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SEAL OF THE FEDERAL COURT OF AUSTRALIA

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Dated: 6/07/2015 12:45:53 PM AEST

Registrar

Important Information

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

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Form 33

Rule 16.32

DEFENCE TO FURTHER AMENDED STATEMENT OF CLAIM

No. VID 406 of 2014

Federal Court of Australia

District Registry: Victoria

EARGLOW PTY LIMITED (ACN 055 664 769)

Applicant

NEWCREST MINING LTD (ACN 005 683 625)

Respondent

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NOTE: A defined term used in this defence has, unless otherwise indicated, the same meaning as that assigned to it in the Further Amended Statement of Claim dated 5 June 2015 ~~8 October 2014~~ (**Further Amended Statement of Claim**).

In answer to the Further Amended Statement of Claim, the Respondent (**Newcrest**) says as follows:

A. PARTIES

1 It does not plead to paragraph 1 as it makes no allegation against it.

2 It does not plead to paragraph 2 as it makes no allegation against it.

3 It does not admit paragraph 3.

4 It admits paragraph 4.

B. NEWCREST'S OPERATIONS

5 Save that paragraph 5 of the Further Amended Statement of Claim should refer to 'Newcrest and its subsidiaries', it admits paragraph 5.

6 In respect of paragraph 6, it:

(a) admits that Newcrest had in place systems by which operational information was reported by each of Newcrest's mines (**Operational Data**);

Particulars

The Operational Data was recorded by each site into its Metallurgical Accounting System ('MET'). Daily reports were prepared and provided to the General Manger responsible for the site and to Executive General Managers.

(b) says that the Operational Data included processing information, mine to mill information and mining operations information;

Particulars

The information received was generally of the following kinds (save that not all pieces of information were received for each site):

Processing information	***Mine to mill information***	***Mining operations information***
Actual gold production	*Daily crusher feed tonnes*	*Daily total material mined*
Autoclave throughput rates	*Crusher feed grades*	*Daily total material moved*
Flotation ore feed grades	*Crusher utilisation*	*Haul truck availability*
Flotation ore tonnes milled		*Shovel productivity*

Processing information	***Mine to mill information***	***Mining operations information***
Direct ore feed grade		*Total metres drilled*
Cyanide recovery		*Drill availability*
Power generation		*Ore reclaimed*

(c) admits that Newcrest had in place systems by which financial information was reported by each of Newcrest's mines (**Financial Data**);

Particulars

Newcrest operated a SAP system. Lihir (from 1 March 2013), Cadia, Telfer and Gosowong input financial information directly into Newcrest's SAP system in the ordinary course of business. Prior to 1 March 2013, Lihir operated on a financial software system known as 'Ellipse'. Financial information for Lihir (prior to 1 March 2013), Bonikro and Hidden Valley was provided by the sites to Newcrest's internal group accountants located in its Head Office at the end of each month. The group accounting function consolidated the information received from all sites monthly at the end of the calendar month.

(d) says that the Financial Data included the costs incurred referable to the operations at each site;

(e) says that, at all relevant times, it was Newcrest's practice regularly to review and analyse the Operational Data and Financial Data and to prepare and circulate operational and management reports containing the same;

Particulars

The operational and management reports so prepared and circulated included the following:

(A) *Production Flash Reports which:*

(i) *were circulated to Newcrest's Executive Committee (**ExCo**) on about the first working day of each month; and*

(ii) *contained (inter alia) a summary of gold, silver and copper production and sales (actual vs budget, and, on occasions, variance to market guidance) for the previous month;*

(B) *Full Flash Reports which:*

(i) *were circulated to ExCo on about the third working day of each month; and*

(ii) *contained (inter alia) a summary of gold, silver and copper production and sales (actual versus budget), site costs, unit cash costs, unit depreciation costs and unit production costs (actual versus budget) for the previous month;*

(C) *ExCo Reports which:*

(i) *were circulated to Newcrest's ExCo and Board on about the fifth working day of each month; and*

(ii) *contained (inter alia) Operational Data and Financial Data;*

(D) *Group Operational Reports which:*

(i) *were circulated to ExCo on about the sixth working day of each month; and*

(ii) *contained (inter alia) an analysis of each site's Operational Data;*

(E) *(from 22 April 2013) Operating Committee Reports which:*

(i) *were circulated to Newcrest's Operating Committee twice per week; and*

(ii) *contained production data.*

Reports with similar content were provided to a working group of ExCo in February and March 2013 before the Operating Committee was formed.

(f) says that it had in place policies and procedures directed at ensuring compliance with its continuous disclosure obligations under the ASX Listing Rules and s 674 of the *Corporations Act 2001* (Cth) (***Corporations Act***); and

Particulars

Newcrest's policies and procedures in place in the period between August 2012 and 7 June 2013 were in writing and comprised the Continuous Disclosure Policy (v2) dated August 2012, a copy of which is available for inspection by appointment with Newcrest's solicitors.

(g) otherwise does not admit paragraph 6.

7 In respect of paragraph 7, and subject to reference to the full terms and effect of the FY11 Annual Report, it admits paragraphs 7(a)-(d).

8 In respect of paragraph 8, it:

(a) admits that Newcrest had, from time to time, information of the kind referred to in paragraph 6 above in relation to the past and present performance of each of its mines contributing to its gold production, and the conditions prevailing at each of those mines;

(b) says, in relation to the likely future performance of each of its mines contributing to its gold production, and the conditions prevailing at each of those mines, that:

(i) information of the kind referred to in paragraph 6 above informed, to an extent, those matters;

(ii) at any given point in time, the future gold production which might potentially be achieved at any mine in a future period is and was, *inter alia*:

(A) uncertain; and

(B) liable to be affected by a large number of risks and variable factors (including the risks and variable factors referred to in the particulars to paragraph ~~27(b)~~ 38(b) below); and

(C) subject to future operational and strategic decisions made by Newcrest having regard to the information available to it, and conditions affecting it, from time to time;

(iii) the uncertainty, risk and variability attending both future gold production and any assessments made by Newcrest with respect to the same:

(A) were expressly made clear to participants in the market for NCM Securities by Newcrest by way of disclaimers published alongside forward-looking statements with respect to future gold production; and

(B) alternatively were reasonably expected by Newcrest to be well understood by participants in the market for NCM Securities;

Particulars

Newcrest routinely and expressly made disclaimers with respect to the risks, uncertainties and variables affecting forward looking statements, including statements with respect to future gold production, in its presentations and in its quarterly reports, in one of the following two forms or in terms to similar effect:

Long form disclaimer

"These materials include forward looking statements. Often, but not always, forward looking statements can generally be identified by the use of forward looking words such as "may", "will", "expect", "intend", "plan", "estimate", "anticipate",

"continue", and "guidance", or other similar words and may include, without limitation statements regarding plans, strategies and objectives of management, anticipated production or construction commencement dates and expected costs or production outputs.

Forward looking statements inherently involve known and unknown risks, uncertainties and other factors that may cause the company's actual results, performance and achievements to differ materially from any future results, performance or achievements. Relevant factors may include, but are not limited to, changes in commodity prices, foreign exchange fluctuations and general economic conditions, increased costs and demand for production inputs, the speculative nature of exploration and project development, including the risks of obtaining necessary licences and permits and diminishing quantities or grades of reserves, political and social risks, changes to the regulatory framework within which the company operates or may in the future operate, environmental conditions including extreme weather conditions, recruitment and retention of personnel, industrial relations issues and litigation.

Forward looking statements are based on the company and its management's good faith assumptions relating to the financial, market, regulatory and other relevant environments that will exist and affect the company's business and operations in the future. The company does not give any assurance that the assumptions on which forward looking statements are based will prove to be correct, or that the company's business or operations will not be affected in any material manner by these or other factors not foreseen or foreseeable by the company or management or beyond the company's control.

Although the company attempts and has attempted to identify factors that would cause actual actions, events or results to differ materially from those disclosed in forward looking statements, there may be other factors that could cause actual results, performance, achievements or events not to be anticipated, estimated or intended, and many events are beyond the reasonable control of the company. Accordingly, readers are cautioned not to place undue reliance on forward looking statements. Forward looking statements in these materials speak only at the date of issue. Subject to any continuing obligations under applicable law or any relevant stock exchange listing rules, in providing this information the company does not undertake any obligation to publicly update or revise any of the forward looking statements or any change in events, conditions or circumstances on which any such statement is based."

Short form disclaimer

"These materials include forward looking statements. Forward looking statements inherently involve subjective judgement and analysis and are subject to significant uncertainties, risks and contingencies, many of which are outside of the control of, and may be unknown to, the company. Actual results and developments may vary materially from those expressed in these materials. The types of uncertainties which are relevant to the company may include, but are not limited to, commodity prices, political uncertainty, changes to the regulatory framework which applies to the business of the company and general economic conditions. Given these uncertainties, readers are cautioned

not to place undue reliance on such forward looking statements.

Forward looking statements in these materials speak only at the date of issue. Subject to any continuing obligations under applicable law or any relevant stock exchange listing rules, the company does not in providing this information undertake any obligation to publicly update or revise any of the forward looking statements or any change in events, conditions or circumstances on which any such statement is based."

A statement in the above (or similar) terms was included in (inter alia):

- *each of Newcrest's quarterly reports issues in the 2012 and 2013 calendar years;*
- *each quarterly presentation issued by Newcrest in the 2012 and 2013 calendar years;*
- *Newcrest's Financial Results ASX releases in respect of its half year financial results for six months to 31 December 2011, and 31 December 2012;*
- *each presentation in respect of the half year financial results for the six months to 31 December 2011, and 31 December 2012;*
- *Newcrest's Financial Results releases in respect of its full year results for 30 June 2012;*
- *Newcrest's presentation in respect of its full year results for 30 June 2012; and*
- *presentations given by Newcrest staff at conferences.*

Further, other gold mining companies both in Australia and internationally routinely and expressly made disclaimers in *similar terms with respect to the risks, uncertainties and variables affecting forward looking statements, including statements with respect to future gold production, in their presentations, reports and other public documents.*

(iv) at all relevant times, for the purposes of its annual planning cycle, Newcrest gathered information regarding, *inter alia*, the potential future performance of its mines;

Particulars

The information gathered and analysed for the purposes of the preparation (inter alia) of Newcrest life of province plans, Newcrest five year plans and the Newcrest Budget typically included the following:

- *the volume of reserves at each site;*
- *the grade of reserves and stockpiles at each site;*
- *the sequence in which ore bodies and stockpiles at each site were to be exploited;*
- *the costs of extraction and processing for different ore bodies and stockpiles at each site including the cost of employees, contractors, machinery, power and gas, chemicals and general and administrative costs;*
- *the metallurgical properties of the ore bodies and stockpiles at each site;*
- *possible capital expenditure including sustaining capital, capital for projects and development capital having regard to production strategies and ore body sequencing at each site;*
- *the profit impact of production strategies and possible capital expenditure at the different sites, including the impact of depreciation;*
- *exploration plans.*

In preparing Newcrest life of province plans, Newcrest five year plans and the Newcrest Budgets, Newcrest's objectives included:

- *planning for a range of credible situations, including by the preparation of fall-back scenarios for softer economic conditions and step-up scenarios for upside economic conditions;*
- *making efficient use of the ore body;*
- *updating planning data with new data from studies, detailed test work and recent actual performance in order to take advantage of increased local knowledge and so optimise performance.*

Newcrest's annual planning cycle brought together a range of inputs from different parts of the group including:

- *the setting by the CEO and Board of the overall corporate strategy;*
- *the development of economic parameters as to matters such as commodity prices, foreign exchange rates, transportation and realisation costs, and cost input rates (concerning matters such as costs for diesel, tyres, grinding media, electricity, liners, reagents, explosives, transport and equipment) which economic parameters may be modified during the planning cycle;*
- *resource development of exploration targets and the ongoing definition of resources at operating sites;*
- *the identification and assessment of different business options for new and existing ore bodies;*
- *the consideration of initiatives that may be taken to improve operational efficiency, including in mining methods, processes, equipment, and costs.*

(v) at all relevant times prior to June 2013, Newcrest's annual planning cycle included preparation of the following:

(A) in about September to December of each year, a Life of Province Plan (**LoPP**) which:

(1) constituted an internal analysis of Newcrest's then strategic options for the long term resource development of each mining province;

(2) was based on information available to Newcrest at the time of its preparation;

(3) was prepared annually as part of the planning cycle in light of information then available;

Particulars

The strategic options typically concerned matters such as the sequencing of ore bodies, mining and treatment methods, scale of operations, whether to use bulk or selective approaches in addressing ore bodies, the type of equipment to be used, the excavation methods and support methods to be used, how materials and waste may be handled, environmental engineering, cost management and ultimately mine closure.

LoPPs delivered high, medium and low case scenarios for each mine based on the identified options and possibilities.

(B) a five year plan (**5YP**), which:

(1) was presented to the Board for discussion <u>and endorsement</u> in about April of each year;

(2) constituted an internal statement of Newcrest's then planned or possible activity in respect of its mining assets;

(3) set out, amongst other things, various directional outcomes in respect of production, revenue, costs and

capital expenditure which Newcrest then planned to work towards achieving;

(4) was based on information available to Newcrest at the time of its preparation, including assumptions made by it with respect to numerous future matters which could affect the planned or possible activity and directional outcomes set out in the 5YP;

(5) was prepared annually as part of the planning cycle in light of information then currently available, including information regarding any changes in strategy, operating environment, economic conditions or other relevant circumstances and, in respect of directional gold production outcomes, matters of the kind set out in subparagraph (ii) above;

Particulars

The Newcrest 5YP is an iterative document, prepared each year between December and the following April. It sets out a roadmap to plan development activities in relation to viable options coming out of the LoPP process. It is prepared to assist the understanding of future investment choices, studies required and balance sheet management.

The Newcrest 5YP is prepared by Newcrest management, and is thereafter provided to the Board (usually in or after April each year) for discussion and endorsement. Production outcomes, capital expenditure figures and mining plans referred to in the 5YP at April in any year may no longer remain current if (inter alia) the operating or economic environment (including the gold price) *changes or if the subsequent Budget process has flow-on impacts on later years.*

5YPs refine the first 5 years of the LoPP and seek to:

- *analyse and identify possible plans for production, capital expenditure and studies over the period;*
- *indicate possible investment decision points;*
- *identify the earnings, cashflow and investment returns consequent upon different scenarios being analysed.*

Inputs used in the development of the 5YP have a 'median' confidence level, as compared with the greater confidence level of inputs used in the preparation of the Budget.

The assumptions made by Newcrest for the purposes of preparing the 5YP included, without limitation, assumptions in respect of the relevant five year period regarding:

- *gold prices;*
- *copper prices;*
- *silver prices;*
- *exchange rates;*
- *diesel and gas prices;*
- *labour prices in relevant regions;*
- *energy prices in relevant regions;*
- *the level of consumption/usage required in relation to each of energy, labour and consumables;*
- *royalties and taxes;*
- *treatment and refining charges;*
- *other matters of the kind set out in the particulars to paragraph ~~27(b)~~ 38(b) below.*

(6) was, insofar as it incorporated estimates with respect to capital expenditure, subject to the considerations and matters set out in paragraph <u>18</u> ~~16A~~(c) below;

(C) a Budget for the next financial year, which:

(1) was presented to the Board for approval in about June of each year;

(2) constituted a statement of Newcrest's target performance outcomes for the forthcoming year and included a detailed plan for delivery of that outcome;

(3) included, in particular, targets for capital, production, revenue and expenditure for each mine and the corporate function, as well as exploration activity;

(vi) the figures in respect of future gold production referred to in each LoPP, 5YP and Budget were subject to the matters set out in subparagraph (ii) above; and

(c) otherwise denies paragraph 8.

9 It admits paragraph 9 and says further that:

(a) it refers to and repeats paragraphs 8(b)(ii), 8(b)(iii), 8(b)(iv), 8(b)(v) and 8(b)(vi) above;

(b) Newcrest, from time to time, issued to the market:

(i) gold production guidance statements (**Guidance Statements**) in respect of the current financial year; and

(ii) less frequently than it issued Guidance Statements, five year gold production outlook statements (**Outlook Statements**) in respect of gold production for the succeeding five years;

(c) Guidance Statements issued by Newcrest to the market were risk-weighted assessments constituting its then current expectation as to the range in which its gold production for the year would ultimately fall;

Particulars

Guidance Statements were formulated by Newcrest's senior management in conjunction with Newcrest's Board, having regard to various risk factors which might affect Newcrest's ability to meet the production targets set out in its Budget for the relevant financial year, including risk factors of the kind referred to in the particulars to paragraph ~~27(b)~~ <u>38(b)</u> below.

(d) Outlook Statements issued by Newcrest to the market were ordinarily issued at the time of its annual financial results presentation, and were risk-weighted assessments constituting Newcrest's then current views as to the range of gold production possibilities for the ensuing five year period;

Particulars

Outlook Statements were formulated by Newcrest's senior management in conjunction with Newcrest's Board, having regard to various short and longer term risk factors (including risk factors of the kind set out in the particulars to paragraph ~~27(b)~~ <u>38(b)</u> below) which might affect the planned or possible activities and directional gold production outcomes set out in the 5YPs and which could, subject to the adoption of different activity strategies, potentially have an impact on production in those years.

(e) Guidance Statements and Outlook Statements issued by Newcrest to the market:

(i) were statements that were made by Newcrest, and received by the market, in the context of the presentations and reports in which they were contained and in the economic environment prevailing at the time;

Particulars

Newcrest will refer to the full text of the written reports and presentations containing Guidance Statements and Outlook Statements, as well as to the statements made orally by Newcrest's *then CEO, Greg Robinson (**Robinson**), and its CFO, Gerard Bond (**Bond**), in speaking to the company's Guidance Statements and Outlook Statements from time to time.*

(ii) were subject to the uncertainties, risks, variable factors and future operational and strategic decisions of the kind referred to in paragraph 8(b)(ii) above;

(iii) were, consequently:

(A) difficult matters of judgment on which reasonable minds might differ;

(B) all the more difficult and uncertain the longer the temporal range under consideration; and

(C) inherently susceptible to revision as circumstances changed and new or different information emerged which had the potential to affect gold production outcomes;

(iv) did not, however, necessarily require revision upon a change of circumstances or the emergence of new or different information since (amongst other things):

(A) not all such changes in circumstances or information might lead to the conclusion that gold production outcomes in the relevant period would be likely to be affected;

(B) Newcrest had available to it a range of possible mitigation, replacement or alternative strategies that it could, in an appropriate case, deploy in order to seek to achieve existing production outcomes or targets, which necessarily included a broader suite of potential strategies the longer the temporal range under consideration; and

(C) as regards Outlook Statements, the implications of any such changes in circumstances or information for Newcrest's production in future years were considered in the course of Newcrest's annual planning cycle and announced to the market annually;

(v) were subject to express disclaimers of the kind referred to in paragraph 8(b)(iii)(A) above and/or the understanding referred to in paragraph 8(b)(iii)(B) above;

(f) Newcrest routinely reviewed the gold production guidance it had issued to the market from time to time throughout the relevant year, and issued revised guidance as and when it determined that it was sufficiently certain that the guidance previously issued would not be achieved;

Particulars

At or about the conclusion of each of the first three quarters of a year (September, December, March) the General Manager for each mine site submitted a forecast containing (inter alia) actual production figures for the year to date for that mine together with the then current expectation of the site team as to the mine's likely total gold production for the year. The information was consolidated and a group forecast was prepared. The group forecast was provided to senior Newcrest management for consideration and evaluation to assess (and if necessary, make further enquiries about) whether additional opportunities existed or actions were required, and the probable production outcome for each mine site for that financial year. In the event that Newcrest's senior management determined that it was sufficiently certain that a mine site would not achieve or would exceed guidance, they would determine a revised gold production guidance for that mine and/or a revised total gold production guidance for Newcrest. The proposed revised guidance would then be finalised after consideration by Newcrest's Board, following which (if appropriate) revised guidance would be issued.

(g) the revisions to its gold production guidance in 2011 and 2012 were:

(i) routine, and occurred in accordance with the process described in subparagraph (f) above; and

(ii) necessitated by a range of unanticipated factors which impacted production and could not be successfully mitigated in order to meet the original guidance.

Particulars

- *FY11 guidance was downgraded on 25 January 2011 because:*
  - *extreme rain in December 2010 impeded access to the high grade zone at the base of the open-cut mine at Cadia Valley;*
  - *Cracow and Mt Rawdon experienced a minor impact on production;*
  - *operations at Bonikro were suspended for security reasons following an election in Cote d'Ivoire;*
- *FY11 guidance was downgraded on 19 April 2011 because:*
  - *extreme rain restricted access to the high grade zone at the base of the open-cut mine at Cadia Valley until the end of February 2011;*
  - *low rainfall limited the availability of fresh water for the flotation circuit, adversely affecting production at Lihir;*
  - *operations at Bonikro were suspended during most of the March quarter due to civil unrest;*
- *FY11 guidance was downgraded on 9 June 2011 because the operation of the processing plant at Lihir was interrupted by a failure of the high voltage switchgear;*
- *FY12 guidance was downgraded on 24 January 2012 because:*
  - *an access ramp at the Cadia Hill open pit was blocked by a ground slip for part of the December quarter; and*
  - *heavy rain affected production from high grade positions at Lihir.*

(h) the practice of Newcrest and other gold producers of routinely reviewing and issuing revisions to their gold production guidance gave rise to an expectation and understanding in the market that such revisions may occur from time to time, including for the reasons set out in subparagraphs 9(e)(ii) and (e)(iii) above;

(i) in accordance with its practice referred to in subparagraph (f) above, during the course of FY13, Newcrest revised its gold production guidance for that year as follows:

(A) on 24 January 2013, it issued revised guidance as follows:

(1) in respect of gold production from the Gosowong mine – 350koz (down from 375 to 425koz);

(2) in respect of gold production from the Hidden Valley mine – 90koz (down from 100 to 120koz);

Particulars

The revised guidance was published in Newcrest's December 2012 quarterly results, released on 24 January 2013.

(B) on 28 March 2013 it issued revised guidance as follows:

(1) in respect of gold production from the Gosowong mine – in the range of 300 to 325koz (down from 350koz);

(2) in respect of gold production from the Hidden Valley mine – in the range of 80 to 90koz (down from 90koz);

(3) in respect of gold production from the Lihir mine – in the range of 620 to 680koz (down from 700 to 900koz);

(4) in respect of overall group gold production – 2.0 to 2.15Moz (down from 2.3 to 2.5Moz);

Particulars

The revised guidance was published in a market release entitled 'Production Update and Executive Changes', issued on 28 March 2013.

and thereafter met its revised gold production guidance with a final gold production figure for FY13 of 2,109,784oz.

10 In respect of paragraph 10, it:

(a) denies paragraph 10;

Particulars

Insofar as the Applicant relies in support of its plea on All-In Sustaining Cash Cost as a measure of economic viability, Newcrest denies that that is so and says further:

(i) *the World Gold Council (**WGC**) had three different cost metrics under consideration until about 27 June 2013 when it issued a Press Release (a copy of which may be inspected by appointment with Newcrest's solicitors) containing a Guidance Note on "all-in sustaining costs" and "all-in costs";*

(ii) *FY13 was the first year in which Newcrest used the WGC 'All-in Sustaining Cost' (**AISC**) on the basis of the World Gold Council's Guidance Note on Non-GAAP metrics released on 27 June 2013;*

(iii) *Newcrest did not begin using the AISC until the fourth quarter of FY13;*

(iv) *the AISC of any particular mine:*

(A) *includes (inter alia) production stripping and sustaining capital (both of which may be very substantial and variable across periods) in the period in which it is incurred notwithstanding that the economic return of that stripping and capital investment may be enjoyed in later years or periods or over a period of more than one year;*

(B) *excludes (inter alia) depreciation, the costs of building up stockpiles and costs incurred in prior periods;*

(C) *(and any consequent comparison with revenue) may vary significantly from quarter to quarter and year to year with* *(inter alia) varying grades of ore, varying costs of mining and varying needs for reinvestment in new and existing projects; and*

(D) *when compared with the prevailing gold price over a limited period of time, is not a proxy for the economic viability of a particular mine.*

(b) says further that even if the costs of operating each of the mines referred to was, at any given point, higher than the average gold price, this would not, or would not necessarily, render ongoing gold production at those mines uneconomic or at risk of becoming uneconomic; and

(c) the economic viability of Newcrest's mines is a matter with respect to which Newcrest takes a long term view, having regard to numerous factors including future cashflows, the risk profile of the relevant project, historical performance, operational and strategic considerations, and other factors.

11 In respect of paragraph 11, it:

(a) says that Newcrest's net cash cost and total costs for each mine for FY12 were as follows:

	Net Cash Cost (A$/oz) [5]	Total Costs (A$/oz) [5]
Twelve Months to June 2012		
Cadia Hill		
Ridgeway		
Cadia East		
Total Cadia Valley	**423**	**663**
Telfer Open Pit		
Telfer Underground		
Telfer Dump Leach		
Total Telfer	**783**	**1,116**
Lihir	560	725
Gosowong	406	559
Hidden Valley (50%)	1,259	1,676
Bonikro	898	1,239
Mt Rawdon [6]	958	1,147
Cracow (70%) [6]	808	1,057
Total	**603**	**839**

and,

(b) otherwise does not admit paragraph 11.

