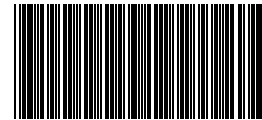




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Commercial List Statement

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2019/00122037

TITLE OF PROCEEDINGS

First Plaintiff	David William Pallas & Julie Ann Pallas as trustees for the Pallas Family Superannuation Fund ABN 67014467929
Second Plaintiff	Martin John Fletcher
First Defendant	Lendlease Corporation Limited ACN 000226228
Second Defendant	Lendlease Responsible Entity Ltd as responsible entity for Lendlease Trust ABN 39 944 184 773 ARSN 128 052 595

FILING DETAILS

Filed for	David William Pallas & Julie Ann Pallas as trustees for the Pallas Family Superannuation Fund, Plaintiff 1 Martin John Fletcher, Plaintiff 2
Legal representative	ROOP AMRIT SANDHU
Legal representative reference	
Telephone	02 8277 4517

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Statement (Amended Consolidated Commercial List Statement.pdf)

[attach.]

Form 1 (version 4)

AMENDED CONSOLIDATED COMMERCIAL LIST STATEMENT**COURT DETAILS**

Court	Supreme
Division	Equity
List	Commercial
Registry	Sydney
Case number	2019/122037

TITLE OF PROCEEDINGS

First plaintiff	David William Pallas and Julie Ann Pallas as trustees for the Pallas Family Superannuation Fund ABN 67 014 467 929
Second plaintiff	Martin John Fletcher
First defendant	Lendlease Corporation Limited ACN 000 226 228
Second defendant	Lendlease Responsible Entity Ltd ABN 72 122 883 185 as responsible entity for Lendlease Trust ABN 39 944 184 773 ARSN 128 052 595

FILING DETAILS

Filed for	David William Pallas and Julie Ann Pallas as trustees for the Pallas Family Superannuation Fund and Martin John Fletcher, Plaintiffs
Legal representative	Phi Finney McDonald
Contact name and telephone	Jeremy Zimet, (03) 9134 7100
Contact email	Jeremy.Zimet@phifinney-mcdonald.com

Nature of Dispute

1. This is a claim by the Plaintiffs on behalf of persons who acquired an interest in stapled securities each representing one ordinary share in Lendlease Corporation Ltd stapled to one unit in the Lendlease Trust (**Securities**) or American Depositary Receipts representing the Securities (**ADRs**) during the period from 17 October 2017 to 8 November 2018 (**Relevant Period**).
2. The Defendants (**Lendlease**) were at all material times an international property and infrastructure group with operations in Australia, Asia, Europe and the Americas. At all material times, Lendlease had an engineering and services business that was undertaking major infrastructure projects in New South Wales, Victoria and Queensland.

3. It is alleged that during the Relevant Period, Lendlease contravened its continuous disclosure obligations by failing to inform the market about certain matters concerning projects within its engineering and services business and the effect that those projects were having on Lendlease's financial performance and results.
4. It is also alleged that during the Relevant Period, Lendlease made representations in relation to those projects and its engineering and services business that were misleading or deceptive or likely to mislead or deceive.

Issues that the Plaintiffs believe are likely to arise

1. Did Lendlease contravene its continuous disclosure obligations in relation to its engineering and services business and/or projects within its engineering and services business and the impact that they were having on Lendlease's financial performance and results?
2. Did Lendlease engage in conduct that was misleading or deceptive or likely to mislead or deceive in relation to its engineering and services business and/or projects within its engineering and services business and the impact that they were having on Lendlease's financial performance and results?
3. Did Lendlease's contraventions cause the Plaintiffs and Group Members to suffer loss and damage?
4. What is the correct measure of compensation for which Lendlease may be liable to the Plaintiffs and Group Members?

Plaintiffs' contentions

A THE PLAINTIFFS AND GROUP MEMBERS

1. This proceeding is commenced as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) by the Plaintiffs on their own behalf and on behalf of persons who or which:
 - (a) acquired an interest in:
 - (i) stapled securities each representing one ordinary share in Lendlease Corporation Ltd stapled to one unit in the Lendlease Trust (**Securities**) during the period from 17 October 2017 to 8 November 2018 (**Relevant Period**); or

- (ii) American Depositary Receipts that represent the Securities (**ADRs**) during the Relevant Period; and
- (b) have suffered loss or damage by reason of the conduct of the Defendants (together referred to as **Lendlease**) pleaded in this Amended Consolidated Commercial List Statement; and
- (c) are not any of the following:
 - (i) a related party (as defined by the *Corporations Act 2001* (Cth) (**Corporations Act**)) of Lendlease;
 - (ii) a related body corporate (as defined by section 50 of the Corporations Act) of Lendlease;
 - (iii) an associated entity (as defined by section 50AAA of the Corporations Act)} of Lendlease;
 - (iv) an officer or close associate (as defined by section 9 of the Corporations Act) of Lendlease;
 - (v) the Chief Justice, or a Justice of the Supreme Court of New South Wales, or the Chief Justice or a Justice of the High Court of Australia,
 (collectively, **Group Members**).
- 2. As at the commencement of this proceeding, seven or more Group Members have claims against Lendlease.
- 3. On or about 6 September 2018, the First Plaintiff acquired 4,300 Securities on the financial market operated by the Australian Securities Exchange (**ASX**) at a cost of \$19.52 per Security plus brokerage of \$100.73.
- 4. On or about 27 September 2018, the Second Plaintiff acquired 1,000 Securities on the financial market operated by the ASX at a cost of \$19.78 per Security.

B DEFENDANTS

B.1 Compliance and reporting requirements

- 5. Each of the Defendants comprising Lendlease is and at all material times was:
 - (a) a company registered pursuant to the Corporations Act and capable of being sued;
 - (b) a person within the meaning of s 1041H of the Corporations Act;

- (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (d) a person within the meaning of s 18 of the Australian Consumer Law set out in Sch 2 to the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**).

6. At all material times:

- (a) each of the Defendants comprising Lendlease was included in the official list of the financial market operated by the ASX;
- (b) in the case of:
 - (i) the First Defendant, was an entity, the shares in which are ED securities for the purpose of s 111AE of the Corporations Act; and
 - (ii) the Second Defendant, was an entity in respect of which units in the Lendlease Trust of which it is the responsible entity are ED securities issued by it for the purpose of s 111AE of the Corporations Act,

such shares and units being “stapled” to each other on a 1:1 ratio, such that one may not be dealt with without the other, and being at all times traded together as one security on the ASX under the ticker “LLC”;
- (c) the Defendants have had an arrangement with Bank of New York Mellon Corporation pursuant to which the latter institution issues Lendlease ADRs (at a ratio of 1 Lendlease ADR to 1 Lendlease Security) which are traded on the OTC market in the United States of America under the ticker “LLESY”;
- (d) each of the Defendants comprising Lendlease was a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
- (e) each of the Defendants comprising Lendlease was subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**); and
- (f) each of the Defendants comprising Lendlease was obliged by ss 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes, aware of any information concerning Lendlease that a reasonable person would expect to have a material effect on the price or value of the Securities, tell the ASX that information immediately (unless the exceptions in ~~the~~ ASX Listing Rule 3.1A apply).

7. At all material times, each of the Defendants comprising Lendlease was prohibited pursuant to:
- (a) s 1041H of the Corporations Act and s 12DA of the ASIC Act, from engaging in conduct in relation to the Securities (being a financial product within the meaning of the Corporations Act and ASIC Act); and
 - (b) s 18 of the Australian Consumer Law, from engaging in conduct in trade or commerce,
- that was misleading or deceptive or likely to mislead or deceive.

B.2 Relevant Lendlease ~~personnel~~ officers

8. ~~[not used] At all material times, David Crawford (**Crawford**) was the Lendlease Group Chairman, acting in that capacity in respect of both the Defendants comprising Lendlease.~~
9. At all material times, Stephen McCann (**McCann**) was the Lendlease Group Chief Executive Officer and Managing Director, acting in that capacity in respect of both the Defendants comprising Lendlease and an officer within the meaning of s 9 of the Corporations Act of each of the Defendants.
10. At all material times, Tarun Gupta (**Gupta**) was the Lendlease Group Chief Financial Officer, acting in that capacity in respect of both the Defendants comprising Lendlease and an officer within the meaning of s 9 of the Corporations Act of each of the Defendants.
11. On and from 15 January 2018, David Andrew Wilson (**Wilson**) was the Lendlease Group Chief Commercial and Risk Officer, acting in that capacity in respect of both Defendants comprising Lendlease and an officer within the meaning of s 9 of the Corporations Act of each of the Defendants.
12. On and from about March 2015, Dale Connor (**Connor**) was the Lendlease Managing Director of Building Australia and an officer within the meaning of s 9 of the Corporations Act of each of the Defendants.
13. ~~On and from 1 May 2018, Johannes Dekker (**Dekker**) was the Lendlease Group Head of Engineering and Building.~~ Johannes Dekker (**Dekker**) was:
- (a) the Lendlease Chief Executive Officer of Engineering and Services Australia from about mid-September 2018 until early December 2018;

- (b) the Lendlease Group Head of Engineering and Building from 1 May 2018; and
 - (c) an officer within the meaning of s 9 of the Corporations Act of each of the Defendants from 1 May 2018, alternatively from about mid-September 2018.
14. At all material times, Craig Laslett (**Laslett**) was the Lendlease Chief Executive Officer of Engineering and Services Australia and an officer within the meaning of s 9 of the Corporations Act of each of the Defendants from in or about January 2016 until about mid-September 2018.
 15. On and from about ~~September~~ October 2017, Michelle Letton (**Letton**) was the Lendlease Chief Financial Officer of Engineering and Services Australia and an officer within the meaning of s 9 of the Corporations Act of each of the Defendants.
 - 15A. From about October 2016 until about October 2021, Ashley Mason (**Mason**) was the Head of Operational Risk for Lendlease and an officer within the meaning of s 9 of the Corporations Act of each of the Defendants.
 16. By reason of the matters pleaded at paragraphs ~~8-9~~ to ~~44-15A~~ above, information of which any of ~~Crawford, McCann, Gupta, Wilson, Connor, Dekker, Laslett, and Letton~~ and Mason (each **Lendlease Officers**) became aware, or which ought reasonably to have come into their possession in the course of the performance of their respective duties as an officer of Lendlease was information of which each of the Defendants comprising Lendlease was aware (within the meaning of “aware” in ASX Listing Rules 19.12).

B.3 Lendlease’s business

17. At all material times, Lendlease was an international property and infrastructure group with operations in Australia, Asia, Europe and the Americas.
18. At all material times, the business operations and financial affairs of Lendlease were operated by reference to three segments being the:
 - (a) development segment;
 - (b) construction segment (**Construction Segment**); and
 - (c) investments segment.
19. At all material times, Lendlease’s Construction Segment comprised the building division (**Building Division**) and engineering and services business (**Engineering Business**).

20. At all material times, Lendlease's Engineering Business was undertaking the design and/or construction of major infrastructure projects, including projects known as:
- (a) NorthConnex being a nine kilometre tunnel connecting the M1 Pacific Motorway to the M2 Hills Motorway in northern Sydney, New South Wales (**NorthConnex or NCX**);
 - (b) ~~The~~ Gateway Upgrade North being the widening of, and improvements to, the Gateway Motorway North in Brisbane, Queensland (**Gateway Upgrade North or GUN**); and
 - (c) the Kingsford Smith Drive upgrade being the widening of, and improvements to, Kingsford Smith Drive in Brisbane, Queensland (**Kingsford Smith Drive Upgrade or KSD**); and
 - (d) ~~the Melbourne Metro Tunnel being a nine kilometre twin rail tunnel and five new underground stations in Melbourne, Victoria~~ (**Melbourne Metro**),
- (together, **the Projects**).
21. ~~At all material times, Lendlease conducted regular reviews on the cost to complete and provisions for its major infrastructure projects including the Projects~~ (**Regular Project Reviews**).

Particulars

~~The transcript of the 21 February 2018 Call (as defined at paragraph 26(c) below) at p 4.~~

~~The transcript of the 22 August 2018 Call (as defined at paragraph 28(c) below) at p 10.~~

~~The transcript of the 9 November 2018 Call (as defined at paragraph 30(b) below) at p 3.~~

22. The Construction Segment:

- (a) in the period FY15 to FY18 was reported to have achieved the following financial performance:

Financial Year	Revenue	EBITDA
FY15	10,937M	279M
FY16	12,032M	288.1M
FY17	12,645M	338.3M
FY18	12,940M	78.2M

Particulars

- i) *'Lendlease 2016 Full Year Results' presentation published and lodged by Lendlease to the ASX on 19 August 2016, p. 8.*
 - ii) *'Lendlease 2017 Full Year Results' presentation published and lodged by Lendlease to the ASX on 28 August 2017, pp. 9 and 11.*
 - iii) *'Lendlease 2018 Full Year Results' presentation published and lodged by Lendlease to the ASX on 22 August 2018, pp. 10 and 14.*
- (b) by reason of the matters pleaded in sub-paragraph (a) above, Lendlease's Construction Segment contributed the following portion of Lendlease's reported revenue and EBITDA:

Financial Year	Revenue	EBITDA
FY15	82.35%	24.41%
FY16	79.66% 79.75%	27.31% 23.12%
FY17	75.85% 75.97%	28.15% 24.41%
FY18	78.1% 78.25%	6.28% 5.51%

Particulars

- i) *The particulars to subparagraph (a) are repeated.*
- ~~(c) any significant increase in the cost to complete Lendlease's major infrastructure projects, including the Projects, was capable of having a material adverse impact on the Construction Segment and Lendlease's profitability.~~

C RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES

C.1 17 October 2017

23. On 17 October 2017, Lendlease made an announcement to the ASX entitled "Lendlease Retirement Living transaction and market update" (**17 October 2017 Announcement**).
24. In the 17 October 2017 Announcement, Lendlease made the following statements:
- (a) the composition of the FY18 result is expected to be impacted by underperformance in Lendlease's Australian construction business which relates to a small number of engineering projects;

- (b) as a result, the FY18 EBITDA contribution from the Australian construction business is expected to be lower than the prior corresponding period; and
- (c) Lendlease expects this underperformance to be offset by outperformance in other parts of the business.

(together, **17 October 2017 Statements**).

Particulars

The 17 October 2017 Statements were express and were made in writing in the 17 October 2017 Announcement.

C.2 17 November 2017

- 25. On 17 November 2017, Lendlease convened an annual general meeting of holders of its Securities (**2017 AGM**).
- 26. At the 2017 AGM, Lendlease made the following statements:
 - (a1) the integrated model means that at least two of Lendlease's operating segments of Development, Construction and Investment are working together on a project;
 - (a2) in combination, Lendlease's three segments become more powerful and, in Lendlease's view, provide a sustainable competitive advantage. To be the best at what Lendlease does Lendlease need the best origination, delivery, funding and management capabilities. That's why Lendlease believe having the three segments operating in unison is so important. And this is what underpins Lendlease's ability to drive long-term securityholder value;
 - (a) Lendlease recently announced that there were some challenges in a small number of engineering projects that will impact the earnings contribution from Lendlease's construction segment in FY18;
 - (b) Lendlease expects that ~~that~~ this underperformance will be offset by outperformance in other parts of the business;
 - (c) the projects that have underperformed are a combination of projects and the factors that have impacted ~~Lendlease's~~ mispricing some of the risk issues that emerged during the delivery of those projects ~~during that year~~; and
 - (d) Lendlease need to make sure that going forward Lendlease's approach to risk management and pricing is best in class. Lendlease has made significant changes to the senior management team in the Engineering Business and Lendlease is cautious and conservative in its approach both to selecting projects

that Lendlease bids for and in the analysis of the pricing of those projects. So certainly, Lendlease's intention and securityholder's expectations should be for improved performance in the Engineering Business going forward.

(together, **17 November 2017 Statements**).

Particulars

The 17 November 2017 Statements were express and were made by McCann during the 2017 AGM:

- Statements (a1) and (a2), refer to the transcript of the 2017 AGM at p 12.
- *Statement (a), refer to the transcript of the 2017 AGM at p 6.*
- *Statements (b) to (d), refer to the transcript of the 2017 AGM at p 9.*

C.3 21 February 2018

27. On 21 February 2018, Lendlease:

- (a) published and released to the ASX its Appendix 4D and half year consolidated financial report for the six months ended 31 December 2017 (**1H18 Financial Report**);
- (b) made an announcement to the ASX entitled "Lendlease Group Half Year 2017 Results Announcement, Presentation and Appendix" (**21 February 2018 Announcement**); and
- (c) convened a "Half Year 2018 Lendlease Group Earnings Presentation" (**21 February 2018 Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in the Securities and/or ADRs.

Particulars

The 21 February 2018 Call was transcribed and published by Thomson Reuters.

The participants in the 21 February 2018 Call included senior managers of Lendlease, and analysts who followed and reported on Lendlease Securities:

- *Daniel Labbad, McCann and Gupta of Lendlease;*

- *Benjamin Brayshaw (JP Morgan);*
- *David Lloyd (Citigroup);*
- *Grant McCasker (UBS);*
- *Rob Freeman (Macquarie);*
- *Sameer Chopra (Bank of America Merrill Lynch);*
- *Sholto Maconochie (CLSA);*
- *Stuart McLean (Macquarie).*

28. In the 1H18 Financial Report, 21 February 2018 Announcement and 21 February 2018 Call, Lendlease made the following statements:

- (a) the Construction Segment delivered an EBITDA loss of \$26.1 million, compared to an EBITDA profit of \$170.2 million in the prior corresponding period;
- (b) that result was impacted by the underperformance of a small number of engineering projects in Australia which has resulted in a loss for the Construction Segment in the half and that Lendlease was focused on addressing the issues;
- (c) that EBITDA outcome was below the target EBITDA margin range of three to four per cent;
- (d) the Australian construction segment generated an EBITDA loss of \$66.1 million impacted by the performance of the engineering business;
- (e) performance issues across a small number of engineering projects were identified during the period;
- (f) the small number of underperforming engineering projects are all at least 50 per cent complete;
- (g) the impact of expected losses on these projects has been recognised in the result for the period, including the reversal of previously booked margin;
- (h) these projects will not contribute to margin for the remaining lives of the projects and will therefore impact the overall EBITDA margin of the segment until they complete;
- (i) Lendlease's review of its engineering portfolio confirmed that the problems were isolated and project specific and not more widespread;
- (j) Lendlease has allowed for prudent contingencies for the remaining lives of these underperforming projects;

- (k) group profit after tax for the six months ended 31 December 2017 was \$425.7M (\$425.6M attributable to security holders) which was an improvement of 8 per cent compared to the six months ended 31 December 2016;
- (l) group total assets was \$15,792M;
- (m) group total liabilities was \$9,362.9M;
- (n) the 1H18 Financial Report gave a true and fair view of Lendlease's financial position and financial performance in FY18; ~~and~~
- (o) the 1H18 Financial Report was prepared in compliance with Australian Accounting Standards, including Australian Accounting Standard 101 ("*Presentation of Financial Statements*") (**AASB101**); Australian Accounting Standard 110 ("*Events after the Reporting Period*") (**AASB110**), Australian Accounting Standard 111 ("*Construction Contracts*") (**AASB111**) and Australian Accounting Standard 136 ("*Impairment of Assets*") (**AASB136**); ~~and~~
- (p) Lendlease had regular review cycles to identify issues and problems with the projects within the Engineering and Construction Business and that Lendlease identify the problems with projects in the normal course of business during the regular review cycles.

(together, **21 February 2018 Statements**).

