the ASIC Act; and/or
 - (c) section 18 of the Australian Consumer Law,
- (the HD4 Project Selection Representation Contravention).**

II 10 April 2012 and 2 May 2012 Reporting Systems Representation Contravention

92. By reason of the matters pleaded in paragraph 86 and/or 87, by making and/or failing to qualify the HD4 Project Management Contravention and/or the Reporting Systems Representation, Macmahon engaged in conduct in the Relevant Period:
- (a) in relation to a financial product or a financial service within the meaning of section 1041H(1) of the Corporations Act;
 - (b) in trade or commerce in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
 - (c) in trade or commerce within the meaning of section 18 of the Australian Consumer Law.
93. By reason of the matters pleaded in paragraphs 40 and/or 41:

- (a) the Improved Management Control Environment did not contain improved management controls; and/or
- (b) Macmahon was unable to manage and monitor the HD4 Project in accordance with the Improved Management Control Environment; and/or
- (c) Macmahon did not have appropriate internal reporting systems within its construction business to enable it to reliably monitor the progress and adherence to timelines and budgets of its major construction projects, including the HD4 Project.

Particulars

- (i) *The applicant repeats the matters pleaded in paragraphs 40 and/or 41: above, and says further that, by Macmahon's admission, Macmahon did not become aware of problems leading to costs overruns on the HD4 Project until September 2012.*
- (ii) *Accordingly, Macmahon either did not successfully implement appropriate internal reporting systems within its construction business to enable it to accurately monitor its progress and adherence to timelines and budgets of its major construction projects prior to taking on the HD4 project, or did not utilise those systems effectively when carrying out the HD4 Project.*

94. By reason of the matters pleaded in paragraphs 92 to 93 during the Relevant Period, Macmahon engaged in conduct which was misleading or deceptive, or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law,

(the **HD4 Project Management/Reporting Representation Contraventions**).

III Listing Rules Compliance Representation

95. Throughout the Relevant Period, Macmahon represented to the Affected Market that Macmahon had complied with the Continuous Disclosure Requirements.

Particulars

- (i) *The representation was implied from Macmahon's obligations pursuant to the Continuous Disclosure Requirements.*
- (ii) *The representation was also implied by silence in circumstances where:*
 - (A) *Macmahon had made express statements to the effect that it complied with the Continuous Disclosure Requirements, those statements being contained at p 79 of the 20 August 2012 Annual Report and p 50 of the 16 August 2011 Annual Report; and*
 - (B) *Macmahon did not contradict or qualify those statements at any time throughout the Relevant Period.*

(individually or together, the **Listing Rule Compliance Representation**).

96. The Listing Rule Compliance Representation was a continuing representation in the Relevant Period.
97. By making and/or failing to qualify the Listing Rule Compliance Representation Macmahon engaged in conduct:
 - (a) in relation to a financial product or a financial service within the meaning of section 1041H(1) of the Corporations Act;
 - (b) in trade or commerce in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
 - (c) in trade or commerce within the meaning of section 18 of the Australian Consumer Law.
98. By reason of the matters pleaded in paragraph 66, Macmahon had not complied with the Continuous Disclosure Requirements.
99. By reason of the matters pleaded in paragraphs 97 to 98, Macmahon engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:
 - (a) section 1041H(1) of the Corporations Act;
 - (b) section 12DA(1) of the ASIC Act; and/or
 - (c) section 18 of the Australian Consumer Law,
 (the **Listing Rule Compliance Representation Contravention**).

I. MACMAHON'S CONDUCT AS FROM 20 AUGUST 2012

I Status of the HD4 Project as at 20 August 2012

100. As at 20 August 2012, the HD4 Project was 56% complete.

Particulars

*Investor presentation entitled "Macmahon 2012 Full Year Results" published and lodged with ASC on 20 August 2012 (**20 August 2012 Investor Presentation**).*

101. By reason of the existence of the Costs Impacts, HD4 Project Profit Impairment Information, ~~and/or the HD4 Project Profit Impairment Risk Information~~ (as pleaded in paragraphs 58 to ~~60~~ 64), by no later than 20 August 2012, it was likely ~~and/or there was a material risk that:~~
 - (a) the HD4 Project would substantially exceed the costs originally forecast by Macmahon (that is, the Post-Acceleration Cost to Complete); and

- (b) the HD4 Project would have a major impact on Macmahon's forecast profit for FY 2013.

Particulars

The risk and/or likelihood was of the same kind as pleaded in paragraphs 5(b) and 18 above wherein delays and cost overruns on a single major construction project in FY 2011 did have, a major impact on Macmahon's profit.

By reason of the Time Impacts and/or the Cost Impacts (Expert Report of John Brady, Section 13.3), the projected total construction cost the HD4 Project executed using the resources available to Macmahon, being the Projected Acceleration Cost was as at 20 August 2011, \$132.7m (Expert Report of Colin Fox, Section 1.3.4).

II Macmahon's disclosures on 20 August 2012

102. On 20 August 2012, Macmahon published and lodged with ASX:
- (a) its Appendix 4E Preliminary Final Report;
 - (b) the 20 August 2012 Annual Report;
 - (c) a Media Release entitled "Macmahon reports record profit of \$56.1 million" and dated 20 August 2012 (the **20 August 2012 Media Release**); and
 - (d) 20 August 2012 Investor Presentation.
103. In the 20 August 2012 Annual Report, Macmahon stated that:
- (a) Macmahon had delivered on its commitment to return an acceptable level of profit, recording a record profit after tax of \$56.1 million in FY 2012;
 - (b) \$1.4 billion of revenue was secured for FY 2013; and
 - (c) Macmahon expected 20% profit growth for FY 2013.

