

NOTICE OF FILING

Details of Filing

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File Title:	ANDREW PARKIN v BORAL LIMITED (ACN 008 421 762)
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Registrar

Important Information

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

The date of the filing of the document is determined pursuant to the Court's Rules.



Amended Defence

Amended on 24 June 2023 in response to the Further Amended Statement of Claim
filed on 19 June 2023 pursuant to orders made on 19 June 2023

No. NSD 602 of 2020

Federal Court of Australia
District Registry: New South Wales
Division: General

Andrew Parkin

Applicant

Boral Limited (ACN 008 421 761)

Respondent

Unless otherwise stated, a defined term used in this Amended Defence has the same meaning given to it in the Further Amended Statement of Claim filed ~~16 April 2021~~ 20 June 2023 (**ASOCFASOC**).

In answer to the ASOCFASOC, the Respondent (**Boral**) says as follows:

A. PRELIMINARY

A.1 The Applicant and the Group Members

1. In relation to paragraph 1, it:

- (a) refers to and repeats its responses herein to the conduct alleged in the ASOCFASOC;
- (b) denies that any person has suffered the loss or damage alleged in the ASOCFASOC by reason of the alleged conduct in the ASOCFASOC; and
- (c) for convenience, uses the term 'Group Members' in this defence without admission and subject to the above.

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[Form approved 01/08/2011]

2. In relation to paragraph 2, it:

- (a) admits that the Applicant acquired an interest in Boral Shares during the Relevant Period; and
- (b) says further that the Applicant acquired and sold an interest in Boral Shares as follows:

Effective date	Transaction type	Number of shares	Available balance
29 Jan 2019	Acquisition	2,000	2,000
20 Feb 2019	Acquisition	4,000	6,000
14 Jan 2020	Disposal	3,000	3,000
15 Jan 2020	Disposal	3,000	3,000 0

3. Denies paragraph 3, and refers to and repeats paragraph 1 above.

A.2 The Respondent

4. Admits paragraph 4 and further, says that:

- (a) 'Boral' is defined at paragraph ASOCFASOC [1(b)] and thereafter used throughout the ASOCFASOC in reference only to the Respondent;
- (b) in this Amended Defence, the word 'Boral' similarly is used to refer only to the Respondent.

5. Admits paragraph 5.

6. Admits paragraph 6, save that it contends that s 18 of the ACL does not apply to conduct in respect of "financial services" or a "financial product" to which s 1041H of the Corporations Act and/or s 12DA of the ASIC Act applies.

B. BORAL'S ALLEGED BUSINESS

B.1 Introduction

7. In relation to paragraph 7, it:

- (a) admits that at all material times, it directly or indirectly held interests in entities which operated in Australia, Asia and North America manufacturing and supplying building products and construction materials (the **Boral Group**);
- (b) says that not all of the entities within the Boral Group were wholly owned subsidiaries of Boral;

- (c) says that the term 'Boral Group' as used in this Amended Defence is limited to those entities controlled by Boral; and
- (d) otherwise denies the paragraph.

8. In relation to paragraph 8, it: ~~admits that at all material times the Boral Group was divided into three divisions (**Divisions**), being:~~

- (a) admits subparagraph 8(a) a Boral Australia Division (**Boral Australia**), and says further that this Division Boral Australia:
 - (i) in financial year 2017, included 394 operating sites and 30 distribution sites, with 5,769 employees and approximately 4,728 contractors;
 - (ii) in financial year 2018, included 402 operating sites and 29 distribution sites, with 6,510 employees and approximately 5,000 contractors; and
 - (iii) in financial year 2019, included 396 operating sites and 24 distribution sites, with 6,628 employees and approximately 5,100 contractors;
- (b) admits subparagraph 8(b) a USG Boral Division (**USG Boral**), and says further that this Division USG Boral:
 - (i) is comprised of Boral Group's 50% interest in Gypsum joint ventures in Australia (USG Boral Building Products Pty Ltd) and Asia (USG Boral Building Products Pte Ltd);
 - (ii) in financial year 2017, included of 36 operating sites and 85 distribution sites, with 3,172 employees and approximately 3,333 contractors;
 - (iii) in financial year 2018, included 50 operating sites and 90 distribution sites across 14 countries, with 3,526 employees and approximately 3,400 contractors; and
 - (iv) in financial year 2019, included 53 operating sites and 88 distribution sites across 10 countries, with 3,539 employees and approximately 4,000 contractors; and
- (c) admits that, as and from 9 May 2017 to the end of the Relevant Period, Boral North America (or **BNA**) was a division of the Boral Group a Boral North America Division (**Boral North America** or **BNA**) as and from 9 May 2017, and says further that:

- (i) prior to 9 May 2017, the division of the Boral Group relating to North America was called 'Boral USA';
- (ii) on 9 May 2017, the Boral USA division was replaced by the division known as 'Boral North America' encompassing the Boral Group's existing operations in the USA and the Headwaters' operations in the USA, Mexico and Canada;
- (iii) Boral North America:
 - A. during the period 9 May 2017 to the end of the financial year 2017, included 273 operating sites and 50 distribution sites across North America, with 7,053 employees and 125 contractors;
 - B. in financial year 2018, included 229 operating sites and 49 distribution sites across North America, with 7,096 employees and approximately 300 contractors; and
 - C. in financial year 2019, included 223 operating sites and 44 distribution sites across North America, with 6,937 employees and approximately 200 contractors; and
- ~~(d) — denies that Boral — as opposed to the Boral Group — was or is divided into the divisions pleaded in paragraph 8; and~~
- (d) otherwise denies the paragraph.

Particulars

ASX Announcement entitled "2017 Boral Review", pages 10, 14, 18

ASX Announcement entitled "2018 Boral Review", pages 40, 44-45, 48.

ASX Announcement entitled "2019 Boral Review", pages 10, 12, 14.

B.2 Headwaters and Windows

- 9. It admits paragraph 9 and says further that, at the time of its acquisition, Headwaters:
 - (a) was a leading manufacturer of building products and one of the largest marketers of fly ash in the United States of America, with US\$1.1 billion of revenue in its financial year ending 30 September 2016 (on a pro forma basis reflecting full year ownership of the Krestmark Industries, L.P.); and

- (b) operated across two core divisions: Building Products and Construction Materials.

Particulars

ASX Announcement entitled "Boral to acquire Headwaters Incorporated" dated 21 November 2016.

10. It admits paragraph 10 and says further that completion of the acquisition of Headwaters was effective 8 May 2017 in the United States of America.

~~In relation to paragraph 10, it:~~

- (a) ~~admits that the acquisition of Headwaters completed on 8 May 2017 in the United States of America;~~
- (b) ~~admits that as a consequence Headwaters became a wholly owned subsidiary of Boral Industries Inc, and therefore became an indirectly held wholly owned subsidiary of Boral; and~~
- (c) ~~otherwise denies the paragraph.~~

Particulars

ASX Announcement entitled "Boral completes acquisition of Headwaters Incorporated" dated 9 May 2017.

11. Admits paragraph 11.
12. It refers to paragraph 10 above and otherwise admits paragraph 12.

~~In relation to paragraph it:~~

- (a) ~~refers to and repeats paragraph 8 above;~~
- (b) ~~admits that from 8 May 2017 after Boral's acquisition of Headwaters, Windows formed part of the Boral North America Division of the Boral Group (but denies that this was a division of Boral); and~~
- (c) ~~otherwise denies the paragraph.~~

B.3 Alleged Relevant Boral personnel

13. In relation to paragraph 13, it:
- (a) admits that, on or around 1 October 2012, a committee was formed, styled 'Executive Committee' (**Executive Committee**);
- (b) says that the Executive Committee was comprised of certain Division and functional leaders of Boral and entities within the Boral Group; and

- (c) otherwise denies the paragraph.
14. In relation to paragraph 14, it:
- (a) in relation to subparagraph 14(a):
 - (i) admits that Mr Kane was appointed as the CEO and Managing Director of Boral on 1 October 2012 and ~~says further that Mr Kane~~ held that role until 30 June 2020;
 - (ii) admits that Mr Kane was responsible for managing Boral's affairs and implementing Boral's strategy and policy initiatives and otherwise denies the subparagraph;
 - (b) in relation to subparagraph 14(b):
 - (i) refers to and repeats paragraph 13 above;
 - (ii) admits Mr Kane was a member of the Executive Committee of the Boral Group from the formation of that Committee in Financial Year 2013 until his retirement as CEO and Managing Director of Boral;
 - (c) admits that, between May 2017 to the end of the Relevant Period, Mr Kane spent approximately half his time in the USA;
 - (d) admits that, during the Relevant Period, Mr Kane was an officer of Boral within the meaning of s 9 of the Corporations Act; and
 - (e) otherwise denies the paragraph.
15. In relation to paragraph 15, it:
- (a) in relation to subparagraph 15(a):
 - (i) admits that Ms Ng was appointed as the CFO of Boral on 15 September 2013 and ~~says further that Ms Ng~~ held that role until 15 October 2020;
 - (ii) admits that, as CFO of Boral, Ms Ng had responsibility for overseeing Boral's finance function such as treasury and taxation and otherwise denies the subparagraph;
 - (b) in relation to subparagraph 15(b):
 - (i) refers to and repeats paragraph 13 above;

- (ii) admits that, whilst CFO of Boral, Ms Ng was a member of the Executive Committee of the Boral Group;
 - (c) in relation to subparagraph 15(c), admits that Ms Ng was responsible for the project management of the Headwaters acquisition transaction up to the close of that transaction on 8 May 2017 within the limits of her authority; and
 - (d) otherwise denies the paragraph.
16. In relation to paragraph 16, it:
- (a) in relation to subparagraph 16(a):
 - (i) admits that Mr Sullivan was appointed as Group General Counsel of Boral on 1 July 2013 and ~~says further that Mr Sullivan held that role until 198~~ February 2021;
 - (ii) admits that, as Group General Counsel, Mr Sullivan was responsible for providing legal advice to it and otherwise denies the subparagraph;
 - (b) in relation to subparagraph 16(b):
 - (i) refers to and repeats paragraph 13 above;
 - (ii) admits that, whilst Group General Counsel of Boral, Mr Sullivan was a member of the Executive Committee of Boral Group; and
 - (c) otherwise denies the paragraph.
17. In relation to paragraph 17, it:
- (a) in relation to subparagraph 17(a):
 - (i) admits that Mr Mariner was appointed as President and CEO of Boral Industries Inc on 1 July 2016 and ~~says further that Mr Mariner held that role until 31 May 2020;~~
 - (ii) admits that, as President and CEO of Boral Industries Inc, Mr Mariner was responsible for overseeing the business and operations of Boral Industries Inc and otherwise denies the subparagraph;
 - (b) in relation to subparagraph 17(b):
 - (i) refers to and repeats paragraph 13 above;

- (ii) admits that, whilst President and CEO of Boral Industries Inc, Mr Mariner was a member of the Executive Committee of Boral Group; and
- (c) otherwise denies the paragraph.

17A. In relation to 17A, it:

- (a) in relation to subparagraph 17A(a):
 - (i) admits that Mr Post was appointed as Chief Financial Officer of Boral Industries Inc in around September 2013 and held that role until about March 2020;
 - (ii) admits that the role of Chief Financial Officer was the most senior finance leadership role in Boral North America, following the formation of that division on or about 9 May 2017; and
- (b) otherwise denies the paragraph.

18. In relation to paragraph 18, it:

- (a) refers to and repeats paragraphs 14 to 17A above;
- (b) admits that r 19.21 of the ASX Listing Rules provides that an entity becomes aware of information if, and as soon as, an officer of the entity has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity;
- (c) admits that, for the purposes of the ASX Listing Rules, Boral became aware of information if, and as soon as, Mr Kane has, or ought reasonably to have, come into possession of the information in the course of the performance of his duties as an officer of Boral; and
- (d) otherwise denies the paragraph.