Particulars

The 21 February 2018 Statements were partly express, and were made in writing in the 1H18 Financial Report, 21 February 2018 Announcement and by McCann and Gupta in the 21 February 2018 Call, and partly implied:

- *Statement (a), refer to the 1H18 Financial Report at p 9, the 21 February 2018 ~~a~~Announcement at p 38 of "Lendlease 2018 Half Year Results", the transcript of the 21 February 2018 Call at p 5.*
- *Statement (b), refer to the 1H18 Financial Report at p 9, the 21 February 2018 Announcement at pp 18 and 38 of "Lendlease 2018 Half Year Results", the transcript of the 21 February 2018 Call at p 5.*
- *Statement (c), refer to the 1H18 Financial Report at p 9, the transcript of the 21 February 2018 Call at pp 4-5.*

- *Statement (d), refer to the 21 February 2018 Announcement at p 38 of “Lendlease 2018 Half Year Results”, the transcript of the 21 February 2018 call at p 7.*
- *Statement (e), refer to the 1H18 Financial Report at p 9, the transcript of the 21 February 2018 Call Announcement at p 4.*
- *Statement (f), refer to the 1H18 Financial Report at p 9, the 21 February 2018 Announcement at pp 8 and 18 of “Lendlease 2018 Half Year Results”, the transcript of the 21 February 2018 Call at pp 4, 9.*
- *Statement (g), refer to the 1H18 Financial Report at p 9, the 21 February 2018 Announcement at p 38 of “Lendlease 2018 Half Year Results”, the transcript of the 21 February 2018 Call at pp 4-5, 9.*
- *Statement (h), refer to the 1H18 Financial Report at p 9, the transcript of the 21 February 2018 Call at p 4.*
- *Statement (i), refer to the transcript of the 21 February 2018 Call at p 4.*
- *Statement (j), refer to the transcript of the 21 February 2018 Call at pp 4, 9.*
- *Statement (k), refer to the 1H18 Financial Report at p 1 of Appendix 4D and pp 1, 2, 7 and 8 of the financial report component.*
- *Statement (l), refer to the 1H18 Financial Report at p 3 of the financial report component.*
- *Statement (m), refer to the 1H18 Financial Report at p 3 of the financial report component.*
- *Statement (n), refer to the 1H18 Financial Report at pp 6 and 25 of the financial report component. Moreover, it was implied by reason of the statutory requirements under ss 302, 303 and 305 of the Corporations Act 2001 and the publication by Lendlease during the Relevant Period of the 1H18 Financial Report.*
- *Statement (o), refer to the 1H18 Financial Report at pp 6 and 25 of the financial report component. Moreover, it was implied by reason*

of the statutory requirements under ss 302, 303 and 304 of the Corporations Act 2001 and the publication by Lend Lease during the Relevant Period of the 1H18 Financial Report.

- Statement (p), refer to the transcript of the 21 February 2018 Call at p 4.

C.4 22 August 2018

29. On 22 August 2018, Lendlease:

- (a) published and released to the ASX its annual report for the year ended 30 June 2018 (**FY18 Annual Report**);
- (b) made an announcement to the ASX entitled “Lendlease Group 2018 Full Year Results Announcement, Presentation and Appendix” (**22 August 2018 Announcement**); and
- (c) convened a “Full Year 2018 Lend Lease Group Earnings Presentation” (**22 August 2018 Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in the Securities and/or ADRs.

Particulars

The 22 August 2018 Call was transcribed and published by Thomson Reuters.

The participants in the 22 August 2018 Call included senior managers of Lendlease, and analysts who followed and reported on Lendlease Securities:

- *McCann and Gupta of Lendlease;*
- *Benjamin Brayshaw (JP Morgan);*
- *David Lloyd (Citigroup);*
- *Grant McCasker (UBS);*
- *Rob Freeman (Macquarie);*
- *Sameer Chopra (Bank of America Merrill Lynch);*
- *Sholto Maconochie (CLSA).*

30. In the FY18 Annual Report, 22 August 2018 Announcement and 22 August 2018 Call, Lendlease made the following statements:
- (a) the Construction Segment delivered EBITDA of \$78.2 million compared to \$338.3 million in the prior year;
 - (b) the Australian construction segment delivered an EBITDA loss of \$23.1 million, impacted by weak performance in the engineering business;
 - (c) there was an EBITDA loss of \$218 million for the financial year ended 30 June 2018 in the engineering and services business;
 - (d) the financial results recognised the impact of expected losses, including the reversal of previously booked profit;
 - (e) there were performance issues across a small number of engineering projects which included NorthConnex;
 - (f) the issues on the underperforming projects included logistical and geotechnical challenges;
 - (g) there was also a negative outcome of litigation in relation to a project completed in 2014;
 - (h) the underperforming engineering projects are not expected to contribute to margin for their remaining lives and will impact the overall construction segment margin until they are complete;
 - (i) the financial results of the engineering and services business anticipates the cost to complete NorthConnex and the other underperforming engineering projects;
 - (j) the anticipated costs for completing NorthConnex are broadly in line with the assessment as at 21 February 2018;
 - (k) the underperformance in the Engineering and Services Business would suppress the FY19 EBITDA margin of the Construction Segment, and not cause the FY19 EBITDA margin of the Construction Segment to be negative;
 - (l) the target FY19 EBITDA Margin for the Construction Segment was 3-4%;
 - (m) the FY19 Construction EBITDA Target Margin was based on reasonable grounds;
 - (n) the EBITDA margin of the Construction Segment for FY19 and FY20 would be earnings accretive;

- (o) for the full year ended 30 June 2018 profit after tax was \$793.6M which was up 5 per cent;
 - (p) had-group total assets was \$16,963.60M;
 - (q) had-group total liabilities was \$10,549.40M;
 - (r) the FY18 Annual Report gave a true and fair view of Lendlease's financial position and financial performance in FY18; and
 - (s) the FY18 Annual Report was prepared in compliance with Australian Accounting Standards, including AASB101, AASB110, AASB111 and AASB136,
- (together, **22 August 2018 Statements**).

Particulars

The 22 August 2018 Statements were partly express, and were made in writing in the FY18 Annual Report, 22 August 2018 Announcement and by McCann and Gupta in the 22 August 2018 Call, and partly implied:

- *Statement (a), refer to the FY18 Annual Report at p 78.*
- *Statement (b), refer to the FY18 Annual Report at p 78.*
- *Statement (c), refer to the 22 August 2018 Announcement at p 10 of "Lendlease 2018 Full Year Results", the transcript of the 22 August 2018 Call at p 5.*
- *Statement (d), refer to the 22 August 2018 Announcement at pp 10 and 41 of "Lendlease 2018 Full Year Results".*
- *Statement (e), refer to the transcript of the 22 August 2018 Call at pp 3, 8.*
- *Statement (f), refer to the transcript of the 22 August 2018 Call at p 8.*
- *Statement (g), refer to ~~refer to~~ the 22 August 2018 Announcement at p 41 of "Lendlease 2018 Full Year Results", the transcript of the 22 August 2018 Call at pp 5, 10.*
- *Statement (h), refer to the 22 August 2018 Announcement at p 18 of "Lendlease 2018 Full Year Results", the transcript of the 22 August 2018 Call at p 10.*

- Statement (i), refer to the transcript of the 22 August 2018 Call at p 10.
- Statement (j), refer to the 22 August 2018 Announcement at p 8.
- Statement (k), refer to the 22 August 2018 Announcement at p 18 of “Lendlease 2018 Full Year Results”, ~~and the transcript of the~~ 22 August 2018 Call at pp 5 and 10.
- Statement (l), refer to the 22 August 2018 Announcement at p 6 of “Lendlease 2018 Full Year Results Appendix”.
- Statement (m) was implied by reason of the express statements in (c) to (l).
- Statement (n) was implied by reason of the express statements in (c) to (k) and the implied statements in ~~(l) and (m)~~.
- Statement (o), refer to the FY18 Annual Report at pp 141 and 142.
- Statement (p), refer to the FY18 Annual Report at p 143.
- Statement (q), refer to the FY18 Annual Report at p 143.
- Statement (r), refer to the FY18 Annual Report at p 196. Moreover, it was implied by reason of the statutory requirements under ss 292, 295, 297 and 299A of the Corporations Act 2004 and the publication by LendLease during the Relevant Period of the FY18 Annual Report.
- Statement (s), refer to the FY18 Annual Report at p 196. Moreover, it was implied by reason of the statutory requirements under ss 292, 295 and 296 of the Corporations Act 2004 and the publication by LendLease during the Relevant Period of the FY18 Annual Report.

C.5 9 November 2018

31. On 9 November 2018, Lendlease:

- (a) made an announcement to the ASX entitled “Australian Engineering and Services Business Update” (**9 November 2018 Announcement**); and
- (b) convened a “LendLease Group Australian Engineering and Services Business Update Call” (**9 November 2018 Call**), in a manner likely to bring things said

during it to the attention of the market of investors and potential investors in the Securities and/or ADRs.

Particulars

The 9 November 2018 Call was transcribed and published by Thomson Reuters.

The participants in the 9 November 2018 Call included senior managers of Lendlease, and analysts who followed and reported on Lendlease Securities:

- *McCann, Gupta and Dekker of Lendlease;*
- *David Lloyd (Citigroup);*
- *John Lee (Morgan Stanley);*
- *Paul Butler (Credit Suisse);*
- *Rob Freeman (Macquarie);*
- *Sameer Chopra (Bank of America Merrill Lynch);*
- *Sholto Maconochie (CLSA);*
- *Toney Sherlock (Morningstar).*

32. In the 9 November 2018 Announcement and the 9 November 2018 Call, Lendlease made the following statements:
- (a) Lendlease has identified further underperformance in the financial position of its engineering and services business;
 - (b) it is anticipated Lendlease will take a provision in the order of \$350 million after tax for the six months ending 31 December 2018;
 - (c) the underperformance predominantly relates to further deterioration in the small number of engineering projects previously identified;
 - (d) the underperformance is attributed to a number of issues including lower productivity in the post tunnelling phases of NorthConnex, excessive wet weather, access issues and remedial work arising from defective design on other projects;
 - (e) Lendlease is undertaking a comprehensive review of its engineering and services business;

- (f) Lendlease has made significant changes to the engineering and services business including strengthening the leadership with the appointment of Dekker in May 2018 as the Group Head of Building and Engineering;
- (g) Dekker is identifying processes to reset and strengthen the operations in order to reduce the risk profile, and evaluate alternatives to reduce volatility of earnings in the business;
- (h) Lendlease conducts reviews of projects on a very regular basis; and
- (i) Lendlease has a rigorous risk management process and oversight of projects, (together, **9 November 2018 Statements**).

Particulars

The 9 November 2018 Statements were express, and were expressed in writing in the 9 November 2018 Announcement and by McCann during the 9 November 2018 Call:

- *Statement (a), refer to the 9 November 2018 Announcement, the transcript of the 9 November 2018 Call at p 2.*
- *Statement (b), refer to the 9 November 2018 Announcement, the transcript of the 9 November 2018 Call at p 2.*
- *Statement (c), refer to the 9 November 2018 Announcement, the transcript of the 9 November 2018 Call at p 2.*
- *Statement (d), refer to the 9 November 2018 Announcement, the transcript of the 9 November 2018 eCall at p 2.*
- *Statement (e), refer to the 9 November 2018 Announcement.*
- *Statement (f), refer to the 9 November 2018 Announcement.*
- *Statement (g), refer to the 9 November 2018 Announcement.*
- *Statement (h), refer to the transcript of the 9 November 2018 eCall at pp 3, 7.*
- *Statement (i), refer to the transcript of the 9 November 2018 eCall at p 3.*

C.6 Price effect of the 9 November 2018 Announcement and/or 9 November 2018 Call

33. Following the release of the 9 November 2018 Announcement and/or the convening of the 9 November 2018 Call the price of the Securities and ADRs fell materially.

Particulars

1. *The price of the Securities fell:*
 - a. *from a closing price of \$17.45 on 8 November 2018 to a closing price of \$14.25 on 9 November 2018 with a daily volume of 11,718,662 on 9 November 2018;*
 - b. *from a closing price of \$14.25 on 9 November 2018 to a closing price of \$13.35 on 12 November 2018 with a daily volume of 11,633,462 on 12 November 2018; and*
 - c. *from a closing price of \$13.35 on 12 November 2018 to a closing price of \$12.72 on 13 November 2018 with a daily volume of 24,213,640 on 13 November 2018.*
2. *The price of the ADRs fell:*
 - a. *from a closing price of \$12.60 on 8 November 2018 to a closing price of \$10.34 on 9 November 2018 with a daily volume of 7,600 on 9 November 2018;*
 - b. *from a closing price of \$10.34 on 9 November 2018 to a closing price of \$9.48 on 12 November 2018 with a daily volume of 8,000 on 12 November 2018; and*
 - c. *from a closing price of \$9.48 on 12 November 2018 to a closing price of \$9.3426 on 13 November 2018 with a daily volume of 15,100 on 13 November 2018.*
- ~~3. Further particulars may be provided of further price declines in the Securities and ADRs on and after 13 November 2018, up to and including 25 February 2019.~~

C.7 16 November 2018

34. On 16 November 2018, Lendlease convened an annual general meeting of holders of its Securities (**2018 AGM**) and published and released to the ASX documents entitled

“2018 Annual General Meeting – Chairman and Chief Executive Officer & Managing Director Addresses” (**2018 AGM Addresses**).

35. At the 2018 AGM, Lendlease made the following statements:

- (a) approximately 90 per cent of the \$350 million post tax provision relates to three projects which also impacted the financial results for the year ended 30 June 2018;
- (b) the first project is NorthConnex and productivity rates and costs on recently commenced phases of work on that project have not achieved Lendlease’s estimates and those costs have been reforecast as well as reforecasted costs arising from an acceleration of the mechanical and electrical works;
- (c) the second project has experienced access issues resulting in Lendlease not being able to work the number of hours per month required to finish the project within the forecast program and associated delays including inclement weather have resulted in higher estimated costs to complete; and
- (d) the third project has had a recently identified defect in the design undertaken by external consultants and the design defect has meant the work is outside the required tolerances and requires rectification which has also resulted in increased provisions for delay and other ancillary costs.

(each being **2018 AGM Statements**).

Particulars

The 2018 AGM Statements were express and made by David Crawford (Chairman of Lendlease) and McCann during the 2018 AGM:

- *Statement (a), refer to the transcript of the 2018 AGM at pp 5.*
- *Statement (b), refer to the transcript of the 2018 AGM at p 5.*
- *Statement (c), refer to the transcript of the 2018 AGM at p 5.*
- *Statement (d), refer to the transcript of the 2018 AGM at p 5.*

C.8 26 November 2018

36. On 26 November 2018, Lendlease convened a call with market analysts (**26 November 2018 Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in the Securities and/or ADRs.

Particulars

The 26 November 2018 Call was transcribed and published by West.

The participants in the 26 November 2018 Call included senior managers of Lendlease, and analysts who followed and reported on Lendlease Securities:

- *McCann, ~~and~~ Gupta and Dekker of Lendlease;*
- *Benjamin Brayshaw (JP Morgan);*
- *Rob Freeman (Macquarie);*
- *David Lloyd (Citigroup);*
- *Michelle Wrigglesworth (Milton Corporation);*
- *Tony Sherlock (Morningstar);*
- *Paul Butler (Credit Suisse);*
- *Guy Robinson (ACC);*
- *Lou Capparelli (UniSuper);*
- *David Pace (Greencape);*
- *John Lee (Morgan Stanley).*

37. During the 26 November 2018 Call, Lendlease made the following statements:

- (a) the three underperforming engineering projects identified in the 2018 AGM were NorthConnex, the Gateway Upgrade North and the Kingsford Smith Drive Upgrade;
- (b) the Gateway Upgrade North has been impacted by labour productivity issues and weather related costs; and
- (c) the Kingsford Smith Drive Upgrade has a defect in the design that requires rectification which had led to provisions for delay and other costs.

(together, **26 November 2018 Statements**).

Particulars

The 26 November 2018 Statements were express and made by McCann during the 26 November 2018 Call: refer to the transcript of the 26 November 2018 Call at p 3.

C.9 ~~24 and~~ 25 February 2019

38. On ~~24–25~~ February 2019, Lendlease convened a call with market analysts (**24 25 February 2019 Call**).

Particulars

The ~~24–25~~ February 2019 Call was transcribed and published by Thomson Reuters.

The participants in the ~~24–25~~ February 2019 Call included senior managers of Lendlease, and analysts who followed and reported on Lendlease Securities:

- *McCann and Gupta of Lendlease;*
- *Benjamin Brayshaw (JP Morgan);*
- *David Lloyd (Citigroup);*
- *Grant McCasker (UBS);*
- *Paul Butler (Credit Suisse);*
- *Rob Freeman (Macquarie);*
- *Sholto Maconochie (CLSA).*

39. On 25 February 2019, Lendlease:
- (a) made an announcement to the ASX entitled “HY19 Results and Engineering and Services Update” (**25 February 2019 Announcement**);
 - (b) published and released to the ASX a presentation entitled “2019 Half Year Results” (**25 February 2019 Presentation**); and
 - (c) published and released to the ASX its Appendix 4D and half year consolidated financial report for the six months ended 31 December 2018 (**1H19 Financial Report**).
40. In the ~~24–25~~ February 2019 Call, the 25 February 2019 Announcement, the 25 February 2019 Presentation and the 1H19 Financial Report, Lendlease made the following statements:
- (a) a comprehensive risk review determined that the Engineering Business was non-core and no longer part of the Lendlease Group strategy;

- (b) to allow the Engineering Business to continue to participate in the transport engineering sector while alternatives are considered, Lendlease is implementing a lower risk profile business strategy;
- (c) as Lendlease works through the implications of this decision, Lendlease's preliminary and current estimate is that it may incur pre-tax future restructuring costs of between \$450 million and \$550 million;
- (d) the estimate includes implementation costs, such as technology and systems costs, employee costs and advisor costs and costs to conclude customer contracts;
- (e) the costs of completing the projects included costs of "someone stepping into one or more of [Lendlease's] contracts and [Lendlease] providing whatever assurances that [Lendlease] need to in that process";
- (f) the Engineering Business made a 1H19 EBITDA loss of \$473.7 million including the previously announced \$350 million post tax impact from expected losses on underperforming projects; and
- (g) the Construction Segment made a 1H19 EBITDA loss of \$362.3 million, impacted by the Engineering Business Provision.

(together, **25 February 2019 Statements**).

Particulars

The 25 February 2019 Statements were express and were made orally or in writing:

- *Statement (a), refer to the 25 February 2019 Announcement, 25 February 2019 Presentation at p 5, 1H19 Financial Report at p 3.*
- *Statement (b), refer to the 25 February 2019 Announcement, 25 February 2019 Presentation at p 5.*
- *Statement (c), refer to the 25 February 2019 Announcement, 25 February 2019 Presentation at p 5.*
- *Statement (d), refer to the 25 February 2019 Announcement, 25 February 2019 Presentation at p 5.*
- *Statement (e), refer to the transcript of the 25 February 2019 Call at p 9.*

- *Statement (f), refer to the 25 February 2019 Presentation at pp 20 and 41, 1H19 Financial Report at p 9.*
- *Statement (g), refer to the 25 February 2019 Presentation at p 41, 1H19 Financial Report at p 9.*

C1 THE TRUE POSITION

C1.1 Gateway Upgrade North

40A. On or about 10 July 2015, Lendlease Engineering Pty Ltd (a subsidiary of Lendlease) (Lendlease Engineering) and the State of Queensland (acting through the Department of Transport and Main Roads) entered into a written agreement for the Gateway Upgrade North.

40B. The scope of the works for the Gateway Upgrade North consisted of, amongst other things, the design, procurement, and construction of the widening of an 11.3 km portion of the motorway between Nudgee and Bracken Ridge in Queensland from 4 lanes to 6 lanes and the Intelligent Transport System.

40C. The start date for the Gateway Upgrade North was 10 July 2015.

40D. The original completion date for the Gateway Upgrade North was 10 July 2018.

40E. The total contract value for the Gateway Upgrade North was \$615.9 million.

40F. Lendlease had originally determined a gross profit margin or whole of life profit or loss (WOL P/L) for the Gateway Upgrade North of \$52.5 million.

40G. [not used]

40H. By about 17 October 2017, the Gateway Upgrade North:

- (a) was approximately 54.4% complete based on the earned value of the budget;
- (b) was assessed by Lendlease to be completed by 21 May 2018;
- (c) was assessed by Lendlease at a project level to have a likely WOL P/L of \$15 million; and
- (d) had an actual likely WOL P/L of approximately (\$153.2) million.

Particulars

- i) Report by Peter Badala dated 10 November 2022 (**Badala Report**) at [97]-[190] and the documents specifically referred to therein (by individual document name or Document ID).

40I. By about 17 November 2017, the Gateway Upgrade North:

- (a) was approximately 64.9% complete based on the earned value of the budget;
 (b) was assessed by Lendlease to be completed by 6 June 2018;
 (c) was assessed by Lendlease at a company level to have a likely WOL P/L of \$15 million;
 (d) was assessed by Lendlease at a project level to have a likely WOL P/L of \$0; and
 (e) had an actual likely WOL P/L of approximately (\$150.3) million.