Particulars

20 August 2012 Annual Report, pp 6-8.

104. In the 20 August 2012 Media Release, Macmahon stated that:
- (a) Macmahon had announced a record profit after tax of \$56.1 million for FY 2012; and
 - (b) with much of the order book for FY 2013 already secured, Macmahon expected 20% profit growth for the year ahead.
105. In the 20 August 2012 Investor Presentation, Macmahon stated that:
- (a) the HD4 Project was 56% complete;
 - (b) Macmahon had secured revenue of approximately \$1.7 billion for FY 2013;

- (c) Macmahon's strategic targets included 20% earnings per share growth for FY 2013; and
- (d) Macmahon's target was to deliver 20% profit growth in FY 2013.

Particulars

20 August 2012 Full Year Results, pp 5, 7 and 26-27.

III Macmahon's FY2013 Profit Forecast

106. On 20 August 2012, Macmahon represented to the Affected Market that in its opinion, it was on track to achieve a net profit of approximately \$67.3 million in FY 2013 (**FY 2013 Profit Representation**).

Particulars

- (i) *The representation was express and was contained in statements made in the 20 August 2012 Annual Report, the 20 August 2012 Full Year Results and the 20 August 2012 Media Release as pleaded in paragraphs 102 to 105 above.*
 - (ii) *By those statements, Macmahon announced that it had achieved a record profit after tax for FY 2012 of \$56.1 million and that it expected to achieve 20% profit growth in FY 2013, which equates to \$67.3 million based on the FY 2012 result.*
107. On 20 August 2012, Macmahon represented to the Affected Market that it had reasonable grounds for making the FY 2013 Profit Representation (**FY 2013 Profit Basis Representation**).

Particulars

- (i) *The representation arose expressly from the "Disclaimer and Important Notice" in the 20 August 2012 Full Year Results.*
- (ii) *The representation was implied as a matter of law, including by section 769C of the Corporations Act, section 12BB of the ASIC Act and section 4 of the Australian Consumer Law.*
- (iii) *Further, and in the alternative, the representation arose by silence or by necessary implication from Macmahon's statements in the 20 August 2012 Annual Report, the 20 August 2012 Full Year Results and the 20 August 2012 Media Release and the context in which those statements were made, namely:*
 - (A) *in documents presented to potential investors and investment analysts and published on the ASX company announcements platform;*
 - (B) *in circumstances in which:*
 1. *Macmahon knew, or ought to have known, that the Affected Market may rely upon the statements in making decisions about whether to acquire or retain Macmahon's Securities;*
 2. *compliance with the Continuous Disclosure Requirements required the board of Macmahon to maintain a reasonable level of familiarity with the state of its business and to make reasonable enquiries into such matters prior to making any*

public announcement and to disclose to the ASX Material Information as soon as it became aware of it;

3. *Macmahon did not disclose in, or contemporaneously with the 20 August 2012 Annual Report, the 20 August 2012 Full Year Results or the 20 August 2012 Media Release that it had not maintained a reasonable level of familiarity with the state of its business or made reasonable enquiries into such matters prior to publishing those documents;*
4. *the Affected Market could reasonably have expected Macmahon to have reasonable grounds for the statements by reason of the matters particularised in B.1-B.3 above (or having regard to any, or any combination, of those matters).*

IV Misleading or deceptive conduct as from 20 August 2012

108. As at 20 August 2012, Macmahon did not have reasonable grounds for the FY 2013 Profit Representation by reason of:

- (a) the matters pleaded in paragraph 5;
- (b) the matters pleaded in paragraph 30;
- (c) Macmahon's continued failure to comply with the Baseline Construction Schedule, Recovery Schedule or Revised Recovery Schedule as pleaded in paragraphs 38A to 38Q;
- (d) the matters pleaded in paragraph 51; ~~and/or~~
- (e) the existence of the Costs Impacts, ~~Acceleration Cost Impacts~~, HD4 Project Profit Impairment Information ~~and/or the HD4 Project Profit Impairment Risk Information~~ (as pleaded in paragraphs 58 to ~~60-64~~); and/or
- (f) the matters pleaded in paragraph 101.

Particulars

The FY2013 Profit Representation was a representation as to a future matter and the Applicant also relies on s 12BB(1) of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the Australian Consumer Law.

109. Each of the FY 2013 Profit Representation and/or the FY 2013 Profit Basis Representation was a representation made by Macmahon:

- (a) in relation to a financial product or a financial service within the meaning of section 1041H(1) of the Corporations Act;
- (b) in trade or commerce in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce within the meaning of section 18 of the Australian Consumer Law.

110. By reason of the matters pleaded in paragraphs 108 to 109, the FY2013 Profit Representation was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act;
 - (b) section 12DA(1) of the ASIC Act; and/or
 - (c) section 18 of the Australian Consumer Law,
- (the **FY 2013 Profit Representation Contravention**).