C. ALLEGED RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES

19. In relation to paragraph 19, it:

- (a) admits that, at all material times, materials published by Boral to the ASX were published by the ASX in Australia;
- (b) says that the material published by Boral to the ASX between 21 November 2016 to 14 December 2016 and referred to in paragraphs 20, 194C(b),

194D(b) and 194E were labelled “*Not for distribution or release in the United States*”;

- (c) says that, in the United States, Boral shares are traded in the form of ADRs on the over-the-counter market and refers to paragraph 5;
- (d) to the extent the Affected Market pleaded in paragraph 19 is a market outside of Australia, it does not know and therefore cannot admit whether materials published by it to the ASX were available to that market of investors and potential investors in Boral Shares, Boral ADRs and Boral Equity Swaps; and
- (e) otherwise denies the paragraph.

C.1 21 November 2016

20. In relation to paragraph 20, it:

- (a) admits that on 21 November 2016, Boral published to the ASX a document entitled “ASX Release 21 November 2016” (**the 21 November 2016 Release**);
- (b) says further that the 21 November 2016 Release included:
 - (i) a document entitled “Boral to acquire Headwaters Incorporated – a strategically compelling portfolio of US businesses – supported by capital raising” (**the 21 November 2016 Headwaters Announcement**);
 - (ii) a document entitled “Acquisition of Headwaters: Investor Presentation 21 November 2016” (**the 21 November 2016 Investor Presentation**);
- (c) says further that the 21 November 2016 Release included the words “*NOT FOR DISTRIBUTION OR RELEASE IN THE UNITED STATES*” on both of the documents contained within it; and
- (d) otherwise denies the paragraph.

21. In relation to paragraph 21, it:

- (a) refers to and repeats paragraph 20 above;
- (b) will refer to and rely upon the full terms and effect of the 21 November 2016 Release at trial;

- (c) admits that in the 21 November 2016 Headwaters Announcement, Boral stated the words quoted in subparagraphs 21(a) of the ASOCFASOC;
- (d) admits that in the 21 November ~~2017~~2016 Headwaters Announcement and the 21 November 2016 Investor Presentation Boral stated the words quoted in subparagraph 21(b) of the ASOCFASOC;
- (e) denies subparagraphs 21(c)-(f) and says that the 21 November 2016 Headwaters Announcement quotes Mr Brian Clark (the Chairman of Boral at the time) as stating:

“While this acquisition is significant in scale, we have maintained a disciplined approach to reviewing growth opportunities in the USA. Headwaters has been rigorously assessed and with its highly complementary portfolio of assets, which are strategically aligned with a number of Boral’s existing US businesses, this is a highly compelling acquisition for Boral.

Together with support from external advisors, a team of Boral’s senior executives has done an extensive amount of work to make sure we understand the portfolio of Headwaters businesses and the opportunities presented. Detailed due diligence has been completed, synergies have been identified and integration planning is underway. We anticipate that this transaction will have a strong positive impact on Boral’s shareholder value”

- (f) otherwise denies the paragraph.

C.2 5 May 2017

22. In relation to paragraph 22, it:

- (a) admits that on 5 May 2017, Boral published to the ASX a document entitled “Boral completing its acquisition of Headwaters Incorporated in early May” (**5 May 2017 Release**); and
- (b) otherwise denies the paragraph.

23. In relation to paragraph 23, it:

- (a) will refer to and rely upon the full terms and effect of the 5 May 2017 Release at trial;

- (b) denies subparagraph 23(h)-(i) and says that the 5 May 2017 Release quotes Mr Kane as stating:

“We have been eagerly awaiting the approval from US regulators to allow us to complete the acquisition and to deliver on our strategy. In the meantime, we have continued to develop our integration plans and we are confident in our ability to deliver on the synergy targets we established when the transaction was announced.

Both organisations are highly aligned strategically and culturally so it’s an exciting time as we come together to deliver substantial value for our customers, shareholders and employees.

“This important acquisition strengthens Boral’s position as a global building products and construction materials group with three very strong divisions.

“We have our high performing, well-positioned Boral Australia division capitalising on a growing pipeline of infrastructure work and strength in other construction markets. Our fast growing USG Boral business in Asia, Australia and the Middle East is leading the way in product innovation in attractive, high growth markets. And now we have Boral North America, a scaled building products and fly ash business with greater geographic reach, more diverse product offerings and strong growth prospects”

- (c) otherwise admits the paragraph.

C.3 9 May 2017

24. In relation to paragraph 24, it:

- (a) admits that on 9 May 2017, Boral published to the ASX a document entitled “Boral completes acquisition of Headwaters Incorporated” (**9 May 2017 Release**); and
- (b) otherwise denies the paragraph.

25. In relation to paragraph 25, it:

- (a) will refer to and rely upon the full terms and effect of the 9 May 2017 Release at trial;

- (b) denies subparagraph 25(c) and says further that the 9 May 2017 Release quotes Mr Kane as stating the words quoted in subparagraph 25(c); and
- (c) otherwise admits the paragraph.

C.4 30 August 2017

26. In relation to paragraph 26, it:

- (a) admits that on 30 August 2017, it published the following documents to the ASX:
 - (i) a covering letter dated 30 August 2017 enclosing “Results for announcement to the market – full year ended 30 June 2017”, being its 2017 year-end financial results in the form of an Appendix 4E Preliminary Final Report (hereafter referred to in this Amended Defence as “**FY17 Appendix 4E**”);
 - (ii) a covering letter dated 30 August 2017 enclosing:
 - A “Results Announcement for the year ended 30 June 2017 – Media Release” (**FY17 Media Release**);
 - B “Results Announcement for the year ended 30 June 2017 – Management Discussion & Analysis” (**FY17 MD&A**);
 - (iii) a covering letter dated 30 August 2017 enclosing “Results for full year ended 30 June 2017 – Investor Presentation” (**FY17 Investor Presentation**),

(together, hereafter referred to in this Amended Defence as “**30 August 2017 Documents**”); and

- (b) otherwise denies the paragraph.

27. In relation to paragraph 27, it:

- (a) will refer to and rely upon the full terms and effect of the 30 August 2017 Documents at trial;
- (b) denies subparagraph 27(a) and says further that the FY17 Media Release quotes Mr Kane as stating the words quoted in subparagraph 27(a);
- (c) denies subparagraphs 27(b)-(c) and says further that the FY17 MD&A stated the words quoted in subparagraphs 27(b) and 27(c).

27A In relation to paragraph 27A, it:

- (a) will refer to and rely upon the full terms and effect of the FY17 Investor Presentation at trial;
- (b) admits subparagraphs 27A(a)-(b) and says that the FY17 Investor Presentation states the following:
 - “Integration and mobilisation activities successfully rolled out in first 3 months
 - Leadership team in place; strong employee engagement; 60 sites visited by key leaders in first 3 weeks, roll-out of Zero Harm messages
 - Customer outreach successful
 - All businesses have developed detailed synergy plans – fast tracking execution, where possible”
- (c) admits subparagraph 27A(c) and says that the FY17 Investor Presentation states the following:

“Headwaters integration on track and positioned well

Performance in line with expectations; strong confidence around synergies”
- (d) admits subparagraph 27A(d);
- (e) says further that:
 - (i) the covering letter to the ASX in respect of the FY17 Investor Presentation stated to the effect that the FY17 Investor Presentation was to be ‘webcast’ on Boral’s website at a specified time;
 - (ii) the FY17 Investor Presentation was a slide-deck to accompany commentary from Mr Kane and Ms Ng at the webcast of the presentation; and
- (f) otherwise denies the paragraph.

28. In relation to paragraph 28, it:

- (a) admits it convened a call on 30 August 2017; and
- (b) otherwise denies the paragraph.

29. In relation to paragraph 29, it says that any words spoken during the 30 August 2017 Call were made in a particular context and Boral will rely at trial upon the full context of what was said and by whom, and it:

- (a) otherwise admits that Mr Kane said the words quoted in sub-paragraph 29(a);
- (b) denies sub-paragraph 29(b) and says that during the 30 August 2017 Call Mr Kane said, *"There is work being done to complete an IT roadmap and streamlined support services. Where we can, we are fast tracking synergy execution"*;
- (c) denies sub-paragraph 29(c) and says that during the 30 August 2017 Call Mr Kane said, *"So I'll pick up on synergies first. We're - the \$100 million synergies is four years out, it's difficult to get your crystal ball out and to pull that number. But let me phrase it this way, anyone who thinks that we're not going to achieve the synergies we've announced on this deal is making the wrong bet. We – now having several months under our belt and looking deeply inside the business, we're seeing opportunities and synergies beyond what we expected. So we expect to do well on synergies. As I - I think I set the audience up when the announcement of the deal saying that we would be really challenged to see them in the first year. I underestimated the ability of our team. I don't think they'll be as challenged as we thought to be able to clearly deliver those synergies, and possibly more, in the first year. So I'm more optimistic today than I was when we announced this deal about our ability to achieve these synergies, and to exceed these synergies in the long run. So that's about all I want to say about synergy attainment without giving you a specific number. But our confidence is running high on synergies"*;
- (d) otherwise admits that Mr Kane said the words quoted in sub-paragraph 29(d);
- (e) otherwise admits that Mr Kane said the words quoted in sub-paragraph 29(e); and
- (f) otherwise denies the paragraph.

C.5 13 February 2018

30. In relation to paragraph 30, it:

- (a) admits that on 13 February 2018, it published the following documents to the ASX:
 - (i) a covering letter dated 13 February 2018 enclosing:

- A “Half Year Report (Appendix 4D) for the half year ended 31 December 2017” (**HY18 Appendix 4D**);
- B “Results Announcement for the half year ended 31 December 2017 – Media Release” (**HY18 Media Release**);
- C “Results Announcement for the half year ended 31 December 2017 – Management Discussion & Analysis” (**HY18 MD&A**);

- (ii) a covering letter dated 13 February 2018 enclosing “Results for half year ended 31 December 2017 – Investor Presentation” (**HY18 Investor Presentation**),

(together, hereafter referred to in this Amended Defence as “**13 February 2018 Documents**”);

- (b) admits it convened a call on 13 February 2018; and

- (c) says further that in the HY18 MD&A:

- (i) that document stated (on p.16) ‘*The results announcement has not been subject to review or audit, however it contains disclosures which are extracted or derived from the Half Year Financial Report for the 6 months ended 31 December 2017*’;
- (ii) that document stated (p.16) that ‘*The Half Year Financial Report for the 6 months ended 31 December 2017 is prepared in accordance with the ASX listing rules and should be read in conjunction with any announcements to the market made by the Group during the year*’;

- (d) says further that the covering letter to the ASX in respect of the HY18 Investor Presentation stated:

- (i) HY18 Investor Presentation was to be ‘webcast on Boral’s website’ at a specified time;
- (ii) ‘*The information contained in this announcement should be read in conjunction with today’s announcement of Boral’s half year results and Boral’s most recent annual financial report*’; and

- (e) the presentation was a slide-deck to accompany commentary from Mr Kane and Ms Ng at the webcast of the presentation; and

- (f) otherwise denies the paragraph.