Particulars

- i) Badala Report at [97]-[190] and the documents specifically referred to therein (by individual document name or Document ID).

40J. By about 21 February 2018, the Gateway Upgrade North:

- (a) was approximately 68.4% complete based on the earned value of the budget;
 (b) was assessed by Lendlease to be completed by 18 September 2018;
 (c) was assessed by Lendlease at a company level to have a likely WOL P/L of (\$17.6) million with a further provision held above the Lendlease Engineering level of (\$42.7) million;
 (d) was assessed by Lendlease at a project level to have a likely WOL P/L of (\$46.3) million; and
 (e) had an actual likely WOL P/L of approximately (\$199.4) million.

Particulars

- i) Badala Report at [97]-[190] and the documents specifically referred to therein (by individual document name or Document ID).

- ii) Report by Owain Stone dated 17 November 2022 (**Stone Report**) at [2.3.1]-[2.3.14] and [3.3.1]-[3.3.26] and the documents referred to therein.

40K. By about 31 May 2018, the Gateway Upgrade North:

- (a) was approximately 76.7% complete based on the earned value of the budget;
- (b) was assessed by Lendlease to be completed by 24 September 2018;
- (c) was assessed by Lendlease at a company level to have a likely WOL P/L of (\$55.6) million;
- (d) was assessed by Lendlease at a project level to have a likely WOL P/L of (\$56) million; and
- (e) had an actual likely WOL P/L of approximately (\$188.7) million.

Particulars

- i) Badala Report at [97]-[190] and the documents specifically referred to therein (by individual document name or Document ID).

40L. By about 22 August 2018, the Gateway Upgrade North:

- (a) was approximately 85.5% complete based on the earned value of the budget;
- (b) was assessed by Lendlease to be completed by 16 October 2018;
- (c) was assessed by Lendlease at a company level to have a likely WOL P/L of (\$70) million;
- (d) was assessed by Lendlease at a project level to have a likely WOL P/L of (\$123.9) million; and
- (e) had an actual likely WOL P/L of approximately (\$213.3) million.

Particulars

- i) Badala Report at [97]-[190] and the documents specifically referred to therein (by individual document name or Document ID).

40M. [not used]

C1.2 Kingsford Smith Drive Upgrade

40N. On or about 3 December 2015, Lendlease Engineering and Brisbane City Council entered into a written agreement for the Kingsford Smith Drive Upgrade.

40O. The scope of the works for the Kingsford Smith Drive Upgrade included the design and construction of widening the road from four lanes to six lanes between Theodore Street, Eagle Farm and Cooksley Street, Hamilton in Queensland.

40P. The start date for the Kingsford Smith Drive Upgrade was 3 December 2015.

40Q. The original completion date for the Kingsford Smith Drive Upgrade was 30 June 2019.

40R. The total contract value for the Kingsford Smith Drive Upgrade was \$440.6 million excluding GST.

40S. Lendlease had originally determined a WOL P/L for the Kingsford Smith Drive Upgrade of \$36.8 million.

40T. [not used]

40U. By about 17 October 2017, the Kingsford Smith Drive Upgrade:

- (a) was approximately 37.8% complete based on the earned value of the budget;
- (b) was assessed by Lendlease to be completed by 6 March 2020;
- (c) was assessed by Lendlease at a project level to have a likely WOL P/L of \$0; and
- (d) had an actual likely WOL P/L of approximately (\$109.8) million.

Particulars

- i) Badala Report at [191]-[283] and the documents specifically referred to therein (by individual document name or Document ID).*

40V. By about 17 November 2017, the Kingsford Smith Drive Upgrade:

- (a) was approximately 39.6% complete based on the earned value of the budget;
- (b) was assessed by Lendlease to be completed by 6 March 2020;
- (c) was assessed by Lendlease at a company and project level to have a likely WOL P/L of \$0; and

(d) had an actual likely WOL P/L of approximately (\$89.5) million.

Particulars

- i) *Badala Report at [191]-[283] and the documents specifically referred to therein (by individual document name or Document ID).*

40W. By about 21 February 2018, the Kingsford Smith Drive Upgrade:

- (a) was approximately 46.9% complete based on the earned value of the budget;
(b) was assessed by Lendlease to be completed by 7 October 2019;
(c) was assessed by Lendlease at a company level to have a likely WOL P/L of (\$10) million with a further provision held above the Lendlease Engineering level of (\$12) million;
(d) was assessed by Lendlease at a project level to have a likely WOL P/L of (\$37.3) million; and
(e) had an actual likely WOL P/L of approximately (\$109.8) million.

Particulars

- i) *Badala Report at [191]-[283] and the documents specifically referred to therein (by individual document name or Document ID).*
- ii) *Stone Report at [2.3.1]-[2.3.14] and [3.3.1]-[3.3.26] and the documents referred to therein.*

40X. By about 31 May 2018, the Kingsford Smith Drive Upgrade:

- (a) was approximately 56.1% complete based on the earned value of the budget;
(b) was assessed by Lendlease to be completed by 7 October 2019;
(c) was assessed by Lendlease at a company and project level to have a likely WOL P/L of (\$47.8) million; and
(d) had an actual likely WOL P/L of approximately (\$116.8) million.

Particulars

- i) *Badala Report at [191]-[283] and the documents specifically referred to therein (by individual document name or Document ID).*

40Y. By about 22 August 2018, the Kingsford Smith Drive Upgrade:

- (a) was approximately 60.3% complete based on the earned value of the budget;
- (b) was assessed by Lendlease to be completed by 7 October 2019;
- (c) was assessed by Lendlease at a company and project level to have a likely WOL P/L of (\$47.8) million; and
- (d) had an actual likely WOL P/L of approximately (\$140.5) million.

Particulars

- i) Badala Report at [191]-[283] and the documents specifically referred to therein (by individual document name or Document ID).*

40Z. [not used]

C1.3 NorthConnex

40AA. On or about 31 January 2015, Lendlease Engineering, NorthConnex State Works Contractor Pty Ltd, NorthConnex Company Pty Ltd and Bouygues Construction Australia Pty Ltd entered into an agreement for the design and construction of NorthConnex.

40AB. The scope of the works for NorthConnex included the design and construction of a 9 km twin tunnel multi lane motorway that connected the M1 Pacific Highway at Wahroonga to the Hills M2 Motorway in West Pennant Hills, New South Wales.

40AC. The start date for NorthConnex was 31 January 2015.

40AD. The original completion date for NorthConnex was 15 December 2019.

40AE. The total contract value for NorthConnex was \$2,526 million excluding GST.

40AF. Lendlease had originally determined a WOL P/L for Lendlease for NorthConnex of \$144 million.

40AG. [not used]

40AH. By about 30 September 2017, NorthConnex:

- (a) was assessed by Lendlease to be completed by 15 December 2019;

(b) was assessed by Lendlease at a project level to have a likely WOL P/L for Lendlease of (\$101.4) million; and

(c) had an actual likely WOL P/L for Lendlease of approximately (\$237) million.

Particulars

- i) *Badala Report at [284]-[371] and the documents specifically referred to therein (by individual document name or Document ID).*

40AI. By about 31 December 2017, NorthConnex:

(a) was assessed by Lendlease at a company and project level to have a likely WOL P/L for Lendlease of (\$75) million; and

(b) had an actual likely WOL P/L for Lendlease of approximately (\$208.4) million.

Particulars

- i) *Badala Report at [284]-[371] and the documents specifically referred to therein (by individual document name or Document ID).*

40AJ. By about 31 March 2018, NorthConnex:

(a) was assessed by Lendlease at a company level to have a likely WOL P/L for Lendlease of (\$104) million;

(b) was assessed by Lendlease at a project level to have a likely WOL P/L for Lendlease of (\$120.5) million; and

(c) had an actual likely WOL P/L for Lendlease of approximately (\$274.4) million.

Particulars

- i) *Badala Report at [284]-[371] and the documents specifically referred to therein (by individual document name or Document ID).*

40AK. By about 30 June 2018, NorthConnex:

(a) was assessed by Lendlease at a company level to have a likely WOL P/L for Lendlease of (\$120.4) million;

(b) was assessed by Lendlease at a project level to have a likely WOL P/L for Lendlease of (\$158.3) million; and

(c) had an actual likely WOL P/L for Lendlease of approximately (\$309.5) million.

Particulars

- i) Badala Report at [284]-[371] and the documents specifically referred to therein (by individual document name or Document ID).

40AL. By about 30 September 2018, NorthConnex:

- (a) was assessed by Lendlease at a company level to have a likely WOL P/L for Lendlease of (\$120.4) million with a further provision held above the Lendlease Engineering level of (\$10) million;
- (b) was assessed by Lendlease at a project level to have a likely WOL P/L for Lendlease of (\$252.6) million; and
- (c) had an actual likely WOL P/L for Lendlease of approximately (\$295.2) million.

Particulars

- i) Badala Report at [284]-[371] and the documents specifically referred to therein (by individual document name or Document ID).
- ii) Stone Report at [2.3.1]-[2.3.14] and [3.3.1]-[3.3.26] and the documents referred to therein.

C1.4 Inadequate provisions

40AM. By reason of the deficit between the WOL P/L as assessed by Lendlease and the actual likely WOL P/L for the Projects Lendlease had inadequate provisions for the Projects and the Engineering Business.

Particulars

- i) Stone Report at [2.3.1]-[2.3.14] and [3.1.1]-[3.3.26].

40AN. By 17 October 2017, additional pre-tax provisions in the order of the following amounts would need to be taken by Lendlease in the current financial period:

- (a) approximately \$153.2 million for the Gateway Upgrade North with an additional reduction of \$15.0 million representing the positive Gross Profit Margin being reported by the project in October 2017 (a total difference in the project position of \$168.2 million);
- (b) approximately \$109.8 million for the Kingsford Smith Drive Upgrade; and
- (c) approximately \$137.0 million for NorthConnex,

being a total of approximately \$415.0 million for the Engineering Business (17 October 2017 Provision Information).

Particulars

- i) Badala Report at [97]-[190] (GUN), [191]-[283] (KSD) and [284]-[371] (NCX).
- ii) Stone Report at [2.3.1]-[2.3.14] and [3.1.1]-[3.3.26].

40AO. By 17 November 2017, additional pre-tax provisions in the order of the following amounts would need to be taken by Lendlease in the current financial period:

- (a) approximately \$150.3 million for the Gateway Upgrade North with an additional reduction of \$15.0 million representing the positive Gross Profit Margin being reported by the project in November 2017 (a total difference in the project position of \$165.3 million);
- (b) approximately \$89.5 million for the Kingsford Smith Drive Upgrade; and
- (c) approximately \$108.4 million for NorthConnex,

being a total of approximately \$363.2 million for the Engineering Business (17 November 2017 Provision Information).

Particulars

- i) Badala Report at [97]-[190] (GUN), [191]-[283] (KSD) and [284]-[371] (NCX).
- ii) Stone Report at [2.3.1]-[2.3.14] and [3.1.1]-[3.3.26].

40AP. By 21 February 2018, additional pre-tax provisions in the order of the following amounts would need to be taken by Lendlease in the current financial period:

- (a) approximately \$139.1 million for the Gateway Upgrade North;
- (b) approximately \$87.8 million for the Kingsford Smith Drive Upgrade; and
- (c) approximately \$104.4 million for NorthConnex,

being a total of approximately \$331.3 million for the Engineering Business (21 February 2018 Provision Information).

Particulars

- i) Badala Report at [97]-[190] (GUN), [191]-[283] (KSD) and [284]-[371] (NCX).
- ii) Stone Report at [2.3.1]-[2.3.14] and [3.1.1]-[3.3.26].

40AQ. By 31 May 2018, additional pre-tax provisions in the order of the following amounts would need to be taken by Lendlease in the current financial period (compared to the position last reported to the financial market on 21 February 2018):

- (a) approximately \$128.4 million for the Gateway Upgrade North;
- (b) approximately \$94.8 million for the Kingsford Smith Drive Upgrade;
- (c) approximately \$170.4 million for NorthConnex,

being a total of approximately \$393.6 million for the Engineering Business (31 May 2018 Provision Information).

Particulars

- i) Badala Report at [97]-[190] (GUN), [191]-[283] (KSD) and [284]-[371] (NCX).*
- ii) Stone Report at [2.3.1]-[2.3.14] and [3.1.1]-[3.3.26].*

40AR. By 22 August 2018, additional pre-tax provisions in the order of the following amounts would need to be taken by Lendlease in the current financial period:

- (a) approximately \$143.3 million for the Gateway Upgrade North;
- (b) approximately \$92.7 million for the Kingsford Smith Drive Upgrade; and
- (c) approximately \$179.5 million for NorthConnex,

being a total of approximately \$415.5 million for the Engineering Business (22 August 2018 Provision Information).

Particulars

- i) Badala Report at [97]-[190] (GUN), [191]-[283] (KSD) and [284]-[371] (NCX).*
- ii) Stone Report at [2.3.1]-[2.3.14] and [3.1.1]-[3.3.26].*

C1.5 Overstated profits

40AS. By reason of the inadequate provisions for the Projects and the Engineering Business, Lendlease's financial results as published for the six months ended 31 December 2017 required:

- (a) an additional provision of \$331.3 million for the Projects; and
- (b) a reduction in after-tax profits of \$231.9 million,

(31 December 2017 Profit Information).

Particulars

- i) Stone Report at [2.5.1]-[2.5.2] and [5.1.1]-[5.3.15].

40AT. By reason of the inadequate provisions for the Projects and the Engineering Business, Lendlease's financial results as published for the twelve months ended 30 June 2018 required:

(a) an additional provision of \$415.5 million for the Projects; and

(b) a reduction in after-tax profits of \$290.9 million,

(30 June 2018 Profit Information).

Particulars

- i) Stone Report at [2.5.1]-[2.5.2] and [5.1.1]-[5.3.15].

D REPRESENTATIONS MADE BY LENDLEASE MISLEADING OR DECEPTIVE CONDUCT

D.1 Representations made on 17 November 2017

41. By reason of the matters pleaded in paragraphs 25 and 26 above, on 17 November 2017, Lendlease represented to the market of investors and potential investors in the Securities and the ADRs (**Affected Market**) that ~~there would be improved performance in the Engineering Business was likely going forward~~ (**17 November 2017 Representations**).

Particulars

The 17 November 2017 Representations were express and the Plaintiffs refer to the 17 November 2017 Statements.

42. Further, by reason of the matters pleaded in paragraphs 25 and 26 above, on 17 November 2017, Lendlease represented to the Affected Market that:

(a) Lendlease had a reasonable basis for making the 17 November 2017 Representations; and

(b) Lendlease was able, with the information available to it, to make reasonably reliable assessments of the future revenues and costs associated with the projects being undertaken by its Engineering Business,

(together, **17 November 2017 Basis Representations**).

43. From 17 November 2017 until 8 November 2018 inclusive, Lendlease continued to make the 17 November 2017 Representations and 17 November 2017 ~~2018~~-Basis Representations.

Particulars

The continuing representation is implied by Lendlease not saying anything during that period to modify, qualify or contradict the 17 November 2017 Representations and 17 November 2017 Basis Representations.

- 43A. The making and failing to correct or qualify of each of the 17 November 2017 Representations and/or the 17 November 2017 Basis Representations was conduct engaged in by Lendlease:

- (a) in trade or commerce; and
- (b) in relation to the Securities.

- 43B. Lendlease did not have reasonable grounds for making the 17 November 2017 Representations and/or the 17 November 2017 Basis Representations:

- (a) as at 17 November 2017, in the circumstances pleaded in paragraphs 40H, 40I, 40U, 40V, 40AH, 40AM to 40AO above; and
- (b) from 17 November 2017, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AR above, from the dates on which each of those circumstances is alleged to have existed as specified in those paragraphs.

Particulars

To the extent that the 17 November 2017 Representations were representations as to future matters, the Plaintiffs also rely on s 12BB(1) of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law.

- 43C. By making and/or failing to correct or qualify the 17 November 2017 Representations and/or the 17 November 2017 Basis Representations:

- (a) as at 17 November 2017, in the circumstances pleaded in paragraphs 40H, 40I, 40U, 40V, 40AH, 40AM to 40AO above; and
- (b) from 17 November 2017, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AR above, from the dates on which each of those circumstances is alleged to have existed as specified in those paragraphs.

Lendlease engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

43D. By reason of the matters pleaded in paragraphs 41 to 43C above, Lendlease contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each being a 17 November 2017 Misleading Conduct Contravention).

D.2 ~~Representations~~ Adequate provisions representations made on 21 February 2018

44. By reason of the matters pleaded in paragraphs 27 and 28 above, on 21 February 2018, Lendlease represented to the Affected Market that:

- (a) the provisions it had made for its Engineering Business were prudent;
- (b) the provisions it had made for underperforming engineering projects were for the remaining lives of those projects;
- (c) no further provision for underperforming engineering projects, or its Engineering Business, would be required;

(together, Adequate Provisions 21 February 2018 Representations).

Particulars

1. *The representations in paragraphs (a) and (b) above were express and the Plaintiffs refer to the 21 February 2018 Statements.*
2. *The representation in paragraph (c) above was implied by the express representations in paragraphs (a) and (b) above, and the omission of any information which modified, qualified or contradicted those representations.*

45. Further, by reason of the matters pleaded in paragraphs 27 and 28 above, on 21 February 2018, Lendlease represented to the Affected Market that:

- (a) Lendlease had a reasonable basis for making the Adequate Provisions 21 February 2018 Representations; and

- (b) Lendlease was able, with the information available to it, to make reasonably reliable assessments of the future revenues and costs associated with the projects being undertaken by its Engineering Business,

(together, **Adequate Provisions 21 February 2018 Basis Representations**).

46. From 21 February 2018 until 8 November 2018 inclusive, Lendlease continued to make the Adequate Provisions 21 February 2018 Representations and Adequate Provisions 21 February 2018 Basis Representations.

Particulars

The continuing representation is implied by Lendlease not saying anything during that period to modify, qualify or contradict the Adequate Provisions 21 February 2018 Representations and Adequate Provisions 21 February 2018 Basis Representations.

- 46A. The making and failing to correct or qualify of each of the Adequate Provisions 21 February 2018 Representations and/or the Adequate Provisions 21 February 2018 Basis Representations was conduct engaged in by Lendlease:

- (a) in trade or commerce; and
 (b) in relation to the Securities.

- 46B. Lendlease did not have reasonable grounds for making each of the Adequate Provisions 21 February 2018 Representations and/or the Adequate Provisions 21 February 2018 Basis Representations:

- (a) as at 21 February 2018, in the circumstances pleaded in paragraphs 40H to 40J, 40U to 40W, 40AH, 40AI, 40AM to 40AP above; and
 (b) from 21 February 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AR above, from the dates on which each of those circumstances is alleged to have existed as specified in those paragraphs.

Particulars

To the extent that the Adequate Provisions 21 February 2018 Representations were representations as to future matters, the Plaintiffs also rely on s 12BB(1) of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law.

46C. By making and/or failing to correct or qualify each of the Adequate Provisions 21 February 2018 Representations and/or the Adequate Provisions 21 February 2018 Basis Representations:

- (a) as at 21 February 2018, in the circumstances pleaded in paragraphs 40H to 40J, 40U to 40W, 40AH, 40AI, 40AM to 40AP above; and
- (b) from 21 February 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AR above, from the dates on which each of those circumstances is alleged to have existed as specified in those paragraphs,

Lendlease engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

46D. By reason of the matters pleaded in paragraphs 44 to 46C above, Lendlease contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each being an **Adequate Provisions 21 February 2018 Misleading Conduct Contravention**).

D.2A Financial performance representations made on 21 February 2018

46E. By reason of the matters pleaded in paragraphs 27 and 28 above, on 21 February 2018, Lendlease represented to the Affected Market that:

- (a) its after tax profits for the six months ended 31 December 2017 were \$425.7 million (\$425.6 million attributable to security holders); and
- (b) there had been an 8 per cent increase in its profits for the six months ended 31 December 2017 compared to the six months ended 31 December 2016,

(together, **Financial Performance 21 February 2018 Representations**).

Particulars

The representations in paragraphs (a) and (b) above were express and the Plaintiffs refer to the 21 February 2018 Statements.