12 ~~11~~ In respect of paragraph 12~~11~~, it:

(a) admits paragraph 12~~11~~(a);

(b) says further that:

(i) the Lihir acquisition completed on 14 September 2010;

(ii) the spot gold price on 14 September 2010 was US$1,265;

(iii) at the time of the Lihir acquisition, Lihir Gold Ltd (**LGL**), the then owner of the Lihir mine, had commenced a project it called the 'Million Ounce Plant Upgrade' (**MOPU**), which was designed to increase, over time, gold production at Lihir by an average of 240koz per annum, subject to the grade of the ore processed through the plant;

(c) otherwise denies paragraph 12~~11~~.

Particulars

The features of LGL's intentions and activity in respect of the MOPU project as owner of the Lihir mine are referred to in LGL's release to the ASX dated 29 February 2008. A copy of this report may be inspected by appointment with Newcrest's solicitors.

13 ~~12~~ In respect of paragraph 13~~12~~, it:

(a) admits that, as at 13 August 2012, Newcrest had in place:

(i) an ongoing program to improve plant reliability at the Lihir mine (the **Lihir Reliability Program**) which, as at 13 August 2012, comprised three principal projects:

(A) refurbishment of the neutralisation, cyanide and absorption (NCA) circuit;

(B) works on the short term water supply;

(C) work to improve electrical power stability;

(ii) an ongoing project to increase the flotation capacity at the Lihir mine (the **Lihir Flotation Capacity Upgrade**) which, as at August 2012, was due to be completed by June 2013;

Particulars

The nature of, and schedule for, the Lihir flotation capacity upgrade are set out in the Lihir Flotation Upgrade Project Feasibility Study dated 18 August 2012, a copy of which may be inspected by appointment with Newcrest's solicitors.

The content of the Lihir Reliability Program at August 2012 is set out in the '555 Lihir Sustaining Capital Program: Monthly Progress Report August 2012', a copy of which may be inspected by appointment with Newcrest's solicitors.

(b) says further that the projects comprising the Lihir Reliability Program varied over time and there was no fixed completion date for the program; and

(c) otherwise does not admit paragraph 13~~12~~.

14 ~~13~~ In respect of paragraph 14~~13~~, it:

(a) admits that, between early 2011 and 6 June 2013, as Newcrest reported to the ASX, a number of events had occurred which affected gold production at the Lihir mine;

(b) says that, subject to reference to the full terms and effect of each such announcement to the ASX, Newcrest admits that:

(i) the ASX release of 19 April 2011 reported that:

"Unseasonably low rainfall limited the supply of fresh water to the process plant which resulted in the flotation circuit being unavailable for a large part of February and March. This resulted in the need to process direct feed ore to the autoclaves at lower than planned gold grades and throughput rates. In addition, sea water was used as a substitute for fresh water in the downstream circuits in the plant which increased the reagent usage and reduced leach recovery. The combined negative impact

on production was approximately 40koz. Significant rainfall late in March enabled the plant to return to planned operating levels."

(ii) the ASX release of 9 June 2011 reported that:

"A high voltage switchgear failure in the power station at Newcrest's Lihir operation in Papua New Guinea has interrupted production with the processing plant currently operating at a reduced capacity."

(iii) the ASX release of 19 December 2011 reported that:

"The lower production is a result of the extended time required to complete the total plant shut down during August and the extreme rainfall during September which impeded production from high grade positions in the open pit until mid November."

(iv) the ASX release of 24 February 2012 reported that:

"Lihir is experiencing a production disruption caused by a failure detected in the post autoclave final discharge deaeration tank and continued erratic processing plant restart performance."

(v) the ASX release of 28 August 2012 reported that:

"Production at the Lihir mine is currently being impacted due to LMALA, the Lihir Mining Area Landowners Association, requiring that mine production be suspended until a dispute has been resolved."

(vi) the ASX release of 21 September 2012 reported that:

"Newcrest's Lihir operation in Papua New Guinea has temporarily reduced production to approximately 25% of plant capacity due to an issue with the electrical system in the main oxygen plant. The oxygen plant supplies oxygen to the autoclaves to facilitate the pressure oxidation process which enables gold recovery from the ore feed."

(vii) the ASX release of 28 March 2013 reported that:

> *"Notwithstanding the pleasing performance of the MOPU plant to date, the Lihir operation is currently running at reduced production capacity following a shutdown of autoclave 1, which is part of the original Lihir plant. A routine thermal scanning program has detected a hot spot on the outer shell of autoclave 1 and, following inspection, it has been confirmed that the internal brickwork is damaged"*

(c) otherwise does not admit paragraph 14 ~~13~~.

15 ~~14~~ In respect of paragraph 15 ~~14~~, it:

(a) refers to and repeats paragraph ~~12~~ 13 above;

(b) admits that the ASX announcement on 24 February 2012 contained the statements alleged at paragraph 15 ~~14~~ of the Further Amended Statement of Claim; and

(c) says further that, in the ASX announcement on 24 February 2012, Newcrest stated (*inter alia*) that:

> *"a series of minor electrical and mechanical issues continue to cause intermittent plant shutdowns. Each instance causes the plant to lose efficient production for two to three days. These plant reliability issues are expected to adversely impact the March quarterly production of the Company by 50,000 to 60,000 ounces…*
>
> *Newcrest has completed a detailed review of the maintenance plan for the plant. The plan is being executed to progressively rectify vulnerable and unreliable parts of the older plant. Sustaining capital expenditure at Lihir is under constant review and is currently forecast to be around A$200 million per annum for the next few years to support this program.*
>
> *Newcrest's financial year 2012 production and cost guidance is being maintained but is under pressure; delivery will largely depend on the performance of Lihir over the next 4 months."*

16 ~~15~~ In respect of paragraph 16 ~~15~~, it:

(a) refers to and repeats paragraphs 10 above;

(b) admits that, based on all of the assumptions set out in the Newcrest FY12 5YP and subject always to those assumptions being revised, Newcrest expected the grade of gold processed at the Lihir mine to decline in the five years to FY17; and

Particulars

As reflected in the 5YP, at all times, the average grade of material available for processing at Lihir depended on a number of variables including:

(i) for mined ore, the deposit and phase being mined;

(ii) for stockpiled ore, the part of the stockpile from which the ore was drawn.

Newcrest refers to the variable "Au grade (g/t)" set out in the Newcrest FY12 5YP at 11.1.2.

(c) otherwise denies paragraph 16 ~~15~~.

17 ~~16~~ In respect of paragraph 17 ~~16~~ it:

(a) admits that around 2010, it commenced developing a new underground mine at Cadia Valley referred to as Cadia East;

(b) admits that on about 16 August 2010, in a presentation with respect to Newcrest's FY10 financial results, Newcrest included a Guidance Statement (the **FY11 Cadia Valley Gold Production Guidance Statement**) to the effect that its then current expectation was that full year gold production at the Cadia Valley mine for FY11 would be within the range of 580koz to 600koz;

(c) says, in relation to the FY11 Cadia Valley Gold Production Guidance Statement that:

(i) it refers to and repeats paragraphs 9(c), 9(e), 9(f) and 9(g) above;

(ii) the FY11 Cadia Valley Gold Production Guidance Statement:

(A) was accompanied by an express disclaimer of the kind referred to in paragraph 8(b)(iii)(A);

Particulars

The disclaimer statement was set out on page 2 of the FY10 Full Year Results presentation.

(B) was, and was reasonably expected to be, subject to the understanding in the market referred to in paragraph 8(b)(iii)(B) above;

(d) admits that on about 15 August 2011 in a presentation with respect to Newcrest's FY11 financial results, Newcrest included a Guidance Statement (the **FY12 Cadia Valley Gold Production Guidance Statement**) to the effect that its then current expectation was that full year gold production at the Cadia Valley mine for FY12 would be within the range of 550koz to 580koz;

(e) says in relation to the FY12 Cadia Valley Gold Production Guidance Statement that:

(i) it refers to and repeats paragraphs 9(c), 9(e), 9(f) and 9(g) above;

(ii) the FY12 Cadia Valley Gold Production Guidance Statement:

(A) was accompanied by an express disclaimer of the kind referred to in paragraph 8(b)(iii)(A);

Particulars

The disclaimer statement was set out on page 2 of the FY11 Full Year Results presentation.

(B) was, and was reasonably expected to be, subject to the understanding in the market referred to in paragraph 8(b)(iii)(B) above;

(f) says that Newcrest issued statements reducing its overall production guidance for FY11 and FY12, which revised guidance it achieved in FY11 and FY12 respectively;

Particulars

In respect of FY11:

- *on 16 August 2010 Newcrest issued gold production guidance for FY11 of 1.850 to 1.950Moz;*
- *following the acquisition of Lihir, on 21 October 2010, Newcrest issued revised guidance of 2.8 to 3.0Moz in its quarterly report for the three months ending 30 September 2010;*
- *on 25 January 2011, Newcrest released its quarterly report for the three months ending 31 December 2010 and revised its gold production guidance for FY11 to 2.85 to 2.95Moz. Newcrest stated that December rainfall was expected to reduce Cadia gold production by approximately 16 to 20koz;*
- *on 19 April 2011 Newcrest released its quarterly report for the three months ending 31 March 2011 and reduced its gold production guidance for FY11 to 2.82Moz, plus or minus 35koz. Newcrest stated that extreme rain events had impacted operations at Cadia, reducing access to the high grade zone at the base of the open cut, leading to production being approximately 40koz lower than expected at Cadia;*
- *on 9 June 2011 Newcrest issued a release in which it reduced its full year gold production guidance to 2.7Moz; and*
- *Newcrest's final gold production in FY11 was 2.702Moz.*

Copies of these documents are available on the Newcrest website (www.newcrest.com.au) or may be inspected by prior appointment with Newcrest's solicitors.

In respect of FY12:

- *on 15 August 2011 Newcrest issued gold production guidance for FY12 of 2.775 to 2.925Moz;*
- *on 19 December 2011 Newcrest issued a production downgrade announcement in which it reduced its gold production guidance for FY12 to 2.43 to 2.55Moz due to disruptions at Cadia and Lihir. Newcrest stated that Cadia's expected production for the first two quarters was expected to be 30koz lower than planned due to a ground slip in the open pit and heavy rainfall;*

- *on 24 April 2012 Newcrest issued a production downgrade announcement in which it reduced its gold production guidance for FY12 to 2.25 to 2.35Moz and stated that Cadia continued to experience extremely high rainfall during the March 2012 quarter as well as machinery problems; and*
- *Newcrest's final gold production in FY12 was 2.29Moz.*

Copies of these documents are available on the Newcrest website (www.newcrest.com.au) or may be inspected by prior appointment with Newcrest's solicitors.

(g) admits that, in the Newcrest FY12 5YP, during the period of FY13 to FY15, in which production from Cadia East was planned to be ramped up, ore from the Ridgeway and Cadia East mines, and from the Cadia Hill stockpiles, was planned to be used as mill feed;

(h) admits that as at 30 June 2012, Newcrest had ceased mining of Cadia Hill;

(i) admits that:

(i) by July 2012 delays had been experienced in the ramp-up of production at Cadia East;

(i) in FY12, approximately 8koz of gold was produced from the Cadia East mine compared with a budget of approximately 67koz;

(j) denies that by July 2012 the development of the Cadia East mine was running at least $400m over budget.

(k) admits that:

(i) the Newcrest FY12 5YP contained figures for ore tonnes milled in FY12 approximately totalling the figures set out in paragraph 17(i)(i) of the Further Amended Statement of Claim;

(ii) the document referred to in the Further Amended Statement of Claim as the 'Cadia FY12 5YP' contained directional gold production outcomes which contemplated that a majority of gold produced across the plan would come from Cadia East;

(l) otherwise does not admit paragraph 17 ~~16~~.

18 ~~16A~~ In respect of paragraph 18 ~~16A~~ it:

(a) admits that, as part of its annual planning cycle in FY12 (which cycle was complete by 30 June 2012), Newcrest prepared the Newcrest FY12 5YP;

(b) refers to and repeats paragraphs 8(b)(ii), 8(b)(v)(B) and 8(b)(vi) above;

(c) says that the directional capital expenditure estimates contained in 5YPs prepared by Newcrest, including the Newcrest FY12 5YP:

(i) represented an estimate of the capital expenditure which might be incurred in order to undertake the range of activities set out in the 5YP;

(ii) did not represent capital expenditure that had been approved by Newcrest's management or Board, as the case may be;

(iii) were subject to ongoing revision and change in light of numerous factors including:

(A) changes in strategy, operating environment, economic conditions, studies or other relevant circumstances;

(B) the development of replacement or alternative strategies designed to respond to market conditions or bring about like (or better) results more efficiently;

(iv) did not constitute statements of commitment or expectation that:

(A) particular capital projects or capital expenditure were or would be necessary in order to achieve the directional production outcomes set out in the 5YPs;

(B) particular capital projects or capital expenditure would be undertaken in order to achieve the directional production outcomes set out in the 5YPs;

(d) admits that the Newcrest FY12 5YP contained:

(i) the gold production figures pleaded at paragraph 18~~16A~~(a) of the Further Amended Statement of Claim; and

(ii) capital expenditure figures totalling A$8.259 billion between FY13 and FY17 in a table which expressly distinguished approved from unapproved capital;

(e) says further that the Newcrest FY12 5YP identified, for each site, key risks and potential opportunities affecting the 5YP for that operation; and

(f) otherwise denies paragraph 18 ~~16A~~.

19 ~~16B~~ In respect of paragraph 19 ~~16B~~, it:

(a) says that the Newcrest FY12 5YP covered all of Newcrest's mining operations, including Lihir;

(b) admits that, as part of Newcrest's annual planning cycle, site teams at Newcrest's mines, including Lihir, prepared site-based five year plans which were ultimately submitted to Newcrest's management and which:

(i) represented no more than the views from time to time of the site team with respect to the matters set out in those five year plans;

(ii) were used by Newcrest management, as it considered appropriate, in formulating the Newcrest 5YP;

(iii) contained views, estimates and possible outcomes formulated by the Lihir site team which were not necessarily agreed or adopted by Newcrest management in preparing the Newcrest 5YP;

Particulars

The views of site teams at various stages with respect to the matters set out in the site 5YPs were discussed and reviewed with site and central commercial and technical planning teams over about two months as part of the planning process leading to the formulation of a group-wide view in relation to all sites, as set out in the Newcrest 5YP.

(c) it says that, consequently:

(i) the five year plans prepared by the site teams did not represent the views, estimates, plans or possible objectives of Newcrest with respect to its mining assets over the ensuing five year period;

(ii) the only documents which set out the views, estimates, plans and possible objectives of Newcrest with respect to its mining assets over the ensuing five year period at any given time were:

(A) the completed Newcrest LoPPs (not the site LoPPs);

(B) the completed Newcrest 5YPs (not the site 5YPs); and

(C) the Budget approved by the Newcrest Board;

(d) admits that the Lihir site team prepared a five year plan for Lihir by 30 June 2012 which contained the figures pleaded at paragraphs ~~16B~~19(a)(i)-(v) of the Further Amended Statement of Claim;

(e) admits that, based on the assumptions in the Lihir FY12 5YP, including as to the tonnes mined from different deposits at Lihir, the Lihir FY12 5YP anticipated the gold grade of milled ore would decline from 3.48g/t to 2.62g/t between FY13 and FY17;

(f) admits that, based on the assumptions stated therein, the Lihir FY12 5YP anticipated that the total ore milled at Lihir would increase between FY13 and FY17;

(g) admits that that the capital expenditure figures pleaded in paragraph ~~16B(c)~~ 19(d) ~~(second occurrence)~~ of the Further Amended Statement of Claim are stated in the Lihir FY12 5YP; and

(h) otherwise does not admit paragraph 19 ~~16B~~.

20 ~~16C~~ In respect of paragraph 20 ~~16C~~, it:

(a) refers to and repeats paragraphs 19 ~~16B~~(a)-(c) above;

(b) admits that the Cadia Valley site team prepared a five year plan for Cadia Valley by 30 June 2012 and ultimately submitted it to Newcrest management as part of Newcrest's annual planning cycle;

~~(c) says that the document referred to in subparagraph (b) was a draft five year plan for Cadia Valley which was thereafter superseded;~~

(c) ~~(d)~~ admits that ~~this superseded draft five year plan for Cadia Valley~~ <u>the document referred to in the Further Amended Statement of Claim as the 'Cadia FY12 5YP'contained:</u>

(i) the figures in respect of directional <u>gold</u> production outcomes set out in paragraph 20 ~~16C~~(a) of the <u>Further</u> Amended Statement of Claim ~~as one of five sets of possible production figures; and~~

(ii) <u>contained planned figures for ore tonnes milled in FY14 approximately totalling the figures set out in paragraph 20(b) of the Further Amended Statement of Claim;</u>

(iii) <u>stated that the *"Cadia East Project is the dominant ore source for the Cadia Valley production profile and underpins metal production at CVO"*;</u>

(iv) <u>planned for an increase in total ore milled from approximately 25.8Mt in FY13 to approximately 30Mt in FY16 and:</u>

(A) <u>stated:</u>

<u>"*The 5YP allows for progressive debottlenecking of the CVO ore processing circuits to achieve a steady state throughput in FY16 of 30Mtpa. Continuation of the current CVO mill expansion studies will be crucial to realise these progressive increases. The studies work will encompass areas of permitting, power, water, tailings capacity and geo-metallurgy in order to find the most efficient expansion solutions*";</u>

(B) <u>stated that of the capital expenditure included in the plan, $70m was for "mill debottlenecking, increasing low grade throughput to 29Mtpa in Year 3, and then 30Mtpa in Year 4"; and,</u>

(d) ~~(e)~~ otherwise does not admit paragraph 20 ~~16C~~.

21 In respect of paragraph 21, it:

(a) refers to and repeats sub-paragraphs 19(a)-(c) above;

(b) admits that the Telfer site team prepared a five year plan for Telfer by 30 June 2012 and ultimately submitted it to Newcrest management as part of Newcrest's annual planning cycle;

(c) admits that the document referred to in the Further Amended Statement of Claim as the 'Telfer FY12 5YP' contained the following table which "*summarises metal production, unit cash and production costs and capital expenditure for the 5YP*";

Metric	Unit	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17
Production									
Gold	Moz	0.69	0.62	0.55	0.54	0.60	0.59	0.51	0.51
Copper	Kt	35	32	31	24	23	20	20	20
Silver	Moz	0.45	0.37	0.37	0.31	0.41	0.32	0.29	0.30
Unit Cash Costs									
Cash Cost (pre credit)	AUD$/oz	897	1,137	1,289	1,381	1,363	1,290	1,295	1,410
Cash Cost (post credit)	AUD$/oz	499	674	832	996	1,039	1,010	976	1,098
Production Cost (pre credit)	AUD$/oz	1,148	1,427	1,629	1,742	1,751	1,671	1,635	1,673
Production Cost (post credit)	AUD$/oz	750	965	1,172	1,357	1,426	1,391	1,315	1,361
Capital									
Capital	AUD$m	50	84	419	181	332	40	35	35
Exploration	AUD$m	29	19	19	28	25	25	11	11

and,

(d) otherwise does not admit paragraph 21.

22 In respect of paragraph 22, it:

(a) refers to and repeats sub-paragraphs 19(a)-(c) above;

(b) admits that the Gosowong site team prepared a five year plan for Gosowong by 30 June 2012 and ultimately submitted it to Newcrest management as part of Newcrest's annual planning cycle;

(c) admits that the document referred to in the Further Amended Statement of Claim as the 'Gosowong FY12 5YP':

(i) contained the following table of metrics:

Metric	Unit	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17
Production									
Gold	Moz	0.44	0.46	0.46	0.41	0.40	0.40	0.40	0.40
Silver	Moz	0.25	0.28	0.35	0.46	0.49	0.42	0.59	0.65
Unit Cash Cost									
Cash Cost (pre credit)	US$/oz	276	351	436	524	528	520	545	492
Production (pre credit)	US$/oz	357	497	590	751	821	762	739	610
Unit Cash Cost									
Cash Cost (post credit)	US$/oz	266	332	410	487	491	490	507	456
Production (post credit)	US$/oz	347	479	564	714	784	732	701	573
Capex & Exploration	US$m	132	105	112	147	68	51	62	41

(ii) stated that: "*ore from exploration success will be required from FY15 onwards*" and "*[n]ew discoveries are required within the next two years to sustain the present Gosowong production profile within the 5 year plan and beyond*"; and,

(d) otherwise does not admit paragraph 22.

23 ~~16D~~ In respect of paragraph 23 ~~16D~~ it:

(a) says that, subject to reference to its full terms and effect, Newcrest admits that:

(i) on 7 June 2012, the Board of Newcrest considered and approved the budget for FY13 proposed by management (**FY13 Budget**);

(ii) the FY13 Budget provided for:

(A) a gold production target for FY13 of 2.474Moz;

(B) A$329 million in sustaining capital expenditure, A$1.559 billion in development and expansionary capital expenditure and A$158 million in exploration capital expenditure in FY13;

(b) says further that the production figures specified in a budget are not 'forecasts' but are targets proposed by management:

(i) which represent desired performance outcomes for the company;

(ii) which are based on the assumptions stated in the budget;

(iii) the achievement of which is subject to numerous risks, uncertainties, operational and environmental factors, including the kinds of risks and factors affecting gold production referred to in paragraph 8(b)(ii) above; and

(c) otherwise denies paragraph 23 ~~16D~~.

24 ~~16E~~ In respect of paragraph 24 ~~16E~~, it:

(a) admits that, each year, Newcrest assessed the carrying value of its assets as at 30 June (being the end of each annual reporting period), an exercise which was necessarily not completed until after 30 June each year;

(b) says that:

(i) under Australian Accounting Standards Board (**AASB**) 136, Newcrest was required to assess "at the end of each reporting period whether there is any indication that an asset may be impaired" and "[i]f any such indication exists, the entity shall estimate the recoverable amount of the asset" (AASB 136 cl 9);

(ii) the process of assessing whether mining assets of the kind owned by Newcrest are impaired involves comparison between the book value of the asset and its "fair value less costs to sell" (AASB 136 cl 18);

(iii) while Newcrest maintained monthly management accounts, including a balance sheet recording the book value of its assets at 30 June, the final book value of its assets is not known until mid to late July each year;

(iv) it was Newcrest's practice to estimate fair value by conducting a discounted cash flow (**DCF**) analysis of the value of each asset and using a multiples-based approach for values not otherwise captured in the DCF analysis;

(v) in the first instance, and in the ordinary course:

(A) the assessment of the risk of impairment was conducted using a 'desktop' approach in which the DCF analysis was conducted using (*inter alia*) the mining plans, costs, capital and economic assumptions contained in the most recent 5YP and LoPP (subject to adjustments to reconcile the two);

(B) for assets identified as possibly being impaired based on the process set out at subparagraph (A) above, a more detailed analysis was undertaken involving review of the mining plans and all other assumptions used in the DCF model for that asset;

(vi) in relation to the process for assessing fair value, it refers to and repeats paragraph ~~90(e)~~ 120(e) below;

(c) admits that, in FY12, Newcrest assessed the carrying value of its assets as at 30 June 2012 (**FY12 Impairment Testing**), an exercise which was considered by the Board Audit and Risk Committee (**BARC**) at its meeting on 9 August 2012;

(d) says that, in carrying out the FY12 Impairment Testing, and in accordance with the process described in subparagraph (b) above:

(i) Newcrest undertook a DCF analysis in respect of each relevant asset;

(ii) the DCF analysis was conducted using three 'cases' as follows:

(A) Case 1 used the production, cost and capital assumptions of the December 2011 LoPP mid-case;

(B) Case 2 used the Newcrest FY12 5YP production, cost and capital assumptions to FY17 and the December 2011 LoPP mid-case for FY18 onwards;

(C) Case 3 (the 'blended' case) used the Newcrest FY12 5YP production, cost and capital assumptions 'blended' to the December 2011 LoPP mid-case to ensure logical continuity between the two sets of assumptions;

(iii) Newcrest applied the mid-price gold price assumptions pleaded in paragraph 24 ~~16E~~(b) of the Further Amended Statement of Claim and the spot gold price assumptions referred to in paragraph 24 ~~16E~~(c);

(iv) Newcrest reached the conclusions pleaded at paragraph 24 ~~16E~~(c) of the Further Amended Statement of Claim, which conclusions were supported by the EY 1 August FY12 Report referred to in paragraph 25 ~~16F~~ below;

(v) Newcrest applied asset-specific gold multiples which were lower than those applied in assessing carrying values at December 2011;

(vi) Newcrest used assumptions for the gold price in future years which were prepared:

(A) by combining (in the ratio 25 to 75) the median of broker projections and the forward curve of the gold price; and

(B) for periods where no forward curve was available, the median forecast of a number of investment banks;

(vii) Newcrest tested the results of its DCF analysis by conducting sensitivity testing including by:

(A) using a long term gold price assumption of US$1,300/oz with other assumptions held constant;

(B) using the discount rate methodology used by Grant Samuel in assessing the value of Lihir at the time of its acquisition; and

(e) otherwise does not admit paragraph 24 ~~16E~~.

Particulars

The document NEW.602.001.8330 referred to by the Applicant is a draft of the paper provided to the BARC for its meeting on 9 August 2012. The final version of that paper is NEW.601.001.0161. The material provided to the BARC on 9 August 2012 included the EY 1 August FY12 Report referred to at paragraph 25 ~~16F~~ below being NEW.601.001.0106.