31. In relation to paragraph 31, says that any words spoken during the 13 February 2018 Call were made in a particular context and Boral will rely at trial upon the full context of what was said and by whom, and Boral will refer to and rely upon the full terms and effect of the 13 February 2018 Documents at trial, and it:
- (a) denies sub-paragraph 31(a) and says that during the 13 February 2018 Call Mr Kane said, *"I must say now that we have the keys we have been driving the Headwaters' integration. We are more than confident that this acquisition will be every bit the transformative deal we anticipated it to be. The Board and management are delighted with the incredible opportunity we will enjoy as we continue to build on the great foundation of Headwaters in combination with Boral's North American asset base"*;
 - (b) denies sub-paragraph 31(b) and says that during the 13 February 2018 Call Mr Kane said, *"When I look at this, on balance I'm comfortable, I'm confident that this is a fantastic business. We are so glad we acquired Headwaters"*;
 - (c) otherwise admits that the HY18 Media Release quotes Mr Kane as stating the words quoted in sub-paragraph 31(c);
 - (d) denies sub-paragraph 31(d) and says that the HY18 Media Release quotes Mr Kane as stating *"We are very pleased with our transformed North American division, which reported a significant increase in earnings as a result of a full period contribution from the Headwaters businesses"*;
 - (e) otherwise admits that the HY18 Media Release quotes Mr Kane as stating the words quoted in sub-paragraph 31(e);
 - (f) denies sub-paragraph 31(f) and says that, in the HY18 Media Release, Boral stated that *"Referring to the financial results from Boral's three divisions, Mr Kane reported the following...Boral North America – delivered a substantial lift in EBITDA to A\$184 million (US\$144 million) from A\$41 million (US\$30 million) reported in the same period last year. The result includes a full period contribution from Headwaters with US\$18 million of synergy benefits for the half year against the FY2018 target of US\$30-\$35 million, which we now expect to exceed. On a pro forma basis, EBITDA growth of 4% to US\$144 million was tempered by a series of significant weather events including two hurricanes, as well as temporary plant operational issues, and lower earnings from Meridian Brick. The division reported an EBITDA margin of 16.3% and is*

well placed to deliver above cost of capital returns over time through full realisation of synergies and market growth”;

- (g) denies sub-paragraph 31(g) and says that during the 13 February 2018 Call Mr Kane said, *“Last, but not least, Magnolia Windows in Georgia– another acquisition that Headwaters did in the closing moments. Matter of fact, they acquired this business in-between the time we announced the deal and we closed the deal. They did tell us that it was happening, but we didn’t, not being in the windows business, we weren’t exactly sure what that all meant. But we found out rather quickly that Magnolia was having issues. Joel Charlton, who heads up our innovation centre and is a key part of the management team in North America, has had windows reporting directly to him from the date of closure. He has been working diligently on getting Magnolia fixed. We’re making progress and improving the OE of that plant. In the second half we don’t expect significant downside from that Magnolia operation”;*
- (h) denies sub-paragraph 31(h) and says that during the 13 February 2018 Call Mr Kane said, *“These are the three plant operations. I don’t want anyone to be confused – \$7 million impact in the first half. Not 70. Not a big number, but definitely a number. And you add that to the weather – and I refer you back to this chart, which is the heart attack chart we can all look at. These are small-dollar impacts, identifiable issues. There’s nothing on this chart we don’t understand or understand how to fix”;*
- (i) denies sub-paragraph 31(i) and says that during the 13 February 2018 Investor Call Mr Kane said, *“Looking at the overall – or, overall, the integration of Headwaters, we are pleased with the quality of our transformed North American business and the progress our team has made to date. There’s been a number of areas which have exceeded our expectations as well as some challenges, some of which I’ve talked about and we’ve responded accordingly. Most pleasingly, we’ve seen greater opportunities for synergies than we first expected which has strengthened our confidence in achieving our targets. We’ve also seen a generally positive response from our employees and customers through the integration process”;*
- (j) denies sub-paragraph 31(j) and says that during the 13 February 2018 Investor Call Mr Kane said, *“Integrating Headwaters into Boral North America is a substantial undertaking, and there’s also been some challenges. Foremost, we’ve spent more management time and capital improving safety*

performance than we had anticipated. The roofing business Headwaters acquired around the time of our acquisition have underperformed, and the integration of Magnolia Windows into Krestmark has been challenging. Stone had some larger than expected acquisition-related share loss, which we are clawing back currently, and Clubhouse Decking, Enviroshake in Canada and the energy business were all small underperforming businesses, read losing money, which we've now divested";

- (k) denies sub-paragraph 31(k) and says that during the 13 February 2018 Investor Call Mr Kane said, *"Looking at acquisition synergies in more detail, we're confident of delivering in excess of US\$100 million per annum of synergy benefits in financial year 2021. We will have a clearer view on this outcome as we end this financial year, and I think we'll be in a position to put a range on that. In this first half US\$18 million of cost in revenue synergies were delivered across all businesses, although there was some share loss to synergy in the stone business, which we are confident we can regain. To date we've reduced headcount by 170, which contributed US\$14 million in the first half. Synergies made significant savings in procurement, integrated all key IT processes, and we are starting to see the beginning of sales synergies in light building products. We now expect to deliver in excess of US\$35 million of synergies in financial year '18, an exit run rate exceeding US\$50 million to US\$55 million per annum by the end of financial year '18";*
- (l) denies sub-paragraph 31(l) and says that the HY18 Media Release states that *"Commenting on outlook, Mr Kane said Boral expects continued growth across all businesses in FY2018, including a significant lift in earnings from Boral North America. In summary: ...Boral North America is expected to deliver a significantly higher EBITDA in FY2018 reflecting the Headwaters acquisition, over US\$35 million of year one synergy benefits and underlying market growth. EBITDA is expected to be substantially skewed to 2H as a result of: further delivery of synergies; price growth; a return to normal weather conditions; progress in resolving operational issues; and normal seasonal impacts, which typically result in much higher volumes and activity in Q4";*
- (m) denies sub-paragraph 31(m) and says during the 13 February 2018 Investor Call:
 - (i) Mr Kane was asked, *"I appreciate your comments just around early stage integration issues and costs associated with some of those,*

particularly the plant operational issues. I'm just wondering, what gives you the confidence or have you had the business for long enough to have high conviction that these are the end of the initial operational issues and integration issues that were actually outside the scope that Boral identified at the time of acquisition?";

- (ii) Mr Kane said, in response to that question, *"When you consider the size of the North American footprint, I'm sure there'll be some surprises as we travel along. The acquisition of a publicly traded company and the fact that we were a direct competitor of theirs in many, many markets made it extraordinary difficult in the due diligence process to get full access to all the information we needed. There were some sites that we were not allowed to see. There was some information which was given to us that was more aggregated information and less precise information. In fairness to the team that did the due diligence, we saw some of the issues but not all of the issues as we went through the due diligence. Did it surprise me that we had some surprises? Not at all... I look at Headwaters and I see what's come across the transom in that transaction and we have technologies, market positions, deploying very early stage products in the light building products division growth. There's a division where we can continue to invest in capacity because in many of their products they're constrained by their capacity. I think there's nothing but opportunity built into that Headwaters portfolio and complexity and challenges for David and his team. The one thing I know about the US team is I've helped build this team since 2010. They're some of the best building products and construction materials professionals in the North American market. It's a young team, it's an aggressive team, they know their business and I wouldn't want to have any other team than the one I've got right now"*; and

- (n) otherwise denies the paragraph.

C.6 24 April to 1 May 2018

32. In relation to paragraph 32, it :

- (a) admits that on 24 April 2018 at 9:22am AEST Boral published to the ASX a document entitled, "Boral announces property earnings and trading update" (**24 April 2018 Release**); and
- (b) otherwise denies the paragraph.

33. In relation to paragraph 33, it:

- (a) will refer to and rely upon the full terms and effect of the 24 April 2018 Release at trial;
- (b) denies 33(a)-(d) and says that in the 24 April 2018 Release Boral stated that:

"After taking into account the higher property earnings and March quarter trading for Boral Australia and Boral North America, divisional outlooks for Boral Australia and Boral North America have been revised: ...March quarter earnings for Boral North America were below our expectations. Significant rain in the Texas region and up through the Midwest, particularly in February, together with prolonged winter weather relative to the prior year when the spring recovery came early, had an adverse impact during the period. Operational issues reported in the first half are being resolved, although consolidation of production lines in the Oceanside metal roofing business in California are still being addressed and commissioning costs associated with the Greencastle stone plant continued to impact up until the end of March. In the Fly Ash business, higher costs associated with repositioning fly ash supply to customers due to the closure of the three utilities in Texas are having a short-term impact. With historically more favourable weather in the June quarter, coupled with pent up demand, synergy delivery and improving operational performance, Boral North America is expected to deliver an earnings lift in the second half of around 10-25% compared to the first half result, on both an EBITDA and EBIT basis".

34. In relation to paragraph 34, it:

- (a) admits it convened a call on 1 May 2018; and
- (b) otherwise denies the paragraph.

35. In relation to paragraph 35, it says that any words spoken during the 1 May 2018 Call were made in a particular context and Boral will rely at trial upon the full context of what was said and by whom, and it:
- (a) otherwise admits that Mr Kane said the words quoted in sub-paragraph 35(a);
 - (b) otherwise denies sub-paragraph 35(b) and says that during the 1 May 2018 Call Mr Kane stated that *“All the issues we talked about, were performance issues at a manufacturing plant, and moving across every per cent in this portfolio from head to toe. There are no surprises out there. There are not varying debt spend no varying investment issues that are going to bubble up and float on up. In most of these divisions they’re in excellent shape, most of these plants they’re in excellent shape. We had to do some housekeeping and we’ve had to put on some guards and we’ve seen the opportunity for upgrades, but not normally, those are associated with the ability to grow volume and share. No, there are no things are going to jump up and bite us in the arse, that are coming out of the networks in North America, because we’ve been across them all in retail now. We’re running these operations and the understanding, there’s not a business, the exception of Windows I guess is the only one we didn’t understand going in to this deal. And so frankly, no surprises, coming forward and we don’t expect any”*; and
 - (c) otherwise denies the paragraph.

C.7 29 August 2018

36. In relation to paragraph 36, it:

- (a) admits that on 29 August 2018, it published the following documents to the ASX:
 - (i) a covering letter dated 29 August 2018 enclosing “Results for announcement to the market – full year ended 30 June 2018”, being its 2018 year-end financial results in the form of an Appendix 4E Preliminary Final Report (hereafter referred to in this Amended Defence as **“FY18 Appendix 4E”**);
 - (ii) a covering letter dated 29 August 2018 enclosing:
 - A “Results Announcement for the year ended 30 June 2018 – Media Release” (**FY18 Media Release**);

B “Results Announcement for the year ended 30 June 2018 – Management Discussion & Analysis” (**FY18 MD&A**);

- (iii) a covering letter dated 29 August 2018 enclosing “Results for full year ended 30 June 2018 – Investor Presentation” (**FY18 Investor Presentation**),

(together, hereafter referred to in this Amended Defence as “**29 August 2018 Documents**”); and

- (b) otherwise denies the paragraph.

37. In relation to paragraph 37, it:

- (a) says it will refer to and rely upon the full terms and effect of the 29 August 2018 Documents at trial;
- (b) denies sub-paragraph 37(a) and says further that in the FY18 Media Release Boral stated “*The highlights include...The significant contribution from Headwaters and the delivery of US\$39 million of synergies in year 1 against a target of US\$35 million*”;
- (c) denies subparagraphs 37(b) and (c) and says that the FY18 Media Release quotes Mr Kane as stating the words:

“Boral North America delivered a full year EBITDA of US\$284 million, 9% above the proforma combined Boral and Headwaters result last year. Strong fourth quarter EBITDA margins exceeded 20% with full year EBITDA margins of 17%.

We are confident in the success of our integration of the Headwaters acquisition during the year. First year delivered synergies of US\$39 million exceeded our initial US\$30-US\$35 million target. We have increased our initial year 4 synergy target by 15% to US\$115 million, as a result. We have also strengthened our plans to grow our fly ash business by increasing available supply of fly ash over the coming years.”

- (d) denies subparagraph 37(d) and says further that the FY18 Media Release quotes Mr Kane as stating the words quoted in subparagraph 37(d);
- (e) denies sub-paragraphs 37(e)-(i) and says further that the words quoted in subparagraphs 37(e)-(i) appear in the FY18 MD&A.

C.8 17 September 2018

38. In relation to paragraph 38, it:

- (a) admits that on 17 September 2018 Boral published to the ASX a document entitled “2018 Annual Report” (**Boral 2018 Annual Report**); and
- (b) otherwise denies the paragraph.