46F. Further, by reason of the matters pleaded in paragraphs 27 and 28 above, on 21 February 2018, Lendlease represented to the Affected Market that Lendlease had a reasonable basis for making the Financial Performance 21 February 2018 Representations (**Financial Performance 21 February 2018 Basis Representation**).

46G. From 21 February 2018 until 8 November 2018 inclusive, Lendlease continued to make the Financial Performance 21 February 2018 Representations and Financial Performance 21 February 2018 Basis Representation.

Particulars

The continuing representation is implied by Lendlease not saying anything during that period to modify, qualify or contradict the Financial Performance 21 February 2018 Representations and Financial Performance 21 February 2018 Basis Representation.

46H. The making and failing to correct or qualify of each of the Financial Performance 21 February 2018 Representations and/or the Financial Performance 21 February 2018 Basis Representation was conduct engaged in by Lendlease:

- (a) in trade or commerce; and
- (b) in relation to the Securities.

46I. Lendlease did not have reasonable grounds for making each of the Financial Performance 21 February 2018 Representations and/or the Financial Performance 21 February 2018 Basis Representation:

- (a) as at 21 February 2018, in the circumstances pleaded in paragraphs 40H to 40J, 40U to 40W, 40AH, 40AI, 40AM to 40AP, 40AS above; and
- (b) from 21 February 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AR, 40AS above, from the dates on which each of those circumstances is alleged to have existed as specified in those paragraphs.

Particulars

To the extent that the Financial Performance 21 February 2018 Representations were representations as to future matters, the Plaintiffs also rely on s 12BB(1) of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law.

46J. By making and/or failing to correct or qualify each of the Financial Performance 21 February 2018 Representations and/or the Financial Performance 21 February 2018 Basis Representation:

- (a) as at 21 February 2018, in the circumstances pleaded in paragraphs 40H to 40J, 40U to 40W, 40AH, 40AI, 40AM to 40AP, 40AS; and

- (b) from 21 February 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AR, 40AS above, from the dates on which each of those circumstances is alleged to have existed as specified in those paragraphs,

Lendlease engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

46K. By reason of the matters pleaded in paragraphs 46E to 46J above, Lendlease contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each being a **Financial Performance 21 February 2018 Misleading Conduct Contravention**).

D.3 Representations Adequate provisions representations made on 22 August 2018

47. By reason of the matters pleaded in paragraphs 29 and 30 above, on 22 August 2018, Lendlease represented to the Affected Market that:

- (a) the financial results that it announced on 22 August 2018 recognised all losses and/or provisions that could be expected on Lendlease's underperforming engineering projects (including NorthConnex);
- (b) the financial results that it announced on 22 August 2018 recognised the cost to complete its underperforming engineering projects (including NorthConnex);
- (c) there would be no further losses and/or provisions in respect of Lendlease's underperforming engineering projects;

(together, **Adequate Provisions 22 August 2018 Representations**).

Particulars

1. *The representations in paragraphs (a) and (b) above were express and the Plaintiffs refer to the 22 August 2018 Statements.*
 2. *The representation in paragraph (c) above was implied by the express representations in paragraphs (a) and (b) above, and the omission of any information which modified, qualified or contradicted those representations.*
48. Further, by reason of the matters pleaded in paragraphs 29 and 30 above, on 22 August 2018, Lendlease represented to the Affected Market that:
- (a) Lendlease had a reasonable basis for making the Adequate Provisions 22 August 2018 Representations; and

- (b) Lendlease was able, with the information available to it, to make reasonably reliable assessments of the future revenues and costs associated with the projects being undertaken by its Engineering Business,

(together, **Adequate Provisions 22 August 2018 Basis Representations**).

49. From 22 August 2018 until 8 November 2018 inclusive, Lendlease continued to make the Adequate Provisions 22 August 2018 Representations and the Adequate Provisions 22 August 2018 Basis Representations.

Particulars

The continuing representation is implied by Lendlease not saying anything during that period to modify, qualify or contradict the Adequate Provisions 22 August 2018 Representations and the Adequate Provisions 22 August 2018 Basis Representations.

- 49A. The making and failing to correct or qualify of each of the Adequate Provisions 22 August 2018 Representations and the Adequate Provisions 22 August 2018 Basis Representations was conduct engaged in by Lendlease:

- (a) in trade or commerce; and
 (b) in relation to the Securities.

- 49B. Lendlease did not have reasonable grounds for making each of the Adequate Provisions 22 August 2018 Representations and/or the Adequate Provisions 22 August 2018 Basis Representations:

- (a) as at 22 August 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AK, 40AM to 40AR above; and
 (b) from 22 August 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AR above, from the dates on which each of those circumstances is alleged to have existed as specified in those paragraphs.

Particulars

To the extent that the Adequate Provisions 22 August 2018 Representations were representations as to future matters, the Plaintiffs also rely on s 12BB(1) of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law.

49C. By making and/or failing to correct or qualify each of the Adequate Provisions 22 August 2018 Representations and/or the Adequate Provisions 22 August 2018 Basis Representations:

- (a) as at 22 August 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AK, 40AM to 40AR above; and
- (b) from 22 August 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AR above, from the dates on which each of those circumstances is alleged to have existed as specified in those paragraphs,

Lendlease engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

49D. By reason of the matters pleaded in paragraphs 47 to 49C above, Lendlease contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each being an **Adequate Provisions 22 August 2018 Misleading Conduct Contravention**).

D.3A Financial performance representations made on 22 August 2018

49E. By reason of the matters pleaded in paragraphs 29 and 30 above, on 22 August 2018, Lendlease represented to the Affected Market that:

- (a) its after tax profits for the twelve months ended 30 June 2018 were \$793.6 million; and
- (b) there had been a 5 per cent increase in its profits for the twelve months ended 30 June 2018 compared to the twelve months ended 30 June 2017,

(together, **Financial Performance 22 August 2018 Representations**).

Particulars

The representations in paragraphs (a) and (b) above were express and the Plaintiffs refer to the 22 August 2018 Statements.

49F. Further, by reason of the matters pleaded in paragraphs 29 and 30 above, on 22 August 2018, Lendlease represented to the Affected Market that Lendlease had a reasonable basis for making the Financial Performance 22 August 2018 Representations (**Financial Performance 22 August 2018 Basis Representation**).

49G. From 22 August 2018 until 8 November 2018 inclusive, Lendlease continued to make the Financial Performance 22 August 2018 Representations and Financial Performance 22 August 2018 Basis Representation.

Particulars

The continuing representation is implied by Lendlease not saying anything during that period to modify, qualify or contradict the Financial Performance 22 August 2018 Representations and Financial Performance 22 August 2018 Basis Representation.

49H. The making and failing to correct or qualify of each of the Financial Performance 22 August 2018 Representations and/or the Financial Performance 22 August 2018 Basis Representation was conduct engaged in by Lendlease:

- (a) in trade or commerce; and
- (b) in relation to the Securities.

49I. Lendlease did not have reasonable grounds for making each of the Financial Performance 22 August 2018 Representations and/or the Financial Performance 22 August 2018 Basis Representation:

- (a) as at 22 August 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AK, 40AM to 40AR, 40AT above; and
- (b) from 22 August 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AR, 40AT above, from the dates on which each of those circumstances is alleged to have existed as specified in those paragraphs.

Particulars

To the extent that the Financial Performance 22 August 2018 Representations were representations as to future matters, the Plaintiffs also rely on s 12BB(1) of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law.

49J. By making and/or failing to correct or qualify each of the Financial Performance 22 August 2018 Representations and/or the Financial Performance 22 August 2018 Basis Representation:

- (a) as at 22 August 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AK, 40AM to 40AR, 40AT above; and

- (b) from 22 August 2018, in the circumstances pleaded in paragraphs 40H to 40L, 40U to 40Y, 40AH to 40AR, 40AT above, from the dates on which each of those circumstances is alleged to have existed as specified in those paragraphs,

Lendlease engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

49K. By reason of the matters pleaded in paragraphs 49E to 49J above, Lendlease contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each being a **Financial Performance 22 August 2018 Misleading Conduct Contravention**).

E CONTINUOUS DISCLOSURE CONTRAVENTIONS

E1.1 17 October 2017 Provision Information

49L. By the start of the Relevant Period, Lendlease had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) the 17 October 2017 Provision Information.

Particulars

See Annexure A at paragraphs [1]-[8] and [41]-[42] (McCann), [43]-[50] and [83]-[84] (Gupta), [163]-[170] and [203]-[204] (Laslett), [205]-[212] and [245]-[246] (Letton) and [247]-[254] and [287]-[288] (Mason).

49M. The 17 October 2017 Provision Information was information that:

- (a) was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act at any time in the Relevant Period; and
- (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the Securities within the meaning of s 674(2)(c)(ii) of the Corporations Act.

49N. Pursuant to ASX Listing Rule 3.1, Lendlease became obliged to tell the ASX the 17 October 2017 Provision Information by the start of the Relevant Period.

49O. Lendlease did not communicate the 17 October 2017 Provision Information to the ASX during the Relevant Period.

49P. In the circumstances set out in paragraphs 49L to 49O above, Lendlease contravened s 674(2) of the Corporations Act (being a **Continuous Disclosure Contravention**).

E1.2 17 November 2017 Provision Information

49Q. By 17 November 2017, Lendlease had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) the 17 November 2017 Provision Information.

Particulars

See Annexure A at paragraphs [9]-[16] and [41]-[42] (McCann), [51]-[58] and [83]-[84] (Gupta), [111]-[118] and [143]-[144] (Connor), [171]-[178] and [203]-[204] (Laslett), [213]-[220] and [245]-[246] (Letton) and [255]-[262] and [287]-[288] (Mason).

49R. The 17 November 2017 Provision Information was information that:

- (a) was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act at any time in the Relevant Period; and
- (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the Securities within the meaning of s 674(2)(c)(ii) of the Corporations Act.

49S. Pursuant to ASX Listing Rule 3.1, Lendlease became obliged to tell the ASX the 17 November 2017 Provision Information by 17 November 2017.

49T. Lendlease did not communicate the 17 November 2017 Provision Information to the ASX during the Relevant Period.

49U. In the circumstances set out in paragraphs 49Q to 49T above, Lendlease contravened s 674(2) of the Corporations Act (being a **Continuous Disclosure Contravention**).

E1.3 31 December 2017 Profit Information and 21 February 2018 Provision Information

49V. By 21 February 2018, Lendlease had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12):

- (a) the 31 December 2017 Profit Information; and
- (b) the 21 February 2018 Provision Information.

Particulars

See Annexure A at paragraphs [17]-[24] and [41]-[42] (McCann), [59]-[66] and [83]-[84] (Gupta), [85]-[92] and [109]-[110] (Wilson), [119]-

[126] and [143]-[144] (Connor), [179]-[186] and [203]-[204] (Laslett), [221]-[228] and [245]-[246] (Letton) and [263]-[270] and [287]-[288] (Mason).

49W. The 31 December 2017 Profit Information and the 21 February 2018 Provision Information was information that:

- (a) was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act at any time in the Relevant Period; and
- (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the Securities within the meaning of s 674(2)(c)(ii) of the Corporations Act.

49X. Pursuant to ASX Listing Rule 3.1, Lendlease became obliged to tell the ASX the 31 December 2017 Profit Information and the 21 February 2018 Provision Information by 21 February 2018.

49Y. Lendlease did not communicate the 31 December 2017 Profit Information and the 21 February 2018 Provision Information to the ASX during the Relevant Period.

49Z. In the circumstances set out in paragraphs 49V to 49Y above, Lendlease contravened s 674(2) of the Corporations Act (being a **Continuous Disclosure Contravention**).

E1.4 31 May 2018 Provision Information

49AA. By 31 May 2018, Lendlease had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) the 31 May 2018 Provision Information.

Particulars

See Annexure A at paragraphs [25]-[32] and [41]-[42] (McCann), [67]-[74] and [83]-[84] (Gupta), [93]-[100] and [109]-[110] (Wilson), [127]-[134] and [143]-[144] (Connor), [145]-[152] and [161]-[162] (Dekker), [187]-[194] and [203]-[204] (Laslett), [229]-[236] and [245]-[246] (Letton) and [271]-[278] and [287]-[288] (Mason).

49AB. The 31 May 2018 Provision Information was information that:

- (a) was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act at any time in the Relevant Period; and

- (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the Securities within the meaning of s 674(2)(c)(ii) of the Corporations Act.

49AC. Pursuant to ASX Listing Rule 3.1, Lendlease became obliged to tell the ASX the 31 May 2018 Provision Information by 31 May 2018.

49AD. Lendlease did not communicate the 31 May 2018 Provision Information to the ASX during the Relevant Period.

49AE. In the circumstances set out in paragraphs 49AA to 49AD above, Lendlease contravened s 674(2) of the Corporations Act (being a **Continuous Disclosure Contravention**).

E1.5 30 June 2018 Profit Information and 22 August 2018 Provision Information

49AF. By 22 August 2018, Lendlease had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12):

- (a) the 30 June 2018 Profit Information; and
 (b) the 22 August 2018 Provision Information.

Particulars

See Annexure A at paragraphs [33]-[40] and [41]-[42] (McCann), [75]-[82] and [83]-[84] (Gupta), [101]-[108] and [109]-[110] (Wilson), [135]-[142] and [143]-[144] (Connor), [153]-[160] and [161]-[162] (Dekker), [195]-[202] and [203]-[204] (Laslett), [237]-[244] and [245]-[246] (Letton) and [279]-[286] and [287]-[288] (Mason).

49AG. The 30 June 2018 Profit Information and the 22 August 2018 Provision Information was information that:

- (a) was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act at any time in the Relevant Period; and
 (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the Securities within the meaning of s 674(2)(c)(ii) of the Corporations Act.

49AH. Pursuant to ASX Listing Rule 3.1, Lendlease became obliged to tell the ASX the 30 June 2018 Profit Information and the 22 August 2018 Provision Information by 22 August 2018.

49AI. Lendlease did not communicate the 30 June 2018 Profit Information and the 22 August 2018 Provision Information to the ASX during the Relevant Period.

49AJ. In the circumstances set out in paragraphs 49AF to 49AI above, Lendlease contravened s 674(2) of the Corporations Act (being a **Continuous Disclosure Contravention**).

E.1 — Information concerning the Projects

50. ~~[not used]By the start of the Relevant Period, Lendlease had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that it was likely, or there was a material risk, that:~~

~~(a) — Lendlease's:~~

~~(i) financial performance; and~~

~~(ii) financial results,~~

~~for FY18 and financial periods after FY18 would continue to be materially adversely affected by the performance of NorthConnex, the Kingsford Smith Drive Upgrade and the Gateway North Upgrade; and/or~~

~~(b) — Lendlease's:~~

~~(i) financial performance; and~~

~~(ii) financial results,~~

~~for FY18 and financial periods after FY18 would continue to be materially adversely affected by the performance of the Engineering Business; and~~

~~(c) — by reason of (a) and/or (b), that the Engineering Business would need to be restructured and de-risked in terms of what projects it would take on (if it was retained by Lendlease), such that it could not reliably be expected to positively contribute to Lendlease's future financial performance and financial results,~~

~~(each being **Project Information**).~~

Particulars

~~1. — Paragraphs 32, 35 and 37 above are repeated.~~

NorthConnex

~~2. — By the start of the Relevant Period at the latest, NorthConnex had experienced significant delays and complications associated with the tunnelling and boring phase of the project including structural issues with the roof of the tunnel, problems~~

~~associated with the treatment of water and the leakage of water into the tunnel which in turn materially increased the cost and time for Lendlease to complete NorthConnex.~~

- ~~3. During the Relevant Period, NorthConnex continued to experience the leakage of water into the tunnel which prevented access for the installation of electrical wiring and lighting, finishes to the roof, roads and other surfaces which in turn materially increased the cost and time for Lendlease to complete NorthConnex.~~
- ~~4. Bouygues (LendLease's 50/50 joint venture partner on NorthConnex) booked a provision on NorthConnex for issues arising in calendar year 2018: Macquarie Research analyst report entitled "LendLease Group — NorthConnex provision heading north?" dated 14 August 2018 at p.1.~~
- ~~5. As at 7 August 2018, Transurban Corporate Limited (LendLease's client for NorthConnex) had:
 - ~~a. stated that the project was "under review" and "there is potentially a delay. Obviously [the contractors] are reviewing their delivery schedule": ASX Announcement published and lodged to the ASX by Transurban Corporation Limited on 7 August 2018 entitled 'Transurban Investor Presentation', pp.6 and 25; Macquarie Research analyst report entitled 'LendLease Group — NorthConnex provision heading north?' dated 14 August 2018 at p.1; and~~
 - ~~b. "made no secret of the fact that NorthConnex would be late due to what are thought to be geoengineering risks, and the project delivery timetable was currently 'under review'": article entitled 'NorthConnex delays dog LendLease' dated 14 August 2018 in the Australian.~~~~
- ~~6. In or around late August 2018, LendLease told analysts that it had suffered "logistical and geotechnical challenges" on NorthConnex: article entitled 'NorthConnex opening date still in doubt as LendLease bulks up engineering' dated 28 August 2018 in the Australian Financial Review.~~

- ~~7. At all material times NorthConnex's project management, which included representatives of Lendlease, met monthly to discuss the progress of the project including the delays and complications particularised in paragraphs 2 to 6 above.~~
- ~~8. By the start of the Relevant Period, alternatively materially before 9 November 2018, Connor, Laslett, Letton and/or (from May 2018) Dekker, who were key personnel in the Engineering Business and Building Division of LendLease's business, ought to have been aware of the delays and complications particularised in paragraphs 2 to 6 above by reason of the monthly project meetings attended by representatives of Lendlease as particularised in paragraph 7 above.~~
- ~~9. By the start of the Relevant Period, alternatively materially before 9 November 2018, McCann, who was Lendlease's Group Chief Executive Officer and Managing Director at all material times, Wilson, who was LendLease's Group Chief Commercial and Risk Officer, and/or Gupta, who was Lendlease's Chief Financial Officer at all material times, ought to have been aware of the delays and complications particularised in paragraphs 2 to 6 above by reason of the knowledge that Connor, Laslett, Letton and/or (from May 2018) Dekker ought to have had as particularised in paragraph 8 above who should have reported those delays and complications to McCann, Wilson and/or Gupta.~~

Kingsford Smith Drive Upgrade

- ~~10. The section of the Kingsford Smith Drive Upgrade between Toorak Road and Grays Road required 15 metre anchors to be placed into the bedrock to ensure the structural integrity of the retaining wall in the Brisbane River.~~
- ~~11. The initial designs for the Kingsford Smith Drive Upgrade were defective in that it did not make provision for the anchors particularised in paragraph 10 above which materially increased the cost and time required by Lendlease to complete the Kingsford Smith Drive Upgrade.~~

- ~~12. Piling and marine based construction in the west zone of the Kingsford Smith Drive Upgrade, which included the section of the Kingsford Smith Drive Upgrade between Toorak Road and Grays Road, commenced by about October 2016.~~
- ~~13. By the start of the Relevant Period, alternatively on a date materially before 9 November 2018, Lendlease's project manager responsible for the Kingsford Smith Drive Upgrade ought to have known by reason of the piling and marine based construction that had commenced in October 2016 that the design was defective as particularised in paragraph 11 above.~~
- ~~14. By the start of the Relevant Period, alternatively on a date materially before 9 November 2018, Connor, Laslett, Letton and/or (from May 2018) Dekker, who were key personnel in the Engineering Business and Building Division of LendLease's business, ought to have been aware of the design defects as particularised in paragraph 11 above by reason of the project manager's knowledge as particularised in paragraph 13 above.~~
- ~~15. By the start of the Relevant Period, alternatively on a date materially before 9 November 2018, McCann, who was Lendlease's Group Chief Executive Office and Managing Director at all material times, Wilson, who was LendLease's Group Chief Commercial and Risk Officer, and/or Gupta, who was Lendlease's Chief Financial Officer at all material times, ought to have been aware of the design defects particularised in paragraph 9 above by reason of the knowledge that Connor, Laslett, Letton and/or (from May 2018) Dekker ought to have had as particularised in paragraph 14 above who should have reported those design defects to McCann, Wilson and/or Gupta.~~