25 ~~16F~~ In respect of paragraph 25 ~~16F~~ it:

(a) admits that, on or about 1 August 2012, EY provided a Closing Report to the Audit and Risk Committee for the Year ended 30 June 2012 (**EY 1 August FY12 Report**);

(b) admits (subject to reference to its full terms and effect) that the EY 1 August FY12 Report contained the statements pleaded at paragraphs 25 ~~16F~~(a) to 25 ~~16F~~(c) of the Further Amended Statement of Claim;

(c) says further that the EY 1 August FY12 Report noted, at page 3, that (as is the case) "a DCF valuation is built on a large number of judgements and estimates of asset specific and general market conditions"; and

(d) otherwise denies paragraph 25 ~~16F~~.

C. AUGUST 2012 ASX ANNOUNCEMENTS

26 ~~17~~ It admits paragraph 26 ~~17~~.

27 ~~18~~ In respect of paragraph 27 ~~18~~, it:

(a) says that the FY12 Results Release stated:

(i) on page 1, that:

(A) *"[s]ignificant progress was made on advancing the Company's two major growth projects: as at 30 June 2012 the US$1.3 billion Lihir Million Ounce Plant Upgrade (MOPU) was approximately 91% complete and the A$1.9 billion Cadia East project was approximately 80% complete. The successful delivery of these two projects underpins Newcrest's future production growth profile and both projects remain on schedule for completion (Lihir MOPU) and first commercial production (Cadia East) in the December 2012 quarter";*

(B) "*[g]old production in the 2013 financial year is expected to increase to a range of 2.3 to 2.5 million ounces*";

(ii) on page 2, that *" [p]rofit margins remained robust in 2012 with the Company's EBITDA margin declining 1% to 49% and EBIT margin declining 2% to 36%*";

(iii) on page 6, that:

(A) *"[t]he 2013 financial year is one of transition for Newcrest, with the integration of two major growth projects into existing operations being the major focus. First commercial production from Cadia East and the* *completion of the Lihir MOPU plant expansion are both expected to occur in the December 2012 quarter";*

(B) *"[a]lthough production volume was disappointing for the year, higher gold prices and solid cost control in a difficult external environment resulted in a strong financial profit and cash flow. In excess of A$1.7 billion of cash flow from operations was generated during the year, for the second year in succession. Profit margins remain robust, with an EBITDA margin of 49% and EBIT margin of 36%";*

(b) will refer to and rely upon the full terms and effect of the FY12 Results Release at trial; and

(c) otherwise denies paragraph 27 ~~18~~.

28 ~~19~~ In respect of paragraph 28 ~~19~~, it:

(a) says that the FY12 Results Report stated:

(i) on page 5, that *"[s]ignificant progress was made on advancing the two major growth projects of the Company: the US$1.3 billion Lihir Million Ounce Plant Upgrade ('MOPU') was approximately 91% complete and the A$1.9 billion Cadia East project was approximately 80% complete as at 30 June 2012. The successful delivery of these two projects underpins Newcrest's future production growth profile and both projects remain on schedule for completion (Lihir MOPU) and first commercial production (Cadia East) in the December 2012 quarter. 2012 represented a peak level of total capital expenditure for Newcrest due to the investment associated with the two major growth projects. Lower capital expenditure is expected going forward as these major projects are completed";*

(ii) on page 18, that *"Lihir Million Ounce Plant Upgrade ('MOPU') (US$440 million in the period) was approximately 91% complete at 30 June 2012, with commissioning activities approximately 54% complete. The project is expected to increase total annual gold* *production from Lihir by approximately 240,000 ounces per year and is on schedule for ramp-up of production in the December 2012 quarter";*

(iii) on page 18, that "*Cadia East (A$1.108 million in the period) remains on schedule to achieve first commercial production in the December 2012 quarter, being approximately 80% complete at 30 June 2012. Capital costs to the first commercial production milestone are within 10% above the A$1.9 billion budget, with this increase in capital cost due to lower production from the block cave before commercial commissioning (resulting in lower revenue credit)*";

(b) will refer to and rely upon the full terms and effect of the FY12 Results Report at trial; and

(c) otherwise denies paragraph 28 ~~19~~.

29 ~~20~~ In respect of paragraph 29 ~~20~~, it:

(a) admits that on 13 August 2012, Newcrest published and lodged with the ASX the FY12 Results Presentation;

(b) says that the FY12 Results Presentation stated:

(i) on page 6, that:

(A) "*Cadia East on track for commercial production in December quarter 2012*";

(B) "*Lihir MOPU on track for completion in December quarter 2012*";

(ii) on page 14, under the heading *"Capex focussed on low cost, long life mines"*, that:

"*FY12 Project spend:*

· Cadia East establishment A$986m

· Cadia East expansion A$122m

· Lihir MOPU US$440m

· *Wafi-Golpu A$54m*

Lihir represents 42% of FY12 sustaining capital"

(iii) under the heading "*A strong balance sheet and liquidity position"* that "*Gearing peaks in FY13 around 15%";*

(iv) ~~(iii)~~ on page 18, that:

(A) "*Cadia East – Commercial production and ramp-up mid FY13 – Lower grade open pit stockpiles to feed mill during ramp-up*";

(B) "*Lihir – MOPU plant expansion completion and ramp up mid FY13 – reliability improvement program continues*";

(C) "*FY13 production ranges reflect integration of new & existing operations*";

(v) ~~(iv)~~ on page 19, under the heading *'FY13 guidance'*, that:

" ·*Gold Production range = 2.3 - 2.5Moz*

– *Up to 9% increase on FY12*

– *Quarterly production to fall initially, then steadily increase across the year*

– *Telfer transitions to lower then back to higher grade ore sources*

– *Cadia East &Lihir MOPU ramp up in H2*

– *Lower grades at Gosowong in FY13*

Capital Expenditure lower at =A$1,800 to $2,000m"

(vi) ~~(v)~~ on page 20, under the heading *'FY13 gold production guidance'*, that:

(A) "*[p]roduction increases at three operations: Lihir, Bonikro, Hidden Valley*";

(B) "*[t]wo operations sustain FY12 production levels: Cadia Valley, Telfer*";

(C) "*[p]roduction at Gosowong declines on lower grade*";

(D) under the sub-heading '*Gold production ranges by site*' that the FY13 production range was:

(1) 400 to 500koz for Cadia Valley;

(2) 700 to 900koz for Lihir;

(3) 500 to 600koz for Telfer;

(4) 375 to 425koz for Gosowong;

(5) 100 to 110koz for Bonikro; and

(6) 100 to 120koz for Hidden Valley;

(vii) ~~(vi)~~ in the context of a '*5 year outlook*' that:

(A) "*commodity price and exchange rates outlook uncertain"* (page 24);

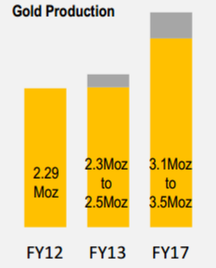
(B) under the sub-heading '*Key growth outcomes*'

(7) "*Gold production growth over 5 year period – FY 17 production projected to be 35-55% higher than FY12 – [Compound Annual Growth Rate] of 5-10%"* (page 25);

(8) "*Growth in production sourced from lower cost operations: - Cadia East, Lihir expansion – And from improvements at Bonikro and Hidden Valley*" (page 25);

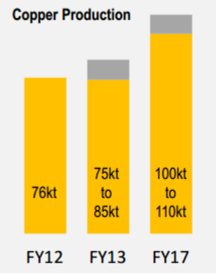
(9) "*Capital expenditure to decline from FY12 levels: - A$1,800 to 2,000m in FY13 – Thereafter capex declines to less than a third of current spend rate*" (page 25);

(C) under the sub-heading '*Past investment will deliver near term growth*' (page 26):



Gold: 5 year production growth of 35% to 50%

- Past investments drive future growth
  - Cadia East = 30 to 40% of 5 year growth
  - Lihir = 50 to 70% of 5 year growth
- Only includes projects tollgated beyond pre-feasibility stage



Copper: 5 year production growth of 20% to 30%

- Copper growth is delivered by Cadia East ramp-up
- Telfer production declines to 25ktpa from FY14

(D) under the sub-heading ‘*Milestones to deliver 5 year growth*’ (page 27):

Milestones to deliver 5 year growth

Committed projects in execution	FY13		FY14		FY15	
Cadia East commercial production	☑					
Lihir MOPU project completed	☑					
Lihir reliability program	☑	☑	☑			
Hidden Valley crusher installed		☑				
Cadia East Lift 2 production commences				☑		
Lihir flotation expansion commissioned				☑		
Bonikro mill expansion to 3.5mtpa commissioned						☑

Only depicts projects that have passed the pre-feasibility study tollgate

(E) under the sub-heading ‘*Previous 5 year outlook confirmed*’ (page 28):

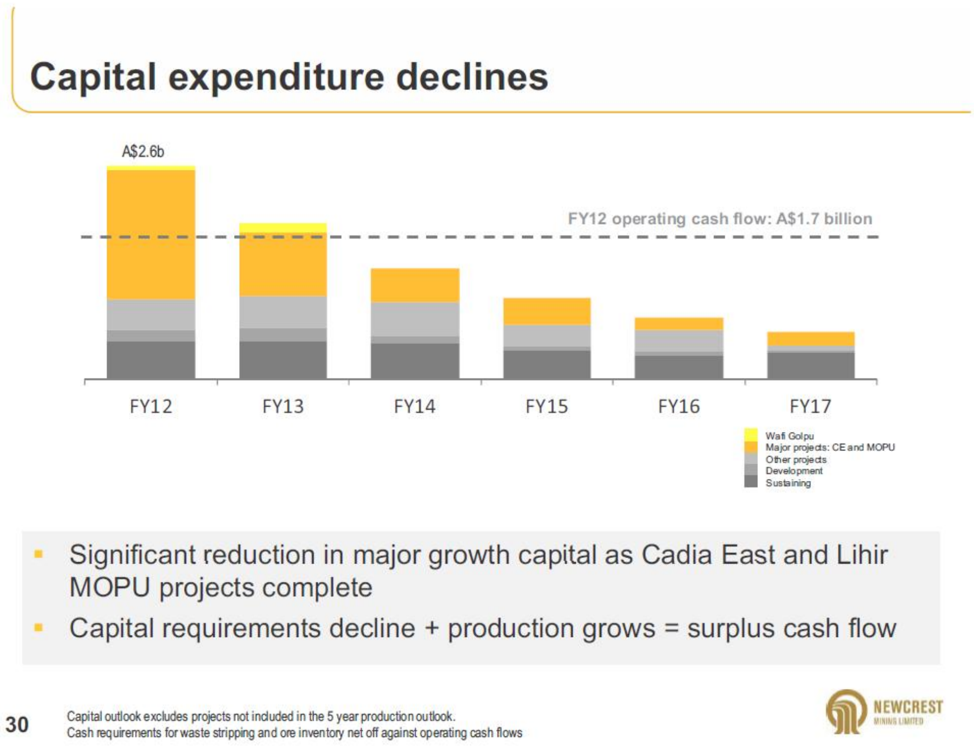
(1) for Cadia Valley, “‘*Production 700-800koz per year from FY16’ · 5 year gold production growth >60% · Contributes 30 to 40% of Newcrest 5 year growth · Continue studies of mill expansion*”;

(2) for Lihir, '"*Increase production to 1.2 - 1.3Moz per year' · Delivered by MOPU, flotation upgrade (5mt), plant reliability improvement and optimisation · Contributes 50 to 70% of Newcrest 5 year growth · Continue studies to achieve 1.4Moz within 5 years*";

(3) for Gosowong, "*Consistent production around 400koz pa' · Grade falls, throughput increased*";

(4) for Telfer, '"*Consistent production 500-600koz pa' · Multiple ore sources";*

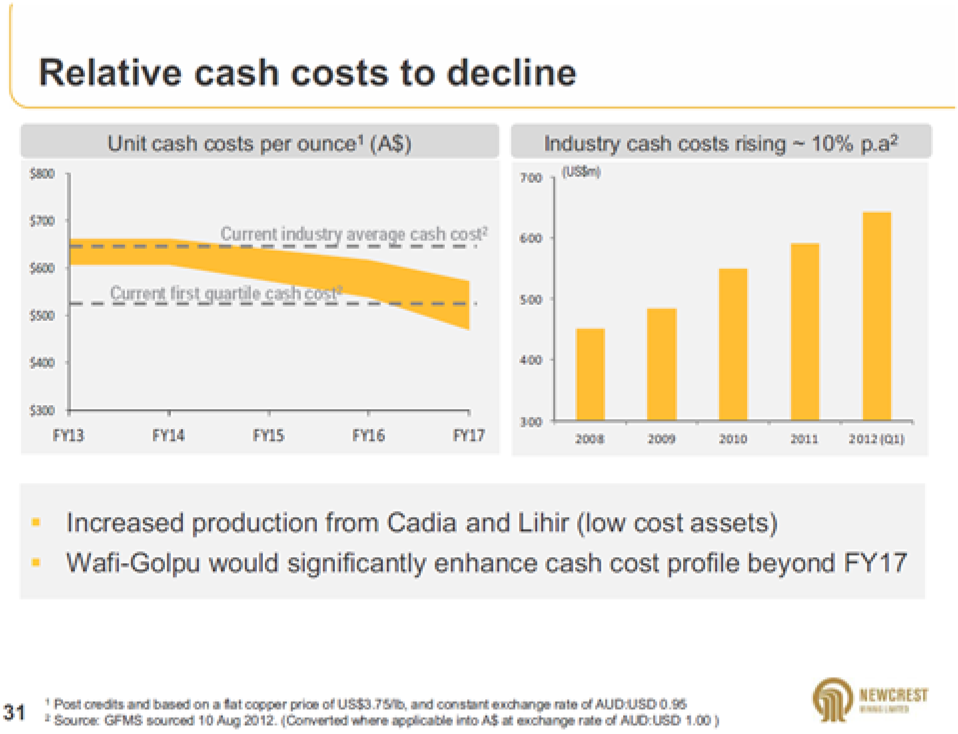
(F) under the sub-heading '*Capital expenditure declines*' (page 30):



~~(1) "*Significant reduction in major growth capital as Cadia East and Lihir MOPU projects complete*"; and~~

~~(2) "*Capital requirements decline + production grows = surplus cash flow*";~~

(viii) <u>under the heading '*Relative cash costs to decline"* (page 31):</u>



(ix) ~~(vii)~~ under the heading *'FY13 an exciting year for Newcrest'* stated, on page 34, that *"FY13 production guidance 2.3Moz to 2.5Moz – Reflects integration of expansion projects into large operations – Focus on consistent, predictable performance"*;

(x) ~~(viii)~~ under the heading '*FY13 guidance by site'*, on page 38, set out the production ranges by site, referred to in sub-paragraph <u>29</u> ~~20~~(b)~~(v)~~<u>(vi)</u>(D) above;

(c) says further that the FY12 Results Presentation contained:

(i) an express disclaimer of the kind referred to in paragraph 8(b)(iii)(A) above and the particulars thereto (page 2);

(ii) was subject to the understanding referred to in paragraph 8(b)(iii)(B) above;

(d) will refer to and rely upon the full terms and effect of the FY12 Results Presentation at trial; and

(e) otherwise denies paragraph <u>29</u> ~~20~~.

30 ~~21~~ In respect of paragraph <u>30</u> ~~21~~, it:

(a) says, in respect of the guidance provided for FY13 in the FY12 Results Release and FY12 Results Presentation, that:

(i) Newcrest's then current expectation as to the range in which its gold production range for Cadia Valley for FY13 would ultimately fall was between 400 and 500koz in circumstances where:

(A) gold production from Cadia Valley for FY12 had been 473koz;

(B) gold production from Cadia Valley for FY11 had been 515koz;

(C) it was anticipated that for FY13:

(1) Cadia East would commence economic production in December 2012, contributing 54koz in gold production;

(2) Ridgeway mine would ramp up to a total of 8<u>Mt</u> ~~mt~~ for the year, contributing 257koz to the full year production;

(3) the balance of gold produced from Cadia Valley in FY13 would be derived from existing low grade stockpiles;

(4) the combined capacity of both processing plants for FY13 would be 25Mt;

(ii) Newcrest's then current expectation as to the range in which its gold production range for Lihir for FY13 would ultimately fall was between 700 and 900koz in circumstances where:

(A) gold production from Lihir for FY12 had been approximately 604koz;

(B) gold production from Lihir for FY11 had been approximately 791koz;

(C) Newcrest's then current expectation was that MOPU was on track to ramp-up production in the December 2012 quarter;

(b) says that it was anticipated that:

(i) 30 to 40 percent of the anticipated production growth identified in the '*5 year outlook*' in the FY12 Results Presentation would be driven by the development and optimisation of Ridgeway and Cadia East underground caving operations;

(ii) 50 to 70 percent of the anticipated production growth identified in the '*5 year outlook*' in the FY12 Results Presentation would be driven by MOPU, the flotation upgrade, plant reliability improvement and optimising existing infrastructure;

(c) refers to and repeats paragraphs 33 ~~22~~ and 38 ~~27~~ below; and

(d) otherwise denies paragraph 30 ~~21~~.

31 ~~21A~~ In respect of paragraph 31 ~~21A~~, it:

(a) says, in respect of sub-paragraph (a), that:

(i) the Guidance Statement provided for FY13 in the FY12 Results Release and FY12 Results Presentation was *inter alia* based on the FY13 Budget;

(ii) the Outlook Statement in the FY12 Results Presentation was *inter alia* based:

(A) insofar as it related to FY13, on the FY13 Budget;

(B) on the Newcrest FY12 5YP; and,

(b) says, in respect of sub-paragraph (b), that:

(i) the high-end of the Guidance Statement range for FY13 provided in the FY12 Results Release and FY12 Results Presentation was 2.5Moz;

(ii) the directional gold production outcome in the Newcrest FY12 5YP for FY13 was 2.6Moz (page 7);

(iii) the directional gold production outcome in the Newcrest FY12 5YP for FY14 was 2.98Moz (page 7);

(iv) neither the FY12 Results Release nor the FY12 Results Presentation issued a '*forecast in growth for annual gold production*' for FY14; and,

(c) says, in respect of sub-paragraph (c), that:

(i) the directional gold production outcome in the Newcrest FY12 5YP for FY15 was 3.27Moz (page 7);

(ii) the directional gold production outcome in the Newcrest FY12 5YP for FY16 was 3.57Moz (page 7);

(iii) the directional gold production outcome in the Newcrest FY12 5YP for FY17 was 3.66Moz (page 7);

(iv) neither the FY12 Results Release nor the FY12 Results Presentation issued a 'forecast in growth for annual gold production' for FY15 or FY16;

(v) the Outlook Statement contained an assessment in respect of Newcrest's directional gold production outcome for FY17 of between 3.1 to 3.5Moz (page 26, FY12 Results Presentation);

(d) refers to and repeats paragraph 33 ~~22~~ below; and

(e) otherwise denies paragraph 31 ~~21A~~.

32 ~~21B~~ It denies paragraph 32 ~~21B.~~

D. THE ALLEGED 'AUGUST 2012 REPRESENTATIONS' AND 'MATERIAL INFORMATION'

33 ~~22~~ In respect of paragraph 33 ~~22~~, it:

(a) denies paragraph 33 ~~22~~; and

(b) refers to and repeats paragraphs 8(b), 9(b) to 9(e) and 26 ~~17~~ to 29 ~~20~~ above;

(c) says further that:

(i) the Outlook Statement in the FY12 Results Presentation was (and was understood to be) an assessment in respect of directional gold production outcomes for Newcrest for FY17 made in the context referred to in sub-paragraph 9(e) above;

(ii) the reference in the FY12 Results Presentation to a compound annual growth rate of 5 to 10 percent:

(A) did not mean, and was not reasonably understood as meaning, that Newcrest's then current view was that growth in respect of the assessed directional outcome for FY17 of 3.1 to 3.5Moz, would occur in a linear fashion;

(B) meant, and would reasonably have been understood in the market to mean, that Newcrest's then current assessment was that, over the entire five year period between FY13 and FY17 covered by the Guidance Statements and Outlook Statements, gold production might grow at an average rate of 5 to 10 percent, compounding annually;

Particulars

Historically, gold production of Newcrest and other gold mining companies did not grow in a linear fashion, and the nature of gold mining operations was generally incompatible with expectations of linear movement or trends in gold production.

The compound annual growth rate referred to in the FY12 Results Presentation was merely a reflection of the difference between the FY13 Guidance Statement range of 2.3 to 2.5Moz and the FY17 Outlook Statement which posited an assessed directional outcome in that year of 3.1 to 3.5Moz, a difference which implied an average compound annual growth in production over that period of between 5 and 10 percent.

(iii) the reference in the FY12 Results Presentation set out in sub-paragraph 29~~20~~(b)~~(vi)~~(vii)(E)(2) above was a statement of Newcrest's then current plan that production levels at Lihir would increase to 1.2 to 1.3Moz at some stage in the five year Outlook Statement period; and

(iv) Newcrest did not state that 'Newcrest's production outlook after FY13 would not be significantly affected by a decline in gold prices' but recognised that gold prices could affect production.

Particulars

Newcrest refers to and repeats paragraphs 8(b)(iii) and 9(e) above. See further the disclaimer on page 2 of the FY12 Results Presentation and the reference on page 24 of that document to uncertainty in the outlook for commodity prices and exchange rates.

34 ~~23~~ It denies paragraph 34 ~~23~~.

35 ~~24~~ In respect of paragraph 35 ~~24~~, it:

(a) refers to and repeats 8(b)(ii) to 8(b)(iv), 9(d), 9(e) and ~~20~~29(c) above and says therefore that Newcrest's Outlook Statement for FY14 to FY17 was subject to "known and unknown risks, uncertainties and other factors", the existence of which was regularly disclosed, including in the FY12 Results Presentation; and

(b) otherwise denies paragraph 35 ~~24~~.

E. THE ALLEGED 'AUGUST 2012 CONTRAVENTIONS'

36 ~~25~~ In respect of paragraph 36 ~~25~~, it:

(a) denies paragraph 36 ~~25~~;

(b) says further that if the August 2012 Representations were made (which is denied), they were statements of opinion as to future matters, made in relation to a financial product in trade or commerce.

37 ~~26~~ It denies paragraph 37 ~~26~~.

38 ~~27~~ In respect of paragraph 38 ~~27~~, it:

(a) denies paragraph 38 ~~27~~;

(b) says further that, if the August 2012 Representations were made (which is denied), they were statements of opinion as to future matters made on reasonable grounds.

Particulars

The Outlook Statement in the FY12 Results Presentation was produced by Newcrest following completion of the Newcrest FY12 5YP and Budget (in respect of FY13), by the process referred to in paragraph 8 above. The Newcrest FY12 5YP and Budget (in respect of FY13) so completed contained directional gold production outcomes and targeted gold production outcomes (respectively) which were arrived at having regard to inter alia:

(A) *scenarios generated by optimisation models, including the COMET model which was deployed at Lihir and was designed to allow the modelling of multiple ore type processing and the interaction between the mine and processing facilities, so as to optimise net present value, taking into account productive capability, physical and cost constraints and economic conditions.*

(B) *a wide-ranging number of variable factors relevant to estimation of gold production, such as:*

(1) *gold, silver and copper resources and reserves;*

(2) *the resource to reserve conversion ratio;*

(3) *exploration potential and the ability to increase resources;*

(4) *the gold reserve depletion rate;*

(5) *the long and short term gold, copper and silver price;*

(6) *the grade of the gold expected to be mined;*

(7) *the gold, copper and silver recovery percentage;*

(8) *the gold, copper and silver production and grade recovery actuals;*

(9) *the amount of ore available to be milled;*

(10) *ore mill capacity and utilisation;*

(11) *the quality of stock piled ore;*

(12) *haul routes;*

(13) *the method of mining employed and the associated risks with each method;*

(14) *the type of ore mined;*

(15) *the sequence and time in which the ore is mined;*

(16) *the timing of face position changes;*

(17) *the amount of stock-piled ore;*

(18) *the strip ratio;*

(19) *geological risk;*

(20) *exchange rates;*

(21) *country risk;*

(22) *sovereign risk;*

(23) *surface material movements;*

(24) *the likely timing of capital works;*

(25) *the effectiveness of improvements and/or optimisation works;*

(26) *infrastructure and processing capacity and constraints;*

(27) *the availability (including down-time, shut downs and delays) of fixed and mobile plant and equipment;*

(28) *throughput and utilisation of fixed and mobile plant and equipment;*

(29) *maintenance schedules;*

(30) *project delivery, ramp-up and performance;*

(31) *capital expenditure returns;*

(32) *the capability of staff and contractors;*

(33) *weather and natural forces;*

(34) *operating expenditure (e.g., transportation costs, the cost of diesel, fuel oil geothermal power, Sin Gas, labour prices, energy prices, consumables overhead, royalty rates, treatment and refining costs);*

(C) *the site-specific and other specialist expertise of Newcrest's employees in fields such as geology, mine-planning, mining, maintenance, asset management, metallurgy, workforce planning, contract negotiation, contractor management, energy efficiency, business analysis, economics, investment evaluation, training, technology and improvement;*

(D) *the historic performance of each of Newcrest's mines;*

(E) *the application of a management overlay,*

which were matters of a kind routinely taken account of in the preparation of Newcrest 5YPs and Budgets.

Outlook Statements were thereafter formulated by Newcrest's senior management in conjunction with Newcrest's Board, as set out in paragraph 9(d) above and were at all times subject to the matters set out in paragraph 9(e) above.