J. CAUSATION, LOSS AND DAMAGE

I Contraventions caused loss to the applicant and the Group Members

111. During the ~~Relevant Period~~ period from 10 April 2012 to 19 September 2012, the applicant and Group Members acquired an interest in Macmahon's Securities:

- (a) in a market regulated by, inter alia, sections 674(2) and 1041H of the Corporations Act, the Listing Rules, section 12DA of the ASIC Act, and sections 4 and 18 of the Australian Consumer Law;
- (b) in circumstances in which that market was a "semi-strong" form of efficient market in which publicly available information relevant to the price or value of Macmahon's Securities was reflected in Macmahon's share price shortly after it was made available to participants in the market such that the price of those securities would have been affected by such relevant information disclosed pursuant to:
 - (i) the Continuous Disclosure Requirements; and
 - (ii) the norms of conduct prescribed in section 1041H of the Corporations Act, section 12DA of the ASIC Act and section 18 of the Australian Consumer Law;
- (c) in which, by reason of the matters pleaded in paragraph 111(b) above, falls in the price of Macmahon's Securities on and after 19 September 2012 were a result of the release of information to the market which had not been previously revealed because of:
 - (i) the Continuous Disclosure Contraventions pleaded in paragraph 66;
 - (ii) the HD4 Project Selection Representation Contravention pleaded in paragraph 91;
 - (iii) the HD4 Project Management/Reporting Contraventions pleaded in paragraph 94;

- (iv) the Listing Rule Compliance Representation pleaded in paragraph 99; and
- (v) the FY 2013 Profit Representation Contravention pleaded in paragraph 110; and

(or any of them) (collectively, the **Market Contraventions**).

112. By reason of the matters pleaded in paragraph 111 above, during the ~~Relevant Period~~ period from 10 April 2012 to 19 September 2012, the Market Contraventions (or any of them) caused the market price for Macmahon's Securities to be greater than:
- (a) their true value; and/or
 - (b) the market price that would have prevailed but for the Market Contraventions (or any of them).
113. Further or in the alternative to paragraphs 111 to 112, in the decision to acquire Macmahon's Securities, the applicant relied on, separately and in combination, each of:
- (a) the HD4 Project Selection Representation Contravention pleaded in paragraph 91;
 - (b) the HD4 Project Management/Reporting Contraventions pleaded in paragraph 94;
 - (c) the Listing Rule Compliance Representation pleaded in paragraph 99; and
 - (d) the FY 2013 Profit Representation Contravention pleaded in paragraph 110,
- (together, the **Contravening Representations**).
114. Further or in the alternative to paragraph 113, during the ~~Relevant Period~~ period from 10 April 2012 to 19 September 2012, the Contravening Representations (and each of them) materially contributed to the decision of the applicant to purchase Macmahon's Securities at the prevailing market price or at all.
115. Further or in the alternative to paragraphs 111 to 112, in the decision to acquire Macmahon's Securities, some Group Members relied on one or more of the Contravening Representations.

Particulars

The identity of all those Group Members which or who relied directly on any or all of the Contravening Representations is not within the current state of the applicant's knowledge and cannot be ascertained unless and until those advising the applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, 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.

116. Further or in the alternative to paragraph 115, during the ~~Relevant Period~~ period from 10 April 2012 to 19 September 2012, one or more of the Contravening Representations

materially contributed to the decision of Group Members to purchase Macmahon's Securities at the prevailing market price or at all.

II Loss or damage suffered by the applicant and Group Members

117. The applicant (as trustee of the David Hopkins Superfund) and Group Members have suffered loss and damage by and resulting from the Market Contraventions (or any one or combination of the Market Contraventions).

Particulars

- (i) *The loss suffered by the applicant will be calculated by reference to:*
 - (A) *the difference between the prices at which he acquired his Macmahon's Securities ~~during the Relevant Period~~ and the true value of those Securities; or*
 - (B) *the difference between the prices at which he acquired his Macmahon's Securities and the market price that would have prevailed had the Market Contraventions not occurred; or*
 - (C) *alternatively, on the days ~~after the Relevant Period~~ 19 September 2012 when the traded price of Macmahon's Securities fell as a result of the disclosure of information that had not previously been disclosed because of the Market Contraventions, the quantum of that fall; or*
 - (D) *the difference between the price at which he acquired his Macmahon's Securities ~~during the Relevant Period~~ and the amount "left in hand" or realised on sale of those Securities; or*
 - (E) *the difference between the price at which he acquired his Macmahon's Securities ~~during the Relevant Period~~ and the amount "left in hand" or realised on sale of those securities modified to take into account so much, if any, of the movement in the traded price of those Securities which did not result from the contraventions; or*
 - (F) *the difference, at the date of the hearing, between the applicant's actual position as a result of having acquired Macmahon's Securities ~~during the Relevant Period~~ and the position he would have been in as a result of investing the cost of investing in those Securities in alternative investments.*
- (ii) *The applicant's losses will be calculated by reference to Schedule 2 of the this further amended statement of claim and Section VIII and Exhibit H of the Expert Report of Frank Torchio. Further particulars will be provided prior to trial. Further particulars in relation to the applicant's losses will be provided after the service of expert evidence in chief.*
- (iii) *The loss suffered by Group Members will also be calculated in accordance with particular (i) above but are not particularised in this Further Amended Statement of Claim. Particulars in relation to Group Members' losses will be obtained (and will be provided) following opt out, 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.*

118. Further, or alternatively, to paragraph 117, by reason of the matters pleaded in paragraphs 113 to 116, the Applicant and some Group Members have suffered loss or damage.

Particulars

The particulars to paragraph 117 are repeated.