Gateway Upgrade North

- ~~16. Lendlease's ability to access the site in order to undertake work on the Gateway Upgrade North was administered by a third party.~~
- ~~17. At a time not presently known to the Plaintiffs but during the Relevant Period and on a date materially before 9 November 2018, the third party providing access to the site was not~~

~~providing Lendlease sufficient access to the site in order for Lendlease to complete the Gateway Upgrade North within Lendlease's forecast program which materially increased the cost and time for Lendlease to complete the Gateway Upgrade North.~~

~~18. At a time not presently known to the Plaintiffs but during the Relevant Period and materially before 9 November 2018, Connor, Laslett, Letton and/or (from May 2018) Dekker, who were key personnel in the Engineering Business and Building Division of LendLease's business, ought to have been aware of the site access issues as particularised in paragraph 17 above.~~

~~19. McCann, who was Lendlease's Group Chief Executive Officer and Managing Director at all material times, Wilson, who was LendLease's Group Chief Commercial and Risk Officer, and/or Gupta, who was Lendlease's Chief Financial Officer at all material times, ought to have been aware of the site access issues as particularised in paragraph 17 above by reason of the knowledge that Connor, Laslett, Letton and/or (from May 2018) Dekker ought to have had as particularised in paragraph 18 above who should have report those site access issues to McCann, Wilson and/or Gupta.~~

Engineering Business

~~20. McCann, who was Lendlease's Group Chief Executive Officer and Managing Director at all material times, Wilson, who was LendLease's Group Chief Commercial and Risk Officer, and/or Gupta, who was Lendlease's Chief Financial Officer at all material times, ought to have been aware of the matters pleaded in sub-paragraph (c) above by reason of their knowledge of the underperformance of NorthConnex, the Kingsford Smith Drive Upgrade, and the Gateway North Upgrade as particularised in paragraphs 9, 15 and 19 above which were three large infrastructure projects within the Engineering Business.~~

Other

~~21. Further, or in the alternative, Lendlease Officers ought to have come into possession of the matters particularised in paragraphs~~

~~1 to 18 above during the Relevant Period and materially before 9 November 2018 in the course of their duties as an officer of that entity.~~

~~22. Further, or in the alternative, Lendlease Officers ought to have come into possession of the matters particularised in paragraphs 1 to 20 above during the Relevant Period and materially before 9 November 2018 by reason of the Regular Project Reviews.~~

~~23. The quantum of the adverse affectation on Lendlease's financial performance and financial position pleaded in sub-paragraph (a) and (b) is a matter for evidence, but involved the recognition of losses and/or the raising of provisions of at least equal to the amounts recognised and raised on 9 November 2018, and the associated further impacts on forward EBITDA attributable to the Projects and/or the Engineering Business of the raising of those provisions;~~

~~24. The degree to which the Engineering Business required restructuring and de-risking as pleaded in sub-paragraph (c) is a matter for evidence, as is the degree by which it would fail to positively contribute to Lendlease's financial performance financial position, but (A) the former would include, at least, not taking on projects with similar (or even less favourable) risk profiles to NorthConnex, the Kingsford Smith Drive Upgrade and Gateway Upgrade North, and (B) the latter would involve, at least, the recognition of losses and/or the raising of provisions of at least equal to the amounts recognised and raised on 9 November 2018, and the associated further impacts on forward EBITDA attributable to the Projects and/or the Engineering Business of the raising of those provisions, as well as the cost of undertaking such restructuring and de-risking (being costs of a kind ultimately announced by Lendlease in its ASX Announcement dated 25 February 2019 entitled "Lendlease Group 2019 Half Year Results Announcement, Presentation and Appendix").~~

~~25. The Plaintiffs may provide particulars about underperforming projects within the Engineering Business, other than NorthConnex, the Gateway Upgrade North and the Kingsford~~

~~Smith Drive Upgrade, following completion of Lendlease's discovery.~~

E.2 — Information concerning Unreliable Performance

51. ~~[not used]Further, or alternatively, by the start of the Relevant Period, Lendlease had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that it was likely, or there was a material risk that:~~

~~(a) — its costs, financial and/or project reporting systems, including the Regular Project Reviews, were not sufficient to enable it to determine:~~

- ~~(i) the cost to complete the Projects; and~~
- ~~(ii) the appropriate provision for the Projects; and/or~~

~~(b) — Lendlease could not reliably determine:~~

- ~~(i) the cost to complete of projects being undertaken by the Engineering Business; and~~
- ~~(ii) the appropriate provision in respect of the Engineering Business;~~
- ~~(iii) by reason of (a) and/or (b), Lendlease could not reliably determine whether or not the Engineering Business would need to be restructured and de-risked in terms of what projects it would take on (if it was retained by Lendlease), such that it could not reliably be expected to positively contribute to Lendlease's future financial performance and financial results;~~

~~(each being, Unreliable Performance Information).~~

Particulars

~~1. — The Plaintiffs repeat the particulars to paragraph 54 above.~~

~~2. — During the Relevant Period and thereafter, LendLease continued to downgrade earnings or report underperformance from the Construction Segment and/or Engineering and Services Business:~~

~~c. — 17 October 2017 Announcement at p 1;~~

~~d. — 21 February 2018 Announcement at p 2 of the announcement;~~

- e. ~~Transcript of 21 February 2018 Call pp 3 and 9;~~
 - f. ~~22 August 2018 Announcement at p 2 of announcement;~~
 - g. ~~Transcript of 22 August 2018 Call at pp 3, 5, 6, and 8;~~
 - h. ~~9 November 2018 Announcement at p 1;~~
 - i. ~~25 February 2019 Announcement at p 3 of the announcement and 25 February 2019 Presentation at p 11;~~
~~and~~
 - j. ~~Transcript of 25 February 2019 Call at pp 3, 5 and 13.~~
3. ~~On 21 February 2018, LendLease:~~
- a. ~~took an approximately \$190m provision against underperforming projects in the Engineering and Services Business: Macquarie Research analyst report entitled 'Back in 2014' dated 22 February 2018 at pp 1-3;~~
 - b. ~~stated that it "continued to invest in our capability" and would devote "management focus on underperforming Engineering projects" to improve the performance of the Engineering and Services Business: 21 February 2018 Announcement at p 3 of announcement, and at p 21 of "LendLease 2018 Half Year Results";~~
 - c. ~~stated that as at 21 February 2018, the underperforming projects were "all at least 50% complete, so obviously we're working on considerable information from performance to date": Transcript of 21 February 2018 Call at p 9;~~
 - d. ~~stated that the underperforming projects were impacted by "logistics and geotechnical" problems that were "project-specific": 21 February 2018 Announcement at p 8 of presentation;~~
 - e. ~~stated that "the revenue backlog associated with the underperforming projects accounts for 20% of the total engineering backlog": 21 February 2018 Briefing Transcript, p 4, and 21 February 2018 Presentation at p 8 of "LendLease 2018 Half Year Results";~~

- ~~f. stated that the underperforming projects would impact margin until completion: 21 February 2018 Announcement at p 8 of "LendLease 2018 Half Year Results"; and~~
 - ~~g. stated that "[t]he impact of expected losses has been recognised in the result for the period, including the reversal of previously booked margin. These projects will not contribute margin for the remaining lives of the projects and will therefore impact the overall EBITDA margin of the segment until they complete": 1H18 Financial Report at p 9.~~
- ~~4. During May 2018, LendLease appointed Dekker to the position of Group Head of Building and Engineering:~~
 - ~~a. in the context of LendLease "making significant changes to [the Engineering and Services Business] including strengthening the leadership": 9 November 2018 Announcement at p 1; and~~
 - ~~b. "to enable [the Engineering and Services Business] to reach their full potential": Transcript of 22 August 2018 Call at p 8.~~
- ~~5. On 9 November 2018, LendLease announced to the market that:~~
 - ~~a. it "identified further underperformance in the financial position of its Engineering and Services Business. To account for this underperformance it is anticipated LendLease will take a provision in the order of \$350 million after tax for 1H19"; and~~
 - ~~b. "the underperformance predominantly relates to further deterioration in the small number of projects previously identified";~~

~~(9 November 2018 Announcement at p 1).~~
- ~~6. On 16 November 2018, LendLease confirmed that the issues with the Engineering and Services Business were not isolated to the projects previously identified. McCann stated:~~
 - ~~a. "Approximately 90 per cent of the \$350 million post tax provision [arising from underperforming projects in the Engineering and Services Business] relates to three projects";~~

- ~~b. “Further deterioration on NorthConnex [Project] and two other projects was identified during reviews completed last week”;~~
- ~~c. in relation to the NorthConnex Project, “productivity rates and costs on recently commenced phases of work have not achieved our estimates and we now have reforecast these costs. We have also reforecast costs arising from an acceleration of the mechanical and electrical works, the final major phase of the NorthConnex Project”;~~
- ~~d. in relation to Kingsford Smith Drive Upgrade, it had “experienced unforeseen access issues resulting in our team not being able to work the number of hours per month required to finish the project within the forecast program. Associated delays including inclement weather have resulted in higher estimated costs to complete”; and~~
- ~~e. in relation to Gateway Upgrade North, LendLease “recently identified a defect in the design undertaken by external design consultants. This design defect has meant the work is outside the required tolerances and therefore requires rectification. In addition to the costs of rectification work, this has resulted in increased provisions for delay and other ancillary costs.”~~

~~(2018 AGM Addresses at pp 2-3 of McCann Address).~~

- ~~7. On 25 February 2019, LendLease announced to the market that it had identified further deterioration in expected performance on its Engineering and Services Business projects that would require it to provide an “indemnity for future performance” to potential purchasers of the impugned business as part of “restructuring costs”. Transcript of 25 February 2019 Call at p 9; Macquarie Research analyst report entitled ‘Tunnel Vision’ dated 21 May 2019 at p 4.~~
- ~~8. At a time not presently known to the Plaintiffs but during the Relevant Period and materially before 9 November 2018, Connor, Laslett, Letton and/or (from May 2018) Dekker, who were key personnel in the Engineering Business and Building~~

~~Division of LendLease's business, ought to have been aware of the inadequacy of the project cost, financial and/or reporting systems as particularised in paragraphs 1 to 7.~~

9. ~~McCann, who was Lendlease's Group Chief Executive Officer and Managing Director at all material times, Wilson, who was LendLease's Group Chief Commercial and Risk Officer, and/or Gupta, who was Lendlease's Chief Financial Officer at all material times, ought to have been aware of the inadequacy of the project cost, financial and/or reporting systems as particularised in paragraphs 1 to 7 above by reason of the knowledge that Connor, Laslett, Letton and/or (from May 2018) Dekker ought to have had as particularised in paragraph 8 above who should have reported the inadequacy of the project cost, financial and/or reporting systems to McCann, Wilson and/or Gupta.~~
10. ~~McCann, who was Lendlease's Group Chief Executive Officer and Managing Director at all material times, Wilson, who was LendLease's Group Chief Commercial and Risk Officer, and/or Gupta, who was Lendlease's Chief Financial Officer at all material times, ought to have been aware of the matters pleaded in sub-paragraph (c) above by reason of their knowledge of the underperformance of NorthConnex, the Kingsford Smith Drive Upgrade, and the Gateway North Upgrade which were three large infrastructure projects within the Engineering Business.~~
11. ~~Further, or in the alternative, Lendlease Officers ought to have come into possession of the matters particularised in paragraphs 1 to 7 above during the Relevant Period and materially before 9 November 2018 in the course of their duties as an officer of that entity.~~
12. ~~Further, or in the alternative, Lendlease Officers ought to have come into possession of the matters particularised in paragraphs 1 to 7 above during the Relevant Period and materially before 9 November 2018 by reason of the Regular Project Reviews.~~
13. ~~Further and alternatively, it can be inferred that LendLease Officers became actually aware of the matters particularised at 1 to 7 by reference to the following:~~

- ~~a. On 17 October 2017, LendLease announced that “[t]he composition of the FY18 result is expected to be impacted by underperformance in our Australian construction business which relates to a small number of engineering projects. As a result, the HY18 EBITDA contribution from the Australian construction business is expected to be lower than the prior corresponding period”: 17 October 2017 Announcement at p.2.~~
- ~~b. On 21 February 2018, LendLease represented in the context of an approximate \$190m provision against the underperforming projects in the Engineering Business that it “continued to invest in our capability” and would devote “management focus on underperforming Engineering projects” to improve the performance of the Engineering and Services Business: 21 February 2018 Announcement at p 3 of announcement and p 21 of “LendLease Half Year Results”.~~
- ~~c. During May 2018, LendLease appointed Dekker to the position of Group Head of Building and Engineering as particularised in paragraph 4 above.~~

~~E.3 Project Information continuous disclosure contravention~~

- 52. ~~[not used]The Project Information was information that:~~
 - ~~(a) was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act at any time in the Relevant Period; and~~
 - ~~(b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the Securities within the meaning of s 674(2)(c)(ii) of the Corporations Act.~~
- 53. ~~[not used]Pursuant to ASX Listing Rule 3.1, Lendlease became obliged to tell the ASX the Project Information by the start of the Relevant Period.~~
- 54. ~~[not used]Lendlease did not communicate the Project Information to the ASX before 9 November 2018.~~

55. ~~[not used]~~In the circumstances set out in paragraphs 52 to 54 above, Lendlease contravened s 674(2) of the Corporations Act (being a **Continuous Disclosure Contravention**).

~~E.4 Unreliable Performance Information continuous disclosure contravention~~

56. ~~[not used]~~The Unreliable Performance Information was information that:
- ~~(a) was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act at any time in the Relevant Period; and~~
 - ~~(b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the Securities within the meaning of s 674(2)(c)(ii) of the Corporations Act.~~
57. ~~[not used]~~Pursuant to ASX Listing Rule 3.1, Lendlease became obliged to tell the ASX the Unreliable Performance Information by the start of the Relevant Period.
58. ~~[not used]~~Lendlease did not communicate any of the Unreliable Performance Information to the ASX before 9 November 2018.
59. ~~[not used]~~In the circumstances set out in paragraphs 56 to 58 above, Lendlease contravened s 674(2) of the Corporations Act (being a **Continuous Disclosure Contravention**).

~~F MISLEADING OR DECEPTIVE CONDUCT~~

~~F.1 Misleading conduct contraventions from 17 November 2017~~

60. ~~[not used]~~The making and failing to correct or qualify each of the 17 November 2017 Representations and/or the 17 November 2017 Basis Representations was conduct engaged in by Lendlease:
- ~~(a) in trade or commerce; and~~
 - ~~(b) in relation to the Securities.~~
61. ~~[not used]~~As at and from 17 November 2017, Lendlease did not have reasonable grounds for making the 17 November 2017 Representations in the circumstances pleaded in paragraphs 31, 32, 34 to 37, 38, 39, 50 and 51 above.

Particulars

To the extent that the 17 November 2017 Representations were representations as to future matters, and the Plaintiffs also rely on

~~s 12BB(1) of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the Australian Consumer Law.~~

62. ~~[not used]As at and from 17 November 2017, by making and/or failing to correct or qualify the 17 November 2017 Representations in the circumstances pleaded in paragraphs 31, 32, 34 to 37, 38, 39, 50 and 51 above, Lendlease engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.~~
63. ~~[not used]Further, or alternatively, by reason of the circumstances pleaded in paragraphs 31, 32, 34 to 37, 38, 39, 50 and 51 above, by making and/or failing to correct or qualify 17 November 2017 Basis Representations Lendlease engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.~~
64. ~~[not used]By reason of the matters pleaded in paragraphs 60 to 63 above, Lendlease contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each being a **17 November 2017 Misleading Conduct Contravention**).~~

~~F.2 Misleading conduct contraventions from 21 February 2018~~

65. ~~[not used]The making and failing to correct or qualify of each of the 21 February 2018 Representations and/or the 21 February 2018 Basis Representations was conducted engaged in by Lendlease:~~
- ~~(a) in trade or commerce; and~~
- ~~(b) in relation to the Securities.~~
66. ~~[not used]As at and from 21 February 2018, Lendlease did not have reasonable grounds for making each of the 21 February 2018 Representations in the circumstances pleaded in paragraphs 31, 32, 34 to 37, 38, 39, 50 and 51 above.~~

Particulars

~~To the extent that the 21 February 2018 Representations were representations as to future matters, and the Plaintiffs also rely on s 12BB(1) of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the Australian Consumer Law.~~

67. ~~[not used]As at and from 21 February 2018, by making and/or failing to correct or qualify each of the 21 February 2018 Representations in the circumstances pleaded in~~

paragraphs 31, 32, 34 to 37, 38, 39, 50 and 51 above, Lendlease engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

68. ~~[not used]~~ Further, or alternatively, by reason of the circumstances pleaded in paragraphs 31, 32, 34 to 37, 38, 39, 50 and 51 above, by making and/or failing to correct or qualify each of the 21 February 2018 Basis Representations Lendlease engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
69. ~~[not used]~~ By reason of the matters pleaded in paragraphs 65 to 68 above, Lendlease contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each being a **21 February 2018 Misleading Conduct Contravention**).

F.3 — Misleading conduct contraventions from 22 August 2018

70. ~~[not used]~~ The making and failing to correct or qualify of each of the 22 August 2018 Representations and/or the 22 August 2018 Basis Representations was conduct engaged in by Lendlease:
- (a) — in trade or commerce; and
 - (b) — in relation to the Securities.
71. ~~[not used]~~ As at and from 22 August 2018, Lendlease did not have reasonable grounds for making each of the 22 August 2018 Representations in the circumstances pleaded in paragraphs 31, 32, 34 to 37, 38, 39, 50 and 51 above.

Particulars

~~To the extent that the 22 August 2018 Representations were representations as to future matters, and the Plaintiffs also rely on s 12BB(1) of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the Australian Consumer Law.~~

72. ~~[not used]~~ As at and from 22 August 2018, by making and/or failing to correct or qualify each of the 22 August 2018 Representations in the circumstances pleaded in paragraphs 31, 32, 34 to 37, 38, 39, 50 and 51 above, Lendlease engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
73. ~~[not used]~~ Further, or alternatively, by reason of the circumstances pleaded in paragraphs 31, 32, 34 to 37, 38, 39, 50 and 51 above, by making and/or failing to correct

~~or qualify each of the 22 August 2018 Basis Representations Lendlease engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.~~

74. ~~[not used] By reason of the matters pleaded in paragraphs 70 to 73 above, Lendlease contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each being a **22 August 2018 Misleading Conduct Contravention**).~~

G CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

G.1 Acquisition of Securities and ADRs

75. During the Relevant Period, the Plaintiffs and Group Members acquired interests in the Securities.

Particulars

Paragraphs 3 and 4 above in respect of the Plaintiffs are repeated.

76. During the Relevant Period, Group Members acquired interests in ADRs.

Particulars

Particulars of Group Members' holdings of ADRs will be provided prior to the trial of their individual claims following the determination of the common questions.

G.2 Market based causation

77. The Plaintiffs and Group Members acquired their interests in the Securities in a market of investors or potential investors in the Securities:
- (a) operated by the ASX;
 - (b) regulated by, inter alia, the ASX Listing Rules and s 674(2) of the Corporations Act;
 - (c) where Lendlease had the obligations pleaded in paragraphs 6 to 7 above;
 - (d) where the price or value of the Securities would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and s 674(2) of the Corporations Act; and
 - (e) where:
 - (i) material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material effect on

the price or value of the Securities (namely the 31 December 2017 Profit Information, 30 June 2018 Profit Information, 17 October 2017 Provision Information, 17 November 2017 Provision Information, 21 February 2018 Provision Information, 31 May 2018 Provision Information and 22 August 2018 Provision Information ~~Project Information and the Unreliable Performance Information~~); and

- (ii) misleading or deceptive conduct had been engaged in (namely the conduct the subject of the 17 November 2017 Misleading Conduct Contravention, the Adequate Provisions 21 February 2018 Misleading Conduct Contravention, the Financial Performance 21 February 2018 Misleading Conduct Contravention, the Adequate Provisions 22 August 2018 Misleading Conduct Contravention and the Financial Performance 22 August 2018 Misleading Conduct Contravention (collectively, the **Misleading Conduct Contraventions**)) that a reasonable person would expect to have a material effect on the price or value of the Securities, in that if they had not been made no investors or potential investors in the Securities would have been in a position to read or rely upon them.