Both Cadia and Lihir were reasonably considered and described by Newcrest to be 'low cost' mines as, over the upcoming five year period, the expected cash cost of production was comparatively low when viewed in comparison with other Newcrest gold mines and actual cash costs of production at that time for other gold mines in the industry. In this regard, the expected cash cost of Cadia and Lihir in FY13 was expected to be US$273/oz and US$580/oz respectively (as set out on page 22 of the FY13 Budget). The expected cash cost of Cadia and Lihir over the five year period was expected to be US$134/oz and US$518/oz respectively. Applied to actual FY11 industry cash cost data, Cadia's expected cash costs per ounce were then in the lowest quartile, and Lihir was at the high end of the first quartile during the five year period.

39 ~~28~~ It denies paragraph 39 ~~28~~.

40 ~~29~~ It denies paragraph 40 ~~29~~.

41 ~~30~~ It denies paragraph 41 ~~30~~.

42 ~~31~~ In respect of paragraph 42 ~~31~~, it:

(a) refers to and repeats paragraph 35 ~~24~~ above;

(b) says that if, which is not admitted but is denied, the August 2012 Information existed and Newcrest was aware the August 2012 Information existed prior to 6 June 2013 as alleged:

(i) it does not admit that August 2012 Information was information which a reasonable person would expect, if it were generally available to have a material effect on the price of Newcrest's securities for the purposes of ss 674 and 677 of the *Corporations Act*;

(ii) insofar as the August 2012 Information was comprised by the 'information' pleaded in paragraph 35 ~~24~~ of the Further Amended Statement of Claim, that information was generally available for the purposes of ss 674 and 676 of the *Corporations Act*;

Particulars

Newcrest refers to and repeats paragraphs 8(b)(iii) and 9(e) above. See further the disclaimers on page 10 of the FY12 Results Release, page 2 of the FY12 Results Presentation and the reference on page 24 of that document to uncertainty in the outlook for commodity prices and exchange rates.

(c) says further, that even if the 'August 2012 Information' existed (which is denied) and Newcrest was aware of it (which is denied), and ASX Listing Rule 3.1 otherwise required its disclosure (which is denied), then the 'August 2012 Information' was within the exception to that ASX Listing Rule provided by ASX Listing Rule 3.1A because:

(i) a reasonable person would not have expected Newcrest to disclose the information;

(ii) the information:

(A) was information generated for internal management purposes; and/or

(B) was a matter of supposition or insufficiently definite to warrant disclosure; and/or

(C) concerned incomplete proposals and ongoing negotiations;

(iii) the information was confidential and the ASX had not formed the view that the information had ceased to be confidential,

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information; and

Particulars

Newcrest refers to and repeats the particulars to paragraph 38(b) ~~27(b)~~ above.

(d) otherwise denies paragraph 42 ~~31~~.

43 ~~32~~ In respect of paragraph 43 ~~32~~, it:

(a) refers to and repeats paragraphs ~~24~~ 35 and ~~31~~ 42 above; and

(b) denies paragraph 43 ~~32~~.

44 ~~33~~ In respect of paragraph 44 ~~33~~, it:

(a) refers to and repeats paragraphs ~~24~~ 35, ~~31~~ 42 and ~~32~~ 43 above and on the basis of the matters pleaded therein:

(i) says that it did not notify the ASX of the 'August 2012 Information' at any time during the Period;

(ii) says that it did not include the 'August 2012 Information' in the FY12 Results Report; and

(b) otherwise denies paragraph 44 ~~33~~.

45 ~~34~~ It denies paragraph 45 ~~34~~.

46 ~~35~~ It denies paragraph 46 ~~35~~.

F. ASX ANNOUNCEMENTS AND OTHER EVENTS BETWEEN SEPTEMBER 2012 AND JANUARY 2013

47 ~~36~~ In respect of paragraph 47 ~~36~~, it:

(a) admits that on 20 September 2012, Newcrest published and lodged with the ASX the FY12 Annual Report;

(b) admits sub-paragraphs 47 ~~36~~(i) to 47 ~~36~~(m);

(c) says that the FY12 Annual Report stated:

(i) on page 3, that "*[o]ur assets are predominantly low-cost, long-life mines and we have a strong pipeline of future growth*";

(ii) on page 4, under the heading '*Results at a Glance*', that "*[t]wo major growth projects nearing completion: the Cadia East project and the Lihir plant expansion*";

(iii) on page 7, that:

> "*Despite a record profit, this year has been challenging for Newcrest, with production impacted by several short-term one-off issues that are now well on the way to being rectified. The pre-commissioning production ore sourced from Cadia East was lower than the rates initially expected and the underinvested old plant at*

Lihir required repair sooner than anticipated. Both of these situations affected production and delayed cash income.

Notwithstanding these challenges, it has been a year of significant progress. The Newcrest portfolio has been consolidated into a suite of predominantly long-life, low-cost mines and a pipeline of further growth options. The two smaller mines in Queensland, Cracow and Mt Rawdon were sold. Excellent progress was made on the two major projects, the Cadia East project and the plant expansion at Lihir, which will underpin production for future decades. These two projects are slated for completion in the December 2012 quarter."

(iv) on page 9, that:

"*2012 was a year of significant investment in growth. Substantial progress was made at our two major projects. At year end, the US$1.3 billion Lihir plant expansion remained on budget and schedule and was over 90 per cent complete. It is on schedule for completion in the December 2012 quarter. The A$1.9 billion Cadia East project, which will be Australia's largest underground mine, is on schedule to achieve first commercial production in the December 2012 quarter.*"

(v) on page 9 that:

"Our production performance during the latter half of the year was disappointing, impacted by plant reliability issues at Lihir and by very high rainfall events in Papua New Guinea and the east coast of Australia. Lihir's production was lower than expected due to continued reliability issues in the processing plant resulting from long-term underinvestment in fixed plant maintenance. A revised refurbishment plan for the plant was developed and good progress was made on operational asset reliability. This program of reliability improvement remains a priority for 2013."

(d) will refer to and rely upon the full terms and effect of the FY12 Annual Report at trial; and

(e) otherwise denies paragraph <u>47</u> ~~36~~.

~~37 [Not used]~~

48 ~~38~~ It admits paragraph <u>48</u> ~~38~~.

49 ~~39~~ In respect of paragraph <u>49</u> ~~39~~, it:

(a) admits that the 1Q13 Results Release contained statements to the effect alleged in sub-paragraphs <u>49</u> ~~39~~(a), <u>49</u> ~~39~~(b)(i), <u>49</u> ~~39~~(b)(iv) and <u>49</u> ~~39~~(c);

(b) says further that the 1Q13 Results Release stated on page 3 that "*[a]t Lihir, the Million Ounce Plant Upgrade (MOPU) progressed to schedule, with construction approximately 97% complete and commissioning activities approximately 75% complete*"*;*

(c) admits that the 1Q13 Results Presentation contained statements to the effect alleged in sub-paragraphs <u>49</u> ~~39~~(a), <u>49</u> ~~39~~(b)(ii)-(iv) and <u>49</u> ~~39~~(c)(ii);

(d) says further that the 1Q13 Results Presentation:

(i) contained an express disclaimer of the kind referred to in paragraph 8(b)(iii)(A) above and the particulars thereto (page 2);

(ii) was subject to the understanding referred to in paragraph 8(b)(iii)(B) above;

(e) will refer to and rely upon the full terms and effect of the 1Q13 Results Release and 1Q13 Results Presentation at trial; and

(f) otherwise denies paragraph <u>49</u> ~~39~~.

50 ~~40~~ It admits paragraph <u>50</u> ~~40~~.

51 ~~41~~ Subject to reference to the full terms and effect of the FY12 AGM Speech at trial, it admits paragraph <u>51</u> ~~41~~.

52 ~~42~~ In respect of paragraph <u>52</u> ~~42~~, it:

(a) says that the FY12 AGM Presentation stated:

(i) on page 3 under the sub-heading '*Key elements*':

"· *Gold focus*

· *Australia and Asia Pacific region*

· *Long-life/low cost assets*

· *Consistent growth of 5-10%pa*

· *Unhedged, low gearing*

· *People and technical capability focus*

· *Dividend growth*"

(ii) on page 5, under the heading '*Performance*' that:

(A) "*Profit margins remain robust*";

(B) in the 2011 financial year, Newcrest produced 2.527Moz of gold; and

(C) in the 2012 financial year, Newcrest produced 2.286Moz of gold;

(iii) on page 6 under the heading *'Past investment will deliver near term growth'*, that:

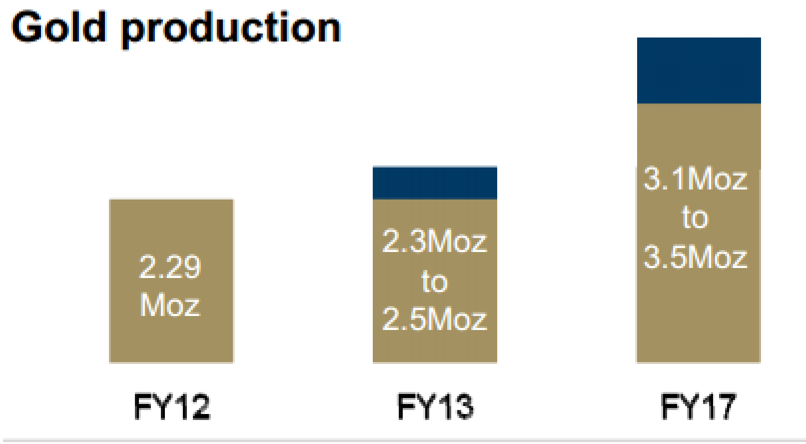
"**5 year production growth of 35% to 50%**

· *CAGR = 5 to 10% per annum*

· *Past investments drive future growth*

- *Cadia East = 30 to 40 percent of 5 year growth*
- *Lihir = 50 to 70 percent of 5 year growth*

· *Other growth option studies continue*"



Annual production range: gold bar designates up to low end of range, blue signifies high end of range

(iv) On page 7, under the heading '*Lihir expansions*':

" ·*Lihir MOPU Project*

- *US$1.3 billion plant expansion*
- *Increases annual gold production to over 1Moz*
- *Project >95% complete*
- *Reserve life of at least 30 years*
- *Commissioning December 2012 quarter*

· *Lihir flotation expansion follows*

- *Increase production to 1.2Moz per year*"

(v) on page 8, under the heading '*Cadia East project*', that:

" …

· *Increases annual production to:*

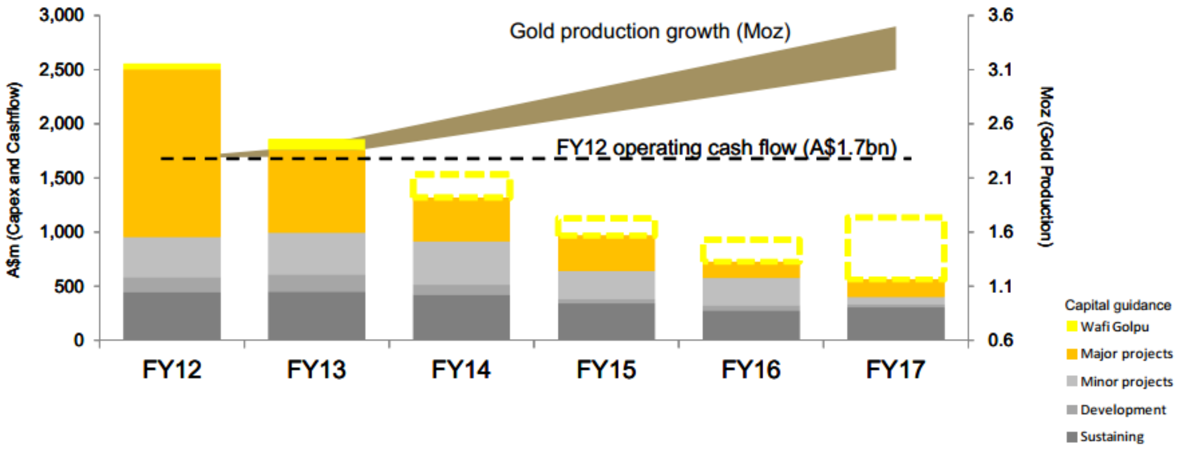
- *700 to 800koz gold (up from ~ 500koz)*

…

· *Project >80% complete as at 30 June 2012*

· *On schedule for first commercial production December 2012 quarter*"

(vi) on page 12, under the heading *'Strong cash flow generation outlook'*:



(b) says further that FY12 AGM Presentation:

(i) contained an express disclaimer of the kind referred to in paragraph 8(b)(iii)(A) above and the particulars thereto (page 2);

(ii) was subject to the understanding referred to in paragraph 8(b)(iii)(B) above;

(c) refers to and repeats paragraph ~~22~~ <u>33</u> above;

(d) will refer to and rely upon the full terms and effect of the FY12 AGM Presentation at trial; and

(e) otherwise denies paragraph <u>52</u> ~~42~~.

53 ~~42A~~ In respect of paragraph <u>53</u> ~~42A~~, it:

(a) says that between September 2012 and December 2012, Newcrest gathered and processed information for the purpose of preparing the Newcrest FY13 LoPP; and,

(b) refers to and repeats paragraph 8(b)(v)(A) above;

(c) otherwise denies paragraph <u>53</u> ~~42A~~.

54 ~~42B~~ In respect of paragraph <u>54</u> ~~42B~~, it:

(a) denies paragraph <u>54</u> ~~42B~~;

(b) refers to and repeats paragraphs 8 and 9 above;

(c) admits that as part of Newcrest's annual planning cycle, site teams at Newcrest's mines, including Lihir, prepared, and ultimately submitted to Newcrest management, site-based life of province plan cases or scenarios which:

(i) represented no more than the views of the site team with respect to the matters set out in those plans;

(ii) were used by Newcrest management, as it considered appropriate, in formulating the Newcrest LoPP;

(iii) contained views, estimates and possible outcomes formulated by the Lihir site team which were not necessarily agreed or adopted by Newcrest management in preparing the Newcrest LoPP;

Particulars

The views of site teams at various stages with respect to the site-based life of province plan cases or scenarios were discussed and reviewed with site and central commercial and planning teams as part of the planning process leading to the formulation of a group-wide view in relation to all sites, as set out in the Newcrest LoPP.

(d) consequently:

(i) the life of province plans prepared by the site teams did not represent the views, estimates, plans or possible objectives of Newcrest with respect to its mining assets over the ensuing period and/or the life of the relevant mining asset;

(ii) the only documents which set out the views, estimates, plans and possible objectives of Newcrest with respect to its mining assets over the ensuing period at any given time were:

(A) the completed Newcrest LoPPs (not the site LoPPs);

(B) the completed Newcrest 5YPs (not the site 5YPs); and

(C) the Budget approved by the Newcrest Board;

(e) says further that:

(i) there was no 'completed' 'LoPP for Lihir' but that the 'Lihir FY13 LoPP' was an iterative work in progress for incorporation into the Newcrest FY13 LoPP;

(ii) the document referred to in the <u>Further</u> Amended Statement of Claim as the 'Lihir FY13 LoPP':

(A) contained a "low case", "Mid 1 case", "Mid 2 case" and a "High case" for potential gold production outcomes across the life of the Lihir mine;

(B) contained potential gold production outcomes for Lihir for the FY14 to FY17 period which were lower than those contained in the document referred to in the <u>Further</u> Amended Statement of Claim as the 'Lihir FY12 5YP'; and

(C) had been prepared by 14 November 2012.

55 ~~42C~~ In respect of paragraph <u>55</u> ~~42C~~, it:

(a) denies paragraph <u>55</u> ~~42C~~;

(b) refers to and repeats paragraphs 8, 9, <u>54</u> ~~42B~~(c) and <u>54</u> ~~42B~~(d) above;

(c) says further that:

(i) there was no 'completed' 'LoPP for Cadia' but that the 'Cadia FY13 LoPP' was an iterative work in progress for incorporation into the Newcrest FY13 LoPP;

(ii) the document referred to in the <u>Further</u> Amended Statement of Claim as the 'Cadia FY13 LoPP':

(A) contained a "low", "mid" and "high case" for potential gold production outcomes across the life of the Cadia mine;

(B) contained FY14 Cadia potential gold production outcomes for the "low case" ~~and "high case"~~ of 424koz, ~~and~~ for the "mid case" of 503koz <u>and for the "high case" of 520koz</u>;

(C) contained potential gold production outcomes for Cadia for the FY14 to FY17 period which were lower than those contained in the document referred to in the Further Amended Statement of Claim as the 'Cadia FY12 5YP', except for the "high case" for FY17; and

(D) had been prepared by ~~15 November~~ 4 December 2012.

56 In respect of paragraph 56, it:

(a) denies paragraph 56;

(b) refers to and repeats paragraphs 8, 9, 54(c) and 54(d) above;

(c) says further that:

(i) there was no 'completed' 'LoPP for Telfer' but that the 'Telfer FY13 LoPP' was an iterative work in progress for incorporation into the Newcrest FY13 LoPP; and,

(ii) the document referred to in the Further Amended Statement of Claim as the 'Telfer FY13 LoPP' contained a "low", "mid" and "high case" for potential gold production outcomes across the life of the Telfer mine.

57 In respect of paragraph 57, it:

(a) denies paragraph 57;

(b) refers to and repeats paragraphs 8, 9, 54(c) and 54(d) above;

(c) says further that:

(i) there was no 'completed' 'LoPP for Gosowong' but that the 'Gosowong FY13 LoPP' was an iterative work in progress for incorporation into the Newcrest FY13 LoPP; and,

(ii) the document referred to in the Further Amended Statement of Claim as the 'Gosowong FY13 LoPP' contained a "low", "mid" and "high case" for potential gold production outcomes across the life of the Gosowong mine.

58 ~~42D~~ In respect of paragraph 58 ~~42D~~, it:

(a) says that the Newcrest FY13 LoPP was submitted to ExCo on 17 December 2012;

(b) refers to and repeats paragraphs 8, 9 and 32 ~~21B~~ above;

(c) says further that :

(i) the Newcrest FY13 LoPP identified *inter alia* “mid case” possible gold production and capital expenditure outcomes and compared them against the Newcrest FY12 5YP, as follows:

Group Comparison of LoPP Mid Case to Statement of Intent									
	UOM	2011 A (*)	2012 A (*)	2013 B	2014	2015	2016	2017	2014-17
Gold Production									
LoPP Mid Case	Koz	2,527	2,286	2,474	2,759	2,942	3,213	3,356	12,270
FY12 5YP (SOI)	Koz	2,527	2,286	2,474	2,982	3,269	3,570	3,602	13,423
Variance	*Koz*				*-223*	*-327*	*-357*	*-246*	*-1,153*
Variance	*%*				*-8%*	*-11%*	*-11%*	*-7%*	*-9%*
Copper Production									
LoPP Mid Case	Kt	76	76	84	74	90	94	97	354
FY12 5YP (SOI)	Kt	76	76	84	91	95	106	111	403
Variance	*Kt*				*-17*	*-5*	*-12*	*-14*	*-49*
Variance	*%*				*-23%*	*-5%*	*-13%*	*-15%*	*-14%*
Capital									
LoPP Mid Case	$m	2,049	2,717	2,047	2,003	1,691	1,151	1,205	6,050
FY12 5YP (SOI)	$m	2,049	2,717	2,047	1,868	1,638	1,627	1,747	6,880
Variance	*$m*				*135*	*53*	*-476*	*-542*	*-830*
Variance	*%*				*7%*	*3%*	*-41%*	*-45%*	*-14%*
Cash Costs									
LoPP Mid Case	$/oz	303	423	273	699	641	603	618	638
FY12 5YP (SOI)	$/oz	303	423	273	604	557	496	518	541
Variance	*$/oz*				*95*	*84*	*107*	*100*	*97*
Variance	*%*				*14%*	*13%*	*18%*	*16%*	*15%*
Site Costs									
LoPP Mid Case	$m	1,813	2,221	2,380	2,349	2,370	2,442	2,415	2,397
FY12 5YP (SOI)	$m	1,813	2,221	2,380	2,445	2,341	2,406	2,377	2,391
Variance	*$m*				*-96*	*29*	*36*	*38*	*6*
Variance	*%*				*-4%*	*1%*	*1%*	*2%*	*0%*
EBIT MARGIN									
LoPP Mid Case	%	38%	36%	43%	37%	36%	36%	33%	36%
FY12 5YP (SOI)	%	38%	36%	43%	38%	38%	41%	39%	39%
Variance	*%*				*-1%*	*-2%*	*-5%*	*-6%*	*-4%*
Hidden Valley shown as 50% and Wafi-Golpu shown as 35%									
(*) Includes QLD Assets									

(ii) the possible capital expenditure outcome for the “mid case” Newcrest FY13 LoPP for FY14 was A$2.003 billion; and

(d) otherwise denies paragraph ~~42D~~ 58.

59 ~~42E~~ In respect of paragraph 59 ~~42E~~, it:

(a) admits sub-paragraph 59 ~~42E~~(a);

(b) says, in relation to sub-paragraph 59 ~~42E~~(b):

(i) that it admits that Robinson, Newcrest’s then CEO and Managing Director had issued a memorandum entitled “*5 YEAR PLAN – DIRECTION SETTING*” to the other members of ExCo by

21 December 2012 (**Direction Setting Memo**) which stated *inter alia* that:

(A) under the heading '*Our external context*' on page 2:

"*Production in the first 5 months of FY13 has been lower than budget, consuming much of the range allowed for in our guidance to the market. Below budget production has a significant adverse impact on our unit cost position. In the remaining 7 months of the financial year, we need to deliver.*"

(B) under the heading '*Life of Province Plan (LoPP) outcomes*' on pages 2 and 3:

"*The LoPP process has concluded and has been effective in showing us where action needs to be taken at a strategic level to ensure our near term action plans are aligned with the long term value optimisation of our provinces.*

This memorandum does not seek to summarise the LoPP outcomes that were shared with the ExCo on 17 December. The following general observations do inform our planning for the next five years:

·The level of capital required is unacceptably high given past commitments to our Board and shareholders on the return from past investments.

·The production forecast for the next few years is too low relative to our past commitments to our Board and shareholders.

·Our production and site cost profiles do not show benefits from our functional excellence and the way we work.

More specific observations include:

·The need to address the 'gap' in production in FY15 at Lihir;

·The need for Lihir to consolidate, with time to focus on productivity and cost reduction;

·The imperative to address the metallurgical constraints at Lihir to be able to process all ores;

·The need to lift copper production and potentially reduce near term capital from Cadia Valley;

·The need to realise the technical aspirations in relation to waste rejection at Telfer;

·The imperative to explore thoroughly and quickly at Gosowong and Telfer; and

·The need to convert more of our resources (the LoPP had a low percentage) into production."

(C) under the heading *'Required 5 Year Plan Outcomes'* on page 4:

"*In the coming 5 Year Plan, the expectation is for the following outcomes:*

…

·Sustained level of production:

·an FY14-17 production profile that is as close as possible to the FY13 5 Year Plan [being, the 5 year plan for the years FY13 to FY17, elsewhere referred to in the defence as the Newcrest FY12 5YP] (that is, we do not "reset down" every year but rather build on past promises);

·a 5 Year Plan production profile that is reflective of the improvements identified and being progressed by the functional teams. It is absolutely essential that the activity of the functional teams (mining, metallurgy, asset management, workforce planning, contractor management, energy efficiency, training, technology and step change) be directly measurable

in the outcomes of assets over the 5 Year Plan period. This can only occur when the functional teams are truly integrated in the planned outcomes for each site (which is entirely consistent with the purpose of the centre-led functions);

·Lower capital investment:

·Total capital investment over the 5 Year Plan period that is as close as possible to that indicated in the FY13 5 Year Plan for FY14-17 inclusive [being, the 5 year plan for the years FY13 to FY17, elsewhere referred to in the defence as the Newcrest FY12 5YP]. That is, total capital investment is to decline significantly from past levels.

·Specifically, total capital investment in FY14 is not to exceed A$1.5bn. This is significantly lower than what was indicated in the LoPP and therefore needs considerable input and ownership by line management to define the optimal capital profile.

·At lower levels of capital spend, an elevated level of capital efficiency is essential. We need to get more for our capital $ by taking advantage of changed market conditions, increased commerciality in engaging project contractors, and capital compression from sourcing both capital items and labour in lower cost markets.

...

Line EGMs are to drive the determination of the capital proposals for their sites and functions. Appendix A tabulates an indication of what the capital spend could be by site in order to achieve the $1.5bn cap in FY14. It is for the EGMs, taking into account the actions outline in this memorandum, to do the work necessary to arrive at the most appropriate allocation of this $1.5bn (which is $1.3bn when excluding the Wafi-Golpu spend)"

(ii) further, that the Direction Setting Memo *inter alia*:

(A) stated under the heading '*Purpose*' on page 1 that:

"*[A]s we commence the ramp-up of our two major projects at Lihir and Cadia Valley, we are going to spend significant time and effort in this upcoming 5 Year Plan simplifying our business. This will enable our people to focus on maximising performance with the current suite of operations before we decide on a new round of investments. The delivery outcome over the next 1 to 2 years will be the critical enabler to a mandate to capture future opportunities for Newcrest. I think we can do better with what we currently own and operate.*

To be clear we will maintain our commitment to our business model; simplify our activities; reduce our capital projects; apply deeper thinking and actions to improve productivity and cost control. Clarity on base data, insightful analysis and development of detailed plans is to be rigorously pursued. Measurement against Plan, clear accountabilities and delivery will be emphasised in the years ahead. During this 5 Year Plan period we are also increasing our focus on the capture of new opportunities, a parallel stream to ensure Newcrest applies a great mining business to the opportunities of the future."