III Entitlement to relief

119. By reason of the matters pleaded in paragraphs 17 and 111 to 118 above, the applicant and each of the Group Members may recover the amount of the loss and damage suffered by them from Macmahon pursuant to section 1041I of the Corporations Act, section 12GF of the ASIC Act and/or section 236 of the Australian Consumer Law.
120. Further or in the alternative to paragraph 118, by reason of the matters pleaded in paragraphs 17 and 111 to 117 above, Macmahon is obliged pursuant to section 1317HA of the Corporations Act to compensate the applicant and the Group Members for the damage that resulted from its contraventions of section 674(2) of the Corporations Act.

Date: 27 April 2018



Signed by Steven Lewis
Solicitor for the Applicant

This pleading was prepared by W.A.D. Edwards with A.H. Edwards of counsel.

Certificate of lawyer

I Steven Lewis certify to the Court that, in relation to the further 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: 27 April 2018



Signed by Steven Lewis
Solicitor for the Applicant

SCHEDULE 1: DEFINED TERMS

I. DATE SPECIFIC TERMS (listed in chronological order)

19 October 2010 Market Update means Macmahon's ASX Release dated 19 October 2010 and entitled "Market Update".

26 November 2010 AGM CEO's Report means Macmahon's ASX Release dated 26 November 2010 and entitled "2010 Annual General Meeting Chief Executive Officer's Report".

23 February 2011 ASX Release means Macmahon's ASX release entitled "Interim Financial Report for the six months ended 31 December 2010 issued 23 February 2011".

23 June 2011 Media Release means Macmahon's ASX Release dated 23 June 2011 and entitled "Macmahon Construction management changes".

4 July 2011 Media Release means Macmahon's Media Release dated 4 July 2011 and entitled "Macmahon awarded Rio Tinto Iron Ore Construction Work".

16 August 2011 Annual Report means Macmahon's Annual Report for FY 2011 dated 16 August 2011.

3 November 2011 AGM CEO's Report means Macmahon's ASX release entitled "2011 Annual General Meeting, Chief Executive Officer's Report" and dated 3 November 2011.

3 November 2011 AGM Chairman's Address means Macmahon's ASX release entitled "2011 Annual General Meeting, Chairman's Address" and dated 3 November 2011.

21 February 2012 Half Year Results means Macmahon's slide presentation dated 21 February 2012 and entitled "Macmahon 2012 Half Year Results".

21 February 2012 Interim Financial Report means Macmahon's Interim Financial Report for the six months ended 31 December 2011 issued on 21 February 2012.

2 May 2012 Presentation means Macmahon's slide presentation dated 2 May 2012 presented at the Macquarie Australia Conference 2012 and lodged with the ASX.

20 August 2012 Annual Report means Macmahon's Annual Report for FY 2012 dated 20 August 2012.

20 August 2012 Full Year Results means the slide presentation of Macmahon's full year results dated 20 August 2012.

20 August 2012 Investor Presentation means the Investor presentation entitled "Macmahon 2012 Full Year Results" published and lodged with the ASX on 20 August 2012

20 August 2012 Media Release means Macmahon's Media Release entitled "Macmahon reports record profit of \$56.1 million" and dated 20 August 2012.

19 September 2012 Earnings Update means the document entitled "Earnings Guidance Update" lodged with the ASX and publicly released on 19 September 2012.

19 September 2012 Analyst Briefing means the presentation to investment analysts concerning the 19 September 2012 Earnings Update given in a conference call conducted by Chairman, Ken Scott-Mackenzie and Chief Executive Officer, Ross Carroll on behalf of Macmahon.

9 November 2012 ASX Announcement means Macmahon's ASX Release dated 9 November 2012 and entitled "ASX Release: 2012 Annual General Meeting.

II. NON-DATE SPECIFIC TERMS

Acceleration HD4 Contract has the meaning set out in paragraph 26O of this Further Amended Statement of Claim.

Accelerated HD4 Contract Timeframe has the meaning set out in paragraph 28A of this Further Amended Statement of Claim.

Acceleration Payment has the meaning set out in paragraph 26J of this Further Amended Statement of Claim.

Acceleration Variation has the meaning set out in paragraph 26L of this Further Amended Statement of Claim.

Affected Market means the class of people and entities comprising investors and potential investors in Macmahon's Securities (as pleaded in paragraph 68 of this Amended Statement of Claim).

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

ASX means the Australian Securities Exchange Limited.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Baseline Construction Schedule has the meaning set out in paragraph 26M of this Further Amended Statement of Claim.

Calibre means Calibre Rail Pty Ltd

Construction Business Risk has the meaning set out in paragraph 5 of this Further Amended Statement of Claim

Construction Review has the meaning set out in paragraph 19 of this Further Amended Statement of Claim.

Construction Review Completion has the meaning set out in paragraph 22 of this Further Amended Statement of Claim

Construction Review Comprehensive Analysis has the meaning set out in paragraph 21 of this Further Amended Statement of Claim.

Construction Review Implementation has the meaning set out in paragraph 22 of this Further Amended Statement of Claim

Construction Review Key Recommendations has the meaning set out in paragraph 23 of this Further Amended Statement of Claim

Construction Review Preliminary Findings has the meaning set out in paragraph 20 of this Further Amended Statement of Claim

Construction Schedule Term has the meaning set out in paragraph 26A of this Further Amended Statement of Claim.

Continuous Disclosure Contraventions means the contraventions pleaded in paragraph 66 of this Further Amended Statement of Claim.

Continuous Disclosure Requirements means the requirements of Listing Rules 3.1 and 19.12 and section 674(2) of the Corporations Act.

Contravening Representations means the representations made by Macmahon pleaded in paragraph 113 of this Further Amended Statement of Claim.