- 78. During the Relevant Period, the market for ADRs was a market that was traded on the basis that the market for the Securities had the features pleaded in paragraph 77 above.
- 79. In the Relevant Period, the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions (and each of them) (**Market Contraventions**) caused the market price for the Securities and ADRs to be, or materially contributed to the market price of the Securities and ADRs being, substantially greater than:
 - (a) their true value; and/or
 - (b) the market price that would have prevailed but for the Market Contraventions, from the respective dates that those Market Contraventions commenced as pleaded above.

Particulars

Report by Mark Zmijewski dated 17 November 2022 (**Zmijewski Report**).

~~The extent to which the Market Contraventions caused the market price for the Securities and ADRs to be substantially greater than their true value and/or the market price that would otherwise had prevailed~~

~~(that is, inflated) during the Relevant Period will be served immediately following the Plaintiffs filing opinion evidence in the proceeding.~~

80. The decline in the price of the Securities and ADRs pleaded in paragraph 33 above was caused or materially contributed to by:
- (a) the market's reaction to the 9 November 2018 Announcement and/or the 9 November 2018 Call; and
 - (b) the Market Contraventions that occurred prior to 9 November 2018.

Particulars

Zmijewski Report.

~~The extent to which the decline in price of the Securities and ADRs was caused or materially contributed to by these matters is a matter for evidence, particulars of which will be served immediately following the Plaintiffs filing opinion evidence as referred to in the particulars to paragraph 79 above.~~

81. Further, or alternatively, if Lendlease had:
- (a) ~~[not used]~~disclosed to the market the Project Information during the Relevant Period;
 - (b) ~~[not used]~~disclosed the market the Unreliable Performance Information during the Relevant Period;
 - (c) disclosed to the market the 31 December 2017 Profit Information during the Relevant Period;
 - (d) disclosed to the market the 30 June 2018 Profit Information during the Relevant Period;
 - (e) disclosed to the market the 17 October 2017 Provision Information during the Relevant Period;
 - (f) disclosed to the market the 17 November 2017 Provision Information during the Relevant Period;
 - (g) disclosed to the market the 21 February 2018 Provision Information during the Relevant Period;
 - (h) disclosed to the market the 31 May 2018 Provision Information during the Relevant Period;

- (i) disclosed to the market the 22 August 2018 Provision Information during the Relevant Period; and/or
 - (j) not engaged in the conduct the subject of the Market Contraventions,
- the price of the Securities and ADRs would have fallen substantially.

Particulars

Zmijewski Report.

~~The extent to which the decline in price of the Securities and ADRs would have fallen at earlier points in time during the Relevant Period, and when it would have so fallen, is a matter for evidence, particulars of which will be served immediately following the Plaintiffs filing opinion evidence as referred to in the particulars to paragraph 79 above.~~

G.3 Reliance

82. Further, or in the alternative, in the decision to acquire the Securities and/or ADRs:
- (a) the Plaintiffs and some Group Members would not have acquired the Securities at the prices and in the volumes that they were acquired, if the ~~Project Information~~ 31 December 2017 Profit Information, 30 June 2018 Profit Information, 17 October 2017 Provision Information, 17 November 2017 Provision Information, 21 February 2018 Provision Information, 31 May 2018 Provision Information and/or 22 August 2018 Provision Information and/or the ~~Unreliable Performance Information~~ had been disclosed to them and/or the ASX;
 - (b) some Group Members would not have acquired the ADRs at the prices and in the volumes that they were acquired, if the ~~Project Information~~ 31 December 2017 Profit Information, 30 June 2018 Profit Information, 17 October 2017 Provision Information, 17 November 2017 Provision Information, 21 February 2018 Provision Information, 31 May 2018 Provision Information and/or 22 August 2018 Provision Information and/or the ~~Unreliable Performance Information~~ had been disclosed to them and/or the ASX; and
 - (c) the Plaintiffs and some Group Members acquired the Securities and/or ADRs at the prices and in the volumes they were acquired in reliance upon some or all of the following representations (and/or Lendlease not having corrected or qualified such representations):

- (i) the 17 November 2017 Representations and 17 November 2017 Basis Representations (or any of them);
- (ii) the Adequate Provisions 21 February 2018 Representations and Adequate Provisions 21 February 2018 Basis Representations (or any of them);
- (iii) the Financial Performance 21 February 2018 Representations and Financial Performance 21 February 2018 Basis Representation (or any of them);
- (iv) the Adequate Provisions 22 August 2018 Representations and Adequate Provisions 22 August 2018 Basis Representations (or any of them); and/or
- (v) the Financial Performance 22 August 2018 Representations and Financial Performance 22 August 2018 Basis Representations (or any of them).

Particulars

The identity of all those Group Members which or who relied directly on any or all of the representations referred to in sub-paragraph 90(e) 82(c) above are not within the current state of the Plaintiffs' knowledge and cannot be ascertained unless and until those advising the Plaintiffs take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the Plaintiffs' claim and identification of common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

G.4 Loss and damage

- 83. The Plaintiffs and Group Members have suffered loss and damage resulting from the Market Contraventions.

Particulars

1. *The loss suffered by the Plaintiffs will be calculated by reference to the Zmijewski Report, and:*
 - A. *the difference between the price at which the Securities were acquired by the Plaintiffs during the Relevant Period and the true value of that interest; or*
 - B. *the difference between the prices at which the Plaintiffs acquired the Securities and the market price that would have prevailed had the Market Contraventions not occurred; or*
 - C. *alternatively, the days during the Relevant Period where the traded price of the Securities fell as a result of the disclosure of information which had not previously been disclosed because of the Market Contraventions, and the quantum of that fall; or*
 - D. *alternatively, the days after the Relevant Period when the traded price of the Securities fell as a result of the disclosure of information which had not previously been disclosed because of the Market Contraventions, and the quantum of that fall;*
 - ~~E. *alternatively, the difference between the price at which the Securities were acquired by the Plaintiffs and the price in left in hand.*~~
- 1A. *The First Plaintiff's loss is \$13,072.00 on a LIFO and FIFO basis.*
- 1B. *The Second Plaintiff's loss is \$3,040.00 on a LIFO and FIFO basis.*
2. *Particulars of the losses of Group Members are not within the current state of the Plaintiffs' knowledge and cannot be ascertained unless and until those advising the Plaintiffs take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims. Those instructions will be obtained (and particulars of the losses of those Group Members will be*

provided) following opt out, the determination of the Plaintiffs' claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

The questions (if any) that the plaintiff considers are appropriate for reference

1 None.

Mediation

1 The parties have not participated in a mediation. The Plaintiffs are willing to participate in a mediation at an appropriate time.

SIGNATURE

Signature of legal representative



Capacity

Legal Representative

Date of signature

27 June 2023

Annexure A

Particulars of Knowledge

Contents

A. <u>MCCANN</u>	73
17 OCTOBER 2017	73
17 NOVEMBER 2017	81
21 FEBRUARY 2018	89
31 MAY 2018	97
22 AUGUST 2018	105
THE OPINION THAT WAS ACTUALLY FORMED AND/OR OUGHT TO HAVE BEEN FORMED, BASED ON THE INFORMATION AND FACTS AVAILABLE TO MCCANN	114
B. <u>GUPTA</u>	117
17 OCTOBER 2017	117
17 NOVEMBER 2017	124
21 FEBRUARY 2018	132
31 MAY 2018	140
22 AUGUST 2018	149
THE OPINION THAT WAS ACTUALLY FORMED AND/OR OUGHT TO HAVE BEEN FORMED, BASED ON THE INFORMATION AND FACTS AVAILABLE TO GUPTA	157
C. <u>WILSON</u>	160
21 FEBRUARY 2018	160
31 MAY 2018	168
22 AUGUST 2018	177
THE OPINION THAT WAS ACTUALLY FORMED AND/OR OUGHT TO HAVE BEEN FORMED BASED ON THE INFORMATION AND FACTS AVAILABLE TO WILSON	184
D. <u>CONNOR</u>	187
17 NOVEMBER 2017	187
21 FEBRUARY 2018	193
31 MAY 2018	198
22 AUGUST 2018	202
THE OPINION THAT WAS ACTUALLY FORMED AND/OR OUGHT TO HAVE BEEN FORMED BASED ON THE INFORMATION AND FACTS AVAILABLE TO CONNOR	206
E. <u>DEKKER</u>	209
31 MAY 2018	209
22 AUGUST 2018	213
THE OPINION THAT WAS ACTUALLY FORMED AND/OR OUGHT TO HAVE BEEN FORMED BASED ON THE INFORMATION AND FACTS AVAILABLE TO DEKKER	220
F. <u>LASLETT</u>	222
17 OCTOBER 2017	222
17 NOVEMBER 2017	232
21 FEBRUARY 2018	239
31 MAY 2018	248
22 AUGUST 2018	258
THE OPINION THAT WAS ACTUALLY FORMED AND/OR OUGHT TO HAVE BEEN FORMED BASED ON THE INFORMATION AND FACTS AVAILABLE TO LASLETT	266
G. <u>LETTON</u>	269
17 OCTOBER 2017	269
17 NOVEMBER 2017	272
21 FEBRUARY 2018	281

31 MAY 2018	289
22 AUGUST 2018	298
THE OPINION THAT WAS ACTUALLY FORMED AND/OR OUGHT TO HAVE BEEN FORMED BASED ON THE INFORMATION AND FACTS AVAILABLE TO LETTON.....	305
H. <u>MASON</u>	308
17 OCTOBER 2017.....	308
17 NOVEMBER 2017	315
21 FEBRUARY 2018	321
31 MAY 2018	327
22 AUGUST 2018	335
THE OPINION THAT WAS ACTUALLY FORMED AND/OR OUGHT TO HAVE BEEN FORMED BASED ON THE INFORMATION AND FACTS AVAILABLE TO MASON	341

A. McCann

17 October 2017

1. By 17 October 2017, in relation to the **Engineering Business**:

- (a) McCann had actual knowledge, by 11 September 2017, by reason of his attendance at the Engineering Quarterly Business Review, and/or by reason of him being in receipt of the Engineering Quarterly Business Review Presentation dated September 2017, that there were systemic issues across the Engineering Business, being that:
 - (i) the Engineering Business was underperforming;
 - (ii) there was erosion to the forecast gross profit margin (**GPM**) and contingency;
 - (iii) there was a lack of operational oversight in the Engineering Business;
 - (iv) there were inadequate cost control mechanisms in place across the Engineering Business;
 - (v) there were unrealistic tender design programs, which were not being achieved during delivery;
 - (vi) the impact was that most design and construct (**D&C**) projects in the Engineering Business were over three months late within the first year, which had the potential to result in significant cost impacts;
 - (vii) this was identified to result in a “significant impact to the Engineering Business” with greater than 70% of projects involving design;
 - (viii) there was a lack of experienced senior engineering managers;
 - (ix) a number of projects, including Gateway Upgrade North (**GUN**), Kingsford Smith Drive Upgrade (**KSD**) and NorthConnex (**NCX**), were underperforming;
 - (x) project profit plans (**PPP**) had not been established at the commencement of projects, such that the margin position was not maximised and there was limited or no transparency of “worst”, “most likely” and “best case” scenarios, such that data provided in respect of

those integers could be inherently unreliable for the purposes of cost forecasting;

- (xi) Risk and Opportunity (R&O) reporting was inconsistent, as it was approached differently on different projects;
- (xii) contingency erosion needed to be monitored, as it was a “key indicator” of poor performance;
- (xiii) as to GPM:
 - (A) Lendlease had identified that national operational oversight was needed to avoid GPM reduction and an increase on reliances;
 - (B) the forecast GPM of the Engineering Business had reduced by 45% to a forecast loss of approximately (\$164m) from strike and the net reliances had increased to 31% of strike margin;
 - (C) the margin erosion and increased reliances were impacting the Engineering Business’ margin of profit after tax (MPAT); and
 - (D) there was GPM erosion on a number of projects, including GUN, KSD and NCX, with a “high risk” of further GPM erosion on 6 of 8 projects being carried out by the Engineering Business; and
- (xiv) the “root cause” of the GPM erosion had been identified by Lendlease to be inadequate design management and failure to set up cost controls, lack of national operational oversight and independent governance for disciplined execution, limited national sharing of lessons learned and knowledge and limited transparency of significant issues to the managing director, McCann, and the Lendlease Group;¹

(Systemic Performance and Reporting Issues)

- (b) McCann had actual knowledge, by 16 October 2017, by reason of him being in receipt of the Centre of Excellence (CoE) Update on Non-Performing Projects in Engineering, that the CoE was reviewing the projects within the Engineering Business and had identified and reported on six underperforming projects in the

¹ Engineering Quarterly Business Review Presentation dated September 2017 [LLC.003.022.5081], attendees identified in Engineering Quarterly Business Review meeting Actions List dated 11 September 2017 [LLC.033.019.8302].

Engineering Business, being NCX, GUN, KSD, CityLink Tulla Widening, Caulfield to Dandenong Alliance and Tug Harbour, which either had a forecast GPM loss position or GPM erosion;² and

(c) given what McCann actually knew in respect of each of the Projects and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 1(a) to 1(b) above and paragraphs 3, 5 and 7 below, McCann:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

2. Further and in the alternative to paragraph 1 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 17 October 2017, and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review and Engineering Quarterly Finance Review meetings identified and/or receipt of the documents identified in paragraph 1 above and paragraphs 3, 5 and 7 below, McCann:

(a) ought to have known the information particularised at paragraph 1 above and paragraphs 3, 5 and 7 below; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

3. By 17 October 2017, in relation to the **Gateway Upgrade North** project:

(a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1 and 2 above;

(b) McCann had actual knowledge that GUN was an underperforming and/or problem project;

² CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 [LLC.002.010.5556], email from Mason to McCann and another on 16 October 2017 [LLC.008.007.6539].

- (c) McCann had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 11 September 2017, by reason of his attendance at the Engineering Quarterly Business Review Presentation and/or the Engineering Quarterly Finance Review Presentation and/or by reason of him being in receipt of the presentation packs distributed to attendees, that:
 - (i) GUN was underperforming, in that it had been given a “red” risk rating and had been identified to be under time and under budget pressure;
 - (ii) there was an erosion of contingency, with only \$5.9m contingency remaining; and
 - (iii) the then current forecast GPM remained at approximately \$51.6m for the GUN project;³
- (f) McCann had actual knowledge, by 16 October 2017, by reason of McCann being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017, that:
 - (i) the CoE had identified GUN to be a project that should be monitored;
 - (ii) the CoE had reviewed GUN and had provided an indication that its then “current view” was that there would be a GPM reduction to \$15m with further deterioration possible. This was due to, *inter alia*, cost overruns in traffic management, design growth and construction phase services;
 - (iii) there continued to be contingency erosion, with only \$3.6m of contingency remaining of the \$41.1m budget, being only 1.5% of the cost to complete of (\$233m);
 - (iv) a half day review of the GUN project was scheduled on 19 October 2017 for Laslett and the CoE; and

³ Engineering Quarterly Finance Review presentation pack dated September 2017 [LLC.003.022.5080]. Engineering Quarterly Business Review presentation pack dated September 2017 [LLC.003.022.5081], attendees identified in Engineering Quarterly Business Review meeting Actions List dated 11 September 2017 [LLC.033.019.8302].

- (v) the CoE had identified and reported on 6 underperforming projects, NCX, GUN, KSD, CityLink Tulla Widening, Caulfield to Dandenong Alliance and Tug Harbour;⁴ and
- (g) given what McCann actually knew in respect of the GUN project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 1 and 3(a) to 3(f) above, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
- 4. Further and in the alternative to paragraph 3 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 17 October 2017 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review and Engineering Quarterly Finance Review meetings identified and/or receipt of the documents identified in paragraphs 1 and 3 above, McCann:
 - (a) ought to have known the information particularised at paragraphs 1 and 3 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
- 5. By 17 October 2017, in relation to the **Kingsford Smith Drive Upgrade** project:
 - (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1 and 2 above;
 - (b) McCann had actual knowledge that KSD was an underperforming and/or problem project;
 - (c) McCann had actual knowledge that there was erosion of the forecast GPM and contingency;

⁴ CoE Update on Non-Performing Projects in Engineering [LLC.002.010.5556], email from Mason to McCann and another on 16 October 2017 [LLC.008.007.6539].

- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 11 September 2017, by reason of his attendance at the Quarterly Business Review and/or by reason of being in receipt of the Quarterly Business Review presentation dated September 2017, that the geotechnical conditions in the Brisbane River continued to impact progress and that Laslett was to meet with the Brisbane Lord Mayor to discuss project issues and opportunities for cost relief;⁵
- (f) McCann had actual knowledge, by 16 October 2017, by reason of him being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017, that:
 - (i) while the business was targeting a break even GPM of \$0 (zero), it was the CoE's view that the GPM was likely to be a loss of approximately (\$40m);
 - (ii) there were cost concerns from geotechnical issues along the bed of the Brisbane River and significant underground services;
 - (iii) the forecast completion date had moved from 5 July 2019 to 28 January 2020 and no time contingency remained;
 - (iv) the CoE anticipated completion date with appropriate time contingency was April 2020;
 - (v) the cost contingency had eroded; and
 - (vi) there was a significant reliance of \$70m;⁶ and
- (g) given what McCann actually knew in respect of the KSD project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 1 and 5(a) to 5(f) above, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

⁵ Engineering Quarterly Business Review Presentation dated September 2017 [LLC.003.022.5081], attendees identified in Engineering Quarterly Business Review meeting Actions List dated 11 September 2017 [LLC.033.019.8302].

⁶ CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 [LLC.002.010.5556], email from Mason to McCann and another on 16 October 2017 [LLC.008.007.6539].

that an inadequate provision had been made in respect of the KSD Project and the Engineering Business as a whole.

6. Further and in the alternative to paragraph 5 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 17 October 2017 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review meeting identified and/or receipt of the documents identified in paragraphs 1 and 5 above, McCann:

- (a) ought to have known the information particularised at paragraphs 1 and 5 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD Project and the Engineering Business as a whole.

7. By 17 October 2017, in relation to the **NorthConnex** project:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1 and 2 above;
- (b) McCann had actual knowledge that NCX was an underperforming and/or problem project;
- (c) McCann had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 16 October 2017, by reason of him being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017, that:
 - (i) the likely GPM position for the NCX project (Lendlease share) would be a loss of approximately (\$100m);
 - (ii) the CoE had attended the NCX program review which identified significant program and cost overruns;
 - (iii) there had been an erosion of contingency of 7 months;

- (iv) the exposure to liquidated damages was \$350,000 per day;
- (v) the CoE had formed the view that the NCX program was “under significant time pressure”;
- (vi) a further review would be carried out in November 2017;
- (vii) the largest issue was the requirement for deeper tunnel alignment which was anticipated to cost approximately \$130m and liability had not yet been established; and
- (viii) there were significant slippages in the tunnel works;⁷ and
- (f) given what McCann actually knew in respect of the NCX project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 1 and 7(a) to 7(e) above, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
- 8. Further and in the alternative to paragraph 7 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 17 October 2017 and given McCann’s position at Lendlease, his attendance at the Engineering Quarterly Business Review meeting identified and/or receipt of the documents identified in paragraphs 1 and 7 above, McCann:
 - (a) ought to have known the information particularised at paragraphs 1 and 7 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

⁷ CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 [LLC.002.010.5556], email from Mason to McCann and another on 16 October 2017 [LLC.008.007.6539].

17 November 20179. By 17 November 2017, in relation to the **Engineering Business**:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1 to 8 above;
- (b) McCann had actual knowledge that the Engineering Business continued to underperform;
- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by reason of him being in receipt of the Post ASX Announcement dated 23 October 2017, that after the ASX Announcement on 17 October 2017, market analysts:
 - (i) queried whether the projects identified were the same underperforming projects flagged in FY17;
 - (ii) as to the quantum of underperformance, sought assurance that the extent of problems had been accurately captured to ensure there was no further downside;
 - (iii) sought assurance that the problems were not systemic issues;
 - (iv) questioned when management was aware of the deterioration of the projects; and
 - (v) questioned how the review process was performed;

such that McCann was actually aware that the market was, or would likely be, concerned and/or interested in that information;⁸
- (f) McCann had actual knowledge, by 15 November 2017, by reason of McCann's attendance at the Risk Management and Audit Committee (**RMAC**) meeting on

⁸ Lendlease, Post ASX Announcement Update dated 23 October 2017 [LLC.022.046.7523].