(B) summarised the mid-case outcomes of the Newcrest FY13 LoPP on page 9, as follows:

Gold (koz)	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18
Lihir	639	604	832	1,080	960	1,090	1,150	1,120
CVO	521	474	443	500	640	710	830	830
Telfer	622	541	542	580	640	710	650	500
Gosowong	463	439	415	400	400	400	400	350
Hidden Valley (50%)	100	89	117	100	140	110	120	100
CDI	41	97	83	100	150	190	200	200
Total LoPP				**2,760**	**2,940**	**3,210**	**3,360**	**3,110**

(iii) contained the following table in Appendix A under the heading *"Indicative 5YP Capital for FY14-15 – For Review by EGM's (subject to cap of A$1.5bn)"*:

Capital (A$m)	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18
Lihir	995	1,237	616	400	400			
CVO	613	771	670	550	300			
Telfer	77	235	186	180	140			
Gosowong	85	88	95	60	60			
Hidden Valley (50%)	44	90	68	50	30			
CDI	5	18	47	20	30			
Studies & Corporate				40	40			
Total of existing assets (= Aug 2012 Guidance)				**1,300**	**1,000**	**750**	**600**	**600**
Add: Wafi Golpu (50%) per Guidance				**200**	**160**	**200**	**500**	**750**
Indicative 5YP Total				**1500**	**1160**	**950**	**1100**	**1350**

** Excludes Exploration.*
** Wafi Golpu was modelled as 35% equity in the LoPP*
** Guidance excludes capital relating to projects not toll-gated beyond PFS stage*

(iv) ~~(iii)~~ that it will refer to the full terms and effect of the Direction Setting Memo at trial;

(c) says, in relation to sub-paragraphs 59 ~~42E~~(c) and 59 ~~42E~~(d):

(i) that on 20 December 2012, Andrew Logan sent an email to Craig Jones which stated *inter alia* that:

"A quick summary of our chat….

in January we will have to focus on making the 5 year plan more simplified thus capital efficient. This will mean some tough decisions on things we already have momentum on, and therefore will need firm change management.
in February we need then to tie together the business development streams of work in studies, functions, minerals and step change once each has mapped out their individual 5 year plans. This business development work will seek to use the time bought by the simplification above. I will seek to draw more of your own personal time into this space, and we will need to better link into Greg to guide us on his priorities.

On the first point, the two big items will be Cadia East and Lihir grinding/oxygen/power/general capital.”

(ii) that at 7.43am on 21 December 2012, Craig Jones replied to the email referred to in sub-paragraph 59 ~~42E~~(c)(i) above, stating *inter alia* that:

“*I Agree.*

A couple of tough decisions that will need to be made (carefully).

1.Grinding optimisation – this project is <$100M and provides IRR of 400% additional 4mtpa. The tough decision is do we stop all project work at Lihir and settle, which could have the impact of declining gold production as gold grade continues to drop. We could just defer 6 months and take the site activity out of next financial year.

2.The Cadia East crusher will provide significant production upside and resilience. We should not take our eye off the fact that L2 is the engine room. Ridgeway Deeps grade will be starting to drop well below 1g/t in those last two years, so we should question the rate at which we run.

Other than those two caution points, we are on the same page.”

(iii) that at 9.28am on 21 December 2012, Andrew Logan replied to the email referred to in sub-paragraph 59 ~~42E~~(c)(ii) above, stating that “*[t]he devil is in the detail, so let’s sweat it*.”;

(d) says further in relation to all of the allegations that it:

(i) refers to and repeats paragraph 9(e)(iv)(B) above and says that in December 2012, January and February 2013 Newcrest’s senior management was (amongst other things) giving consideration to the identification and implementation of strategies of the kind there mentioned;

(ii) refers to and repeats, in this regard, paragraphs 69(b), 70 ~~51~~ and 81 ~~59C~~ below; and

(e) otherwise denies paragraph 59 ~~42E.~~

60 ~~42F.~~ In respect of paragraph 60 ~~42F~~, it:

(a) refers to and repeats paragraph 24 ~~16E~~ above;

(b) says that:

(i) in accordance with AASB 134, it was not required to undertake a detailed impairment calculation as at 31 December 2012 but was required to review its assets for indications of impairment in order to determine whether a more detailed impairment calculation was required;

(ii) in conformity with AASB 134, at its meeting on 9 August 2012, the BARC recommended that certain assets (Hidden Valley, Bonikro, Lihir and Telfer) should be reviewed for potential impairment on a six monthly basis;

(c) it admits that Newcrest reviewed the carrying values of Hidden Valley, Bonikro, Lihir and Telfer for indications of impairment as at 31 December 2012 (not by or around that date) (**December 2012 Impairment Review**) using the Newcrest FY13 LoPP;

(d) it admits that the results of the December 2012 Impairment Review were as pleaded in paragraph 60 ~~42F~~(b) and says further that:

(i) the valuation of Bonikro using the Newcrest FY13 LoPP resulted in a decrease in the valuation of Bonikro relative to the previous 5YP and LoPP;

(ii) the drivers of the reduction in the valuation of Bonikro were to be the subject of review during the forthcoming 5YP process, which review was therefore directly relevant to the question whether the asset was or might be impaired;

(e) says further that the December 2012 ~~i~~Impairment Review ~~testing~~:

(i) was a preliminary assessment only as it was conducted on the basis of the Newcrest FY13 LoPP (presented to ExCo in mid-December 2012) in circumstances where the production plans, capital expenditure, costs and economic assumptions used in the LoPP were subject to deeper review, greater precision in estimation and change during the 5YP planning process being undertaken from the start of the 2013 calendar year, as well as various inputs that had been used in FY12 impairment testing;

(ii) was the subject of review by Ernst & Young in a report dated 30 January 2013; and

(f) otherwise denies paragraph 60 ~~42F~~.

61 ~~43~~ It admits paragraph 61 ~~43~~.

62 ~~44~~ In relation to paragraph 62 ~~44~~, it:

(a) says that the 2Q13 Results Presentation:

(i) contained an express disclaimer of the kind referred to in paragraph 8(b)(iii)(A) above and the particulars thereto (page 2);

(ii) was subject to the understanding referred to in paragraph 8(b)(iii)(B) above;

(b) admits that:

(i) the 2Q13 Results Presentation stated *inter alia* that:

(A) on pages 3 and 4 under the heading *'Key points'*:

" ·*Major projects achieve key milestones*

-*Cadia East in commercial production*

-*Lihir MOPU commissioning to complete in January 2013*

. …

·*Full year production guidance maintained*

· *Expect stronger performance in 2nd half of FY13*

-*Ramp up of Cadia East and Lihir MOPU*

-*Improved access to ore at Gosowong, Bonikro & Telfer*

-*Continued focus on cost reductions*

-*Overland conveyor crusher completion at Hidden Valley"*

(B) on page 5, under the heading *'Cadia East commences commercial production'*:

"· In commercial production from 1 January 2013"

(C) on page 6, under the heading *'Lihir MOPU commissioning nearing completion'*:

"*·All new plant now individually commissioned*

·System commissioning completes in January

·Expect total system ramp up from 1 February;

·Board-approved scope (September 2010):

-Increase processing capacity to achieve 1Mozpa

MOPU metrics	Original Scope	Delivered
Capital	$1.30 billion	$1.40 billion (+7.7%)
Construction	end CY2012	end CY 2012
Completion	beginning CY2013	1 February 2013
Full Plant Utilisation	end CY2013	on track
Production Capacity	1.0 moz pa	1.0 moz pa

"

(D) on page 9, under the heading '*Full year guidance*':

"*·Group production, cost and capital guidance maintained*

-Production 2.3 to 2.5Moz gold, 75 to 85kt copper (low end)

…

·Expect below guidance production at Gosowong and Hidden Valley:

-Gosowong around 350koz (previously 375 to 425koz)

-Hidden Valley [footnote omitted] 90koz (previously 100 to 120koz)

-Effect of above offset by other assets performing within their ranges"

(c) admits that the 2Q13 Results Release stated *inter alia*:

(i) on page 1 under the heading *'Major project milestones achieved'*:

"*Newcrest's two major expansion projects, comprising the Cadia East development and the Lihir Million Ounce Plant Upgrade ("MOPU"), both achieved major milestones during the quarter. Production volume from Cadia East continued to ramp up and commercial production milestones were achieved by the end of December 2012; first, commercial production commenced from 1 January 2013. The Lihir MOPU project is in the final stages of commissioning which is expected to be complete by the end of January 2013, after which production ramp up commences. Both projects have a forecast final cost within 8% of their budget.*

The successful completion of these two major projects represents a significant milestone for Newcrest. Together, Lihir MOPU and Cadia East establish the platform to enable delivery of significant production growth in both gold and copper over the next five years at lower unit cash costs.

Production for the December 2012 quarter was 492,906 ounces of gold and 19,926 tonnes of copper. Gold and copper production increased 7% over the September 2012 quarter. The Company's gold and copper production is expected to progressively increase over the remainder of the financial year."

(ii) on page 1, under the heading '*Guidance*' that:

"*Financial year 2013 group guidance ranges for gold and copper production and site costs remain unchanged. Newcrest's total gold production is expected to be at the low end of the 2.3 to 2.5Moz guidance range."*

(iii) on page 3, under the heading *'Operations'* that:

"…

Lihir, PNG

…

Refurbishment projects are progressing to plan to improve the older sections of the plant. Projects include upgrading the electrical and control systems and replacing the Neutralisation Cyanidation Adsorption (NCA) circuit. The expansion project of increasing the flotation capacity is proceeding on schedule to a July 2013 delivery.”

(iv) on page 5, under the heading *'Project Development'* that:

"…

Lihir MOPU, PNG

At Lihir, the MOPU Project will be completed by end January 2013, one month later than the scheduled completion date of end December 2013. Final commissioning activities are in progress and the project team is progressively demobilising from site…

Commissioning and tie-in activity during the December 2012 quarter included the oxygen plant, autoclave, stacker and tailings outfall becoming operational. The new SAG and ball mills are in the final stage of commissioning. During January 2013 the entire plant is finalising the commissioning as an integrated operating system. Careful ramp up of the MOPU system to full capacity will continue through the March 2013 quarter.”

(d) will refer to the full terms and context of the 2Q13 Results Release and 2Q13 Results Presentation at trial; and

(e) otherwise denies paragraph 62 ~~44~~.

G. THE ALLEGED 'CONTINUING CONTRAVENIONS FROM 13 AUGUST 2012'

63 ~~45~~ In respect of paragraph 63 ~~45~~, it:

(a) refers to and repeats paragraphs 8, 9, ~~22~~ <u>33</u>, ~~32~~ <u>43</u> and ~~44~~ <u>62</u> above and paragraphs ~~63~~ <u>85</u> , ~~80~~ <u>108</u> , ~~84~~ <u>114</u> and ~~85~~ <u>115</u> below;

(b) says that for the reasons set out in paragraph ~~22~~<u>33</u>(c)(ii), Newcrest's reference in August 2012 to compound annual growth rate in respect of its future gold production meant, and would reasonably have been understood in the market to mean, that Newcrest's then current assessment was that, over the entire five year period between FY13 and FY17 covered by the Guidance Statements and Outlook Statements, gold production might grow at an average rate of 5 to 10 percent, compounding annually, rather than at a uniform linear rate each year;

(c) says further or alternatively that:

(i) the 2Q13 Results Release and 2Q13 Results Presentation expressly stated that *"Newcrest's total gold production is expected to be at the low end of the 2.3 to 2.5Moz guidance range"*;

(ii) the March 2013 FY13 Production Forecast Downgrade reduced FY13 gold production guidance to 2.00 to 2.15Moz,

and therefore to the extent the 'August 2012 Representations' referred to in sub-paragraphs ~~22~~ <u>33</u>(a), (f) and (g) of the <u>Further</u> Amended Statement of Claim (which are denied) are alleged to arise by the linear extrapolation of an average annual growth of 5 or 10 percent commencing from 2.29Moz in FY12, those 'August 2012 Representations' were amended or qualified by the 2Q13 Results Release, 2Q13 Results Presentation, March 2013 FY13 Production Forecast Downgrade, 3Q13 Results Release and 3Q13 Results Presentation;

(d) says further that:

(i) the 1H13 Results Presentation stated that the production capacity of MOPU was 1.0Moz per annum; and,

Particulars

1H13 Results Presentation on page 6.

(ii) therefore to the extent the 'August 2012 Representations' included or were comprised of the representation referred to in sub-paragraph

~~22~~33(e) of the Further Amended Statement of Claim (which is denied), it was amended or qualified by the 1H13 Results Presentation; and

(e) otherwise denies paragraph 63 ~~45~~.

64 ~~46~~ It denies paragraph 64 ~~46~~.

65 ~~47~~ It denies paragraph 65 ~~47~~.

66 ~~48~~ In respect of paragraph 66 ~~48~~, it:

(a) denies paragraph 66 ~~48~~;

(b) refers to and repeats paragraphs 8, 9, ~~22~~ 33, ~~27~~ 38, ~~42A~~ 53 to ~~42E~~ 59 above and paragraphs 69, ~~51~~ 70, ~~52~~ 71, ~~59A~~ 79, ~~59B~~ 80, ~~59C~~ 81 and ~~79A~~ 102 below; and

(c) says further that if the August 2012 Representations were made and continued (which allegations are denied), they were statements of opinion as to future matters made on reasonable grounds.

Particulars

Newcrest refers to and repeats paragraphs 8, 9, ~~22~~ 33, ~~27~~ 38, ~~42A~~ 53 to ~~42E~~ 59 above and 69, ~~51~~ 70 ~~52~~ 71, ~~59A~~ 79, ~~59B~~ 80 and ~~59C~~ 81 below.

To the extent that the 'August 2012 Representations' were made and continued, as alleged, it was reasonable for Newcrest to maintain those representations in circumstances where:

- *the gold price was volatile;*
- *production outcomes (and, therefore, assessments in respect of the same) would be affected by considerations arising as part of the 5YP and Budget planning process, including considerations pertaining to any changes in:*
  - *Newcrest's strategic direction for FY14 and beyond;*
  - *operating environment;*
  - *economic conditions; and*
  - *other circumstances,*

  and in respect of which no final decision had been made.

67 ~~49~~ It denies paragraph 67 ~~49~~.

68 ~~50~~ It denies paragraph 68 ~~50~~.

H. THE ALLEGED 'JANUARY 2013 MATERIAL INFORMATION'

69 In respect of paragraph 69, it:

(a) refers to and repeats paragraph 33 above;

(b) otherwise denies paragraph 69.

70 ~~51~~ In respect of paragraph 70 ~~51~~, it:

(a) denies paragraph 70 ~~51~~; and

(b) says further that:

(i) prior to 2012:

(A) two grinding studies identified the opportunities available to increase the grinding capability at Lihir beyond the MOPU design assessment of 11 to 12Mtpa;

Particulars

Report by SimSage Pty Ltd entitled 'Simulation of Lihir Grinding Circuit Expansion Options' dated January 2007.

Report by Metso Process Technology & Innovation entitled 'Grinding Circuit Throughput Maximisation on Hard Ore' dated 9 June 2010.

(B) Newcrest had initiated a site improvement project targeting production at Lihir of 14Mtpa with 90 percent recovery;

(ii) on or about 30 June 2012, Newcrest initiated the Lihir Grinding Optimisation Project, to identify possible changes to the grinding circuit to enable greater throughput;

(iii) between July and September 2012, Newcrest commissioned Ausenco to assess grinding capability improvements with a target increase in grinding circuit throughput to 15Mtpa;

(iv) following concept studies, recommendations were made as to how the increase might be achieved;

(v) the recommendations fell into two categories, being optimisation of the existing circuit and capital upgrades;

(vi) the capital upgrade approach involved the installation of two vertimills at Lihir;

(vii) on or about 21 November 2012, Newcrest received a report from Ausenco entitled '*Lihir Grinding Optimisation Project Stream 1 – Optimisation Plan*' which identified a range of potential opportunities available to Newcrest for the optimisation of the existing circuit to achieve production of 15Mtpa by the first quarter of 2013, without any substantial modification or upgrade to the processing equipment (**Ausenco November 2012 Report**);

Particulars

The Ausenco November 2012 Report is available for inspection by prior appointment with Newcrest's solicitors. Further particulars may be provided prior to trial.

Presentation entitled 'Ausenco Site Visit Lihir Project Initiatives' dated 18 to 22 February 2013, a copy of which is available for inspection by prior appointment with Newcrest's solicitors.

(viii) thereafter, during the planning process for the preparation of the Newcrest FY13 5YP, it was proposed that the installation of two vertimills at Lihir would be deferred in the short term and the program of optimising the existing circuit preferred; and

(ix) Newcrest had previously successfully optimised grinding capability at Telfer and Cadia without major capital upgrades.

Particulars

The grinding capability at the Ridgeway Cadia plant was increased from its nameplate capacity of 4Mtpa to 5Mtpa. The grinding capability at Telfer was increased from 17Mtpa to 22Mtpa.

71 ~~52~~ In respect of paragraph 71 ~~52~~, it:

(a) denies paragraph 71 ~~52~~;

(b) refers to and repeats paragraphs 8, 9, ~~22~~ 33, ~~24~~ 35, ~~27~~ 38, ~~42A~~ 53 to ~~42E~~ 59, 69 and ~~51~~ 70 above, and ~~84~~ 114 and ~~85~~ 115 below;

(c) says further that the Newcrest FY13 LoPP process generated possible "mid case" gold production outcomes:

(i) of 1.079Moz at Lihir for FY14;

(ii) consistent with average annual growth in gold production of between 5 and 10 percent for FY14 to FY17;

(iii) of 2.759Moz for FY14; and

(iv) of 3.356Moz for FY17.

I. THE ALLEGED 'JANUARY 2013 CONTRAVENTIONS'

72 ~~53~~ In respect of paragraph ~~53~~ 72, it:

(a) refers to and repeats paragraph ~~52~~ 71 above;

(b) says that if, which is not admitted but is denied, the FY14 Gold Production Information existed and Newcrest was aware the FY14 Gold Production Information existed prior to 6 June 2013 as alleged:

(i) it does not admit that the FY14 Gold Production Information was information which a reasonable person would expect, if it were generally available to have a material effect on the price of Newcrest's securities for the purposes of ss 674 and 677 of the *Corporations Act*;

(ii) further, the FY14 Gold Production Information was information that did not require disclosure pursuant to ASX Listing Rule 3.1A, as to which it:

(A) refers to and repeats paragraph 71 ~~52~~ above; and

(B) says further, that even if the 'FY14 Gold Production Information' existed (which is denied) and Newcrest was aware of it (which is denied), and ASX Listing Rule 3.1

otherwise required its disclosure (which is denied), then the 'FY14 Gold Production Information' was within the exception to that ASX Listing Rule provided by ASX Listing Rule 3.1A because:

(1) a reasonable person would not have expected Newcrest to disclose the information;

(2) the information:

a. was information generated for internal management purposes; and/or

b. was a matter of supposition or insufficiently definite to warrant disclosure; and/or

c. concerned incomplete proposals and ongoing negotiations;

(3) the information was confidential and the ASX had not formed the view that the information had ceased to be confidential,

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information.

Particulars

Newcrest refers to and repeats the particulars to paragraph 38(b) ~~27(b)~~ above.

(c) otherwise denies paragraph 72 ~~53~~.

73 ~~54~~ In respect of paragraph 73 ~~54~~, it:

(a) denies paragraph 73 ~~54~~; and

(b) refers to and repeats paragraphs ~~42A~~ 53 to ~~42E~~ 59 and ~~51~~ 69(b) to ~~53~~ 72 above.

74 ~~55~~ In respect of paragraph ~~55~~ 74, it says that if, which is not admitted but is denied, the FY14 Gold Production Information existed and Newcrest was aware the FY14 Gold Production Information existed prior to 6 June 2013 as alleged:

(a) it admits that it did not notify the ASX of the FY14 Gold Production Information at any time during the Period; and

(b) by reason of the matters referred to in paragraphs 69(b) ~~51~~ to 73 ~~54~~ above, says that it was not under any obligation to notify the ASX.

75 ~~56~~ It denies paragraph 75 ~~56.~~

76 ~~57~~ It denies paragraph 76 ~~57~~.

77 ~~58~~ It denies paragraph 77 ~~58.~~

78 ~~59~~ It denies paragraph 78 ~~59.~~

J. FEBRUARY 2013 ASX ANNOUNCEMENTS

79 ~~59A~~ In respect of paragraph 79 ~~59A,~~ it:

(a) refers to and repeats paragraphs 8, 9 and 59 ~~42E~~ above;

(b) otherwise denies paragraph 79 ~~59A~~; and

(c) says further that:

(i) after the completion of second quarter of FY13, Newcrest's then current expectation as to the total FY13 gold production (pre-capitalisation) was 2,300koz against a budgeted gold production (pre-capitalisation) for the year of 2,474koz;

Particulars

Newcrest Production and Cost Summary, dated in or about 16 January 2013 and the FY13 Budget.

(ii) in or about late January 2013, Robinson established a team of senior managers for the purpose of motivating those managers to take action to identify and implement strategies for the purpose of:

(A) seeking to ensure that Newcrest's total gold production for FY13 did in fact fall within the gold production guidance issued by Newcrest in respect of that year;

(B) specifically, identifying and executing opportunities to add ounces in production over the subsequent five months;

(iii) as at 29 January 2013, Newcrest had, or had substantially, made up for delays in the ramp up of the MOPU project and was no longer behind schedule.

80 ~~59B~~ In respect of paragraph 80 ~~59B~~, it:

(a) denies paragraph 80 ~~59B~~; and

(b) refers to and repeats paragraphs 8, 9, 69(b) and 7069(b) ~~51~~ above, and paragraph 102 ~~79A~~ below;

(c) says further that:

(i) it refers to and repeats paragraphs 19 ~~16B~~(b) and (c), and 79 ~~59A~~(c)(ii) above; and

(ii) for the reasons there set out, there was no formal 'Lihir FY13 5YP' but that the 'Lihir FY13 5YP' was an iterative work in progress for incorporation into the Newcrest FY13 5YP.

81 ~~59C~~ In respect of paragraph 81 ~~59C~~, it:

(a) admits sub-paragraph 81(a);

(b) denies sub-paragraph 81(b);

(c) ~~(a)~~ refers to and repeats paragraphs 9, 59 ~~42E~~ and 79 ~~59A~~ above and otherwise admits sub-paragraph 81(c);

~~(b) otherwise admits sub-paragraph 59C(a);~~

(d) ~~(c)~~ says that Newcrest identified a number of initiatives in early February 2013 for the purpose of deriving a target of 100koz additional ounces in gold production in FY13; and

Particulars

The initiatives included:

- *High grade open pit by dropping into Phase 9 (Lihir);*
- *Maindome stage 6/ switchback (Telfer);*
- *Phase 11 pump station (Lihir);*
- *Early, rapid commissioning and ramp up of CE Lift 1 crusher to displace low grade stockpiles (Cadia);*
- *Preferential draw from high grade draw columns in CE Lift 1 (Cadia);*
- *High grade open pit by dropping into Phase 11 more aggressively (Lihir);*
- *High grade open pit by dropping into Phase 12 (Lihir);*
- *Front end (feed preparation, crushing, grinding, float & storage) process control to operate at drum beat 15ktpa versus current 5 to 15ktpa range (Lihir);*
- *Simplify process control of autoclaves to mass flow limit of 270 to 300tph & max oxygen, allowing recovery to flex. versus current complicated process logic (Lihir);*
- *M35 - increase development capacity to debottleneck production (Telfer);*
- *Rapid commissioning and ramp up of MD Stage 4 for higher net yield grades (Telfer);*
- *Rapid commissioning and ramp up of MD Stage 6 for higher net yield grades (Telfer);*
- *Defer RW belt change out by use of elevated monitoring and response triggers (Cadia);*
- *High grade stockpile definition, selection & dispatch (Lihir);*
- *Truck cycles and our ability to handle material (Lihir);*

(e) otherwise does not admit paragraph 81 ~~59C~~.

82 ~~60~~ It admits paragraph 82 ~~60~~.

83 ~~61~~ In respect of paragraph 83 ~~61~~, it:

(a) says that the 1H13 Results Release stated *inter alia* that:

(i) on page 1:

"*The 2013 financial year is a significant one for Newcrest with the completion of two major projects establishing a platform for increased gold and copper production, earnings and cashflow.*

The Cadia East project achieved commercial production milestones in December 2012 and is ramping up ore production from the underground panel cave. The Lihir Million Ounce Plant Upgrade ('MOPU') project was commissioned in January 2013 and handed to operations on 1 February 2013, significantly increasing capacity at Newcrest's largest operation.

Newcrest's financial results for the six months to 31 December 2012 reflect the transitional nature of the 2013 financial year, with the completion of two major growth projects and some production challenges at existing operations. Production is expected to be higher in the second half of the 2013 financial year.

…

Directors have determined an interim dividend of 12.0 cents per share (unfranked), an increase in the payout ratio to 29%.