Corporations Act means the *Corporations Act 2001* (Cth).

Corrective Action Direction has the meaning set out in paragraph 38C of this Further Amended Statement of Claim.

Corrective Action Term has the meaning set out in paragraph 26A of this Further Amended Statement of Claim.

Costs Impacts has the meaning set out in paragraph 58 of this Further Amended Statement of Claim.

Delay Impact has the meaning set out in paragraph 42 of this Further Amended Statement of Claim.

FCAA means the *Federal Court of Australia Act 1976* (Cth)

Fixed Price Term has the meaning set out in paragraph 26A of this Further Amended Statement of Claim.

FY 2013 Profit Representation has the meaning set out in paragraph 106 of this Further Amended Statement of Claim.

FY 2013 Profit Basis Representation has the meaning set out in paragraph 107 of this Further Amended Statement of Claim.

FY 2013 Profit Representation Contravention has the meaning set out in paragraph 110 of this Further Amended Statement of Claim.

Group Members means the persons on whose behalf the proceedings is brought by the applicant as identified in paragraph 1 of this Further Amended Statement of Claim.

HD4 Contract has the meaning set out in paragraph 25 of this Further Amended Statement of Claim.

HD4 Contract Adverse Impacts has the meaning set out in paragraph 30 of this Further Amended Statement of Claim.

HD4 Contract Timeframe has the meaning set out in paragraph 28 of this Further Amended Statement of Claim.

HD4 Project means the infrastructure project referred to as “Hope Downs 4 – Rail Earthworks and Bridge Construction”.

HD4 Project Complexity has the meaning set out in paragraph 27 of this Further Amended Statement of Claim.

HD4 Project Management Representation has the meaning set out in paragraph 79 of this Further Amended Statement of Claim.

HD4 Project Management/Reporting Representation Contraventions has the meaning set out in paragraph 94 of this Further Amended Statement of Claim.

HD4 Project Selection Representation has the meaning set out in paragraph 77 of this Further Amended Statement of Claim.

HD4 Project Selection Representation Contravention has the meaning set out in paragraph 91 of this Further Amended Statement of Claim.

HD4 Project Profit Impairment Information has the meaning set out in paragraph 59 of this Further Amended Statement of Claim.

Improved Management Control Environment has the meaning set out in paragraph 75 of this Further Amended Statement of Claim.

Improved Project Selection Environment has the meaning set out in paragraph 74 of this Further Amended Statement of Claim.

Listing Rule Compliance Representation means the representation made by Macmahon pleaded at paragraph 95 of this Further Amended Statement of Claim.

Listing Rule Compliance Representation Contravention means the contravention pleaded in paragraph 99 of this Further Amended Statement of Claim.

Listing Rules means the Listing Rules of the ASX.

Macmahon means the respondent Macmahon Holdings Limited (ACN 007 634 406).

Macmahon's High Work Volume has the meaning set out in paragraph 30C of this Further Amended Statement of Claim.

Macmahon's Project Management Inadequacy has the meaning set out in paragraph 40 of this Further Amended Statement of Claim.

Macmahon's Resource Diversion has the meaning set out in paragraph 30D of this Further Amended Statement of Claim.

Market Contraventions means the contraventions pleaded in paragraph 111(c) of this Further Amended Statement of Claim.

Material Information has the meaning set out in paragraph 8 of this Further Amended Statement of Claim.

Mobilisation Failure has the meaning set out in paragraph 36 of this Further Amended Statement of Claim.

Mobilisation Requirement has the meaning set out in paragraph 30A of this Further Amended Statement of Claim.

Ongoing Projected Acceleration Costs has the meaning set out in paragraph 51 of this Further Amended Statement of Claim.

Peak Construction Costs has the meaning set out in paragraph 29 of this Further Amended Statement of Claim.

Post Acceleration Forecast Margin has the meaning set out in paragraph 26Q of this Further Amended Statement of Claim.

Post Acceleration Forecast CTC has the meaning set out in paragraph 26Q of this Further Amended Statement of Claim.

Productivity Failure has the meaning set out in paragraph 38D of this Further Amended Statement of Claim.

Productivity Impact has the meaning set out in paragraph 42 of this Further Amended Statement of Claim.

Productivity Requirement has the meaning set out in paragraph 30G of this Further Amended Statement of Claim.

Programming Impact has the meaning set out in paragraph 42 of this Further Amended Statement of Claim.

Projected Acceleration Costs has the meaning set out in paragraph 49 of this Further Amended Statement of Claim.

Projected Acceleration Costs Impacts has the meaning set out in paragraph 59 of this Further Amended Statement of Claim.

Proposed Acceleration Variation has the meaning set out in paragraph 26J of this Further Amended Statement of Claim.

Recovery Schedule has the meaning set out in paragraph 38E of this Further Amended Statement of Claim.

Relevant Period means the period from 10 April 2012 to 19 September 2012.

Reporting Systems Representation has the meaning set out in paragraph 87 of this Further Amended Statement of Claim

Resourcing Impact has the meaning set out in paragraph 42 of this Further Amended Statement of Claim.

Revised Recovery Schedule has the meaning set out in paragraph 38I of this Further Amended Statement of Claim.

Securities means ordinary shares.

SP1 has the meaning set out in paragraph 26A of this Further Amended Statement of Claim.

SP2 has the meaning set out in paragraph 26A of this Further Amended Statement of Claim.

SP3 has the meaning set out in paragraph 26A of this Further Amended Statement of Claim.