39. In relation to paragraph 39, it will refer to and rely on the full terms and effect of the Boral 2018 Annual Report at trial and subject to that:

- (a) in relation to sub-paragraph 39(a), it otherwise admits that the Chairman’s Review in the Boral 2018 Annual Report Boral stated, *“with FY2018 marking the first full year of ownership of the Headwaters business in North America, the Board remains very positive about the acquisition. The compelling opportunity that we saw in the acquisition and the undeniably strong fit with Boral’s existing business, are reflected in the outperformance of synergy delivery. Our year one target was to deliver US\$30-35 million of synergies; we delivered US\$39 million. Our initial four year target was for US\$100 million; we have now increased this target to US\$115 million”*;
- (b) in relation to subparagraph 39(b), it otherwise admits that in the Chief Executive’s Review in the Boral 2018 Annual Report Boral stated the words quoted at sub-paragraph 39(b);
- (c) in relation to sub-paragraph 39(c), it otherwise admits that in the Boral 2018 Annual Report Boral stated, *“A revenue lift of 32% reflects the acquisitions by Headwaters of Krestmark in August 2016 and Magnolia in February 2017, coupled with underlying volume growth of 5%. Operational issues at Magnolia in the first half negatively impacted margins. Operational improvement initiatives at the Magnolia plant, including the installation of a key new plant component and implementation of LEAN manufacturing principles, were completed in FY2018 and are expected to deliver improved performance in FY2019”*; and
- (d) it otherwise denies the paragraph.

C.8A 18 September 2018

39A Admits paragraph 39A.

39B In relation to paragraph 39B, it:

- (a) will refer to and rely upon the full terms and effect of the 18 September 2018 Investor Site Tour Presentation at trial;
- (b) admits subparagraph 39B(a) and says that the 18 September 2018 Investor Site Tour Presentation stated:

“Major wins and new challenges post acquisition

Integration & synergies progressing well, operational issues largely addressed”

- (c) denies subparagraph 39B(b) and says that the 18 September 2018 Investor Site Tour Presentation stated:

“Challenge / Opportunity

...

Operational issues – plant integration (Oceanside, Entegra, Magnolia), commissioning capacity (Lake Wales, Greencastle), safety interventions (StoneCraft)

...

Response / Status

...

Operational issues largely resolved – Oceanside metal roofing (California) will continue to improve in FY19. Capacity upgrades will ramp up in FY19”

- (d) denies subparagraph 38B(c) and says that the 18 September 2018 Investor Site Tour Presentation stated the following in relation to Magnolia:

“Background

- Business purchased immediately prior to Headwaters acquisition
- 1Q FY18 new management made the decision to scale down customer orders and address operational issues at the plant:
 - Poor safety record and highly manual labor
 - Old, unreliable equipment due to little capex in prior years
 - Inconsistent product quality and capacity constraints from operational inefficiencies

- Limited financial controls, weak analysis/reporting framework

FY18 Actions

- Implemented safety program; 50% decrease in recordable incidents
- US\$1.1m capex for upgrades and new machinery
- Reduced manual labor with purchase of automated process machine and glass optimizer
- Performed workflow process improvements resulting in increased efficiencies
- Revamped analytical capabilities via system improvements and additional analysts in the plant
- Improving and managing labor costs”

- (e) denies subparagraph 39B(d) and says that the 18 September 2018 Investor Site Tour Presentation states the following in relation to upgrading the Krestmark operation:

“Background

- Highly manual manufacturing processes
- Inefficient workflow leading to manufacturing challenges
- Poor inventory controls resulting in waste
- Approaching capacity limits

FY18 Actions

- Improved workflow leading to increased capacity
- Revamped lean manufacturing principles
- ERP system upgrade
- Performed costing and margin analysis to drive decisions
- Implemented full inventory management controls and just-in-time manufacturing leading to less waste”

- (f) otherwise denies the paragraph.

C.9 4 February 2019

40. In relation to paragraph 40, it:

- (a) in relation to subparagraph 40(a), admits that on 4 February 2019 at 7:48AM AEDST Boral published a document to the ASX entitled 'Boral announces trading update and revised FY2019 guidance' (**4 February 2019 Release**);
- (b) in relation to subparagraph 40(b) admits that it convened a call on 4 February 2019; and
- (c) otherwise denies the paragraph.

41. In relation to paragraph 41, it says that any words spoken during the 4 February 2019 Call were made in a particular context and Boral will rely at trial upon the full context of what was said and by whom during the 4 February 2019 Call, and the full terms and effect of the 4 February 2019 Release, and subject to that:

- (a) in relation to sub-paragraph 41(a), it otherwise admits that in the 4 February 2019 Release Boral stated, "*Boral Limited (ASX:BLD) today announced that for the first half of FY2019 it expects net profit after tax (NPAT) (before significant items) to be approximately \$200 million and earnings before interest, tax, depreciation and amortisation (EBITDA) (before significant items) to be approximately \$485 million, subject to finalisation of the auditors' review*";
- (b) in relation to sub-paragraph 41(b), it otherwise admits that in the 4 February 2019 Release Boral stated the words quoted in sub-paragraph 41(b) of the ASOCFASOC;
- (c) in relation to sub-paragraph 41(c), it otherwise denies 41(c) and says that in the 4 February 2019 Release Boral stated "*Boral's FY2019 EBITDA (before significant items) is expected to be higher than FY2018 for continuing operations with a skew to the second half, underpinned by...FY2019 EBITDA growth from Boral North America, of approximately 15% in US dollars, excluding discontinued operations*";
- (d) in relation to sub-paragraph 41(d), it otherwise admits that in the 4 February 2019 Release Boral stated, "*Boral will announce interim FY2019 results on Monday of 25 February 2019, at which time it will provide a comprehensive review of first half performance. Key factors impacting first half earnings include the following...Boral North America: Delivery of Headwaters acquisition synergies is progressing well. First half was impacted by above*

average rainfalls in key US states, which slowed volumes in most businesses. Underlying demand growth is moderate while growth rates are mixed geographically, with Roofing benefiting from strong growth“;

- (e) in relation to sub-paragraph 41(e), it otherwise admits that on the 4 February 2019 Call Mr Kane said the words quoted in sub-paragraph 41(e) of the ASOGFASOC;
- (f) in relation to sub-paragraph 41(f), it otherwise admits that on the 4 February 2019 Call, in answer to the question *“is there anything internally that might be difficult to achieve between goals of boosting volumes and extracting costs, both in terms of these more recent initiatives and your synergies for the Headwaters acquisition?”*, Mr Kane said: *“No. There is a consistency between the work we’re doing on cost-out. Things within our control, we feel fairly comfortable about. Things that are outside our control, as we’ve announced, have -- had this impact. The other thing is this more pronounced skew in the second half is now clearly in train. If you went back several years our skew first to second half was plus or minus 0% to 2% roughly, roughly and now it’s much more plus or minus 0% to 5% with a clear indication for second half because of the - when you look at the size of the US business and the fact that the last three months of the financial year in the US, the fourth quarter, has always been the most impactful, you can see why we’re more pronounced in the second half”*; and
- (g) otherwise denies the paragraph.

C.10 25 February 2019

42. In relation to paragraph 42, it:

- (a) admits that on 25 February 2019, it published to the ASX the following documents:
 - (i) a covering letter dated 25 February 2019 enclosing:
 - A “Half Year Report (Appendix 4D) for the half year ended 31 December 2018” (**HY19 Appendix 4D**)’
 - B “Media Release: Boral announces half year results in line with recent guidance and announces progress on a value-creating growth strategy for USG Boral” (**HY19 Media Release**);

C “Management Discussion & Analysis – Results Announcement for the half year ended 31 December 2018” (**HY19 MD&A**);

D “Boral announces senior executive changes”;

(ii) a covering letter dated 25 February 2019 enclosing “Results for half year ended 31 December 2018 – Investor Presentation” (**HY19 Investor Presentation**),

(together, hereafter referred to in this Amended Defence as “**25 February 2019 Documents**”);

(b) says further that in the HY19 MD&A:

(i) that document stated (on p.14) ‘*The results announcement has not been subject to review or audit, however it contains disclosures which are extracted or derived from the Half Year Financial Report for the 6 months ended 31 December 2018*’;

(ii) that document stated (p.14) that ‘*The Half Year Financial Report for the 6 months ended 31 December 2018 is prepared in accordance with the ASX listing rules and should be read in conjunction with any announcements to the market made by the Group during the year*’;

(c) says further that the covering letter to the ASX in respect of the HY19 Investor Presentation stated:

(i) HY19 Investor Presentation was to be ‘webcast on Boral’s website’ at a specified time;

(ii) ‘*The information contained in this announcement should be read in conjunction with today’s announcement of Boral’s half year results and Boral’s most recent annual financial report*’; and

(d) otherwise denies the paragraph.

43. In relation to paragraph 43, it:

(a) refers to and repeats paragraph 42 above;

(b) will refer to and rely upon the full terms and effect of the 25 February 2019 Documents at trial;

(c) says further in relation to subparagraphs 43(a)-(e):

- (i) otherwise admits that the HY19 Appendix 4D stated that:
- A Boral's EBITDA before significant items for the half year ended 31 December 2018 as A\$485.1m;
 - B Boral's EBIT before significant items for the half year ended 31 December 2018 as A\$297.1m;
 - C Boral's net profit before significant items for the half year ended 31 December 2018 as A\$200.2m;
 - D BNA's EBITDA before significant items for the half year ended 31 December 2018 as A\$195.6m (compared to A\$165.2m for the previous half year);
 - E BNA's EBIT before significant items for the half year ended 31 December 2018 as A\$115.0m (compared to A\$90.0m for the previous half year);
- (ii) otherwise admits that in the HY19 Media Release Boral stated that:
- "Boral's half year results include:*
- *Net profit after tax (NPAT) before significant items of \$200 million down 6% on 1H FY2018*
 - *Statutory NPAT including significant items of \$237 million up 37% on 1H FY2018*
 - *Sales revenue of \$2.99 billion up 2% on 1H FY2018, reflecting a modest revenue lift in Boral North America and Boral Australia*
 - *First half earnings before interest, tax, depreciation & amortisation (EBITDA) before significant items of \$485 million compared with \$500 million last year, with the \$15 million year on year difference in EBITDA equivalent to the reduced earnings due to the divestments of Denver Construction Materials and US Block; EBITDA was steady for continuing operations*
 - *Half year Headwaters synergies of US\$14 million against a full year target of US\$25 million*

- *An interim dividend of 13.0 cents per share, up 4% on last year's interim dividend*";
- (iii) otherwise admits that the HY19 MD&A or HY19 Investor Presentation variously recorded the statements of EBITDA, EBIT and net profit before significant items pleaded in subparagraph (c)(i) above;
- (d) says further in relation to subparagraph 43(f), otherwise admits that a slide of the HY19 Investor Presentation to be presented by Mr Kane stated "*Synergies of US\$14m achieved, with business on track to deliver US\$25m target in FY2019*";
- (e) says further in relation to subparagraph 43(g), otherwise admits that the HY19 Media Release quotes Mr Kane as stating the words quoted in sub-paragraph 43(g); and
- (f) otherwise denies the paragraph.

C.11 26 August 2019

44. In relation to paragraph 44, it:

- (a) admits that on 26 August 2019, it published to the ASX the following documents:
 - (i) a covering letter dated 26 August 2019 enclosing "Results for announcement to the market – full year ended 30 June 2019", being its 2019 year-end financial results in the form of an Appendix 4E Preliminary Final Report (hereafter referred to in this Amended Defence as "**FY19 Appendix 4E**");
 - (ii) a covering letter dated 26 August 2019 enclosing:
 - A "Results Announcement for the year ended 30 June 2019 – Media Release" (**FY19 Media Release**);
 - B "Results Announcement for the year ended 30 June 2019 – Management Discussion & Analysis" (**FY19 MD&A**);
 - (iii) a covering letter dated 26 August 2019 enclosing "Results for full year ended 30 June 2019 – Investor Presentation" (**FY19 Investor Presentation**),

(together, hereafter referred to in this Amended Defence as "**26 August 2019 Documents**"); and

(b) otherwise denies the paragraph.