…

Highlights

…

· Cadia East commenced commercial production 1 January 2013 and has commenced commercial production ramp up

· Lihir MOPU project completed and has commenced planned increase in mill throughput rates

…

· Interim dividend maintained at 12 cents per share (unfranked)"

(b) on page 5, under the heading *'Dividends'*:

"*Newcrest has determined a 12 cents per share interim dividend (unfranked) (A$92 million), consistent with the interim dividend from the corresponding prior period. The dividend will be paid from conduit foreign income and will be exempt from withholding tax. The interim dividend is payable to shareholders on 16 April 2013 and shareholders registered as at the close of business on 22 March 2013 will be eligible for the interim dividend. The Dividend Reinvestment Plan ("DRP") remains in place and the Directors resolved on 7 February 2013 to amend the DRP rules such that the DRP price will be the arithmetic average of the daily volume weighted average price in the five day period commencing two days after the record date."*

(c) on page 5, under the heading *'Subsequent Events'*:

"Other than the matters discussed above there are no other matters or circumstances which have arisen since 31 December 2012 that have significantly affected or may significantly affect the operations of the Group, the results of those operations or the state of affairs of the Group in subsequent financial years."

(d) on page 5, under the heading *'Outlook'*:

"The completion of Newcrest's two major growth projects underpins a positive production outlook for the company for the remainder of the financial year and beyond. The ramp up in production rates has commenced at both the Cadia East panel cave mine and at Lihir post the MOPU project, which together will materially increase Newcrest's share of production from lower cost ore sources. Steady progress has also been made on the refurbishment of the older processing facilities at Lihir to improve plant reliability, and the Bonikro primary crusher refurbishment was completed in January 2013 restoring the processing plant to full capacity. The primary crusher upgrade at Hidden Valley is expected to be commissioned in April 2013 and should deliver an improvement in both production and cost performance. The Company's investment in stripping activity and ground support will further

contribute to the mining and processing of higher grade ore at Gosowong, Telfer and Bonikro.

For the remainder of the 2013 financial year, Newcrest expects higher production in line with achieving the bottom end of guidance, and a subdued cost environment. Achieving guidance will be primarily dependent on the speed of the Lihir plant ramp up and access to high grade ore stopes at Gosowong."

(e) says further that the 1H13 Results Release:

(i) contained an express disclaimer of the kind referred to in paragraph 8(b)(iii)(A) above and the particulars thereto (page 9);

(ii) was subject to the understanding referred to in paragraph 8(b)(iii)(B) above;

(f) will refer to and rely upon the full terms and effect of the 1H13 Results Release at trial; and

(g) otherwise denies paragraph 83 ~~61~~.

84 ~~62~~ In respect of paragraph 84 ~~62~~, it:

(a) says that the 1H13 Results Report stated *inter alia* that:

(i) on page 4:

"The 2013 financial year is a significant one for Newcrest with the completion of its two major growth projects establishing the platform for significant growth in gold and copper production, earnings and cash flow over the next five years.

The Cadia East project achieved commercial production milestones in December 2012. Ore production volume from the Cadia East underground panel cave continues to ramp up and will progressively displace lower grade stockpiled ore as the primary feed at Cadia Valley. The Lihir Million Ounce Plant Upgrade ('MOPU') project was commissioned in January 2013 and handed to operations on 1 February 2013, significantly increasing production capacity at Newcrest's largest *operation and largest resource base. Both projects were delivered on time and within 8% above the original budget.*

…

Newcrest's financial results for the six months ended 31 December 2012 reflect this transitional nature of the 2013 financial year for the Company. The comparison with the corresponding prior period shows the impact of Cadia Valley's transition from higher grade final open pit material to reliance on lower grade historical ore stockpiles; this will continue in the year ahead as Cadia East ore production ramps up to capacity. Production and the financial results of the Company in the current six month period also reflect unexpectedly poor ground conditions at Gosowong impeding access to high grade ore and the impact of high sulphur content in the West Dome ore feed on Telfer metal recoveries.

…

Newcrest has maintained its interim dividend of 12.0 cents per share, balancing the lower production and profit in the six month period with the outlook for future profitability associated with the ramp up in production volumes from the completed projects and an expectation of higher levels of production from the other operations in the second half of the financial year. The dividend payout ratio (as a percentage of Statutory profit) has increased from 14% in the corresponding prior period to 29%. This interim dividend be unfranked."

(ii) on page 6:

"The completion of Newcrest's two major growth projects underpins a positive production outlook for the company for the remainder of the financial year and beyond. The ramp up in production rates has commenced at both the Cadia East panel cave mine and at Lihir post the MOPU project, which together increase production from lower cost ore sources.

Newcrest has an attractive portfolio of assets with production growth coming from lower cost operations in the years ahead. Beyond the 5 year plan period, the Company also has good growth projects with Wafi-Golpu, O'Callaghans and Namosi, combined with an active exploration programme. Management's current focus is to ramp up the key projects, maintain strict cost control and maximise productivity of existing investments. Future growth projects will be carefully designed to minimise capital costs and deliver in an appropriate time horizon to ensure investment returns are strong. Our business outlook is supported by proven technical expertise, proven major project delivery capability and a strong and strengthening balance sheet. Most importantly, Newcrest has a talented, committed and aligned workforce that is energised by the prospect of the Company delivering on its potential."

(b) will refer to and rely upon the full terms and effect of the 1H13 Results Report at trial; and

(c) otherwise denies paragraph <u>84</u> ~~62~~.

85 ~~63~~ In respect of paragraph <u>85</u> ~~63~~, it:

(a) says that in the 1H13 Results Presentation, Newcrest stated *inter alia* that:

(i) on page 5, under the heading '*Operational Highlights*':

"·*Major projects achieve key milestones*
-*Cadia East in commercial production and ramping up*
-*Lihir MOPU completed in January 2013 and ramping up*"

(ii) on page 6, under the heading *'Update on Lihir MOPU Commissioning'*:

" · *System commissioning completed*
· *Total system ramp up initiated*
· *Handed to operations on 1 February 2013*
· *Autoclaves achieved 1,100 tonnes per hour*
· *All systems operating, reliability focus"*

MOPU metrics	Original Scope	Delivered
Capital	US$1.30 billion	US$1.40 billion (+7.7%)
Construction	end CY2012	end CY2012
Completion	beginning CY2013	1 February 2013
Full Plant Utilisation	end CY2013	on track
Production Capacity	1.0 moz pa	1.0 moz pa

(iii) on page 17, under the heading *'Capex decreasing as major projects complete'*:

> "· *Major projects in Dec 12 half*
>
> *-Cadia East A$303M*
>
> *-Lihir MOPU US$177M*
>
> *-Wafi-Golpu (50%) US$47M*
>
> · *Development capital increase due to Cadia East panel cave 1*
>
> ...
>
> · *Outlook for second half of FY13*
>
> *-MOPU winds down*
>
> *-Cadia East progresses…*"

(b) says further that the 1H13 Results Presentation:

(i) contained an express disclaimer of the kind referred to in paragraph 8(b)(iii)(A) above and the particulars thereto (page 2);

(ii) was subject to the understanding referred to in paragraph 8(b)(iii)(B) above;

(c) will refer to and rely upon the full terms and effect of the 1H13 Results Presentation at trial; and

(d) otherwise denies paragraph 85 ~~63~~.

86 ~~64~~ In respect of paragraph 86 ~~64~~, it:

(a) says that in the 2012 Resources & Reserves Statement, Newcrest stated *inter alia* that:

> *"Mineral Resources are quoted inclusive of Ore Reserves. Metal price assumptions used for all Newcrest Mineral Resources are US$1350/oz*

for gold, US$3.10/lb for copper and US$23/oz for silver. Price assumptions for Ore Reserves are US$1250/oz for gold, US$2.70/lb for copper and US$20.00/oz for silver. In the case of Gosowong, a gold price of US$1400/oz has been used to estimate Mineral Resources and Ore Reserves, acknowledging the shorter life of the currently known deposits. Where appropriate, resources are also constrained spatially by a notional pit shell based on US$1400/oz for gold and US$4.00/lb for copper or, for underground mining, by a shape based on the marginal cut-off grade used as a conservative measure to remove non-contiguous mineralisation. Cost assumptions are based on the latest approved study for each deposit.

…

The accompanying statement of Mineral Resources and Ore Reserves conforms to the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves 2004 Edition (The JORC Code)[1]*."*

(b) will refer to and rely upon the full terms and effect of the 2012 Resources & Reserves Statement at trial; and

(c) otherwise denies paragraph 86 ~~64~~.

87 ~~65~~ It admits paragraph 87 ~~65~~.

K. THE ALLEGED 'FEBRUARY 2013 REPRESENTATIONS AND MATERIAL INFORMATION'

88 ~~66~~ In respect of paragraph 88 ~~66~~, it:

(a) denies paragraph 88 ~~66~~; and

---

[1] As a company with a secondary listing to the Toronto Stock Exchange, Newcrest Mining Limited is required to include a reconciliation of the material differences between The JORC Code and the applicable definitions adopted by the Canadian Institute of Mining, Metallurgy and Petroleum (CIM Definition Standards). In relation to the December 2012 Resources and Reserves Statement, the reconciliation is set out in Newcrest's Canadian News Release dated 8 February 2013, and is available at www.sedar.com and at Newcrest's website www.newcrest.com.au.

(b) refers to and repeats paragraphs 8, 9, 26 ~~17~~ to 33 ~~22~~, 47 ~~36~~, 48 ~~38~~ to 63 ~~45~~ and 82 ~~60~~ to 86 ~~64~~ above.

89 ~~67~~ In respect of paragraph 89 ~~67~~, it:

(a) refers to and repeats 8(b)(ii)-(iv), 9(d), 9(e), ~~20~~29(c), ~~39~~49(d) and ~~42~~52(b) above and says therefore that Newcrest's Outlook Statement for FY14 to FY17 was subject to "known and unknown risks, uncertainties and other factors", the existence of which was regularly disclosed;

(b) further or alternatively, refers to and repeats paragraph 71 ~~52~~ and the particulars to paragraph 38 ~~27~~ above; and

(c) otherwise denies paragraph 89 ~~67~~.

L. THE ALLEGED 'FEBRUARY 2013 CONTRAVENTIONS'

90 ~~68~~ In respect of paragraph 90 ~~68~~, it:

(a) denies paragraph 90 ~~68~~; and

(b) says further that if the February 2013 Representations were made (which is denied), they were statements of opinion as to future matters, made in relation to a financial product in trade or commerce.

91 ~~69~~ It denies paragraph 91 ~~69~~.

92 ~~70~~ In respect of paragraph 92 ~~70~~, it:

(a) denies paragraph 92 ~~70~~;

(b) refers to and repeats paragraphs 8, 9, 33 ~~22~~, 38 ~~27~~, 53 ~~42A~~ to 59 ~~42E~~, 69(b), 70 ~~51~~, 71 ~~52~~, 79 ~~59A~~, 80 ~~59B~~ and 81 ~~59C~~ above, and 102 ~~79A~~ below; and

(c) says further that if the February 2013 Representations were made and continued (which allegations are denied), they were statements of opinion as to future matters made on reasonable grounds.

Particulars

Newcrest refers to and repeats paragraphs 8, 9, 33 ~~22~~, 38 ~~27~~, 53 ~~42A~~ to 59 ~~42E,~~ 69(b), 70 ~~51~~, 71 ~~52~~, 79 ~~59A~~, 80 ~~59B~~ and 81 ~~59C~~ above, and 102 ~~79A~~ below.

To the extent that the 'February 2013 Representations' were made and continued, as alleged, it was reasonable for Newcrest to maintain those representations in circumstances where

- *the gold price was volatile;*
- *production outcomes (and, therefore, assessments in respect of the same) would be affected by considerations arising as part of the 5YP and Budget planning process, including considerations pertaining to any changes in:*
  - *Newcrest's strategic direction for FY14 and beyond;*
  - *operating environment;*
  - *economic conditions; and*
  - *other circumstances,*

  and in respect of which no final decision had been made.

93 ~~71~~ In respect of paragraph 93 ~~71~~, it:

(a) denies paragraph 93 ~~71~~; and

(b) refers to and repeats paragraphs 71 ~~52~~, 79 ~~59A~~ to 81 ~~59C~~ and 92 ~~70~~ above.

94 ~~72~~ It denies paragraph 94 ~~72~~.

95 ~~73~~ It denies paragraph 95 ~~73~~.

96 ~~74~~ It denies paragraph 96 ~~74~~.

97 ~~75~~ In respect of paragraph 97 ~~75~~, it:

(a) says that if, which is not admitted but is denied, the February 2013 Information existed and Newcrest was aware the February 2013 Information existed prior to 6 June 2013 as alleged:

(i) it does not admit that the February 2013 Information was information which a reasonable person would expect, if it were generally available to have a material effect on the price of Newcrest's securities for the purposes of ss 674 and 677 of the *Corporations Act*;

(ii) insofar as the February 2013 Information was comprised by the 'information' pleaded in paragraphs ~~67~~89(a) and ~~67~~89(b) of the

Further Amended Statement of Claim, that information was generally available for the purposes of ss 674 and 676 of the *Corporations Act*;

Particulars

Newcrest refers to and repeats paragraphs 8(b)(iii) and 9(e) above. See further the disclaimers on page 10 of the FY12 Results Release, on page 2 of the FY12 Results Presentation and the reference on page 24 of that document to uncertainty in the outlook for commodity prices and exchange rates.

(iii) insofar as the February 2013 Information comprised the 'information' pleaded in paragraph ~~67~~89(c) of the Further Amended Statement of Claim, is does not admit that the information was not generally available for the purposes of ss 674 and 676 of the *Corporations Act*;

(b) says further or alternatively, that even if the 'February 2013 Information' existed (which is denied) and Newcrest was aware of it (which is denied), and ASX Listing Rule 3.1 otherwise required its disclosure (which is denied) then the 'February 2013 Information' was within the exception to that ASX Listing Rule provided by ASX Listing Rule 3.1A because:

(i) a reasonable person would not have expected Newcrest to disclose the information;

(ii) the information:

(A) was information generated for internal management purposes; and/or

(B) was a matter of supposition or insufficiently definite to warrant disclosure; and/or

(C) concerned incomplete proposals and ongoing negotiations;

(iii) the information was confidential and the ASX had not formed the view that the information had ceased to be confidential,

and accordingly, by virtue of ASX Listing Rule 3.1A, ASX Listing Rule 3.1 did not apply to that information.

Particulars

Newcrest refers to and repeats the particulars to paragraph 38 ~~27~~(b) above.

(c) otherwise denies paragraph 97 ~~75~~.

98 ~~76~~ In respect of paragraph 98 ~~76~~, it:

(a) refers to and repeats paragraph 97 ~~75~~ above; and

(b) otherwise denies paragraph 98 ~~76~~.

99 ~~77~~ In respect of paragraph 99 ~~77~~, it says that if, which is not admitted but is denied, the February 2013 Information existed and Newcrest was aware the February 2013 Information existed prior to 6 June 2013 as alleged:

(a) it admits that it did not notify the ASX of the February 2013 Information at any time during the Period; and

(b) by reason of the matters referred to in paragraphs 97 ~~75~~ and 98 ~~76~~ above, says that it was not under any obligation to notify the ASX of the February 2013 Information.

100 ~~78~~ It denies paragraph 100 ~~78.~~

101 ~~79~~ It denies paragraph 101 ~~79~~.

M. ASX ANNOUNCEMENTS AND OTHER EVENTS – MARCH 2013 TO MAY 2013

102 ~~79A~~ It denies paragraph 102. ~~In respect of paragraph 79A, it:~~

~~(a) refers to and repeats paragraphs 8, 9, 16B(b) and (c), 42E and 59B(c) above;~~

~~(b) says that the document referred to in the Amended Statement of Claim as the 'Lihir FY13 5YP':~~

~~(i) was a document of the kind described in paragraph 16B(b) above;~~

~~(ii)did not therefore represent the views, estimates, plans or possible objectives of Newcrest management (and, therefore,~~

~~Newcrest) with respect to matters referred to therein, including gold production outcomes or capital expenditure estimates; and~~

~~(c) otherwise denies paragraph 79A.~~

103 In respect of paragraph 103, it:

(a) refers to and repeats paragraph 9(h) above; and

(b) otherwise denies the allegations.

Particulars

NEW 542.005.4106.

104 In respect of paragraph 104, it:

(a) says that as at around 5 March 2013, Robinson's view was that there was then insufficient information for Newcrest to issue a revision to its Guidance Statement for FY13;

(b) refers to and repeats paragraphs 9(c), 9(h) and 9(i) above; and

(c) otherwise does not admit the allegations.

105 In respect of paragraph 105, it:

(a) refers to and repeats sub-paragraphs 8(b)(v)(B), 19(b), 54 and 80(c) above;

(b) says that:

(i) the document described in the Further Amended Statement of Claim as the 'Lihir FY13 5YP' contained:

(A) a figure for total capital of $1.556 billion;

(B) figures for gold production of $907.1 koz in FY14, 955 koz in FY15, 998.2 koz in FY16, 1.007 Moz in FY17 and 1.1 Moz in FY18;

(ii) by 1 March 2013 a preliminary draft of the Newcrest FY13 5YP had been submitted to ExCo; and,

(c) otherwise denies the allegations.

106 In respect of paragraph 106, it:

(a) says that between 1 March 2013 and 24 March 2013, Robinson determined that:

(i) the preliminary draft of the Newcrest FY13 5YP was not acceptable; and

(ii) the planning teams should, in Robinson's view, prepare options for potential incorporation into the Newcrest FY13 5YP which maximised nearer term cash flows; and

(b) refers to and repeats paragraph 8(b)(v)(B) above; and

(c) otherwise denies paragraph 106.

107 In respect of paragraph 107, it:

(a) refers to and repeats refers to and repeats paragraphs 8(b)(ii), 8(b)(v)(B) and 8(b)(vi) above;

(b) says that by 28 March 2013 a revised draft of the Newcrest FY13 5YP was submitted to ExCo;

(c) the document described as the 'Revised Newcrest FY13 5YP':

(i) contained, in a "*Key Outcome Table*", on page 9, the following figures:

GOLD PRODUCTION											
Total	**koz**	2,381	2,244	2,308	**2,451**	**2,630**	**2,827**	**2,794**	**2,859**	**2,712**	**13,562**
Lihir		639	604	736	812	851	978	1,023	1,030	939	4,696
CVO		515	474	460	514	614	683	845	945	720	3,601
Telfer		622	541	554	555	581	557	320	271	457	2,284
Gosowong		463	439	356	375	350	350	350	350	355	1,775
Hidden Valley		100	89	93	104	120	132	113	117	117	586
Côte d'Ivoire		41	97	109	91	113	127	143	146	124	620
Namosi		0	0	0	0	0	0	0	0	0	0
Wafi-Golpu		0	0	0	0	0	0	0	0	0	0

(ii) contained, in a Telfer Site Summary Data Table, on page 126, the following figures:

	UOM	2011	2012	2013	2014	2015	2016	2017	2018	5YP Average	5YP SUM
GOLD PRODUCTION COSTS											
Mining costs	AUD/oz Au	492	820	899	564	563	443	460	436	504	
Deferred Mining & AOD	AUD/oz Au	(40)	(234)	(290)	141	327	149	23	(9)	156	
Ore Inv Adjust	AUD/oz Au	42	(105)	(69)	(25)	(83)	80	278	339	71	
Mining net of deferral & Inventory	AUD/oz Au	494	480	539	681	807	671	760	766	732	
Milling costs	AUD/oz Au	314	367	425	408	360	392	659	752	468	
Engineering	AUD/oz Au	32	40	29	46	42	39	72	78	51	
G&A costs	AUD/oz Au	138	179	183	206	206	157	158	248	192	
Royalties, TCRC & Concentrate freight	AUD/oz Au	159	188	173	197	183	178	259	253	204	
Cash Cost pre By-Product Credit	**AUD/oz Au**	1,137	1,255	1,350	**1,537**	**1,597**	**1,437**	**1,908**	**2,097**	**2,378**	
By-Product Credit	AUD/oz Au	(463)	(472)	(374)	(385)	(304)	(265)	(411)	(393)	(340)	
Cash Costs	**AUD/oz Au**	674	783	975	**1,152**	**1,293**	**1,172**	**1,497**	**1,704**	**2,038**	
D&A - PP&E, Mineral rights, etc	AUD/oz Au	291	333	318	412	394	443	427	361	411	
Total Production Costs	**AUD/oz Au**	965	1,116	1,293	**1,564**	**1,687**	**1,615**	**1,923**	**2,066**	**2,449**	

and,

(d) otherwise denies paragraph 107.

108 ~~80~~ In respect of paragraph 108 ~~80~~, it:

(a) refers to and repeats paragraph 9 above;

(b) admits (subject to reference to its full terms and effect) that the March 2013 FY13 Production Forecast Downgrade contained express statements to the effect pleaded at paragraphs ~~80~~108(a)-(g) of the Further Amended Statement of Claim; and

(c) says further that the March 2013 FY13 Production Forecast Downgrade stated that:

(i) the cause of the autoclave shutdown referred to at paragraph 108 ~~80~~(c) of the Further Amended Statement of Claim was damaged internal brickwork, detected following a routine thermal scanning program;

(ii) Newcrest had taken the decision to undertake a complete and permanent repair to ensure the long term, reliable and safe performance of that autoclave, consistent with its program to refurbish the older parts of the Lihir plant to ensure high levels of reliability (being the Lihir Reliability Program); and

(iii) the key drivers for Newcrest to achieve the previously articulated production guidance had included regaining access to the high grade ore at Gosowong and that, while ground conditions had continued to be difficult and access to high grade face positions had been below Newcrest’s expectations, it was again mining from high grade face positions.

109 ~~80A~~ In respect of paragraph 109 ~~80A~~, it:

(a) refers to and repeats paragraph 24 ~~16E~~ above;

(b) denies that Newcrest conducted impairment testing on or about 5 April 2013;

(c) says that, in early April 2013, Newcrest prepared indicative modelling of the carrying values by reference to the then draft 5YP and based on (*inter alia*) the 5YP gold price assumptions and the gold spot price of the day;

(d) says that the indicative modelling conducted in April 2013 involved modelling and analysing numerous scenarios, including (*inter alia*) scenarios with outcomes to the effect alleged in paragraphs 109 ~~80A~~(a)-(d) of the Further Amended Statement of Claim;

(e) says that the process of analysing potential impairment of assets continued through April, May and June, as described in paragraphs ~~90~~120(d) and ~~90~~120(e) below;

(f) says that that process led to management bringing forward work-in-progress valuations for the consideration of the BARC and, thereafter, the consideration and determination by the Newcrest Board referred to in paragraph ~~90~~120(f) below;

(g) says that the process (as to which Newcrest refers to and repeats paragraph 24 ~~16E~~ above) thereafter continued and was not finalised until after 30 June 2013, as part of the preparation of Newcrest's financial statements; and

Particulars

The process was completed on or about 8 August 2013 when Newcrest issued a release to the ASX in which it stated (inter alia) that the Board had further assessed the carrying values of Newcrest's assets since 7 June 2013 and announced the expected accounting impairment outcomes set out in the ASX announcement, including US$3,240 million for Lihir (comprising US$3,240 million of the US$3,643 million goodwill) and US$480 million for West Africa (being Bonikro and Cote d'Ivoire exploration, which figure included goodwill of US$188 million).

(h) otherwise denies paragraph 109 ~~80A~~.

110 ~~81~~ In respect of paragraph 110 ~~81~~, it:

(a) says that the gold price:

(i) had a PM fixed price of US$1,535.50 on 12 April 2013;

(ii) had an AM fixed price of US$1,416 on 15 April 2013;

(iii) had a PM fixed price of US$1,395 on 15 April 2013; and

(b) otherwise does not admit paragraph 110 ~~81~~.

111 In respect of paragraph 111, it:

(a) admits:

(i) that Newcrest senior management conducted an initial assessment on or about 16 April 2013 as to the impact of the April 2013 Gold Price Fall on Newcrest's then current FY14 Budget;

(ii) that the analysis indicated, assuming a gold price of $1340/oz:

(A) a potential impact on FY14 revenue, FY14 gold production and FY14 free cash flow in the amounts pleaded at paragraphs 111(a), (b) and (d) of the Further Amended Statement of Claim;

(B) that free cash flow in FY14 would potentially be negative in the case of Cadia Valley, Telfer, Hidden Valley and Bonikro;

(b) says that at the time this analysis was conducted:

(i) the FY14 Budget was at an early stage of its development and had not yet been subject to a preliminary review by ExCo;

(ii) the April 2013 Gold Price Fall had happened the preceding day; and

(iii) it was not known whether the gold price would remain depressed or whether it would rebound and, if so, when that recovery would occur, what level the gold price would rebound to and how it would move thereafter; and

(c) otherwise denies paragraph 111.

112 ~~82~~ In respect of paragraph 112 ~~82~~, it:

(a) says that:

(i) after the gold price fall on 12 to 15 April 2013, it was not known (and there was no consensus in the market with respect to) whether the gold price would remain depressed or whether it would rebound and, if so, when that recovery would occur, what level the gold price would rebound to and how it would move thereafter;

(ii) in the period between 16 April 2013 and 7 June 2013, the gold price was volatile;

(iii) the gold price fall on 12 to 15 April 2013 occurred in an environment where the gold price had been volatile throughout FY13;

(iv) at all relevant times, Newcrest used US$ gold price assumptions in its LoPPs, 5YPs, and Budgets;

Particulars

The US$ gold price assumption was converted (using an assumed exchange rate) to an A$ gold price assumption for use by Australian sites in planning processes.