15 November 2017, the Board meeting on 15 November 2017 and/or by reason of being in receipt of the RMAC Report dated November 2017 and the Minutes of the 15 November 2017 Board meeting, that:

- (i) the underperforming projects of the Engineering Business were listed as the number one Group wide risk and were identified to be high risk with a very large likely impact and risk;⁹
 - (ii) the Engineering Business had significantly increased its reliance assumptions in the quarter, including (\$33.7m) for GUN and (\$42.7m) for KSD;¹⁰
 - (iii) the Steering Committee to carry out an independent review of the Engineering Business had been established (**Steerco**) and it comprised McCann, Labbad, Gupta and Pedersen;¹¹ and
 - (iv) the Group Forecast profit after tax (**PAT**) for FY18 had been revised down to a profit of \$764m;¹²
- (g) McCann had actual knowledge, by 16 November 2017, by reason of McCann attending the Board meeting on 16 November 2017 and/or by reason of him being in receipt of the CFO Memorandum dated November 2017, that:
- (i) the Group forecast FY18 PAT presented at 17 October 2017 included total contingency at the Group level of approximately \$65m post tax, of which \$50m post tax was being held against further downside risks in the Engineering Business;
 - (ii) the \$50m contingency to cover downside across the Engineering Business would be fully absorbed by the position shown as the “independent review scenario”;
 - (iii) the independent review was not yet complete;
 - (iv) PAT FY18 had a variance of (\$16m) and a GPM variance of a loss of (\$99m);

⁹ RMAC Report dated 15 November 2017 [LLC.008.022.4073].

¹⁰ RMAC Report dated November 2017 [LLC.008.022.4073].

¹¹ Minutes of the 15 November 2017 Board meeting [LLC.013.001.2576].

¹² Minutes of the 15 November 2017 Board meeting [LLC.013.001.2576].

- (v) revenue and GPM at Group level had been revised down taking into account margin deterioration on projects in the Engineering Business; and
- (vi) at the Engineering Business level, FY18 variance against budget was: revenue down (\$131m), GPM down (\$102m), EBITDA down (\$97m), Engineering PAT down (\$70m);¹³ and
- (h) given what McCann actually knew in respect of each of the Projects and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 1, 3, 5, 7 and 9(a) to 9(g) above and paragraphs 11, 13 and 15 below, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
- 10. Further and in the alternative to paragraph 9 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 17 November 2017 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 3, 5, 7 and 9 above and paragraphs 11, 13 and 15 below, McCann:
 - (a) ought to have known the information particularised at paragraphs 1, 3, 5, 7 and 9 above and paragraphs 11, 13 and 15 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

¹³ CFO Memorandum dated 16 November 2017 [LLC.011.004.1484], Minutes of the 16 November 2017 Board meeting [LLC.013.001.2576].

11. By 17 November 2017, in relation to the **Gateway Upgrade North** project:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 3, 4, 9 and 10 above;
- (b) McCann had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 15 November 2017, by reason of McCann attending the RMAC meeting on 15 November 2017 and/or by reason of him being in receipt of the RMAC presentation pack including the KPMG Report to the RMAC, that:
 - (i) GUN was identified as being 68.4% complete;
 - (ii) at contract inception, the GPM was approximately \$52.5m but was then forecast to be \$15m with an annual FY18 GPM result of a loss of (\$6.2m);
 - (iii) there was an assumed reliance of \$69.8m;
 - (iv) GUN remained an underperforming project and the various reasons for the underperformance, including that there were delays, design changes, difficult geotechnical conditions and resequencing of works;
 - (v) the delivery of the GUN project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to mitigate delays, changed requirements to remove and replace spoil and additional temporary traffic management;
 - (vi) there was further erosion in the likely GPM; and

- (vii) the GPM was contingent on large reliances; specifically, the project was pursuing \$190.3m in claims of which it needed to recover \$69.1m in order to achieve the then current forecast GPM of \$15m;¹⁴ and
 - (f) given what McCann actually knew in respect of the GUN project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 1, 3, 9 and 11(a) to 11(e) above, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
- 12. Further and in the alternative to paragraph 11 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 17 November 2017 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, RMAC and Lendlease Board meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 3, 9 and 11 above, McCann:
 - (a) ought to have known the information particularised at paragraphs 1, 3, 9 and 11 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
- 13. By 17 November 2017, in relation to the **Kingsford Smith Drive Upgrade** project:
 - (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 5, 6, 9 and 10 above;
 - (b) McCann had actual knowledge that KSD remained an underperforming and/or problem project;

¹⁴ RMAC Report dated November 2017 and KPMG Report to RMAC dated November 2017 [LLC.008.022.4073], attendees identified in minutes of RMAC meeting 15 November 2017 [LLC.011.008.2694].

- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 1 November 2017, by reason of him attending the Steerco Project Status Report Presentation and/or by reason of being in receipt of the Steerco Project Status Report dated 1 November 2017, that:
 - (i) the forecast GPM had reduced from \$36.9m to \$0 (zero), or was a break even project;
 - (ii) there was a delay of approximately 9 months to the works; and
 - (iii) the delays were caused by, *inter alia*, changes in design scope and complexity, latent conditions (geotechnical) and works to marine structures;¹⁵
- (f) McCann had actual knowledge, by 16 November 2017, by reason of him attending the Board meeting on 16 November 2017 and/or by reason of being in receipt of the Board meeting presentation pack dated November 2017 including the Risk and CoE Report and the CFO Report, that the GPM for KSD had deteriorated from approximately \$36.9m to \$0 (zero) or break even;¹⁶ and
- (g) given what McCann actually knew in respect of the KSD project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 1, 5, 9 and 13(a) to 13(f) above, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

14. Further and in the alternative to paragraph 13 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the

¹⁵ Steerco Project Status Report dated 1 November 2017 [LLC.002.010.4935], email from Mason to Steerco attendees dated 1 November 2017 [LLC.002.010.5009].

¹⁶ Board meeting presentation pack dated November 2017 [LLC.013.001.2327], attendees identified in Minutes of 16 November 2017 Board meeting [LLC.013.001.2576].

KSD project and the Engineering Business as a whole prior to 17 November 2017 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 5, 9 and 13 above, McCann:

- (a) ought to have known the information particularised at paragraphs 1, 5, 9 and 13 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

15. By 17 November 2017, in relation to the **NorthConnex** project:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 7, 8, 9 and 10 above;
- (b) McCann had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 18 October 2017, by reason of him being in receipt of the Supporting Documents to the NCX Monthly ACF Presentation dated 18 October 2017, that:
 - (i) the then likely GPM position for the NCX project (Lendlease share) would be a loss of approximately (\$228.9m); and
 - (ii) there was a (\$457.9m) variance in costs between tender and forecast at completion;¹⁷
- (f) McCann had actual knowledge, by 22 October 2017, by reason of him being in receipt of the NCX Monthly Project Review dated 13 September 2017, that there

¹⁷ Supporting Documents to NCX Monthly ACF Presentation dated 18 October 2017 [LLC.021.004.7504], email from Mason to McCann, Gupta and others dated 22 October 2017 [LLC.021.004.7469].

were delays to the works being caused by the change of design and cracking in the tunnel lining and sequencing and that there were delays across many key targets;¹⁸

(g) McCann had actual knowledge, by 16 November 2017, by reason of him attending the Board meeting on 16 November 2017 and/or by reason of him being in receipt of the CFO Update on LLC FY18 Position, being a memorandum prepared by Gupta, that:

(i) as a result of an independent review carried out by Hinds Blunden, the GPM for NCX had deteriorated by a further (\$25m); and

(ii) the forecast completion date had moved to April 2020;¹⁹ and

(h) given what McCann actually knew in respect of the NCX project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 1, 7, 9 and 15(a) to 15(g) above, McCann:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

16. Further and in the alternative to paragraph 15 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 17 November 2017 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC and Lendlease Board meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 7, 9 and 15 above, McCann:

(a) ought to have known the information particularised at paragraphs 1, 7, 9 and 15 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

¹⁸ NCX Monthly Project Review dated 13 September 2017 [LLC.008.008.0560], email from Mason to McCann and others dated 22 October 2017 [LLC.008.008.0558].

¹⁹ CFO Memorandum dated 16 November 2017 [LLC.011.004.1484], Minutes of 16 November 2017 Board meeting [LLC.013.001.2576].

21 February 201817. By 21 February 2018, in relation to the **Engineering Business**:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1 to 16 above;
- (b) McCann had actual knowledge that the Engineering Business continued to underperform;
- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 19 February 2018, by reason of his attendance at the RMAC meeting on 19 February 2018 and/or by reason of him being in receipt of the KPMG Report to RMAC, that there were three material non-performing projects, being GUN, KSD and NCX, which were impacting the gross margin in the order of approximately \$225m, with GUN contributing approximately \$82m of the overall impact;²⁰
- (f) McCann had actual knowledge, by 14 January 2018, by reason of him corresponding with Gupta between 13 and 14 January 2018, that there was a disconnect between what was being reported at the project level and at the Group level and that the Group level reporting was unreasonably optimistic;²¹
- (g) McCann had actual knowledge, by 20 February 2018, by reason of him attending the CFO Presentation on 20 February 2018 and/or by reason of being in receipt of the CFO Report, that:
 - (i) the Group would deliver PAT of approximately \$426m for HY18, which represents an 8% increase on the prior corresponding period;
 - (ii) Construction Australia was significantly down due to margin downside on key projects within the Engineering Business; and

²⁰ KPMG Report to RMAC dated 12 February 2018 [LLC.022.014.0187], RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], attendees identified in Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

²¹ Correspondence between Gupta and McCann dated 13 to 14 January 2018 [LLC.021.003.0773].

- (iii) as to the Engineering Business, the forecast variance against budget was: GPM (\$152m) and EBITDA (\$151M);²² and
- (h) given what McCann actually knew in respect of each of the Projects and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 1, 3, 5, 7, 9, 11, 13, 15 and 17(a) to 17(g) above and paragraphs 19, 21 and 23 below, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
- 18. Further and in the alternative to paragraph 17 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 21 February 2018 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 3, 5, 7, 9, 11, 13, 15 and 17 above and paragraphs 19, 21 and 23 below, McCann:
 - (a) ought to have known the information particularised at paragraphs 1, 3, 5, 7, 9, 11, 13, 15 and 17 above and paragraphs 19, 21 and 23 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
- 19. By 21 February 2018, in relation to the **Gateway Upgrade North** project:
 - (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 3, 4, 9, 10, 11, 12, 17 and 18 above;
 - (b) McCann had actual knowledge that GUN remained an underperforming and/or problem project;

²² CFO Report dated 20 February 2018 [LLC.013.001.2926], Minutes of 20 February 2018 Board meeting [LLC.013.001.3379].

- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 14 February 2018, by reason of McCann's membership of Steerco, his attendance at the Steerco Project Status Report Presentation on 14 February 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated February 2018, that:
 - (i) the GUN project continued to be an underperforming project;
 - (ii) there was an increase in forecast costs of approximately \$91.0m against budget;
 - (iii) the GPM was continuing to erode with it being reported as \$4.4m prior to additional costs (\$4.5m) and reliance (\$17.5m) provisions, for a net Project position of (\$17.6m);
 - (iv) the project was pursuing \$140.4m of claims and relying on a net claim of \$44.8m (gross reliance excluding payment on account \$69.7m); and
 - (v) there was contingency erosion, with it now being \$3.9m compared to a budget of \$55.1m;²³
- (f) McCann had actual knowledge, by 19 February 2018, by reason of McCann's attendance at the RMAC meeting on 19 February 2018 and/or by reason of him being in receipt of the KPMG Report to RMAC dated 12 February 2018 and the RMAC presentation pack dated 19 February 2018, that:
 - (i) the GPM or WOL P/L for GUN was forecast to be a loss of between approximately (\$17.6m) according to the RMAC presentation pack dated February 2018 and (\$61m) according to the KPMG Report to RMAC dated 12 February 2018;
 - (ii) GUN was identified as being between 76.1% and 78% complete;

²³ Steerco Project Status Report dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 meeting [LLC.002.009.0717].

- (iii) the GPM was then forecast to be (\$17.6m), a movement of (\$32.6m) since the last RMAC in October 2017;
- (iv) there was an assumed reliance of \$69.1m;
- (v) the RMAC presentation pack dated February 2018 identified that the delivery of the project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to mitigate delays and additional temporary traffic management;
- (vi) the KPMG Report to RMAC dated 12 February 2018 identified that the deterioration in GPM was primarily due to \$78m cost increase from lower than expected productivity rates, additional structure and bridge piling costs and estimating errors at tender resulting in higher levels of excavation and spoil removal in various road verges, which was partly offset by \$20m client approved variations and claims;
- (vii) the project was relying on \$44.8m relating to claims and variations in order to achieve the forecast margin;
- (viii) the forecast GPM was largely contingent on Lendlease successfully pursuing various contractual and insurance claims, and that there was inherent uncertainty in Lendlease's success; and
- (ix) the issues that were leading to the erosion of the GPM had been identified early in the project and, in some cases, during the tender phase;²⁴ and
- (g) given what McCann actually knew in respect of the GUN project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 1, 3, 9, 11, 17 and 19(a) to 19(f) above, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

²⁴ KPMG Report to RMAC dated 12 February 2018 [LLC.022.014.0187], RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], attendees identified in Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

20. Further and in the alternative to paragraph 19 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 21 February 2018 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 3, 9, 11, 17 and 19 above, McCann:
- (a) ought to have known the information particularised at paragraphs 1, 3, 9, 11, 17 and 19 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
21. By 21 February 2018, in relation to the **Kingsford Smith Drive Upgrade** project:
- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 5, 6, 9, 10, 13, 14, 17 and 18 above;
 - (b) McCann had actual knowledge that KSD remained an underperforming and/or problem project;
 - (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) McCann had actual knowledge, by 14 February 2018, by reason of his attendance at the Steerco Project Status Report presentation and/or by reason of him being in receipt of the Steerco Project Status Report dated February 2018, that there was a projected loss against budget of (\$36.5m) with an additional cost provision of (\$10m). The total project GPM was \$0 or break even, and the net project position including the cost provision was (\$10m);²⁵

²⁵ Steerco Project Status Report dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 meeting [LLC.002.009.0717].

(f) McCann had actual knowledge, by 12 February 2018, or alternatively by 19 February 2018, by reason of his attendance at the RMAC meeting on 19 February 2018 and/or by reason of him being in receipt of the KPMG Report to RMAC dated 12 February 2018, that the forecast WOL P/L had deteriorated to a loss of approximately (\$22m) (including provisions) and that there had been initial project estimation issues including an inaccurate geotechnical report regarding the soil strength and/or river conditions and an optimistic view had been taken of risk and opportunities at tender stage;²⁶ and

(g) given what McCann actually knew in respect of the KSD project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 1, 5, 9, 13, 17 and 21(a) to 21(f) above, McCann:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

22. Further and in the alternative to paragraph 21 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 21 February 2018 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 5, 9, 13, 17 and 21 above, McCann:

(a) ought to have known the information particularised at paragraphs 1, 5, 9, 13, 17 and 21 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

²⁶ KPMG Report to RMAC dated 12 February 2018 [LLC.022.014.0187], email from Wendy Lee to McCann dated 12 February 2018 [LLC.022.014.0186], Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

23. By 21 February 2018, in relation to the **NorthConnex** project:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 7, 8, 9, 10, 15, 16, 17 and 18 above;
- (b) McCann had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 7 December 2017, by reason of him being in receipt of the Engineering Quarterly Business Review report dated 7 December 2017, that:
 - (i) the company level forecast GPM was a loss of approximately (\$75m);
 - (ii) during the quarter the Engineering Business reduced its FY18 MPAT following the completion of project reviews, including NCX;
 - (iii) NCX was listed as being 48% complete;
 - (iv) significant cost variances had occurred since contract inception; and
 - (v) there was a strategy in place to pursue revenue from the client, however the then current forecast assumed no reliance;²⁷
- (f) McCann had actual knowledge, by 13 January 2018, by reason of him being in receipt of the CFO Report for January 2018 dated 13 January 2018, that:
 - (i) NCX was reporting a forecast GPM loss of approximately (\$126m) which was in line with the independent review scenario proposed by Hinds Blunden in November 2017; and

²⁷ Quarterly Business Review – Engineering Business report dated 7 December 2017 [LLC.008.020.4775], email from Jade Henningsen dated 7 December 2017 [LLC.008.020.4774].

- (ii) forecast loss plus an unwinding of the prior year profits had been recognised in the forecast reflecting the updated project position;²⁸
- (g) McCann had actual knowledge, by 16 February 2018, by reason of his attendance at the RMAC meeting or by reason of him being in receipt of the RMAC presentation pack, that:
 - (i) the total project loss had deteriorated from a loss of approximately (\$149m) to a loss of approximately (\$207m);
 - (ii) an additional provision was raised for risks associated with staff demobilisation, a range of M&E risks such as resource rate increases, delay to program and productivity inefficiencies;
 - (iii) an increase in costs in the order of approximately (\$52.1m) was likely;
 - (iv) NCX was listed as being approximately 54.6% complete; and
 - (v) "Significant costs variances impacting margin have occurred since contract inception that relate to deeper alignment and geotechnical issues, productivity and programme, spoil removal and other tender items including Buildings and Civil";²⁹
- (h) McCann had actual knowledge, by 20 February 2018, by reason of him attending the Board meeting on 20 February 2018 and/or by reason of being in receipt of the Board presentation pack dated February 2018, that:
 - (i) the GPM for NCX was forecasted to be a loss of approximately (\$126m), a variance of (\$133m) from the \$7m profit budgeted for; and
 - (ii) Construction Australia was significantly down on PAT due to margin downside on key projects within the Engineering Business;³⁰ and
 - (i) given what McCann actually knew in respect of the NCX project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 1, 7, 9, 15, 17 and 23(a) to 23(h) above, McCann:

²⁸ CFO Report for January 2018 dated 13 January 2018 [LLC.021.003.0857], email from Gupta to McCann dated January 2018 [LLC.021.003.0854].

²⁹ RMAC Speakers Notes dated 16 February 2018 [LLC.003.024.8045], RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

³⁰ CFO Report from 20 February 2018 Board presentation pack [LLC.013.001.2926], Minutes of 20 February 2018 Board meeting [LLC.013.001.3379].

- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

24. Further and in the alternative to paragraph 23 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 21 February 2018 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC and Lendlease Board meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 7, 9, 15, 17 and 23 above, McCann:

- (a) ought to have known the information particularised at paragraphs 1, 7, 9, 15, 17 and 23 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

31 May 2018

25. By 31 May 2018, in relation to the **Engineering Business**:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1 to 24 above;
- (b) McCann had actual knowledge that the Engineering Business continued to underperform;
- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified and further issues with the accuracy and reliability of cost forecasting had been identified (see paragraph 25(e) below and paragraph 27(f) below);

- (e) McCann had actual knowledge, by 26 March 2018, by reason of McCann's attendance at the Quarterly Business Review and/or by reason of him being in receipt of the Quarterly Business Review dated 26 March 2018, that:
- (i) Lendlease was cautiously reviewing pipeline and strategy and was continuing to influence market and customers regarding expectations;
 - (ii) in depth project reviews were being conducted throughout the Engineering Business in March 2018;
 - (iii) potential impacts to the FY18 forecast as a result of the review would be run through Steerco before being incorporated into the March forecast;
 - (iv) during the quarter, the Engineering Business reduced its FY18 MPAT forecast from a loss of approximately (\$53m) to a loss of approximately (\$77m) due to provisioning;
 - (v) the draft FY19 business plan indicated FY19 MPAT of \$19m against prior forecast of \$75m;
 - (vi) the FY19 MPAT included (pre-tax) "stretch targets" of \$13.7m; and
 - (vii) the then current FY18 (or FY19) MPAT did not include additional risk for problem projects (NCX, GUN, KSD);³¹
- (f) McCann had actual knowledge, by 17 April 2018, by reason of his involvement in the preparation of and/or by reason of being in receipt of the CEO Report, that provisions held at the Group level against GUN, NCX and KSD had largely been absorbed and that while Lendlease remained on track to achieve target Group PAT through outperformance in the Property Australia Business, there was limited unallocated contingency;³²
- (g) McCann had actual knowledge, by 19 April 2018, by reason of his attendance at the Board meeting on 17 to 19 April 2018 and/or by reason of him being in receipt of the Board presentation pack dated April 2018 including the Group Chief Commercial and Risk Officer Report dated April 2018, that the magnitude

³¹ Quarterly Business Review dated 26 March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

³² CEO Report dated 17 April 2018 [LLC.013.001.3379], attendees identified in Minutes of the 17-19 April 2018 Board meeting [LLC.013.001.3902].

of non-performing engineering projects continued to bring substantial aggregated risk to the Group;³³

(h) McCann had actual knowledge, by 24 May 2018, by reason of his attendance at the RMAC meeting on 24 May 2018 and/or by reason of his involvement in the preparation of and/or receipt of the RMAC Report dated May 2018, that:

(i) each of NCX, KSD and GUN, were listed as “very high likelihood” with NCX listed as “very large impact” and KSD and GUN listed as “large impact” for “operational issues”; and

(ii) there was a decline in profitability due to the known deterioration in projects in the Engineering Business;³⁴ and

(i) given what McCann actually knew in respect of each of the Projects and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23 and 25(a) to 25(h) above and paragraphs 27, 29 and 31 below, McCann:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

26. Further and in the alternative to paragraph 25 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 31 May 2018 and given McCann’s position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23 and 25 above and paragraphs 27, 29 and 31 below, McCann:

³³ Group Chief Commercial and Risk Officer Report dated 18 April 2018 [LLC.013.001.3379], attendees identified in Minutes of the 17 to 19 April 2018 Board meeting [LLC.013.001.3902].