45. In relation to paragraph 45, it:

- (a) refers to and repeats paragraph 44 above;
- (b) will refer to and rely upon the full terms and effect of the 26 August 2019 Documents at trial;
- (c) says further in relation to subparagraphs 45(a)-(e):
 - (i) otherwise admits that FY19 Appendix 4E stated that:
 - A Boral's EBITDA before significant items for the full year ended 30 June 2019 was A\$1,037.4 million on a total operations basis;
 - B Boral's EBIT before significant items for the full year ended 30 June 2019 was A\$659.6 million;
 - C Boral's NPAT before significant items for the full year ended 30 June 2019 was A\$440.1 million;
 - D BNA's EBITDA before significant items for the full year ended 30 June 2019 was A\$415.4 million (compared to A\$348.9 million for the previous full year);
 - E BNA's EBIT before significant items for the full year ended 30 June 2019 was A\$252 million (compared to A\$198.7 million for the previous full year);
 - (ii) otherwise admits that in the FY19 Media Release Boral stated that:

"Boral's full year results include:

 - *Net profit after tax before amortisation (NPATA) & significant items¹ of \$486 million for the full year ended 30 June 2019, 6% lower than FY2018*
 - *Net profit after tax (NPAT) before significant items of \$440 million down 7%*
 - *Statutory NPAT of \$272 million down 38% on FY2018, reflecting significant items of (\$168 million) including a net impairment of \$174 million for the Meridian Brick joint venture*

- *Reported sales revenue of \$5,863 million steady on FY2018 and sales revenue for continuing operations of \$5,801 million up 4%, despite a 15% decline in Australian housing starts and a 2% decline in the US housing market*
- *Earnings before interest, tax, depreciation & amortisation (EBITDA) of \$1,037 million compared with \$1,056 million last year. EBITDA2 for continuing operations of \$1,033 million was up 2%, reflecting a \$66 million EBITDA lift from Boral North America, partly offset by lower warnings from Boral Australia, including \$30 million of lower Property earnings, and a lower contribution from USG Boral*
- *Full year Headwaters synergies of US\$32 million slightly ahead of plan; with total synergies of US\$71 million now delivered at end of year two*
- *A final dividend of 13.5 cents per share (50% franked) will be paid on 1 October 2019, resulting in a full year dividend of 26.5 cents, steady on last year”;*

- (iii) otherwise admits that the FY19 MD&A or FY19 Investor Presentation variously recorded the statements of EBITDA, EBIT and net profit before significant items pleaded in subparagraph (c)(i) above;
- (d) says further in relation to sub-paragraph 45(f), otherwise admits that the FY19 MD&A stated the words quoted in the subparagraph;
- (e) says further in relation to subparagraph 45(g), otherwise admits that the FY19 MD&A stated, *“We continue to make good progress integrating the Headwaters acquisition. In stone, we completed the first phase of plant network optimisation initiatives, while in Roofing, we continue to optimise our operations in Florida, and launched our branding and channel to market strategies around our metal roofing line. The consolidation of back office, finance and IT systems is continuing in line with our expectations”;*
- (f) says further in relation to subparagraph 45(h), otherwise admits that the FY19 Media Release quotes Mr Kane as stating the words quoted in the subparagraph;
- (g) says further in relation to subparagraph 45(i), otherwise admits that:

- (i) the FY19 Media Release stated that *“Commenting on Boral's outlook for FY2020, Mr Kane said after taking into account where Boral finished the year in FY2019, the outlook for Boral's markets in FY2020, and the trading conditions we have seen in July and August, expect Boral's NPAT (before significant items) to be around 5-15% lower in FY2020 relative to FY2019”*;
- (ii) a slide of the FY19 Investor Presentation to be presented by Mr Kane stated *“Boral expects NPAT to be ~5-15% lower in FY2020 relative to FY2019”*;
- (h) says further in relation to subparagraph 45(j), otherwise admits that the FY19 MD&A stated the words quoted in the subparagraph;
- (i) says further in relation to subparagraph 45(k), otherwise admits that FY19 MD&A stated the words quoted in the subparagraph; and
- (j) otherwise denies the paragraph.

C.11A 19 September 2019

45A Admits paragraph 45A.

45B In relation to 45B, it:

- (a) will refer to and rely upon the full terms and effect of the 19 September 2019 Investor Site Tour Presentation at trial; and
- (b) denies paragraph 45B and says that on a slide entitled “Boral North America strategic objectives”, the 19 September 2019 Investor Site Tour Presentation stated:

“Strategic Objectives

...

2. Integrate business and deliver on synergies

...

FY19 Progress

...

- Delivering synergies – US\$32m in FY19, cumulative US\$71m delivered; Year 4 target of US\$115 on track
- Operational issues resolved

...”

C.12 6 November 2019

46. Admits paragraph 46.

47. In relation to paragraph 47, it:

- (a) says that on 6 November 2019 it published to the ASX a covering letter dated 6 November 2019 enclosing:
 - (i) the “Chairman’s Address by Ms Kathryn Fagg” (**2019 Chairman’s Address**);
 - (ii) the “CEO & Managing Director’s Address by Mr Kane” (**2019 CEO & Managing Director’s Address**); and
 - (iii) the “Chairman of the Remuneration & Nominations Committee Address by Mr John Marlay”,
 (together, the **2019 AGM Addresses**);
- (b) admits that the 2019 Chairman’s Address states the words quoted in subparagraphs 47(a)-(c);
- (c) admits that the 2019 CEO & Managing Director’s Address states the words quoted in subparagraphs 47(d)-(gh);
- (d) will refer to and rely upon the full terms and effect of the 2019 AGM Addresses at trial; and
- (e) otherwise denies the paragraph.

D. THE ALLEGED 5-6 DECEMBER CORRECTIVE DISCLOSURES AND THEIR ALLEGED PRICE IMPACT

D.1 5-6 December 2019

48. In relation to paragraph 48, it:

- (a) admits that on 5 December 2019 at 5:36PM AEST Boral published a document to the ASX entitled, ‘Financial Irregularities in Boral’s North American Windows business’ (**5 December 2019 Release**); and
- (b) otherwise denies the paragraph.

49. In relation to paragraph 49, it:
- (a) will refer to and rely upon the full terms and effect of the 5 December 2019 Release at trial; and
 - (b) otherwise admits the paragraph.
50. In relation to paragraph 50, it:
- (a) admits it convened a call on 6 December 2019; and
 - (b) otherwise denies the paragraph.
51. In relation to paragraph 51, it says that any words spoken during the 6 December 2019 Call were made in a particular context and Boral will rely at trial upon the full context of what was said and by whom, and it otherwise:
- (a) in relation to sub-paragraph 51(a):
 - (i) admits that during the 6 December 2019 Call Mr Kane was asked the following question, *“Then in terms of the US\$20 million to US\$30 million impact at the EBITDA line, Mike, what’s the allocation between the 10 months that you’re calling out in FY’19 versus this year, if it can be done that way?”*;
 - (ii) admits that in response to the question in 51(a)(i) above Mr Kane said, *“I’ll make a comment and then I’ll ask Ros to talk about the allocation of where the money comes in, in the two financial years. We bring fences at this point in the investigation between the months of September 2018 and October 2019. We believe that the issue largely occurs within those 2 stakes in the ground. We have a full financial year report for our financial year 2018 with other people in the financial roles at the time that we have confidence in what that information was and we are going back and rechecking as well as looking forward and trying to look at the margins in the business and understand it going forward, but we don’t have all those answers today. But what we do know is that we estimate in the order of US\$20 million to US\$30 million as occurring between those two dates, and I’ll ask Ros to comment on that”*;
 - (iii) admits that in response to the question in 51(a)(i) above Ms Ng said, *“Simon, in terms of how much is attributed to financial year 2019 and this current year, again, that’s under investigation. It does cross over*

the 14 months but we are investigating so it's hard to give you an answer in terms of how much belongs to '19 and how much is ongoing at this stage.”;

(b) in relation to sub-paragraph 51(b):

- (i) admits that during the 6 December 2019 Call Mr Kane and Ms Ng were asked the following question, *“just in regards to your confidence to the broader business just in terms of the financial discipline please”;*
- (ii) admits that in response to the question in 51(b)(i) above Mr Kane said, *“I’ll make a quick comment on that. The Windows business is a unique business in the portfolio with North America in that when it came into the portfolio there was no like for like business that it merged with, whereas in the other divisions there were like for like mergers. There’s also the question of the shared businesses services. The financial activity in the bulk of the other businesses in North America are handled outside of the individual divisions by a shared business service, so it’s quite a different financial exercise that goes on in the other building products in North America. Whereas the Windows business is working on a legacy ERP system standalone and within the business. Ros, do you want to comment on that?”;*
- (iii) admits that in response to the question in 51(b)(i) above Ms Ng said, *“Just to add to Mike’s comment Sophie, that as Mike mentioned, the Windows business was acquired really recently in 2017 by Headwaters, so it’s a very late addition to the portfolio. When we look at our other businesses for North America, not only what Mike said that there is a shared servicing centre that has independence in terms of the financial reporting, but obviously those businesses have been owned by Headwaters for many decades and subject to SEC and the internal and external audits of Headwaters. Similarly, our own businesses in Boral North America we’ve had ownership for decades and they have been subject to multiple audits ongoing for decades. So, the issue really is at this stage within the Windows business”;*

(c) in relation to sub-paragraph 51(c):

- (i) admits that during the 6 December 2019 Call Mr Kane was asked, *“then the thought that it's contained within that time period, if we take \$20 million to \$30 million off last year's earnings, it would basically mean that that windows division was unprofitable. I'm just wondering how you get a windows business which was historically thought to be comfortably profitable and then last year on an underlying basis reports no profit. Has there been a material decrease in the actual performance of that business or is there actually risks that those prior profits were overstated?”*;
- (ii) admits that in response to the question in 5(c)(i) above Mr Kane said, *“So I think the first answer to that is that all of the losses are not in the prior year, so they're shared across both years, so it wouldn't bring it to no profitability. But at this point we are trying to restate the profitability of this business and understand what happened in the interim and whether this misreporting reflected a long term view of the profitability of this business or an interim view based on mismanagement and/or misconduct. It's unclear at this point and what we do know based on the current information available is that this appears to be the range of the financial impact through those months. The only comfort I take from the stakes in the ground of September '18 through October '19 is that it gives us some confidence that the prior performance of the business in financial year '18, subject to verification again by us, suggests that the business can be profitable to levels that we reported in '18. We have a Team of experts inside the business who are attempting to clarify for us what's the go forward position on this business and at this point we don't want to make any comments about it until we complete that investigation”*;

(d) in relation to sub-paragraph 51(d):

- (i) admits that during the 6 December 2019 Call Ms Ng was asked, *“This is just following on from Peter's question before. I just want to understand actually what EBITDA you reported for windows in FY19. I know you just give the divisional EBITDA number in US dollars at 297, but what did you believe windows contributed to that at that time, back in August when you reported?”*;

- (ii) admits that in response to the question in 51(d)(i) above Ms Ng said, *“Well, I think if we go back to the results announcement, Brook, and you will see that for our full year in the MD&A results announcement, what we have disclosed for our windows division, an external revenue of around \$158 million in US dollars, which represents around 10% of the US revenue, total US revenue for financial year '19 was just under \$1.6 billion. We indicated in the release, the in the MD&A, that revenue increased by 5% and EBITDA also improved. We haven't talked explicitly around the EBITDA margins, we have said that the EBITDA margins for the Boral North America was around 18% to 19% in financial year 2019 and I think in some of the presentations and some of the investor meetings that we have had, we have indicated that windows fairly represents that EBITDA margin”*;
- (e) in relation to sub-paragraph 51(e):
 - (i) admits that during the 6 December 2019 Call Mr Kane was asked, *“just wanted to quickly follow up on an earlier question, just with regards to the investigation, will it be broadened to other divisions of the Headwaters acquisition or are you confident that this is isolated to windows alone?”*;
 - (ii) admits that in response to the question in paragraph 51(e)(i) above Mr Kane said, *“So our North American financial Team has looked at the other divisions in North America and because they are, as we mentioned earlier, situated quite distinctly from that windows division in a shared business service for the other building products, it doesn't have the same vulnerabilities that we have obviously identified in our investigation to date in the windows organisation. But our financial Team in North America continues to look at all the business to make sure that we haven't overlooked anything. We think this issue is isolated to the windows business based on what we know to date. The only caution I give is that our investigation is not complete at this point”*; and
- (f) otherwise denies the paragraph.