(v) the functional currency of Newcrest's overseas operations was US$ and for Australian operations, was A$; and

Particulars

The functional currency is used in developing budgets, planning, assessing operational performance, preparing management accounts and assessing the carrying value of Newcrest's assets.

The closing gold price between 16 April 2013 and 6 June 2013 was as follows:

Date	***PM fixed gold price per oz (US$)***
16-Apr-13	*1380*
17-Apr-13	*1392*
18-Apr-13	*1393.75*
19-Apr-13	*1405.5*

22-Apr-13	*1424.5*
23-Apr-13	*1408*
24-Apr-13	*1428.5*
25-Apr-13	*1451*
26-Apr-13	*1471.5*
29-Apr-13	*1467.5*
30-Apr-13	*1469*
1-May-13	*1454.75*
2-May-13	*1469.25*
3-May-13	*1469.25*
7-May-13	*1444.25*
8-May-13	*1468*
9-May-13	*1465.5*
10-May-13	*1426.5*
13-May-13	*1430.75*
14-May-13	*1433.75*
15-May-13	*1410*
16-May-13	*1381*
17-May-13	*1368.75*
20-May-13	*1354.75*
21-May-13	*1360.75*
22-May-13	*1408.5*
23-May-13	*1380.5*
24-May-13	*1390.25*
28-May-13	*1376.5*
29-May-13	*1382.5*
30-May-13	*1413.5*
31-May-13	*1394.5*
3-Jun-13	*1402.5*
4-Jun-13	*1399.5*
5-Jun-13	*1404*

6-Jun-13	*1400*

In 2011, the gold price rose from US$1319 on 28 January 2011 to peak, on 5 to 6 September 2011, at US$1,895 before dropping to a low of US$1,531 on 29 December 2011. The peak price in 2012 was US$1,791.75 on 4 October 2012.

(b) says further that movements in, or level from time to time of, the spot gold price between 16 April 2013 and 7 June 2013 (or, indeed, any other period) did not imply or require any necessary expectation or conclusion with respect to movements and levels in the gold price at any time thereafter; and

(c) otherwise does not admit paragraph 112 ~~82~~.

113 ~~83~~ Subject to reference to the full terms and effect of the 3Q13 Results, it admits paragraph 113 ~~83~~.

114 ~~84~~ In respect of paragraph 114 ~~84~~:

(a) subject to reference to the full terms and effect of the 3Q13 Results Release, it admits that the 3Q13 Results Release included the following:

(i) *"Overview*

... The new and expanded operations at Cadia East and Lihir performed to plan in the March 2013 quarter. The Cadia East mine operated as expected and during the quarter the second phase primary crusher was commissioned on time. At Lihir, the new plant performed as expected and, importantly, the new autoclave performance achieved nameplate capacity.

...

The flotation upgrade and NCA refurbishment projects at Lihir are also progressing in line with plan and will be completed in the second half of the 2013 calendar year.

...

Operating and capital costs overall continue to be high in the global gold mining industry. Also, the recent decline in commodity prices has not been accompanied by a reduction in the strength of the Australian Dollar and Papua New Guinean Kina. With its major projects ramping up and the more challenging external environment, Newcrest continues to review all of its business activities, particularly those related to higher cost current or future production. As previously stated, the Company is focused on creating a strong return from our major investments in expanded lower cost production sources and generating free cashflow."

(ii) *"Guidance*

As previously advised, gold production guidance for the financial year 2012/13 is 2.00 to 2.15 million ounces."

(iii) *"Key Points …*

- Cadia East and new Lihir plant (previously MOPU) production performance in line with expectations

…

- Focus on free cash flow and generating higher returns

- Actions to simplify and reduce activity and costs across the business"

(iv) *"Lihir, PNG*

…

Ramp up of the new plant progressed as expected with the new autoclave operating at or above its design capacity of 450 tonnes per hour for the month of March 2013.

…

Refurbishment projects in the older sections of the Lihir plant and the flotation expansion project are progressing to *plan. … The flotation expansion project remains on schedule for completion in the first quarter of the 2014 financial year."*

(b) subject to reference to the full terms and effect of the 3Q13 Results Presentation, it admits that the 3Q13 Results Presentation included the following:

(i) *"Key points*

…

- *Project progress*

  - Cadia East mine and new Lihir plant ramping up in line with expectations

  - Lihir flotation expansion remains on track for July 2013 delivery

  …

- *Actions taken in response to performance and external environment*

  – Organisational changes to reduce and simplify off-site activity

  – Paused studies on some projects with a longer term payback

  – Assessing all capital investment in higher cost production ounces

  – Continuing to renegotiate costs and activity with key suppliers

- *Continued strong focus on free cash flow generation"* (pages 3 and 4)

(ii) *"Lihir – ramping up the new plant*

…

- *Flotation and refurbishment projects on track*

  – Flotation upgrade 5mt (from Q1 FY14)

  – NCA refurbishment (November 2013)

  – Electrical & control systems (12 months)

- *Autoclave 1 repair …*

  – Repair complete; back into service" (page 6)

(iii) *"Lihir Operating Strategy*

- *Rebasing of cost structure*

  – Need to simplify the operation

  – Process more stockpiled ore

  – Improve return on investment

- *Lower future capital investment*

  – Complete flotation project

  – Complete reliability program

  – Minimise capital, optimise plant, reduce material movement

- *Operate process plant to full capacity*

  – Long term reliability and stability remain key

  – Continue plant optimisation strategies" (page 7)

(iv) *"Gosowong – access to high grade ore restored*

- *Less stable ground conditions exist in highest grade zones at Kencana*
- *Experienced wall compression in ore drives*
- *Access to higher grade ore zones has now been re-established…"* (page 9)

(v) *"Summary*

…

- *Actions due to performance and external conditions*

  – Reduced off-site headcount

  – Postponement or slowing of some long dated studies

  – Focus on low cost ore sources

  – Continuation of contract renegotiations

  …

  – Objective for all sites to be cash flow positive

- *Stronger orientation to generate free cashflow"*

(c) says that, in delivering the 3Q13 Results Presentation on 23 April 2013, Robinson (*inter alia*) stated as follows and answered questions as follows in relation to Lihir and Newcrest's future strategy:

> *"Going forward, we'll not be investing large capital and effort in high cost marginal ounces. This year we're looking very closely at all sites and at each ore block within those sites to ensure ongoing cash positive margins. The combination currently of a high A dollar, low gold and other commodities -- so, principally, copper for us -- and a high cost position, particularly in Australia, has amplified the test to apply capital for all ore production blocks. So we are going to be very rigorous in that. To repeat, we are going to be stingy with capital as we really look to invest in the business.*
>
> *…*
>
> *Turning the page to page 7, Lihir is going through the process to demobilise the contractors involved in the expansion project. As the commissioning teams have finished we're also reviewing the overall cost base on Lihir with a focus on simplicity and reducing site activity as much as possible. We've invested over A$10 billion in Lihir and we're really looking to run the asset for cash return and minimise future capital investments for as long as possible. Now that said, I've*

mentioned in the prior page we still have three major pieces of work going on. We have the flotation plant, the NCA circuit -- both which we'll deliver in the second half of this calendar year -- and we have the old plant refurbishment, really focused on those electrical and control circuits. That will come in -- well, it will be continual work in that area until 2014.

The focus for the Lihir team is to minimise costly material movement, optimise the significant investment in the plant and ensure high cash flows to Newcrest. The stockpiles are an area that we're going to do a lot of focus on in the short term. They do represent a very valuable opportunity for us. They have mining costs which are already sunk. Therefore their cash per ounce to us is high. The balancing factor for us versus mine movement is the grades are obviously slightly lower. We're looking very closely at the value equation of material movement versus grade, and particularly as our plant performance has started to improve significantly.

Cash flow is clearly a dominant driver in this assessment. We really think that Lihir can be a very good cash annuity to us over this next 10 years. In this next quarter we're looking to stabilise the plant in that -- as I've mentioned before -- that 75,000 to 85,000 ounce level per month. This represents running those claves at about 1150 tonnes an hour. Again, we're reaching those capacity constraints at the moment. We've done that through March. (page 3)

…

Going forward we've got a nice solid five year plan, but in the current investment climate we are going to be very careful what we reinvest in Telfer. The current WA environment, coupled to the A dollar, and the labour productivity will mean that we would hope to see better conditions down the track before we apply more capital to Telfer. (page 4)

…

Mike, the choices we've got going forward, really, in material movement come down to how much we mine and how much we process through the stockpile. We've been doing a lot of work in the stockpile, doing a lot of trenching, a lot of drilling, a lot of assaying, getting the sulphur and gold grades right, understanding how that would go through the plant, so we're getting a much better idea or much better control on how we'll do that. Remember, we've got 100 million tonnes of that stockpile material sitting on the surface, and every time we take that to the mill that is a significant saving in a sense of not being able to -- not actually having to mine it. So, again, at the moment, for next year's plan, we're looking in the 50 million to 60 million tonne material movement, and that is a mixture of mine and stockpile movement with the progressive ramp up of the plant reaching that 75,000 to 85,000 ounce type level. (page 6)

…

Stephen Gorenstein – Merrill Lynch – Analyst

Excellent. Next question's just on the new strategy at Lihir in terms of focusing on the stockpiles et cetera. If I understand it correctly what you're basically saying is in this lower Australian dollar gold environment and the high cost situation that's going on at the moment you're going to focus on using that stockpile asset to better maximise, better maximise the asset and the cash flow … can you give us an idea on what impact that might have on costs and on potential production? (pages 7 to 8)

Greg Robinson – Newcrest Mining Limited – Managing Director and CEO

On a cost basis we'll still be within the ranges we've talked about for Lihir. What we're trying to do is get that cost base back down towards that A$600 level in time and even with that that flotation it's a fantastic option for us because that 5 million tonne and it'll probably optimise higher than that, really gives us a chance to use the knowledge we've *now got on that stockpile to increase the speed of the stockpile through the mill. All the capacities within the mill will stay the same. The only question really comes down to the grade that we run down through it.*

I mean again if you think about costs -- I mean this is where we're very focused on mining cost versus stockpile grade and the mining costs for us is over A$7 a tonne. When we take the stockpile to the mill it's around the A$2 a tonne so you've got a fair bit you can play with there. So again that's something we're looking very, very closely at, at the moment because again our objective is not to have new rounds of capital investment but to really maximise the cash flow out of that asset. (page 8)

…

Brett Mckay – Deutsche Bank Group – Analyst

Okay, great, thanks. Just moving on to Lihir and expansion potential there and your longer term aspirations to achieve more than 1.3 million ounces of annual production, assuming that that's coming from Kapit mainly and the great kick that that brings you. Can you talk through now you're focusing on stockpile movements and cash generation, longer term do you see any changes to that of higher production target and how you approach the Kapit expansion if you go into it from the north or from the south. Does that make sense? (page 12)

Greg Robinson – Newcrest Mining Limited – Managing Director and CEO

So look, I don't want to give a lot of commentary about that. I think most people know that there is a big plum sitting in the middle of Kapit on a boiling zone ore that brings grade and on the current plant capacities would lift production for a period of years and that is also a tempting target. But with that comes quite substantial capital to achieve it and I think when we look at maximising cash flow that is an option we can always pursue. But our current objective at the moment *is really maximise the plant capacities, the nameplate capacities and take that stockpile down as low as we can and maximise the cash flow out of the site. And leave ourselves and we'll be very transparent about it but leave ourselves, a decision to make on Kapit at some time in the future. The longer we can produce out of those stockpiles with the right production profiles, the better cash flow we're going to get and certainly the better return on capital we'll get and the more cash we'll have available to pay for dividends.* (page 12)

Brett Mckay - Deutsche Bank Group - Analyst

So is it fair to say then if the current price environment persists that move into Kapit is likely to be much longer dated and the million ounces per annum is more likely your medium to longer term target? (page 12)

Greg Robinson - Newcrest Mining Limited - Managing Director and CEO

Yeah, I don't want to comment specifically on that production profile so again I think the target we've got out there is one million ounces here in the next two years growing to 1.2. They are all related to material movement in the mine and the switch using some of that stockpile. Anything that we do in utilising -- if we think utilising stockpile is going to maximise cash flow for us in the medium term then we will be talking about that at the August presentation. (page 12)

…

Andrew Knuckey - Commonwealth Bank - Analyst

The final question is really just around the strategy of obviously you're moving towards chasing value ounces as opposed to total ounces. Should we anticipate that perhaps the profile that we've previously considered for Newcrest with the ramp up to 3.5 million ounces could be dampened now. (page 13)

Greg Robinson - Newcrest Mining Limited - Managing Director and CEO

...

On the production range you're a bit naughty Andrew talking about 3.5 million ounces. We did give a range. We did talk about 3.1 million to 3.5 million. That included some expansions around probably some more expensive ounces within the Group. If we look at that five year range going forward we will be talking about that in August but again it will be around optimising cash flow for the Group. Where we see good cash flow, where we see good cash flow coming out of our assets and we can expand into any of those units we talked about in last August; we will continue down that path.

So again I think across all our assets, we're in good shape on the five year plan. I think on the Lihir -- I've had a lot of questions on that and I understand why. There are some very interesting choices to make around Lihir and some of it as I've said is really around mining rate versus stockpile rate and its grade versus mining cost. And we're looking very carefully at that equation right now." (page 13)

Particulars

The transcript of Robinson's delivery of the 3Q13 Results Presentation and question and answer session is at NEW.523.001.1761. A webcast of this session was posted to Newcrest's website.

(d) says that the 3Q13 Results Release and the 3Q13 Results Presentation:

(i) contained an express disclaimer of the kind referred to in paragraph 8(b)(iii)(A) above and the particulars thereto (page 2);

(ii) were subject to the understanding referred to in paragraph 8(b)(iii)(B) above;

(e) refers to and repeats paragraph 9 above; and

(f) otherwise does not admit paragraph 114 ~~84~~.

N. ALLEGED 'CONTINUING CONTRAVENTIONS FROM 8 FEBRUARY 2013'

115 ~~85~~ In respect of paragraph 115 ~~85~~, it:

(a) refers to and repeats paragraphs 8, 9, ~~22~~ 33, ~~45~~ 63(b), ~~66~~ 88, ~~80~~ 107(c)(ii), 111(a), ~~82~~ 112 and ~~84~~ 114 above;

(b) says, further or alternatively, that the March 2013 FY13 Production Forecast Downgrade reduced FY13 gold production guidance to 2.00Moz to 2.15Moz and therefore to the extent the 'February 2013 Representations' referred to in sub-paragraphs ~~22~~ 33(a), (f) and (g) of the Further Amended Statement of Claim (which are denied) are alleged to arise by the linear extrapolation of an average annual growth of 5 or 10 percent commencing from 2.29Moz in FY12, those 'August 2012 Representations' were amended or qualified by the 2Q13 Results Release, 2Q13 Results Presentation and March 2013 FY13 Production Forecast Downgrade; and

(c) says further that the 1H13 Results Presentation stated that the production capacity of MOPU was 1.0Moz per annum;

Particulars

1H13 Results Presentation on page 6.

(d) says further that:

(i) between 8 February 2013 and 7 June 2013, the matters set out in paragraphs 107(c)(ii), 108 ~~80~~, 111(a), 112 ~~82~~ and 114 ~~84~~ above were matters of which Newcrest informed the market or were otherwise known to the market;

(ii) in the period following 8 February 2013 Newcrest was engaged in the process of preparing its 5YP and its FY14 Budget, a detailed process which involved (*inter alia*) developing and analysing a range of operational scenarios and capital plans in light of the information then available to Newcrest (including considerable change in the gold price outlook);

(iii) it was not until the Board considered the FY14 Budget at its meeting on 5 to 6 June 2013 that Newcrest had reached a conclusion with respect to its gold production target for FY14, including the contribution of particular mines to that overall target; and

(e) otherwise denies paragraph <u>115</u> ~~85~~.

116 ~~86~~ It denies paragraph <u>116</u> ~~86~~.

117 ~~87~~ In respect of paragraph <u>117</u> ~~87~~, it:

(a) refers to and repeats paragraphs <u>92</u> ~~70~~, <u>102</u> ~~79A~~, <u>111(a),</u> <u>112</u> ~~82~~, <u>114</u> ~~84~~ and <u>115</u> ~~85~~ above;

(b) says, further or alternatively that, if the February 2013 Representations were made (which is denied), they were statements of opinion as to future matters and Newcrest had reasonable grounds:

(i) for making the representations; and

(ii) continuing the representations, further or alternatively for not withdrawing them; and

Particulars

As to the February 2013 Representations (if made) being made on reasonable grounds, Newcrest refers to paragraphs 8, 9, <u>33</u> ~~22~~, <u>88</u> ~~66~~, <u>92</u> ~~70~~, <u>111(a)</u>, <u>112</u> ~~82~~, <u>114</u> ~~84~~ and <u>115</u> ~~85~~ above.

To the extent that the 'February 2013 Representations' were made and continued, as alleged, it was reasonable for Newcrest to maintain those representations in circumstances where:

- *the gold price was volatile;*
- *production outcomes, targets and assessments would be considered as part of the 5YP and Budget planning process, including considerations pertaining to any changes in:*
  - *Newcrest's strategic direction for FY14 and beyond;*
  - *operating environment;*
  - *economic conditions; and*

- *other circumstances,*

and in respect of which no final decision had been made.

(c) otherwise denies paragraph 117 ~~87~~.

118 ~~88~~ It denies paragraph 118 ~~88~~.

119 ~~89~~ It denies paragraph 119 ~~89~~.

O. APRIL 2013 MATERIAL INFORMATION

120 ~~90~~ In respect of paragraph 120 ~~90~~, it:

(a) refers to and repeats paragraphs 24 ~~16E~~(b) and 109 ~~80A~~ above;

(b) says that, as at 15 April 2013, Newcrest's next 'reporting period' for the purposes of AASB 136 ended on 30 June 2013;

(c) Newcrest adopted the process described in paragraph 24 ~~16E~~(b) above for the purpose of assessing possible and actual impairment in respect of its assets, in accordance with the requirements of AASB 136, for the purposes of the reporting period ending on 30 June 2013;

(d) after 15 April 2013, Newcrest determined that, for the purposes of undertaking that process of assessing possible and actual impairment in respect of its assets, the then current mining plans, costs and economic assumptions were not suitable for use in that process without adjustment, having regard to, in particular, the gold price environment which then prevailed;

(e) thereafter, between late April 2013 and early June 2013 Newcrest undertook detailed work (*inter alia*) to:

(i) devise, review and refine mining plans for its mines to develop a range of scenarios from which it developed the range of cases to be used in the DCF analysis;

(ii) review and adjust capital expenditure to be assumed in the DCF model aligned to the various mining plans under consideration (referred to at paragraph ~~90~~120(e)(i) above);

(iii) develop new cost assumptions for mining costs, processing costs and general and administrative costs aligned to the various mining plans under consideration (referred to at paragraph ~~90~~120(e)(i) above) and including consideration of:

   (A) the potential for supplier cost decreases in a depressed gold price environment;

   (B) optimisation of activity in a depressed gold price environment; and

   (C) foreign exchange rates (having regard to the currency of various cost bases);

(iv) settle, in the context of a volatile and uncertain gold price environment, on revised economic assumptions as to (*inter alia*) the gold price, the silver price, the copper price, the A$ / US$ exchange rate and the A$ / PNG Kina exchange, as well as the discount rate, by reference to which assumptions the carrying value of its assets would be assessed;

(v) develop, from the range of mining, capital, cost and economic assumptions, a combined low, medium and high case to be used in the DCF model;

(vi) assess whether it continued to be appropriate to use a ‘gold multiple’ in conducting carrying value tests;

(vii) review the scope of unmined resources (being resources not included in any mining plan the subject of the DCF analysis) and conduct valuations taking into account a range of factors including the physical specifications of the ore, the probability of conversion, the estimated capital and operating costs and the life of the mine; and

(viii) assess the total mineral endowment, determining the expected realisable value of the estimated additional inventory not otherwise valued by the steps set out above;

following which management prepared draft valuations which were presented to the BARC as work-in-progress valuations;

(f) thereafter, in the first week of June 2013:

(i) management brought forward for the consideration of the draft work-in-progress valuations for the consideration of the BARC;

(ii) Newcrest's Board considered the issue of impairment at its meeting on 5 to 6 June 2013 and determined, at that meeting, having regard to the material presented, that there was a risk that Newcrest would need to recognise a substantial impairment in respect of a number of its assets as at 30 June 2013;

Particulars

The BARC met informally to discuss a working presentation on draft valuations, which remained a work in progress, at its meeting on 3 June 2013, NEW.530.001.0789. As at 3 June 2013 when the BARC met, brokers forecasts of the gold price remained highly variable with, e.g. Deutsche Bank forecasting a price recovery between FY15 and FY18 and Goldman Sachs predicting a continued decline through to FY17. Broker forecasts are set out in the 3 June 2013 BARC presentation at NEW.530.001.0789.

The BARC met on 5 June 2013 (agenda, ~~NEW.530.001.0868~~ NEW.601.002.1247, presentation for discussion, ~~NEW.530.001.0878~~ NEW.509.001.3509). At the time of the BARC meeting on 5 June 2013, Newcrest's Board had not completed its review of the valuations and Newcrest's auditors had not yet considered impairment of Newcrest's assets at 30 June 2013 (Audit Status Report of Ernst & Young 5 June 2013, NEW.530.003.00~~0~~31). At 5 June 2013, the BARC meeting discussed the work required over the next month to develop valuations, decisions that remained to be made concerning mine strategies, the economic assumptions to be used going forward and the level of gold multiples in the impairment analysis (having regard to changes in the gold price) (5 June 2013 BARC minutes ~~NEW.581.004.0020~~ NEW.601.002.0321).

At its meeting on 5 to 6 June 2013, Newcrest's Board considered the draft FY14 Budget (Board paper 2.0 ~~NEW.530.001.1076~~ NEW.601.002.3881) and discussed the possible implications of the draft Budget on carrying values (minutes NEW.601.002.2247, Budget presentation ~~NEW.525.001.1223~~ NEW.502.006.1512).

(g) no information concerning impairment existed of which Newcrest was "aware" for the purposes of ASX Listing Rule 19.12 until:

(i) Newcrest had completed the work and draft valuations referred to at subparagraph (e) above; and

(ii) Newcrest's Board:

(A) considered and approved the draft Budget for FY14 at its meeting on 5 to 6 June 2013; and

(B) considered the assumptions (including the economic assumptions as to the gold price and operating assumptions) upon which draft valuation analysis undertaken in May and early June 2013 was based; and

(C) made the determination referred to in subparagraph (f)(ii);

(h) says further that it refers to and repeats the matters set out in paragraph ~~91~~ 121 below;

(i) says that:

(i) the decision whether or not to pay a final dividend in any year is a decision taken by the Board which is:

(A) subject to statutory requirements including s 254T of the *Corporations Act*;

(B) taken having regard to numerous operational, economic, strategic and environmental considerations including the company's profitability and balance sheet strength around the end of the financial year in question, and its gearing position going forward;

(C) not otherwise directly referable to movements in the gold price;

(ii) no decision was taken by the Board regarding whether to declare a final dividend prior to its meeting on 5 to 6 June 2013;

(iii) in its announcement to the ASX on 7 June 2013, Newcrest stated that it was *"withholding payment of a final dividend in relation to the 2013 financial year so as to allow the Company to maintain a strong balance sheet and continued investment in the high return Cadia East Panel Cave 2"*;

Particulars

The question of whether or not Newcrest would commit capital to the development of Cadia East Panel Cave 2 was a matter which was considered by the Board as part of its consideration of the FY14 Budget at its meeting on 5 to 6 June 2013. At that meeting, the Board considered and approved a request for capital investment of A$~~394~~ <u>349</u> to continue mine development and ramp-up of Cadia East mine, including construction of Panel Cave 2 (<u>Board papers NEW.516.001.7705, NEW.516.001.7712, NEW.516.001.7714 and NEW.516.001.7720 contained the request for capital investment of A$349m; Board</u> minutes NEW.601.002.2247 <u>contained a typographical error in referring to the request as one for A$394m</u>).

(iv) until Newcrest's Board considered and determined not to declare any final dividend at its meeting on 5 to 6 June 2013, Newcrest was not "aware" for the purposes of ASX Listing Rule 19.12 of any information concerning the declaration of a final dividend for FY13, further or alternatively, any such information of which it was aware was not required to be disclosed pursuant to ASX Listing Rule 3.1A; and

(j) otherwise denies paragraph <u>120</u> ~~90~~.