SP4 has the meaning set out in paragraph 26A of this Further Amended Statement of Claim.

SP5 has the meaning set out in paragraph 26A of this Further Amended Statement of Claim.

Staff Retention Payment has the meaning set out in paragraph 26F of this Further Amended Statement of Claim.

Sub-Ballast Handover has the meaning set out in paragraph 26E of this Further Amended Statement of Claim.

Tender Acceleration has the meaning set out in paragraph 23B of this Further Amended Statement of Claim.

Tender Pricing has the meaning set out in paragraph 23B of this Further Amended Statement of Claim.

Time Impact has the meaning set out in paragraph 42 of this Further Amended Statement of Claim

WA Shortages has the meaning set out in paragraph 30B of this Further Amended Statement of Claim.

SCHEDULE 2: APPLICANT'S MACMAHON SECURITIES TRANSACTIONS**Acquisitions**

| <i>Date</i> | <i>Number of securities</i> | <i>Average price per security</i> | <i>Amount paid (\$) excluding GST and brokerage</i> | <i>Brokerage (including GST) (\$)</i> | <i>Amount paid (\$) (including brokerage)</i> |
|--------------------|------------------------------------|--|--|--|--|
| 11/09/12 | 50,000 | 0.54 | \$27,000.00 | \$29.95 | \$27,029.95 |
| 13/09/12 | 25,000 | 0.515 | \$12,875.00 | \$29.95 | \$12,904.95 |

Disposals

| <i>Date</i> | <i>Number of securities</i> | <i>Average price per security</i> | <i>Amount received (\$) excluding GST and brokerage</i> | <i>Brokerage (including GST) (\$)</i> | <i>Amount received (\$) (including brokerage)</i> |
|--------------------|------------------------------------|--|--|--|--|
| 12/06/13 | 75,000 | 0.125 | \$9,375.00 | \$19.95 | \$9,394.95 |

SCHEDULE 3: MACMAHON SECURITIES**ASX PRICE MOVEMENTS 10 APRIL 2012-24 SEPTEMBER 2012**

| Date | Open | High | Low | Close | Volume | Adj Close |
|-------------|-------------|-------------|------------|--------------|---------------|------------------|
| 24/09/2012 | 0.31 | 0.31 | 0.3 | 0.3 | 5509800 | 0.3 |
| 21/09/2012 | 0.31 | 0.32 | 0.31 | 0.31 | 11882200 | 0.31 |
| 20/09/2012 | 0.32 | 0.34 | 0.31 | 0.31 | 19567300 | 0.31 |
| 19/09/2012 | 0.35 | 0.35 | 0.28 | 0.32 | 74561700 | 0.32 |
| 18/09/2012 | 0.53 | 0.53 | 0.53 | 0.53 | 0 | 0.53 |
| 17/09/2012 | 0.53 | 0.53 | 0.53 | 0.53 | 0 | 0.53 |
| 14/09/2012 | 0.52 | 0.54 | 0.51 | 0.53 | 3168500 | 0.53 |
| 13/09/2012 | 0.52 | 0.53 | 0.5 | 0.51 | 4124700 | 0.51 |
| 12/09/2012 | 0.54 | 0.54 | 0.52 | 0.53 | 2287200 | 0.53 |
| 11/09/2012 | 0.52 | 0.55 | 0.52 | 0.54 | 1579000 | 0.54 |
| 10/09/2012 | 0.52 | 0.54 | 0.51 | 0.54 | 3345200 | 0.54 |
| 07/09/2012 | 0.52 | 0.54 | 0.51 | 0.52 | 2559100 | 0.52 |
| 06/09/2012 | 0.51 | 0.52 | 0.5 | 0.51 | 4926200 | 0.51 |
| 05/09/2012 | 0.55 | 0.55 | 0.51 | 0.52 | 3662300 | 0.48 |
| 04/09/2012 | 0.59 | 0.6 | 0.55 | 0.56 | 3149700 | 0.52 |
| 03/09/2012 | 0.59 | 0.61 | 0.58 | 0.58 | 2194300 | 0.54 |
| 31/08/2012 | 0.61 | 0.61 | 0.58 | 0.6 | 2416800 | 0.55 |
| 30/08/2012 | 0.65 | 0.65 | 0.61 | 0.61 | 2538400 | 0.56 |
| 29/08/2012 | 0.66 | 0.66 | 0.64 | 0.66 | 1154200 | 0.61 |
| 28/08/2012 | 0.66 | 0.67 | 0.65 | 0.67 | 852700 | 0.62 |
| 27/08/2012 | 0.66 | 0.66 | 0.65 | 0.66 | 1802000 | 0.61 |
| 24/08/2012 | 0.66 | 0.66 | 0.64 | 0.65 | 1807200 | 0.61 |
| 23/08/2012 | 0.67 | 0.67 | 0.66 | 0.66 | 5003300 | 0.61 |
| 22/08/2012 | 0.67 | 0.67 | 0.65 | 0.66 | 3561700 | 0.61 |
| 21/08/2012 | 0.67 | 0.68 | 0.66 | 0.67 | 3214600 | 0.62 |
| 20/08/2012 | 0.66 | 0.69 | 0.65 | 0.66 | 10306900 | 0.61 |
| 17/08/2012 | 0.6 | 0.64 | 0.6 | 0.62 | 5480000 | 0.58 |
| 16/08/2012 | 0.59 | 0.6 | 0.58 | 0.6 | 1121900 | 0.56 |
| 15/08/2012 | 0.61 | 0.61 | 0.56 | 0.58 | 1871500 | 0.54 |
| 14/08/2012 | 0.61 | 0.61 | 0.6 | 0.61 | 730600 | 0.57 |
| 13/08/2012 | 0.62 | 0.62 | 0.6 | 0.6 | 1027000 | 0.56 |
| 10/08/2012 | 0.59 | 0.62 | 0.59 | 0.61 | 2084100 | 0.56 |
| 09/08/2012 | 0.6 | 0.6 | 0.58 | 0.6 | 792200 | 0.55 |
| 08/08/2012 | 0.6 | 0.6 | 0.58 | 0.59 | 595300 | 0.55 |
| 07/08/2012 | 0.6 | 0.6 | 0.58 | 0.6 | 513100 | 0.55 |
| 06/08/2012 | 0.6 | 0.6 | 0.58 | 0.6 | 635400 | 0.56 |
| 03/08/2012 | 0.58 | 0.58 | 0.56 | 0.56 | 1015400 | 0.53 |
| 02/08/2012 | 0.58 | 0.59 | 0.58 | 0.59 | 509000 | 0.55 |
| 01/08/2012 | 0.61 | 0.61 | 0.59 | 0.59 | 844000 | 0.55 |
| 31/07/2012 | 0.62 | 0.62 | 0.61 | 0.61 | 547200 | 0.56 |