D.2 Alleged price effect of the 5 December 2019 Announcement and/or the 6 December 2019 Call

52. In relation to paragraph 52, it:

- (a) admits that the opening, high, low and closing prices of Boral Shares on the ASX between 5 December 2019 and 11 December 2019 were as follows:

Date	Open	High	Low	Close
5 Dec 2019	4.86	4.94	4.86	4.92
6 Dec 2019	4.80	4.80	4.565	4.61
9 Dec 2019	4.64	4.64	4.55	4.57
10 Dec 2019	4.55	4.56	4.45	4.50
11 Dec 2019	4.48	4.60	4.47	4.56

- (b) admits that the opening, high and low prices of Boral ADRs between 4 December 2019 and 11 December 2019 (US, New York time) were as follows:

Date	Open	High	Low
4 Dec 2019	13.26	13.26	13.26
5 Dec 2019	13.43	13.43	13.43
6 Dec 2019	12.60	12.60	12.60
9 Dec 2019	12.49	12.49	12.49
10 Dec 2019	12.26	12.26	12.26
11 Dec 2019	12.50	12.50	12.50

- (c) otherwise denies the paragraph.

E. THE ALLEGED 10 FEBRUARY 2020 CORRECTIVE DISCLOSURES AND ITS ALLEGED PRICE IMPACT

E.1 10 February 2020

53. In relation to paragraph 53, it:

- (a) admits that on 10 February 2020 at 8:54AM AEST it published to the ASX a covering letter dated 10 February 2020 enclosing:
- (i) “Update on Boral’s North American Windows Business” (**10 February 2020 Release**);

- (ii) “Update on 1H FY2020 Results, FY2020 Outlook Guidance, Interim Dividend”;
- (iii) “Intended Retirement of Mike Kane, Boral’s CEO & Managing Director”; and
- (iv) “Reactivation of Dividend Reinvestment Plan”;

(b) otherwise denies the paragraph.

54. In relation to paragraph 54, it:

- (a) will refer to and rely upon the full terms and effect of the 10 February 2020 Release at trial; and
- (b) admits that in the 10 February 2020 Release, Boral made each of the statements quoted in subparagraphs 54(a)-(g) ASOGFASOC; and
- (c) otherwise denies the paragraph.

E.2 Alleged price effect of the 10 February 2020 Announcement

55. In relation to paragraph 55, it:

- (a) admits that the opening, high, low and closing prices of Boral Shares on the ASX between 7 February 2020 and 11 February 2020 were as follows:

Date	Open	High	Low	Close
7 Feb 2020	5.21	5.29	5.13	5.15
10 Feb 2020	4.60	4.75	4.52	4.60
11 Feb 2020	4.66	4.79	4.62	4.75

- (b) admits that the opening, high and low prices of Boral ADRs between 7 February 2020 and 11 February 2020 (US, New York time) were as follows:

Date	Open	High	Low
7 Feb 2020	13.78	13.78	13.78
10 Feb 2020	12.29	12.29	12.29
11 Feb 2020	12.74	12.74	12.74

- (c) otherwise denies the paragraph.

F. THE ALLEGED TRUE POSITION

F.0 Alleged inadequate due diligence

55A In relation to paragraph 55A, it:

- (a) in respect of subparagraph (a), Headwaters' acquisition of Windows says that:
 - (i) Headwaters acquired the assets of Krestmark Industries, L.P. and its affiliates Crest Vinyl Extrusions LLC (**Krestmark**) and Legacy Vinyl Windows LP (**Legacy**) on or around 19 August 2016; and
 - (ii) Headwaters acquired Magnolia Windows and Doors LLC (**Magnolia**) on or around 2 February 2017; and
- (b) in respect of subparagraph (b), says that Boral had not conducted any internal or external audit of Windows, or any due diligence of Magnolia, prior to or as at 21 November 2016;
- (c) in respect of subparagraph (d), says that as at 21 November 2016, Boral's consideration of its acquisition of Headwaters included Krestmark and Legacy (but not Magnolia) forming part of the portfolio of asserts to be acquired; and
- (d) otherwise denies the paragraph.

F.1 Alleged non-integration of Windows

56. In relation to paragraph 56, it:

- (a) refers to and repeats paragraph 10;
- (b) admits that at all material times from when Boral Industries Inc acquired Headwaters, Windows:
 - (i) ~~Windows~~ operated enterprise resource planning (**ERP**) software that was separate and distinct from the ERP software used by other entities in the BNA Division of the Boral Group; and
 - (ii) did not utilise the Boral Shared Accounting Service (**BSAS**);
 - (iii) did not have a perpetual inventory system that interfaced with the system for maintaining the general ledger; and
- (c) otherwise denies the paragraph.

57. In relation to paragraph 57, it:

- (a) refers to and repeats paragraph 56;

(b) otherwise dDenies paragraph 57.

58. In relation to paragraph 58, it:

- (a) admits that Boral undertook: an internal audit of Windows between July 2017 and October 2017 when it was completed;
 - (i) the June 2017 Windows Audit;
 - (ii) the March 2018 Magnolia Special Review;
 - (iii) the January 2019 Windows Audit;
 - (iv) the November 2019 Windows Audit;
- (b) admits that those audits identified certain issues the matters recorded in the reports and memorandum referred to in subparagraphs (a) to (d); and
- (c) otherwise denies the paragraph.

F.2 Alleged Manipulated Financial Reporting

59. In relation to paragraph 59, it:

- (a) refers to and repeats paragraph 10 above;
- (b) admits that, after Boral Industries Inc acquired Headwaters, from about March 2018 to October 2019, finance personnel within the Windows business manipulated accounts and financial statements primarily to artificially inflate the overall profitability and health of the Windows business, including in relation to inventory levels and costs associated with raw materials and labour in the accounts and financial statements for the Windows business for the financial years ending 30 June 2018 and 30 June 2019; and
- (c) otherwise denies the paragraph.

F.3 Alleged Manipulated Financial Reporting Margin

60. Denies paragraph 60.

F.4 Alleged Manipulated Financial Reporting Quantum and Duration

61. In relation to paragraph 61, it:

- (a) refers to and repeats paragraph 59 above and paragraph 66, 68 and 70 below;
- (b) admits that the conduct referred to in subparagraph 59(b) above extended for a 20-month period to the end of October 2019; and

- (c) admits that, as a consequence of the conduct referred to in subparagraph 59(b) above, Windows' pre-tax earnings were overstated by a total of US\$24.4 million between March 2018 and October 2019; and
- (d) otherwise denies the paragraph.

F.5 Alleged Inadequate Systems

62. In relation to paragraph 62, it:

- (a) refers to and repeats paragraph 59 above;
- (b) says that during the Relevant Period, Windows' financial reporting systems, controls and governance mechanisms prevented the conduct referred to in paragraph 59 above from continuing and led to the detection of it; and
- (c) otherwise denies the paragraph.

63. In relation to paragraph 63, it:

- (a) refers to and repeats paragraph 59 above;
- (b) says that during the Relevant Period, the financial reporting systems, controls and governance mechanisms of Boral and/or the entities within the Boral North America Division, prevented the conduct referred to in paragraph 59 above from continuing and led to the detection of it; and
- (c) otherwise denies the paragraph.

64. Denies paragraph 64.

F.6 Alleged Inadequate Understanding of Headwaters

65. Denies paragraph 65.

F.7 Alleged Overstated financial performance

66. In relation to paragraph 66, it:

- (a) says it reports financial performance on a continuing operations basis;
- (b) in respect of the financial year ending 30 June 2018:
 - (i) admits that it first reported year-end financial results for that year on 29 August 2018 in the form of FY18 Appendix 4E, followed by the other 29 August 2018 Announcements and refers to and repeats paragraph 36(a) above;

- (ii) admits that the EBITDA for controlled entities within the Boral North America Division of the Boral Group for the financial year ending 30 June 2018, as reported on 29 August 2018, was A\$367.5 million (approximately US\$284 million);
 - (iii) says those results excluded Denver Construction Materials, which was divested in or around July 2018;
 - (iv) says further that the EBITDA and EBIT for Boral and its controlled entities for the financial year ending 30 June 2018, as reported on 29 August 2018, was approximately A\$1,033 million and A\$672.9 million on a continuing operations basis (or approximately A\$1,056 million and A\$688 million, respectively, on a total operations basis);
- (c) admits that in light of subsequent information which emerged, and in reporting its results for the financial year ending 30 June 2020, on or around 28 August 2020, it:
- (i) restated the opening 'Retained Earnings' for controlled entities within the Boral North America Division of the Boral Group as at 1 July 2018;
 - (ii) accordingly, restated the EBITDA for controlled entities within the Boral North America Division of the Boral Group for the financial year ending 30 June 2018 was restated as A\$362.6 million (approximately US\$280.6 million), being a difference of approximately A\$4.9 million or US\$3.4 million from the amounts stated on 29 August 2018;
 - (iii) says that this restatement occurred after adjustment due to financial irregularities in the Windows business and the presentation of discontinued operations;

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- (iv) says further that for controlled entities within Boral for the financial year ending 30 June 2018, as reported on 28 August 2020, the EBITDA was approximately A\$1,051 million and the EBIT was A\$684 million on a total operations basis; and

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- (d) otherwise denies paragraph 66.
67. Denies paragraph 67.
68. In relation to paragraph 68, it:
- (a) says it reports financial performance on a continuing operations basis;
 - (b) in respect of the first half of the financial year ending 30 June 2019 (namely the six months ending 31 December 2018):
 - (i) admits that it first reported half year financial results for the period ended 31 December 2018 on 25 February 2019 in the form of HY19 Appendix 4D and refers to and repeats paragraph 42(a) above;
 - (ii) admits that the reported EBITDA for controlled entities within the Boral North America Division for the half year ended 31 December 2018, as reported on 25 February 2019, was approximately A\$196 million or US\$141 million;
 - (iii) admits that the reported EBIT for controlled entities within the Boral North America Division for the half year ended 31 December 2018, as reported on 25 February 2019, was approximately A\$115 million or US\$83 million;
 - (c) admits that in light of subsequent information which emerged, and in reporting its results for the half year ended 31 December 2019, on or around 20 February 2020, it:
 - (i) restated the EBITDA for controlled entities within the Boral North America Division of the Boral Group for the six months ending 31 December 2018 was restated as approximately A\$185 million or US\$134 million, being a difference of approximately A\$11 million or US\$7 million from the amounts stated on 25 February 2019;
 - (ii) restated the EBIT for controlled entities within the Boral North America Division of the Boral Group for the six months ending 31 December 2018 was restated as approximately A\$105 million or US\$76 million, being a difference of approximately A\$10 million or US\$7 million on from the amounts stated on 25 February 2019;
 - (d) admits, in light of subsequent information which emerged, subparagraph 68(b) and (d); and

- (e) otherwise denies the paragraph.
69. Denies paragraph 69.
70. In relation to paragraph 70, it:
- (a) says it reports financial performance on a continuing operations basis;
 - (b) in respect of the financial year ending 30 June 2019:
 - (i) admits that it first reported year-end financial results for that year on 26 August 2019 in the form of FY19 Appendix 4E, followed by the other 26 August 2019 Announcements and refers to and repeats paragraph 44(a) above;
 - (ii) admits that the NPAT for Boral and controlled entities for that financial year (excluding significant items) as reported on 26 August 2019, was stated as approximately A\$440 million;
 - (iii) says further that the EBITDA and EBIT for Boral and its controlled entities for the financial year ending 30 June 2019, as reported on 26 August 2019, was approximately A\$1,033 million and A\$660 million, respectively, on a continuing operations basis (or approximately A\$1,037 million EBITDA on a total operations basis);
 - (iv) admits that the EBITDA for controlled entities within the Boral North America Division of the Boral Group for the financial year ending 30 June 2019, as reported on 26 August 2019, was approximately A\$415 million (approximately US\$297 million);
 - (v) admits that the EBIT for controlled entities within the Boral North America Division of the Boral Group for the financial year ending 30 June 2019, as reported on 26 August 2019, was approximately A\$252 million (approximately US\$180 million);
 - (c) admits that in light of subsequent information which emerged, and in reporting its results for the financial year ending 30 June 2020, on or around 28 August 2020, it:
 - (i) admits that the NPAT for Boral and controlled entities for the financial year ending 30 June 2019 (excluding significant items) was restated as approximately A\$418.7 million;

- (ii) says further that the EBITDA and EBIT for Boral and its controlled entities for the financial year ending 30 June 2019 was restated as approximately A\$1,005 million and A\$633 million, respectively, on a continuing operations basis (or approximately A\$1,010 million and A\$632 million, respectively, on a total operations basis);
- (iii) admits that the EBITDA for controlled entities within the Boral North America Division of the Boral Group for the financial year ending 30 June 2019 (excluding significant items) was restated as approximately A\$388 million (approximately US\$278 million);
- (iv) admits that the EBIT for controlled entities within the Boral North America Division of the Boral Group for the financial year ending 30 June 2019 (excluding significant items) was restated as approximately A\$225 million (approximately US\$161 million);
- (v) says that this restatement occurred after adjustment due to financial irregularities in the Windows business and the presentation of discontinued operations;

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- (d) admits, in light of subsequent information which emerged, subparagraph 70(b)(ii) and (b)(iv); and
- (e) otherwise denies the paragraph.