P. ALLEGED APRIL 2013 CONTRAVENTIONS

121 ~~91~~ In respect of paragraph 121 ~~91~~, it:

(a) says that if, which is not admitted but is denied, Newcrest was aware of the Impairment Information prior to 6 June 2013 as alleged:

(i) the Impairment Information was information that:

(A) was not information which a reasonable person would expect, if it were generally available, to have a material effect on the price of Newcrest's securities the purposes of ss 674 and 677 of the *Corporations Act*;

(B) was generally available for the purposes of ss 674 and 676 of the *Corporations Act*;

(C) further or alternatively, was information that did not require disclosure pursuant to ASX Listing Rule 3.1A, as to which it refers to and repeats paragraphs ~~90~~ 120(f) and ~~90~~ 120(g) above;

(ii) it does not admit that the Impairment Information was information that a reasonable person would expect to have a material effect on the price or value of NCM shares having regard to the decline in Newcrest's share price since 12 April 2013;

(b) says further or alternatively that information to the effect that there existed, prior to 6 June 2013, a risk that Newcrest would need to recognise a substantial impairment in the carrying value of one or more of its assets:

(i) was not information which a reasonable person would expect, if it were generally available, to have a material effect on the price of Newcrest's securities the purposes of ss 674 and 677 of the *Corporations Act*;

(ii) further or alternatively was not information that a reasonable person would expect to have a material effect on the price or value of NCM shares, having regard to the decline in Newcrest's share price since 12 April 2013;

(iii) was generally available for the purposes of ss 674 and 676 of the *Corporations Act*;

(iv) further or alternatively, was information that did not require disclosure pursuant to ASX Listing Rule 3.1A, as to which it refers to and repeats paragraphs ~~90~~ 120(f) and ~~90~~ 120(g) above;

(c) says further or alternatively that information to the effect that there existed, prior to 6 June 2013, a risk that Newcrest would not pay a final dividend in respect of NCM Securities for FY13:

(i) was not information which a reasonable person would expect, if it were generally available, to have a material effect on the price of Newcrest's securities the purposes of ss 674 and 677 of the *Corporations Act*;

(ii) further or alternatively, was generally available for the purposes of ss 674 and 676 of the *Corporations Act*;

(iii) further or alternatively, was information that did not require disclosure pursuant to ASX Listing Rule 3.1A, as to which it refers to and repeats paragraphs ~~90~~ 120(i) above; and

(d) otherwise denies paragraph 121 ~~91~~.

Particulars

As to the risk or likelihood of impairment:

Information to the effect that it was likely, or there was a risk, that Newcrest would need to recognise a substantial impairment in the carrying value of one or more of its assets was not material and/or was generally available by reason that the market was aware that Newcrest's balance sheet (as at 31 December 2012, Appendix 4D Half Year accounts (NEW.014.001.0844)) included A$3,689m in goodwill, which was referable to the goodwill booked upon the acquisition of two mining *assets, Lihir and Bonikro and that 'goodwill' of this kind was likely to be the subject of a partial or full write-down at some point in time.*

In its Financial Results for the six months ending 31 December 2010, Newcrest noted that "(t)he accounting for the merger has been provisionally determined at the end of the reporting period. The final fair values are expected to be finalised prior to 30 June 2011. Based on the provisional fair value determination, goodwill on merger of US$3,868.7 million, which converted to A$4,359.5 million at the effective date of 30 August 2010, has been recognised. The accounts of Lihir and Bonikro are in US$ functional currency and will be translated to A$ at the end of each financial period." A copy of the Financial Results for the six months ending 31 December 2010 may be inspected by appointment with Newcrest's solicitors.

Further, the allocation of the excess of the purchase price cover adjusted book values of LGL's assets was disclosed in the LGL Scheme Booklet (~~KEY.001.003.0197~~ NEW.001.003.0197).

Further, information to the effect that it was likely, or there was a risk, that Newcrest would need to recognise a substantial impairment in the carrying value of one or more of its assets constituted a deduction, conclusion or inference based on readily observable matter(s), namely the gold price, from time to time and the difference between the carrying values of Newcrest's assets (as disclosed in its 31 December 2012 Appendix 4D Half Year Accounts) when compared with the decreasing price of NCM Securities (and hence its market capitalisation) in the period following the gold price fall in April 2013.

Newcrest's market capitalisation in the period 11 April to 27 May 2013 was as follows:

Date	***Market capitalisation (A$ million)***	***Shares on issue***

Date	***Market capitalisation (A$ million)***	***Shares on issue***
11/04/2013	*14,981.14*	*765,906,839*
12/04/2013	*14,958.16*	*765,906,839*
15/04/2013	*13,725.05*	*765,906,839*
16/04/2013	*13,020.42*	*765,906,839*
17/04/2013	*13,097.01*	*765,906,839*
18/04/2013	*12,170.26*	*765,906,839*
19/04/2013	*12,752.35*	*765,906,839*
22/04/2013	*13,038.35*	*766,510,971*
23/04/2013	*12,609.11*	*766,510,971*
24/04/2013	*12,616.77*	*766,510,971*
26/04/2013	*13,069.01*	*766,510,971*
29/04/2013	*13,007.69*	*766,510,971*
30/04/2013	*12,885.05*	*766,510,971*
01/05/2013	*12,609.11*	*766,510,971*
02/05/2013	*12,340.83*	*766,510,971*
03/05/2013	*12,279.51*	*766,510,971*
06/05/2013	*12,287.17*	*766,510,971*

Date	***Market capitalisation (A$ million)***	***Shares on issue***
07/05/2013	*13,122.67*	*766,510,971*
08/05/2013	*13,176.32*	*766,510,971*
09/05/2013	*13,498.26*	*766,510,971*
10/05/2013	*13,337.29*	*766,510,971*
13/05/2013	*12,831.39*	*766,510,971*
14/05/2013	*12,517.12*	*766,510,971*
15/05/2013	*12,156.86*	*766,510,971*
16/05/2013	*11,512.99*	*766,510,971*
17/05/2013	*11,252.38*	*766,510,971*
20/05/2013	*11,160.40*	*766,510,971*
21/05/2013	*11,957.57*	*766,510,971*
22/05/2013	*11,398.02*	*766,510,971*
23/05/2013	*11,152.73*	*766,510,971*
24/05/2013	*11,589.65*	*766,510,971*
27/05/2013	*11,329.03*	*766,510,971*

As to the declaration of a final dividend:

The decision whether or not to pay a final dividend in any year is a decision taken by the Board which is, and is understood in the market to *be, a decision taken around the end of the financial year in question, having regard to (inter alia) year-end profit, the balance sheet at year-end, capital commitments and gearing as well as operational, economic, strategic and environmental considerations which may change significantly from time to time over any given year or period.*

Further, Robinson's remarks in delivering the 3Q3 2013 Results Presentation on 23 April 2013 (NEW.523.001.1761) disclosed to the market that there was a real possibility that no final dividend would be declared in respect of NCM Securities for FY13, as to which Newcrest refers to and repeats paragraph ~~84~~114(c) above.

122 ~~92~~ In respect of paragraph 122 ~~92~~, it:

(a) refers to and repeats paragraphs ~~80A~~109, ~~90~~120 and ~~91~~121 above; and

(b) otherwise denies paragraph 122 ~~92~~.

123 ~~93~~ In respect of paragraph 123 ~~93~~, it:

(a) admits that it did not make any announcement to the ASX concerning impairment of its assets or the payment of a full year dividend for FY13 between 15 April and 6 June 2013; and

(b) otherwise denies paragraph 123 ~~93~~.

124 ~~94~~ In respect of paragraph 124 ~~94~~, it:

(a) refers to and repeats paragraph 122 ~~92~~ above;

(b) otherwise denies paragraph 124 ~~94~~.

125 ~~95~~ It denies paragraph 125 ~~95~~.

126 ~~96~~ In respect of paragraph 126 ~~96~~, it:

(a) refers to and repeats paragraphs 6(f), ~~46~~64, ~~80A~~109, ~~90~~120, ~~91~~121 and ~~92~~122 above; and

(b) otherwise denies paragraph 126 ~~96~~.

127 ~~97~~ It denies paragraph 127 ~~97~~.

Q. ALLEGED EARLY JUNE 2013 ANALYST MEETINGS AND REPORTS

128 ~~98~~ In respect of paragraph 128 ~~98~~, it:

(a) admits that Cole conducted meetings with a number of analysts between 29 and 31 May 2013 (**Analyst Meetings**);

(b) admits that, at one or more of the Analyst Meetings, Cole disclosed that Newcrest's management expected total gold production for FY14 to be 5 to 10 percent above FY13 production and thereby disclosed that Newcrest's management expected total gold production for FY14 to be approximately 2.2 to 2.3Moz (**FY14 management gold production expectation**);

(c) denies that Cole met with analysts between 1 and 4 June 2013 (inclusive);

(d) further or alternatively, refers to and repeats paragraph 33 ~~22~~ above; and

(e) otherwise denies paragraph 128 ~~98~~.

129 ~~98A.~~ In respect of paragraph 129 ~~98A~~, it refers to and repeats paragraph ~~98~~ 128(b) above and says further that:

(a) it admits that Cole stated in an email on 28 May 2013 that he had had a "conversations with BAML and Credit Suisse today … to tell them they were too high and to sharpen their pens based on the levers noted above" but otherwise does not admit paragraph 129 ~~98A~~(a);

Particulars

The 'levers' referred to in Cole's email of 28 May 2013 were:

*"1. **Cashflow Focus** (per quarterly), general focus to improve and move to neutral or positive cashflow as early as possible*

*2. **Lihir Stockpiles** (per quarterly), look at stockpile as a significant source of feed, with positive impact to cashflow but lower grade and production.*

*3. **High Cost Ounces** (per quarterly), consider at Telfer not only the next cutback but also potential levers of grade sequencing and sulphur content, with a small net reduction to ounces but improved cashflow profile.*

4. ***High Cost Ounces*** *(per quarterly), consider at CVO the Cadia Hill stockpile at lower grade gold and copper as marginal ounces. Potential to optimise this on cashflow, but maybe not quite filling the plant.*

5. ***Mine Life*** *(discussed often but not in quarterly) with Gosowong as a shorter life asset, consider potential to derate production slightly, both to reduce delivery risk and to buy a bit more time for exploration.*

6. ***Capital Expenditure*** *(per quarterly), consider a) potential slowing of Cadia East PC2 expenditure; b) spread out fleet replacement at Telfer over a couple years; c) reduce Wafi-Golpu rate of spend; zero expansionary capex at Bonikro and Hidden Valley*

7. ***Exploration*** *(aligned to cashflow focus), consider slowdown in spend for longer dated or non-core areas, such as CDI, MMJV, CVO near mine, and Lihir near mine. Expect expenditure to be relatively unaffected around Gosowong and Telfer WDD."*

(b) it:

(i) admits that:

(A) Cole had a conversation with analysts from Credit Suisse (Slifirski and Webb) on 28 May 2013;

(B) Cole reported on that conversation in the email referred to in paragraph 129 ~~98A~~(a) above;

(C) Webb's note of the conversation he had with Cole on 28 May 2013 included the following:

"Maybe below 2.1moz in FY13"

"Just below 10% growth in FY14"

(ii) otherwise does not admit paragraph 129 ~~98A~~(b);

(c) subject to reference to its full terms and effect, Newcrest admits that Cole had email correspondence with analysts with Credit Suisse on 28 May 2013 as recorded in the document NEW.503.001.1443;

(d) it:

(i) admits that Cole met with Battershill of UBS on 29 May 2013;

(ii) admits that Battershill's note of the meeting included the following:

"Merrill's – Greg stated FY14 volume 5-10% above FY13"

(iii) otherwise does not admit paragraph 129 ~~98A~~(d);

(e) it:

(i) admits that Cole met with Thompson, Driscoll and Isherwood of CSLA on 29 May 2013;

(ii) admits that, at the meeting with CLSA, Cole said:

> *"we should be looking at 5 to 10% growth between where we have finished this year and where we go next year"*
>
> *"for fiscal year '14 ... if you're running with the herd you're probably sitting at 2.6Moz ... that's too high"*

(iii) it otherwise does not admit paragraph 129 ~~98A~~(e);

(f) it:

(i) admits that Cole met with McKay and Hocking of Deutsche Bank on 30 May 2013;

(ii) admits that McKay's note of the meeting included the following:

"5% pa production growth next few years"

(iii) otherwise does not admit paragraph 129 ~~98A~~(f);

(g) it:

(i) admits that Cole met with Seeney, Schembri and Heithersay of Citi on 30 May 2013;

(ii) admits that Seeney's note of the meeting included the following:

"5% pa on 2013 for next couple of yrs (production) .... 5-10% for FY14"

(iii) admits that Schembri's note of the meeting included the following:

"FY14 ... 5% increase in koz ... 5-10%"

(iv) otherwise does not admit paragraph 129 ~~98A~~(g);

(h) it:

(i) admits that Cole met with Orphanides of RCB on 30 May 2013;

(ii) admits that Orphanides' note included:

"5% pa FY13 – 3 – 4 yrs (2-2.15) base"

(iii) otherwise does not admit paragraph 129 ~~98A~~(h);

(i) it:

(i) admits that Cole met with Ryan of Macquarie Bank on 30 May 2013;

(ii) admits that Ryan emailed Sullivan of Macquarie later on 30 May 2013 and stated in his email:

"So I caught up with Spence today ... now he's talking 2.2 – 2.3moz next year…"

(iii) otherwise does not admit paragraph 129 ~~98A~~(i);

(j) it:

(i) admits that Cole had a telephone conversation with Walsh of Colonial First State Asset Management on 31 May 2013;

(ii) admits that Walsh's note of the telephone conversation included:

"5-10% growth pa"

"2.2 - 2.3Moz"

(iii) otherwise does not admit paragraph 129 ~~98A~~(j);

(k) it:

(i) admits that Cole had a telephone conversation with Hester of Greencape Capital (an investor) on 31 May 2013;

(ii) admits that Hester sent an email later on 31 May 2013 to colleagues at Greencape and stated in his email:

"5 to 10% growth on what going to achieve [sic] in actual production"

(iii) otherwise does not admit paragraph 129 ~~98A~~(k); and

(l) it denies paragraph 129 ~~98A~~(l).

130 ~~99~~ In respect of paragraph 130 ~~99~~, subject to reference to the full terms and effect of the analyst reports pleaded, it admits paragraphs 130 ~~99~~(a)-(f).

R. ALLEGED JUNE 2013 CONTRAVENTIONS

131 ~~100~~ In respect of paragraph 131 ~~100~~:

(a) without any admission regarding knowledge of what was communicated during those meetings, Newcrest admits that, on 4 June 2013, it was aware within the meaning of ASX Listing Rule 19.12 of the fact that that the Analyst Meetings had taken place;

(b) it admits that, on 4 June 2013, Newcrest was aware within the meaning of ASX Listing Rule 19.12 of the FY14 management gold production expectation;

(c) it admits that, on 4 June 2013, Newcrest was aware within the meaning of ASX Listing Rule 19.12 that the FY14 management gold production expectation had been revealed to one or more analysts; and

Particulars

Bond and Robinson were put on notice that Cole had disclosed the FY14 management gold production expectation to analysts. Accordingly, on 4 June 2013, Newcrest was aware of that fact within the meaning of ASX Listing Rule 19.12.

(d) it otherwise denies paragraph 131 ~~100~~.

132 ~~101~~ In respect of paragraph 132 ~~101~~, it:

(a) admits that the FY14 management gold production expectation:

(i) was information that a reasonable person would expect to have a material effect on the price or value of NCM Securities; and

(ii) was not information that was generally available; and

(b) refers to and repeats paragraph ~~102~~ 134 below;

(c) otherwise denies paragraph 132 ~~101~~.

133 ~~101A~~. In respect of paragraph 133 ~~101A,~~ it:

(a) refers to and repeats paragraph ~~101~~ 132(a) above and paragraph ~~102~~ 134 below; and

(b) otherwise denies paragraph 133 ~~101A~~ .

134 ~~102~~ In respect of paragraph 134 ~~102~~ it:

(a) refers to and repeats paragraph 131 ~~100~~ to 133 ~~101A~~ above;

(b) admits that, on and from 4 June 2013, Newcrest was obliged to notify the ASX of the FY14 management gold production expectation;

(c) says further that:

(i) the FY14 management gold production information was, at all times prior to 4 June 2013, not information which Newcrest was required to notify to the ASX by reason of ASX Listing Rule 3.1 or s 674(2) of the *Corporations Act* since it satisfied the conditions in ASX Listing Rule 3.1A;

(ii) absent the loss of confidentiality over the FY14 management gold production expectation caused by the matters referred to at paragraph ~~98~~ 128(b) above, Newcrest would not have been obliged to disclose that information to the ASX by reason of the operation of ASX Listing Rule 3.1A; and

Particulars

Unless and until incorporated in a Budget approved by the Newcrest Board in accordance with the process referred in paragraph 8(b)(v)(C) above, targets formulated by Newcrest management in respect of gold production for the forthcoming year do not constitute Newcrest's targets in respect of such gold production. Once adopted in Newcrest's Budget, as approved by the Newcrest Board, such production targets may become the subject of Guidance Statements issued by Newcrest which are formulated by Newcrest's *senior management in conjunction with Newcrest's Board, as set out in paragraph 9 above.*

Prior to Newcrest's Budget for the forthcoming financial year, including production targets set out therein, being approved and adopted by Newcrest's Board, there is no certain or appropriate foundation for the formulation and issue of Guidance Statements in respect of that financial year.

The views of one or more members of management on possible or likely gold production therefore do not represent Newcrest's expectations with respect to its gold production for the forthcoming financial year.

Accordingly, information of this kind is, and the FY14 management gold production expectation was:

- *information generated for internal management purposes, and/or*
- *information which constitutes matters of supposition or information which is insufficiently definite to warrant disclosure*
- *not information of a kind that a reasonable person would expect to be disclosed.*

Further, in the ordinary course management's expectations with respect to gold production for the forthcoming financial year remain, in the ordinary course, confidential unless and until incorporated into Guidance Statements issued by Newcrest as set out in paragraph 9 above.

The FY14 management gold production expectation was confidential until it was revealed as set out in paragraph ~~98~~ 128(b) above.

(d) otherwise denies paragraph 134 ~~102~~.

135 ~~103~~ In respect of paragraph 135 ~~103~~, it:

(a) refers to and repeats paragraphs 132 ~~101~~ to 134 ~~102~~ above;

(b) says that ASX Listing Rule 15.7 provides that:

"An entity must not release information that is for release to the market to any person until it has given the information to ASX and has received an acknowledgement that ASX has released the information to the market."

(c) denies that the alleged Analyst Briefing Information (even if it existed as alleged and had the characteristics as alleged, neither of which is admitted) was "information that [was] for release to the market" within the terms of ASX Listing Rule 15.7; and

(d) otherwise denies paragraph 135 ~~103~~.

136 ~~104~~ In respect of paragraph 136 ~~104~~, it:

(a) refers to and repeats paragraphs 132 ~~101~~ to 135 ~~103~~ above;

(b) admits that it did not notify the ASX of the FY14 management gold production expectation prior to 7 June 2013; and

(c) otherwise denies paragraph 136 ~~104~~.

137 ~~105~~ In respect of paragraph 137 ~~105~~, it:

(a) refers to and repeats paragraphs 132 ~~101~~ to 136 ~~104~~ above;

(b) admits that, by reason of the matters set out in paragraphs ~~98~~ 128 to ~~102~~ 134 above, Newcrest breached s 674(2) of the *Corporations Act* between 4 June 2013 and 6 June 2013~~4~~ in respect of, and only in respect of, the FY14 management gold production expectation; and

(c) otherwise denies paragraph 137 ~~105~~.

138 ~~106~~ In respect of paragraph 138 ~~106~~ it:

(a) admits that the contravention referred to in paragraph ~~105~~137(a) above was continuing between 4 June 2013 and 6 June 2013; and

(b) otherwise denies paragraph 138 ~~106~~.

S. 7 JUNE 2013 DISCLOSURE

139 ~~107~~ In respect of paragraph 139 ~~107~~, it:

(a) refers to and repeats paragraphs 6(f), ~~46~~ 64, ~~96~~ 126 and ~~105~~ 137(b) above; and

(b) otherwise denies paragraph 139 ~~107~~.

140 ~~108~~ It denies paragraph 140 ~~108~~.

141 ~~109~~ In respect of paragraph 141 ~~109~~, it:

(a) admits that Newcrest published and lodged a release entitled "Newcrest Completes Business Review – Update on Outcomes, Impacts and Outlook" (the **7 June 2013 Release**);

(b) admits that the 7 June Release contained (*inter alia*) the following statements:

> *"Newcrest is reviewing the carrying values of its assets having regard to materially lower gold prices, the compression of earnings multiples in the gold industry… and other market factors. The full assessment of carrying value will be completed after 30 June 2013 having regard to actual financial year end balances and final valuation assessments by the Board.*
>
> *However, based on the latest estimate of carrying values and the Company's internal indicative valuations, the Board and Management believe an impairment of the carrying value of assets in the range of $5 to $6 billion is likely.*
>
> *…*
>
> *It is anticipated the asset write-downs will encompass all goodwill on the balance sheet (approximately $3.6 billion and $0.2 billion in relation to Lihir and to Bonikro respectively) and impairments to our higher cost assets, namely Telfer, Hidden Valley and Bonikro (to a total of up to $2.2 billion).*
>
> *…*
>
> *The key outcomes from the review in relation to the 2014 financial year are as follows:*
>
> - *Gold production is expected to be 2.0 to 2.3 million ounces, representing a mid-point estimate increase of approximately 4%*

year on year. This production estimate reflects the removal of high cost ounces from the production profile, particularly at Telfer, Lihir and Cadia Valley …

...

In the context of the reduction in 2013 financial year profitability following the sharp decline in prices, the elevation of gearing at 30 June 2013 associated with the estimated write-down of carrying values and the application of cash flow to completion of the Panel Cave 2 at Cadia East, the Board expects that there will not be a final dividend in relation to the 2013 financial year."

(c) does not admit that the 7 June 2013 Corrective Disclosure was a corrective disclosure in respect of, or in respect of all of, the August 2012 Information, FY14 Gold Production Information and February 2013 Information; and

(d) otherwise denies paragraph 141 ~~109~~.

T. LOSS AND DAMAGE

142 ~~110~~ In respect of paragraph 142 ~~110~~ , it:

(a) does not admit that the Applicant traded in NCM Securities as set out in Annexure A to the Further Amended Statement of Claim;

(b) refers to and repeats paragraph 150 ~~116~~ below; and

(c) otherwise denies paragraph 142 ~~110~~.

143 It does not admit paragraph 143.

144 ~~111~~ In respect of paragraph 144 ~~111~~, it:

(a) admits paragraphs 144 ~~111~~ (a)-(g); and

(b) says further that the opening, high, low and closing prices of Newcrest Securities on the ASX between 28 May 2013 and 13 June 2013 were as follows (A$):

Date	**Open**	**High**	**Low**	**Close**

Date	**Open**	**High**	**Low**	**Close**
28/05/2013	14.9	14.96	14.54	14.65
29/05/2013	14.42	14.84	14.29	14.69
30/05/2013	15.04	15.19	14.42	14.42
31/05/2013	14.8	14.91	14.42	14.51
03/06/2013	14.4	15.37	14.3	15.12
04/06/2013	15.49	15.68	15.14	15.15
05/06/2013	14.58	14.79	14.25	14.35
06/06/2013	14	14.01	13.36	13.36
07/06/2013	11.52	12.54	11.4	12.35
11/06/2013	11.87	12.1	11.84	12.03
12/06/2013	11.81	11.99	11.81	11.93
13/06/2013	11.73	11.8	11.4	11.41

145 ~~112~~ It denies paragraph 145 ~~112~~.

146 ~~113~~ In respect of paragraph 146 ~~113~~:

(a) refers to and repeats paragraph 150 ~~116~~ below; ~~and~~

(b) denies that the assumption referred to in paragraph 146 was made, or reasonably made, by all participants in the market for NCM Securities; and

(c) ~~(b)~~ otherwise denies paragraph 146 ~~113~~.

147 ~~114~~ It denies paragraph 147 ~~114~~.

148 ~~115~~ It does not admit paragraph 148 ~~115.~~

149 It denies paragraph 149.

150 ~~116~~ In respect of paragraph 150 ~~116~~, it:

(a) refers to and repeats paragraphs 142 to 148 ~~110 to115~~ above;

(b) says if, which is denied, Newcrest has contravened any of s 1041H of the *Corporations Act*, s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (***ASIC Act***) and/or s 674(2) of the *Corporations Act*, the matters pleaded by the Applicant in paragraphs 141 to 150 ~~110 to116~~ of the Further Amended Statement of Claim would not, even if established, constitute any causal nexus sufficient to support a claim for compensation pursuant to any of s 1041I of the *Corporations Act*, s 12GF of the *ASIC Act* or s 1317HA of the *Corporations Act* (respectively) in respect of such contraventions; and

(c) otherwise denies paragraph 150 ~~116~~.

151 ~~117~~ In respect of paragraph 151 ~~117~~:

(a) it refers to and repeats paragraph 150 ~~116~~ above;

(b) otherwise denies paragraph 151 ~~117~~.

152 ~~118~~ In respect of paragraph 152 ~~118~~:

(a) it refers to and repeats paragraph 150 ~~116~~ above;

(b) otherwise denies paragraph 152 ~~118~~.

U. COMMON QUESTIONS OF FACT OR LAW

153 ~~119~~ It does not plead to paragraph 153 ~~119~~ as it makes no material allegations against it but notes that the issues referred to at paragraphs 153~~119~~(x) and 153~~119~~(y) will not be capable of determination in the absence of evidence from the Applicant and individual members of the group.

Date: 6 July 2015 ~~25 November 2014~~

Wendy Harris

Robert Craig

Catherine Button

Jonathan Kirkwood

Kane Loxley

Signed by ~~Jason Betts~~ Ken Adams

Lawyer for the Respondent

This pleading was prepared by Wendy Harris QC, Robert Craig ~~and~~, Catherine Button, Jonathan Kirkwood and Kane Loxley of Counsel.

Certificate of lawyer

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

(a) each allegation in the pleading; and

(b) each denial in the pleading; and

(c) each non admission in the pleading.

Date: 6 July 2015

Signed by Ken Adams

Lawyer for the Respondent