| | | | | | | |
|------------|------|------|------|------|---------|------|
| 30/07/2012 | 0.62 | 0.62 | 0.61 | 0.62 | 1205000 | 0.57 |
| 27/07/2012 | 0.6 | 0.6 | 0.58 | 0.6 | 663500 | 0.56 |
| 26/07/2012 | 0.59 | 0.6 | 0.57 | 0.6 | 1249000 | 0.56 |
| 25/07/2012 | 0.57 | 0.58 | 0.57 | 0.58 | 739900 | 0.54 |
| 24/07/2012 | 0.58 | 0.6 | 0.58 | 0.6 | 1604700 | 0.56 |
| 23/07/2012 | 0.59 | 0.6 | 0.57 | 0.58 | 2586300 | 0.54 |
| 20/07/2012 | 0.56 | 0.61 | 0.56 | 0.61 | 2282300 | 0.56 |
| 19/07/2012 | 0.56 | 0.56 | 0.54 | 0.56 | 1750600 | 0.52 |
| 18/07/2012 | 0.55 | 0.55 | 0.54 | 0.55 | 680600 | 0.51 |
| 17/07/2012 | 0.53 | 0.56 | 0.53 | 0.55 | 1249800 | 0.51 |
| 16/07/2012 | 0.54 | 0.54 | 0.52 | 0.54 | 1385000 | 0.5 |
| 13/07/2012 | 0.52 | 0.54 | 0.52 | 0.52 | 1974600 | 0.49 |
| 12/07/2012 | 0.54 | 0.55 | 0.52 | 0.52 | 2299700 | 0.49 |
| 11/07/2012 | 0.56 | 0.56 | 0.53 | 0.53 | 1385100 | 0.49 |
| 10/07/2012 | 0.55 | 0.56 | 0.54 | 0.56 | 5482000 | 0.52 |
| 09/07/2012 | 0.56 | 0.56 | 0.54 | 0.54 | 1551400 | 0.5 |
| 06/07/2012 | 0.57 | 0.58 | 0.56 | 0.56 | 921400 | 0.53 |
| 05/07/2012 | 0.58 | 0.58 | 0.56 | 0.58 | 983700 | 0.54 |
| 04/07/2012 | 0.61 | 0.61 | 0.58 | 0.58 | 1315300 | 0.54 |
| 03/07/2012 | 0.61 | 0.61 | 0.6 | 0.6 | 684800 | 0.56 |
| 02/07/2012 | 0.6 | 0.62 | 0.59 | 0.61 | 2062700 | 0.57 |
| 29/06/2012 | 0.56 | 0.59 | 0.55 | 0.57 | 2769400 | 0.54 |
| 28/06/2012 | 0.52 | 0.56 | 0.52 | 0.56 | 3018500 | 0.52 |
| 27/06/2012 | 0.54 | 0.54 | 0.52 | 0.52 | 2232300 | 0.48 |
| 26/06/2012 | 0.53 | 0.54 | 0.5 | 0.53 | 4887000 | 0.49 |
| 25/06/2012 | 0.56 | 0.56 | 0.54 | 0.54 | 1484100 | 0.5 |
| 22/06/2012 | 0.56 | 0.56 | 0.55 | 0.56 | 1705100 | 0.52 |
| 21/06/2012 | 0.56 | 0.57 | 0.56 | 0.56 | 4255700 | 0.53 |
| 20/06/2012 | 0.58 | 0.58 | 0.56 | 0.57 | 4169800 | 0.53 |
| 19/06/2012 | 0.57 | 0.58 | 0.56 | 0.57 | 1067700 | 0.53 |
| 18/06/2012 | 0.6 | 0.6 | 0.58 | 0.58 | 4610400 | 0.54 |
| 15/06/2012 | 0.58 | 0.6 | 0.57 | 0.59 | 4273000 | 0.55 |
| 14/06/2012 | 0.59 | 0.59 | 0.57 | 0.58 | 1753600 | 0.54 |
| 13/06/2012 | 0.6 | 0.61 | 0.59 | 0.6 | 1101400 | 0.55 |
| 12/06/2012 | 0.59 | 0.6 | 0.59 | 0.6 | 1152000 | 0.55 |
| 11/06/2012 | 0.59 | 0.59 | 0.59 | 0.59 | 0 | 0.55 |
| 08/06/2012 | 0.6 | 0.61 | 0.58 | 0.59 | 2486700 | 0.55 |
| 07/06/2012 | 0.61 | 0.62 | 0.58 | 0.6 | 4588500 | 0.55 |
| 06/06/2012 | 0.62 | 0.62 | 0.59 | 0.6 | 1568900 | 0.55 |
| 05/06/2012 | 0.62 | 0.62 | 0.59 | 0.6 | 2708300 | 0.56 |
| 04/06/2012 | 0.59 | 0.61 | 0.58 | 0.6 | 1588600 | 0.56 |
| 01/06/2012 | 0.64 | 0.64 | 0.6 | 0.63 | 2009000 | 0.59 |
| 31/05/2012 | 0.62 | 0.64 | 0.61 | 0.64 | 1722700 | 0.6 |
| 30/05/2012 | 0.63 | 0.63 | 0.62 | 0.63 | 1548400 | 0.59 |
| 29/05/2012 | 0.61 | 0.65 | 0.61 | 0.64 | 3173600 | 0.6 |
| 28/05/2012 | 0.6 | 0.62 | 0.58 | 0.62 | 2461000 | 0.58 |