71. Denies paragraph 71.

F.8 Alleged Overstated Guidance

72. In relation to paragraph 72, it:

- (a) refers to and repeats paragraphs 36, 37, 59 and 66;
- (b) admits that the documents referred to in paragraph 36 above did not include the matters pleaded in paragraphs 72(a) and 72(b) of the ASOCFASOC; and
- (c) otherwise denies the paragraph.

73. Denies paragraph 73.

74. In relation to paragraph 74, it:

- (a) refers to and repeats paragraphs 44, 45, 59, 68 and 70;

- (b) admits that the documents referred to in paragraph 44 above did not include the matters pleaded in paragraphs 74(a), (b) and (c) of the ASOCFASOC; and
- (c) otherwise denies the paragraph.

75. Denies paragraph 75.

G. ALLEGED MISLEADING OR DECEPTIVE CONDUCT

G.0 Alleged Representations made from 21 November 2016

75A In relation to paragraph 75A, it:

- (a) refers to and repeats paragraphs 19, 20 and 21 above; and
- (b) denies the paragraph.

75B Denies paragraph 75B.

75C Denies paragraph 75C.

75D In relation to paragraph 75D, it:

- (a) in respect of the conduct of Boral admitted in paragraph 20 above:
 - (i) admits it was conduct engaged in by Boral in trade or commerce and in relation to Boral Shares; but
 - (ii) denies it was conduct engaged in by Boral in relation to Boral ADRs; and
- (b) otherwise denies the paragraph.

75DA Denies paragraph 75DA.

75E Denies paragraph 75E.

75F Denies paragraph 75F.

G.1 Alleged Representations made from 30 August 2017

76. In relation to paragraph 76, it:

- (a) refers to and repeats paragraphs 19, and 26 to 29 above; and
- (b) denies the paragraph.

77. Denies paragraph 77.

78. Denies paragraph 78.

79. In relation to paragraph 79, it

- (a) in respect of the conduct of Boral admitted in paragraphs 26 to 29 above:
 - (i) admits it was conduct engaged in by Boral in trade or commerce and in relation to Boral Shares; but
 - (ii) denies it was conduct engaged in by Boral in relation to Boral ADRs; and
- (b) otherwise denies paragraph 79.

80. Denies paragraph 80.

81. Denies paragraph 81.

82. Denies paragraph 82.

G.2 Alleged Representations made from 13 February 2018

83. In relation to paragraph 83, it:

- (a) refers to and repeats paragraphs 19, 30, and 31 above; and
- (b) denies the paragraph.

84. Denies paragraph 84.

85. Denies paragraph 85.

86. In relation to paragraph 86, it:

- (a) in respect of the conduct of Boral admitted in paragraphs 30 and 31 above:
 - (i) admits it was conduct engaged in by Boral in trade or commerce and in relation to Boral Shares; but
 - (ii) denies it was conduct engaged in by Boral in relation to Boral ADRs; and
- (b) otherwise denies the paragraph.

87. Denies paragraph 87.

88. Denies paragraph 88.

89. Denies paragraph 89.

G.3 Alleged Representations from 1 May 2018

90. In relation to paragraph 90, it:

- (a) refers to and repeats paragraphs 19, 34 and 35 above; and
 - (b) denies the paragraph.
91. In relation to paragraph 91, it:
- (a) refers to and repeats paragraphs 19, 34 and 35; and
 - (b) denies the paragraph.
92. In relation to paragraph 92, it:
- (a) refers to and repeats paragraphs 19, 34 and 35 above; and
 - (b) denies the paragraph.
93. Denies paragraph 93.
94. In relation to paragraph 94, it:
- (a) in respect of the conduct of Boral admitted in paragraphs 34 and 35 above:
 - (i) admits it was conduct engaged in by Boral in trade or commerce and in relation to Boral Shares; but
 - (ii) denies it was conduct engaged in by Boral in relation to Boral ADRs; and
 - (b) otherwise denies the paragraph.
95. Denies paragraph 95.
96. Denies paragraph 96.
97. Denies paragraph 97.
98. Denies paragraph 98.
99. Denies paragraph 99.

G.4 Alleged Representations from 29 August 2018

100. In relation to paragraph 100, it:
- (a) refers to and repeats paragraphs 19, 36 and 37 above; and
 - (b) denies the paragraph.
101. In relation to paragraph 101, it:
- (a) refers to and repeats paragraphs 19, 36 and 37 above; and
 - (b) denies the paragraph.

102. Denies paragraph 102.

103. In relation to paragraph 103, it:

- (a) in respect of the conduct of Boral admitted in paragraphs 36 and 37 above:
 - (i) admits it was conduct engaged in by Boral in trade or commerce and in relation to Boral Shares; but
 - (ii) denies it was conduct engaged in by Boral in relation to Boral ADRs; and
- (b) otherwise denies the paragraph.

104. Denies paragraph 104.

105. Denies paragraph 105.

106. Denies paragraph 106.

107. Denies paragraph 107.

108. Denies paragraph 108.

109. Denies paragraph 109.

G.5 Alleged Representations from 25 February 2019

110. In relation to paragraph 110, it:

- (a) refers to and repeats paragraphs 19, 42 and 43 above; and
- (b) denies the paragraph.

111. Denies paragraph 111.

112. Denies paragraph 112.

113. In relation to paragraph 113, it:

- (a) in respect of the conduct of Boral admitted in paragraphs 42 and 43 above:
 - (i) admits it was conduct engaged in by Boral in trade or commerce and in relation to Boral Shares; but
 - (ii) denies it was conduct engaged in by Boral in relation to Boral ADRs; and
- (b) otherwise denies the paragraph.

114. Denies paragraph 114.

115. Denies paragraph 115.

G.6 Alleged Representations from 26 August 2019

116. In relation to paragraph 116:

- (a) refers to and repeats paragraphs 19, 44 and 45 above; and
- (b) denies the paragraph.

117. Denies paragraph 117.

118. Denies paragraph 118.

119. In relation to paragraph 119, it:

- (a) in respect of the conduct of Boral admitted in paragraphs 44 and 45 above:
 - (i) admits it was conduct engaged in by Boral in trade or commerce and in relation to Boral Shares; but
 - (ii) denies it was conduct engaged in by Boral in relation to Boral ADRs; and
- (b) otherwise denies the paragraph.

120. Denies paragraph 120.

121. Denies paragraph 121.

122. Denies paragraph 122.

123. Denies paragraph 123.

G.7 Alleged Representations from 6 December 2019

124. In relation to paragraph 124, it:

- (a) refers to and repeats paragraphs 19, and 48 to 51 above; and
- (b) denies the paragraph.

125. Denies paragraph 125.

126. Denies paragraph 126.

127. In relation to paragraph 127, it:

- (a) in respect of the conduct of Boral admitted in paragraphs 48 to 51 above:
 - (i) admits it was conduct engaged in by Boral in trade or commerce and in relation to Boral Shares; but

(ii) denies it was conduct engaged in by Boral in relation to Boral ADRs;
and

(b) otherwise denies the paragraph.

128. Denies paragraph 128.

129. Denies paragraph 129.

130. Denies paragraph 130.

131. Denies paragraph 131.

132. Denies paragraph 132.

H. ALLEGED CONTINUOUS DISCLOSURE CONTRAVENTIONS

H.0 Alleged inadequate due diligence

132A In relation to paragraph 132A, it:

(a) refers to and repeats paragraph 55A above; and

(b) denies the paragraph.

132B In relation to paragraph 132B, it:

(c) refers to and repeats 132A above; and

(d) denies the paragraph.

132C Denies paragraph 132C.

132D Denies paragraph 132D.

H.1 Alleged Non-integration of Windows

133. In relation to paragraph 133, it:

(a) refers to and repeats paragraphs 56 and 57 above;

(b) otherwise denies the paragraph.

134. In relation to paragraph 134, it:

(a) refers to and repeats paragraph 133 above;

(b) insofar as it thereby denies the existence of the Non-integration of Windows Information and/or the Alternative Non-integration of Windows Information as

defined in paragraphs 56 and 57 of the ASOCFASOC, Boral accordingly denies paragraph 134; and

(c) otherwise denies the paragraph.

135. Denies paragraph 135.

136. In relation to paragraph 136, it:

(a) refers to and repeats paragraphs 56 and 57 above;

(b) otherwise admits that it did not communicate the information defined as the 'Non-integration of Windows Information' and/or the 'Alternative Non-Integration of Windows Information' in paragraphs 56 and 57 of the ASOCFASOC to the ASX before 5 December 2019; and

(c) otherwise denies the paragraph.

137. Denies paragraph 137.

H.2 Alleged Manipulated financial reporting

138. In relation to paragraph 138, it:

(a) refers to and repeats paragraph 59 above; and

(b) denies the paragraph.

139. In relation to paragraph 139, it:

(a) refers to and repeats paragraph 138 above; and

(b) denies the paragraph.

140. Denies paragraph 140.

141. In relation paragraph 141, it:

(a) refers to and repeats paragraphs 138 to 140 above;

(b) admits that it communicated the information admitted in paragraph 59 above to the ASX on 5 December 2019 and not before;

(c) otherwise admits that it did not otherwise communicate the information defined as the 'Manipulated Financial Reporting Information' in paragraph 59 of the ASOCFASOC to the ASX before 5 December 2019; and

(d) otherwise denies the paragraph.

142. Denies paragraph 142.

H.3 Alleged Manipulated Financial Reporting Margin

143. In relation to paragraph 143, it:
- (a) refers to and repeats paragraph 60 above; and
 - (b) denies the paragraph.
144. In relation to paragraph 144, it:
- (a) refers to and repeats paragraph 143 above; and
 - (b) denies the paragraph.
145. Denies paragraph 145.
146. In relation to paragraph 146, it:
- (a) refers to and repeats paragraphs 143 to 145 above;
 - (b) otherwise admits that it did not communicate the information defined as the 'Manipulated Financial Reporting Margin Information' in paragraph 60 of the ASOCFASOC to the ASX before 10 February 2020; and
 - (c) otherwise denies the paragraph.
147. Denies paragraph 147.

H.4 Alleged Manipulated Financial Reporting Quantum and Duration

148. In relation to paragraph 148, it:
- (a) refers to and repeats paragraph 61 above;
 - (b) denies it was aware of the matters admitted in paragraph 61 above from 5 December 2019 but it admits it was aware of them from on or about 10 February 2020; and
 - (c) otherwise denies the paragraph.
149. In relation to paragraph 149, it:
- (a) refers to and repeats paragraph 148 above; and
 - (b) denies the paragraph.
150. Denies paragraph 150.
151. In relation to paragraph 151, it:
- (a) refers to and repeats paragraphs 148 and 149 above;

- (b) admits that it did not communicate the specific information admitted in paragraph 61 above to the ASX before 10 February 2020;
- (c) says it did communicate, on 5 December 2019, the matters set out in the 5 December 2019 Announcement, including the information that:
 - (i) *'details are preliminary at this point but the irregularities relate to the period between September 2018 and October 2019';*
 - (ii) *'Based on information currently available, it is estimated the irregularities relating to the period between September 2018 and October 2019 will result in a one-off impact on earnings before interest, tax, depreciation and amortisation (EBITDA) in the order of US\$20 million to US\$30 million';* and
- (d) otherwise admits that it did not communicate the information defined as the 'Manipulated Financial Reporting Quantum and Duration Information' in paragraph 61 of the ASOCFASOC to the ASX before 10 February 2020 or alternatively, 5 December 2019 as to the range of impact; and
- (e) otherwise denies the paragraph.