| | | | | | | |
|------------|------|------|------|------|----------|---------|
| 25/05/2012 | 0.6 | 0.61 | 0.58 | 0.59 | 1262000 | 0.55 |
| 24/05/2012 | 0.6 | 0.61 | 0.59 | 0.6 | 1422800 | 0.56 |
| 23/05/2012 | 0.62 | 0.62 | 0.59 | 0.6 | 2124600 | 0.56 |
| 22/05/2012 | 0.61 | 0.62 | 0.6 | 0.62 | 3228900 | 0.58 |
| 21/05/2012 | 0.62 | 0.62 | 0.58 | 0.6 | 2643800 | 0.56 |
| 18/05/2012 | 0.62 | 0.63 | 0.58 | 0.6 | 4047900 | 0.56 |
| 17/05/2012 | 0.64 | 0.65 | 0.63 | 0.63 | 2997200 | 0.59 |
| 16/05/2012 | 0.68 | 0.69 | 0.63 | 0.65 | 3310500 | 0.61 |
| 15/05/2012 | 0.69 | 0.69 | 0.67 | 0.69 | 1860000 | 0.64 |
| 14/05/2012 | 0.69 | 0.71 | 0.69 | 0.7 | 2079800 | 0.66 |
| 11/05/2012 | 0.68 | 0.69 | 0.67 | 0.69 | 6125500 | 0.64 |
| 10/05/2012 | 0.67 | 0.68 | 0.67 | 0.67 | 2681000 | 0.62 |
| 09/05/2012 | 0.69 | 0.69 | 0.67 | 0.68 | 2893100 | 0.63 |
| 08/05/2012 | 0.68 | 0.71 | 0.68 | 0.7 | 3876700 | 0.65 |
| 07/05/2012 | 0.65 | 0.68 | 0.65 | 0.66 | 2741600 | 0.61 |
| 04/05/2012 | 0.73 | 0.75 | 0.67 | 0.68 | 8702000 | 0.63 |
| 03/05/2012 | 0.73 | 0.75 | 0.72 | 0.74 | 5859500 | 0.69 |
| 02/05/2012 | 0.71 | 0.74 | 0.71 | 0.73 | 8909000 | 0.68 |
| 01/05/2012 | 0.70 | 0.73 | 0.70 | 0.71 | 4700700 | 0.66124 |
| 30/04/2012 | 0.68 | 0.71 | 0.68 | 0.7 | 12726000 | 0.65192 |
| 27/04/2012 | 0.71 | 0.72 | 0.70 | 0.7 | 6453700 | 0.65192 |
| 26/04/2012 | 0.74 | 0.75 | 0.70 | 0.72 | 4445300 | 0.67055 |
| 25/04/2012 | 0.74 | 0.74 | 0.74 | 0.74 | 0 | 0.68452 |
| 24/04/2012 | 0.76 | 0.77 | 0.74 | 0.74 | 3222600 | 0.68452 |
| 23/04/2012 | 0.77 | 0.77 | 0.76 | 0.77 | 2280800 | 0.71246 |
| 20/04/2012 | 0.77 | 0.78 | 0.76 | 0.77 | 2467600 | 0.71712 |
| 19/04/2012 | 0.77 | 0.78 | 0.77 | 0.78 | 2953500 | 0.72177 |
| 18/04/2012 | 0.79 | 0.79 | 0.77 | 0.78 | 2634400 | 0.72177 |
| 17/04/2012 | 0.79 | 0.79 | 0.78 | 0.78 | 1845800 | 0.72643 |
| 16/04/2012 | 0.77 | 0.79 | 0.77 | 0.79 | 1384700 | 0.73574 |
| 13/04/2012 | 0.79 | 0.79 | 0.77 | 0.79 | 3050400 | 0.73574 |
| 12/04/2012 | 0.77 | 0.79 | 0.77 | 0.79 | 4183400 | 0.73574 |
| 11/04/2012 | 0.74 | 0.76 | 0.74 | 0.76 | 2279700 | 0.70315 |
| 10/04/2012 | 0.73 | 0.79 | 0.73 | 0.78 | 3522300 | 0.72177 |