152. Denies paragraph 152.

H.5 Alleged Inadequate systems

153. In relation to paragraph 153, it:

- (a) refers to and repeats paragraph 64 above; and
- (b) denies the paragraph.

154. In relation to paragraph 154, it:

- (a) refers to and repeats paragraph 154 above; and
- (b) denies the paragraph.

155. Denies paragraph 155.

156. In relation to paragraph 156, it:

- (a) refers to and repeats paragraphs 153 to 155 above;
- (b) otherwise admits that it did not communicate the information defined as the 'Inadequate Systems Information' in paragraph 61 of the ASOCFASOC to the ASX before 5 December 2019; and

(c) otherwise denies the paragraph.

157. Denies paragraph 157.

H.6 Alleged Inadequate understanding of Headwaters

158. In relation to paragraph 158, it:

- (a) refers to and repeats paragraph 65 above; and
- (b) denies the paragraph.

159. In relation to paragraph 159, it:

- (a) refers to and repeats paragraph 158 above; and
- (b) denies the paragraph.

160. Denies paragraph 160.

161. In relation to paragraph 161, it:

- (a) refers to and repeats paragraphs 158 to 160 above; and
- (b) otherwise admits that it did not communicate the information defined as the 'Inadequate Understanding of Headwaters Information' in paragraph 65 of the ASOCFASOC to the ASX before 5 December 2019; and
- (c) otherwise denies the paragraph.

162. Denies paragraph 162.

H.7 Alleged Overstated Boral North America FY18 financial performance

163. In relation to paragraph 163, it:

- (a) refers to and repeats paragraphs 66 and 67 above; and
- (b) denies the paragraph.

164. In relation to paragraph 164, it:

- (a) refers to and repeats paragraph 163 above; and
- (b) denies the paragraph.

165. Denies paragraph 165.

166. In relation to paragraph 166, it:

- (a) refers to and repeats paragraphs 163 to 165 above; and

- (b) otherwise admits that it did not communicate the information defined as the 'Overstated HY19 Financial Performance Information' and/or the 'Alternative Overstated Boral North America FY18 Financial Performance Information' in paragraphs 66 and 67 of the ASOCFASOC to the ASX before 5 December 2019 or further or alternatively 10 February 2020; and
- (c) otherwise denies the paragraph.

167. Denies paragraph 167.

H.8 Alleged Overstated Boral North America HY19 financial performance

168. In relation to paragraph 168, it:

- (a) refers to and repeats paragraphs 68 and 69 above; and
- (b) denies the paragraph.

169. In relation to paragraph 169, it:

- (a) refers to and repeats paragraph 168 above; and
- (b) denies the paragraph.

170. Denies paragraph 170.

171. In relation to paragraph 171, it:

- (a) refers to and repeats paragraphs 168 to 170 above;
- (b) otherwise admits that the 'Overstated Boral North America FY19 Financial Performance Information' or the 'Alternative Overstated Boral North America HY19 Financial Performance Information' as defined in paragraphs 68 and 69 of the ASOCFASOC was not communicated to the ASX before 5 December 2019 or further or alternatively 10 February 2020; and
- (c) otherwise denies the paragraph.

172. Denies paragraph 172.

H.9 Alleged Overstated FY19 financial performance

173. In relation to paragraph 173, it:

- (a) refers to and repeats paragraphs 70 and 71 above; and
- (b) denies the paragraph.

174. In relation to paragraph 174, it:

- (a) refers to and repeats paragraph 173 above; and
 - (b) denies the paragraph.
175. Denies paragraph 175.
176. In relation to paragraph 176, it:
- (a) refers to and repeats paragraphs 173 to 175 above;
 - (b) otherwise admits that the 'Overstated FY19 Financial Reporting Information' and/or the 'Alternative Overstated Financial Performance Information' as defined in paragraphs 70 and 71 of the ASOCFASOC were not communicated to the ASX before 5 December 2019; and
 - (c) otherwise denies the paragraph.
177. Denies paragraph 177.

H.10 Alleged Overstated FY19 guidance

178. In relation to paragraph 178, it:
- (a) refers to and repeats paragraph 72 above; and
 - (b) denies the paragraph.
179. In relation to paragraph 179, it:
- (a) refers to and repeats paragraph 178 above; and
 - (b) denies the paragraph.
180. Denies paragraph 180.
181. In relation to paragraph 181, it:
- (a) refers to and repeats paragraphs 178 to 180 above;
 - (b) otherwise admits that the 'Overstated FY19 Guidance Information' as defined in paragraph 72 of the ASOCFASOC was not communicated to the ASX before 5 December 2019; and
 - (c) otherwise denies the paragraph.
182. Denies paragraph 182.

H.11 Alleged Overstated FY20 guidance

183. In relation to paragraph 183, it:
- (a) refers to and repeats paragraphs 74 and 75 above; and

- (b) denies the paragraph.
- 184. In relation to paragraph 184, it:
 - (a) refers to and repeats paragraph 183 above; and
 - (b) denies the paragraph.
- 185. Denies paragraph 185.
- 186. In relation to paragraph 186, it:
 - (a) refers to and repeats paragraphs 183 to 185 above; and
 - (b) otherwise admits that the 'Overstated FY20 Guidance Information' as defined in paragraph 75 of the ASOGFASOC was not communicated to the ASX before 5 December 2019; and
 - (c) otherwise denies the paragraph.
- 187. Denies paragraph 187.

I. ALLEGED CONTRAVENTING CONDUCT CAUSED GROUP MEMBERS' LOSS

I.1 Alleged Acquisition of Boral Shares, Boral ADRs and Boral Equity Swaps

- 188. In relation to paragraph 188, it:
 - (a) admits that the Applicant acquired and disposed of interests in Boral shares as identified in paragraph 2(b) above;
 - (b) otherwise does not know and therefore cannot admit paragraph 188.

I.2 Alleged Market-based causation

- 189. In relation to paragraph 189, it:
 - (a) refers to and repeats paragraphs 2, 5, 6 and 188 above; and
 - (b) admits that, to the extent the Applicant and the Group Members acquired interests in Boral Shares, they did so:
 - (i) in a market of investors or potential investors in Boral Shares:
 - A having the characteristics pleaded at sub-paragraphs 189(a), (b) and (d) of the ASOGFASOC;

B where Boral had the obligations pleaded in subparagraphs 5(d) and (e) of the ASOCFASOC and admitted in paragraph 5 above;

C where Boral had the obligations admitted in paragraph 6 above; and

(c) otherwise denies the paragraph.

190. Denies paragraph 190.

190A It does not know and therefore cannot admit paragraph 190A.

191. Denies paragraph 191.

191A In relation to paragraph 191A, it:

- (a) refers to and repeats paragraph 191; and
- (b) otherwise does not know and cannot admit paragraph 191A.

192. In relation to paragraph 192, it:

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

192A In relation to paragraph 192A, it:

- (a) refers to and repeats paragraphs 52, 55 and 192 above;
- (b) otherwise does not know and cannot admit paragraph 192A.

193. Denies paragraph 193.

193A In relation to paragraph 193A, it:

- (a) denies the Continuous Disclosure Contraventions and the Misleading Conduct Contraventions as alleged in the ASOCFASOC;
- (b) refers to and repeats its response to paragraph 189(e) of the ASOCFASOC; and
- (c) otherwise does not know and therefore cannot admit paragraph 193A.

I.3 Alleged Reliance

194. In relation to paragraph 194, it:

- (a) refers to and repeats paragraph 188 above;

- (b) denies the Continuous Disclosure Contraventions and the Misleading Conduct Contraventions as alleged in the ASOCFASOC;
- (c) refers to and repeats its response to paragraph 189(e) of the ASOCFASOC; and
- (d) denies the paragraph.

194A In relation to paragraph 194A, it:

- (a) refers to and repeats paragraph 194 above; and
- (b) denies the paragraph.

I.4 Alleged Off market acquisitions

194B In relation to paragraph 194B, it:

- (a) will refer to and rely upon the full terms and effect of the 21 November 2016 Headwaters Announcement at trial;
- (b) says that in the 21 November 2016 Headwaters Announcement, Boral stated *"The acquisition will be funded via a fully underwritten A\$450 million institutional placement and a fully underwritten A\$1.6 billion, 1 for 2.22 pro rata accelerated renounceable entitlement offer with retain entitlements trading; balance funded by way of existing cash and a fully underwritten debt bridge facility"*; and
- (c) otherwise denies the paragraph.

194C In relation to paragraph 194C, it:

- (a) admits subparagraph 194C(a);
- (b) in relation to subparagraph 194C(b):
 - (i) says that on 24 November 2016 it published the following documents to the ASX:
 - A a document entitled "Boral Limited Retail Offer Booklet" **(Retail Offer Booklet)**;
 - B a document entitled "Boral successfully completes Institutional Placement and Institutional Entitlement Offer" **(24 November 2016 Media Release)**;

- (ii) says further that the Retail Offer Booklet and the 24 November 2016 Media Release included the following the words "*NOT FOR DISTRIBUTION OR RELEASE IN THE UNITED STATES*"; and

(c) otherwise denies the paragraph.

194D In relation to paragraph 194D, it:

- (a) will refer to and rely upon the full terms and effect of the ASX release dated 13 December 2016 titled "Boral successfully completed Retail Entitlement Offer" (**13 December 2016 ASX release**) at trial;
- (b) says that in the 13 December 2016 ASX release stated, "*Approximately 51 million Retail Entitlements, representing those Retail Entitlements which were not taken up by Eligible Retail Shareholders or that would have been issued to Ineligible Retail Shareholders, will be sold through the Retail Shortfall Bookbuild. The Retail Premium, if any, less any applicable withholding tax, is expected to be paid to those shareholders on or about Thursday, 22 December 2016*";
- (c) says that the 13 December 2016 ASX release included the following words in the header, "*NOT FOR DISTRIBUTION OR RELEASE IN THE UNITED STATES*"; and
- (d) otherwise denies paragraph 194D.

194E In relation to paragraph 194E, it:

- (a) will refer to and rely upon the full terms and effect of the ASX release dated 14 December 2016 titled "Boral successfully completes Retail Shortfall Bookbuild"; and
- (b) otherwise admits paragraph 194E.

194F Admits paragraph 194F.

194G Denies paragraph 194G.

I.5 Alleged Loss and damage

195. In relation to paragraph 195, it:

- (a) denies the paragraph; and
- (b) says further that, to the extent that the Applicant or any Group Members establishes liability as alleged in the Statement of Claim (which is denied):

- (i) shares in Boral remained capable of being traded on 6 December 2019 and/or 11 February 2020 and at all relevant times thereafter;
- (ii) the Applicant and Group Members could have sold any Boral shares or other interests in Boral shares they held at any time from or after 6 December 2019 and/or 11 February 2020;
- (iii) on the Applicant's claim, all information said to found the Applicant and Group Members' claims was known or knowable from 6 December 2019 and/or 11 February 2020 or shortly thereafter; and
- (iv) to the extent that the Applicant or any Group Member suffered loss or damage after 6 December 2019 and/or 11 February 2020 or shortly thereafter, that loss or damage:
 - A. arose as a result of the Applicant or Group Members' failure to mitigate their loss or damage; and/or
 - B. arose as a result of the Applicant or Group Members' failure to sell any Boral shares or interests in Boral shares that they held from 6 December 2019 or shortly thereafter.

Date: 24 June 2023



Signed by Christine Tran

Lawyer for the Respondent

This pleading was prepared by Herbert Smith Freehills and settled by Cameron Moore SC and Fiona Roughley and Grace Keesing.

Certificate of lawyer

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

- (c) each allegation in the pleading; and
- (d) each denial in the pleading; and
- (e) each non admission in the pleading.

Date: 24 June 2023

A handwritten signature in black ink, appearing to be 'Christine Tran', written over a horizontal dotted line.

Signed by Christine Tran
Lawyer for the Respondent