³⁴ RMAC Report dated May 2018 [LLC.011.009.8254], attendees identified in Minutes of RMAC meeting 24 May 2018 [LLC.011.008.3750].

- (a) ought to have known the information particularised at paragraphs 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23 and 25 above and paragraphs 27, 29 and 31 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

27. By 31 May 2018, in relation to the **Gateway Upgrade North** project:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 3, 4, 9, 10, 11, 12, 17, 18, 19, 20, 25 and 26 above;
- (b) McCann had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 13 March 2018, by reason of McCann's membership of Steerco, his attendance at the Steerco Project Status Report presentation on 13 March 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated March 2018, that the net project GPM for GUN was being reported as a loss of approximately (\$17.6m);³⁵
- (f) McCann had actual knowledge, by 26 March 2018, by reason of McCann's attendance at the Engineering Quarterly Business Review on 26 March 2018 and/or by reason of him being in receipt of the Engineering Quarterly Business Review presentation dated March 2018, that:
 - (i) a two day review of the GUN project had been held on 12 and 13 March 2018;
 - (ii) the review established that the GUN project presented a key risk to the Engineering Business; and

³⁵ Steerco Project Status Report [LLC.002.008.8309], email from Letton to Steerco attendees dated 9 March 2018 [LLC.002.008.8308].

- (iii) the forecast GPM was being finalised;³⁶
- (g) McCann had actual knowledge, by 24 April 2018 and 12 May 2018, by reason of McCann's membership of Steerco, by reason of his attendance at the Steerco Project Status Report presentations on 24 April 2018 and 12 May 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated April and May 2018, that the forecast GPM for GUN was continuing to erode and was then a forecast loss of approximately (\$56m);³⁷ and
- (h) given what McCann actually knew in respect of the GUN project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 1, 3, 9, 11, 17, 19, 25 and 27(a) to 27(g) above, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
- 28. Further and in the alternative to paragraph 27 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 31 May 2018 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 3, 9, 11, 17, 19, 25 and 27 above, McCann:
 - (a) ought to have known the information particularised at paragraphs 1, 3, 9, 11, 17, 19, 25 and 27 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

³⁶ Engineering Quarterly Business Review dated March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

³⁷ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369], Steerco Project Status Report May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

29. By 31 May 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 5, 6, 9, 10, 13, 14, 17, 18, 21, 22, 25 and 26 above;
- (b) McCann had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 24 April 2018, by reason of McCann's membership of Steerco and/or by reason of his attendance at the Steerco Project Status Report presentation on 24 April 2018 and/or by reason of being in receipt of the Steerco Project Status Report dated April 2018, that:
 - (i) the likely GPM was a loss of approximately (\$47.8m); and
 - (ii) there were delays to the works;³⁸
- (f) McCann had actual knowledge, by 12 May 2018, by reason of McCann's membership of Steerco, by reason of his attendance at the Steerco Project Status Report presentation on 12 May 2018 and/or by reason of being in receipt of the Steerco Project Status Report dated May 2018, that there was no change to the GPM forecast loss between April 2018 and May 2018;³⁹ and
- (g) given what McCann actually knew in respect of the KSD project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 1, 5, 9, 13, 17, 21, 25 and 29(a) to 29(f) above, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

³⁸ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369].

³⁹ Steerco Project Status Report May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

30. Further and in the alternative to paragraph 29 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 31 May 2018 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 5, 9, 13, 17, 21, 25 and 29 above, McCann:
 - (a) ought to have known the information particularised at paragraphs 1, 5, 9, 13, 17, 21, 25 and 29 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
31. By 31 May 2018, in relation to the **NorthConnex** project:
 - (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 7, 8, 9, 10, 15, 16, 17, 18, 23, 24, 25 and 26 above;
 - (b) McCann had actual knowledge that NCX remained an underperforming and/or problem project;
 - (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) McCann had actual knowledge, by 9 March 2018, by reason of his membership of Steerco and/or by reason of him being in receipt of the Steerco Project Status Report dated 13 March 2018, that there were deficiencies in the cost reporting and programming disciplines on the project: "Finance & Commercial team to rollout cost reporting 101 training as a priority";⁴⁰

⁴⁰ Steerco Project Status Report dated 13 March 2018 [LLC.008.007.4878], email from Letton to Steerco attendees dated 9 March 2018 [LLC.002.008.8308].

- (f) McCann had actual knowledge, by 31 March 2018, by reason of him being aware of the independent findings of Hinds Blunden, which found that there were deficiencies in the reporting on the NCX project, that:
- (i) there was no or no up to date register of risks for the NCX project;
 - (ii) project level reporting on the NCX project may not provide an accurate picture of the financial and project risks;
 - (iii) even though the program presents as a robust plan for completion of the project, benefit would be realised by the systematic identification of project risks and the active ongoing management of mitigation strategies; and
 - (iv) without a complete risk register, “there is no transparency of the issues which have been included or excluded” and “emerging risks which are no longer current are not handled in a structured way”;⁴¹
- (g) McCann had actual knowledge, by 22 May 2018, by reason of his attendance at the Board meeting on 22 May 2018 and/or by reason of him presenting on Group strategy to the Lendlease Board and/or by reason of him being in receipt of the Board presentation pack dated May 2018, that:
- (i) the GPM for NCX was forecast to be a loss of approximately (\$144m);
 - (ii) the Hinds Blunden review indicated there was a likely loss of approximately (\$122m);
 - (iii) there was a turnaround forecast for the Engineering Business;
 - (iv) the then current position with the problem projects and net impacts on earnings showed that the 31 December provision had been utilised in full, but there was “meaningful contingency at a Group level” and that a review would be conducted before year end to determine what additional provisions may be required; and
 - (v) an update on the FY18 forecast position showed that negative variations prior to forecast on some Engineering projects were updated following project reviews and while provisions held at Group level had largely been

⁴¹ Hinds Blunden report dated 31 March 2018 [LLC.006.001.4585].

absorbed, the Group remained on track to achieve target Group PAT through outperformance in the Property Australia Business;⁴² and

(h) given what McCann actually knew in respect of the NCX project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 1, 7, 9, 15, 17, 23, 25 and 31(a) to 31(g) above, McCann:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

32. Further and in the alternative to paragraph 31 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 31 May 2018 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 7, 9, 15, 17, 23, 25 and 31 above, McCann:

(a) ought to have known the information particularised at paragraphs 1, 7, 9, 15, 17, 23, 25 and 31 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

22 August 2018

33. By 22 August 2018, in relation to the **Engineering Business**:

(a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1 to 32 above;

(b) McCann had actual knowledge that the Engineering Business continued to underperform;

⁴² Lendlease Board presentation pack dated 22 May 2018 [LLC.013.001.3902].

- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 13 July 2018, by reason of his attendance at the Board meeting on 11 to 13 July 2018 and/or receipt of the Board presentation pack dated July 2018, that FY18 was characterised by the businesses driving significant outperformance to offset the “very disappointing underperformance of the Engineering Business”,⁴³
- (f) McCann had actual knowledge, by 20 August 2018, by reason of his attendance at the RMAC meeting on 20 August 2018, his involvement in the preparation of and/or receipt of the Executive Summary dated 20 August 2018 and KPMG report to RMAC, that:
 - (i) the construction performance was subdued driven by underperformance in the Engineering Business. Further provisions of \$38m had been taken outside the projects at a Group level; and
 - (ii) as to the accuracy of the R&O metrics, KPMG identified that:
 - (A) contingency had reduced close to nil in the periods leading up to the inflection point, being the point where GPM begins to deteriorate and contingency remained steady;
 - (B) projects experienced a deterioration of GPM between 50 to 75% complete;
 - (C) at the inflection point in GPM, the net R&O at that point in time was significantly less than the actual GPM deterioration that had occurred subsequently, suggesting unidentified risks that came to fruition and some opportunities that did not crystallise;
 - (D) Lendlease was likely having an optimistic bias when assessing R&O;

⁴³ Board meeting presentation pack dated July 2018 [LLC.013.001.4559], Minutes of the 11-13 July 2018 Board meeting [LLC.013.001.5001].

- (E) resolution of significant risks and uncertainties remained outstanding on a number of key problem projects; and
 - (F) the three material nonperforming projects (being GUN, KSD and NCX), were adversely impacting gross margin by \$284m;⁴⁴ and
 - (g) given what McCann actually knew in respect of each of the Projects and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31 and 33(a) to 33(f) above and paragraphs 35, 37 and 39 below, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
34. Further and in the alternative to paragraph 33 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 22 August 2018 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31 and 33 above and paragraphs 35, 37 and 39 below, McCann:
- (a) ought to have known the information particularised at paragraphs 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31 and 33 above and paragraphs 35, 37 and 39 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

⁴⁴ Executive Summary dated 20 August 2018 and KPMG report to RMAC [LLC.011.009.8562], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

35. By 22 August 2018, in relation to the **Gateway Upgrade North** project:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 3, 4, 9, 10, 11, 12, 17, 18, 19, 20, 25, 26, 27, 28, 33 and 34 above;
- (b) McCann had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 25 July 2018, or alternatively 16 August 2018, by reason of McCann's membership of Steerco, his attendance at the Steerco Project Status Report presentations on 15 June 2018 and 16 August 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated June, July and August 2018, that the forecast GPM had reduced further to a loss of approximately (\$70m) in July and August, which represented a negative deviation of approximately (\$14m) from the GPM in the prior forecast in the Steerco Project Status Report dated June 2018;⁴⁵
- (f) McCann had actual knowledge, by 20 August 2018, by reason of McCann's attendance at the RMAC meeting on 20 August 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated August 2018:
 - (i) that the GUN project was continuing to forecast a GPM loss of approximately (\$70m);
 - (ii) of the reasons for the deterioration in the GPM, including estimating errors at tender on geotechnical ground conditions, lower asphalt productivity rates and additional bridge piling costs resulting in significant resequencing and traffic management cost impacts;

⁴⁵ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779], Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

- (iii) that the project was pursuing claims/insurance recovery and was relying on \$69.1m (against a total claim value of approximately \$180.0m) to achieve the then current forecast margin of (\$56m). A provision of \$14m was being held at the Engineering Business corporate level against this reliance (equalling the total forecast GPM loss of approximately (\$70m)); and
 - (iv) that there was significant underperformance of the project, including as a result of matters that arose at or shortly after tender phase, which was likely to impact the remainder of the works;⁴⁶ and
 - (g) given what McCann actually knew in respect of the GUN project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 1, 3, 9, 11, 17, 19, 25, 27, 33 and 35(a) to 35(f) above, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
36. Further and in the alternative to paragraph 35 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 22 August 2018 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 3, 9, 11, 17, 19, 25, 27, 33 and 35 above, McCann:
- (a) ought to have known the information particularised at paragraphs 1, 3, 9, 11, 17, 19, 25, 27, 33 and 35 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

⁴⁶ RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

37. By 22 August 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 5, 6, 9, 10, 13, 14, 17, 18, 21, 22, 25, 26, 29, 30, 33 and 34 above;
- (b) McCann had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 15 June 2018 and through July 2018, by reason of McCann's attendance at the Steerco Project Status Report presentation on 15 June 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated June and July 2018, that:
 - (i) the forecast GPM was reported as slightly decreased to a loss of (\$47.9m) in the Steerco Project Status Report dated June 2018 or remained the same as the May 2018 forecast of a loss of (\$47.8m) in the Steerco Project Status Reports dated July 2018; and
 - (ii) as the works progressed through the first quarter, the productivity positions taken in 2017 forecasts had proven to be optimistic;⁴⁷
- (f) McCann had actual knowledge, by 16 August 2018, by reason of McCann's membership of Steerco and/or by reason of his attendance at the Steerco Project Status Report presentation and/or by reason of him being in receipt of the Steerco Project Status Report dated August 2018, that:
 - (i) an issue had emerged around the interaction between ground stabilisation works (jet grouting works) and the marine structures, which had the project team critically reviewing the design;

⁴⁷ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

- (ii) the then current indication was that there would likely be design changes and additional works necessary;
 - (iii) the forecast productivity had been optimistic and the project team had commenced increasing the most likely position; and
 - (iv) the forecast GPM remained at a loss of approximately (\$47.8m);⁴⁸
- (g) McCann had actual knowledge, by 21 August 2018, by reason of his attendance at the RMAC meeting on 20 August 2018, attendance at the Board meeting on 21 and 22 August 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated August 2018 and Board presentation pack dated August 2018, that:
- (i) there remained a forecast GPM loss of approximately (\$47.8m); and
 - (ii) the risk relating to the jet grouting issue was under investigation, which represented additional complexities with the project and the progress of the works;⁴⁹ and
- (h) given what McCann actually knew in respect of the KSD project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 1, 5, 9, 13, 17, 21, 25, 29, 33 and 37(a) to 37(g) above, McCann:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
- that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
38. Further and in the alternative to paragraph 37 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 22 August 2018 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, Lendlease Board and Steerco meetings identified, his

⁴⁸ Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

⁴⁹ RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Board presentation pack dated 21-22 August 2018 [LLC.013.001.5001], Minutes of Board meeting 21-22 August 2018 [LLC.013.001.5660], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 5, 9, 13, 17, 21, 25, 29, 33 and 37 above, McCann:

- (a) ought to have known the information particularised at paragraphs 1, 5, 9, 13, 17, 21, 25, 29, 33 and 37 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

39. By 22 August 2018, in relation to the **NorthConnex** project:

- (a) McCann had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 1 above and the information referred to at paragraphs 1, 2, 7, 8, 9, 10, 15, 16, 17, 18, 23, 24, 25, 26, 31, 32, 33 and 34 above;
- (b) McCann had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) McCann had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) McCann had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) McCann had actual knowledge, by 13 July 2018, by reason of him presenting on Group strategy to the Lendlease Board, his attendance at the Board meeting on 11 to 13 July 2018 and/or by reason of being in receipt of the Board Financial Update presentation by Gupta dated 24 June 2018 and the CFO Report from the Board presentation pack dated July 2018, that the forecast FY18 GPM was a loss of approximately (\$162m) and the forecast WOL GPM was a loss of approximately (\$140m);⁵⁰
- (f) McCann had actual knowledge, by 17 July 2018, or alternatively 20 August 2018, by reason of his attendance at the RMAC meeting on 20 August 2018, that:
 - (i) the forecast GPM was a loss of approximately (\$240m); and

⁵⁰ Board Financial Update Presentation by Gupta in Board presentation pack dated 24 June 2018 [LLC.013.001.4460], CFO Report from Board presentation pack dated July 2018 [LLC.013.001.4559].

- (ii) the forecast cost change aligned with movement in the forecast completion date to 25 May 2020;⁵¹
 - (g) McCann had actual knowledge, by 25 July 2018, by reason of his membership of Steerco and/or by reason of him being in receipt of the Steerco Project Status Report dated July 2018, that:
 - (i) the forecast GPM was a loss of approximately (\$240m);
 - (ii) there were major variances to the budget; and
 - (iii) the program shifted from a completion date in December 2019 to May 2020, with the cost updated to reflect the associated burn rate and forecasting errors identified;⁵² and
 - (h) given what McCann actually knew in respect of the NCX project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 1, 7, 9, 15, 17, 23, 25, 31, 33 and 39(a) to 39(g) above, McCann:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
40. Further and in the alternative to paragraph 39 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 22 August 2018 and given McCann's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, Lendlease Board and Steerco meetings identified, his membership of the Lendlease Board and Steerco committee identified and/or receipt of the documents identified in paragraphs 1, 7, 9, 15, 17, 23, 25, 31, 33 and 39 above, McCann:
- (a) ought to have known the information particularised at paragraphs 1, 7, 9, 15, 17, 23, 25, 31, 33 and 39 above; and/or

⁵¹ RMAC Speakers Notes dated 17 July 2018 [LLC.006.039.7775], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

⁵² Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

The opinion that was actually formed and/or ought to have been formed based on the information and facts available to McCann

41. McCann had actual knowledge of the historical performance of the Projects as at each of the following dates:

- (a) 17 October 2017, referred to above at paragraphs 1 to 8 and as summarised in the Badala Report at Table 11, Oct.17 Column (GUN), Table 31, Oct.17 Column (KSD) and Table 51, Sept.17 Column (NCX);
- (b) 17 November 2017, referred to above at paragraphs 1 to 16 and as summarised in the Badala Report at Table 11, Oct.17 and Nov.17 Columns (GUN), Table 31, Oct.17 and Nov.17 Columns (KSD) and Table 51, Sept.17 Column (NCX);
- (c) 21 February 2018, referred to above at paragraphs 1 to 24 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17 and Feb.18 Columns (GUN), Table 31, Oct.17, Nov.17 and Feb.18 Columns (KSD) and Table 51, Sept.17 and Dec.17 Columns (NCX);
- (d) 31 May 2018, referred to above at paragraphs 1 to 32 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18 and May.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18 and May.18 Columns (KSD) and Table 51, Sept.17, Dec.17 and Mar.18 Columns (NCX); and
- (e) 22 August 2018, referred to above at paragraphs 1 to 40 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (KSD) and Table 51, Sept.17, Dec.17, Mar.18 and Jun.18 Columns (NCX).

(McCann Identified Dates).

42. At each of the McCann Identified Dates, by reason of McCann's:

- (a) actual and/or constructive knowledge as particularised in:
- (i) paragraphs 1 to 8 above in respect of the period prior to 17 October 2017;

- (ii) paragraphs 1 to 16 above in respect of the period prior to 17 November 2017;
- (iii) paragraphs 1 to 24 above in respect of the period prior to 21 February 2018;
- (iv) paragraphs 1 to 32 above in respect of the period prior to 31 May 2018;
- (v) paragraphs 1 to 40 above in respect of the period prior to 22 August 2018;
- (b) alternatively,
 - (i) actual and/or constructive knowledge as particularised in paragraphs 1 to 41 above; and
 - (ii) constructive knowledge based upon his ability to access information of the historical performance of the Projects in his capacity as Group Chief Executive Officer and Managing Director as at each relevant date, to the extent that historical performance is as summarised in:
 - (A) the Badala Report, at Table 11 (GUN), Table 31 (KSD) and Table 51 (NCX) and [97]-[190], [191]-[283] and [284]-[371]; and
 - (B) the documents considered and referred to by Peter Badala as identified and extracted by Document ID as the "Source File" or "Source" in Annexures A.1, A.2, B.1, B.2, C.1 and C.2 of that report for each relevant period; and
- (c) role as Group Chief Executive Officer and Managing Director;

McCann:

- (d) had actual knowledge, ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him (as particularised in [42(a)] and [42(b)] above, insofar as the allegations are of actual knowledge), or which ought to have been known to him (as particularised in [42(a)] and [42(b)] above insofar as the allegations are of constructive knowledge), that the provisions taken for the Engineering Business as a consequence of the Projects were inadequate; and

- (e) ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him, or which ought to have been known to him, that:

Provision Information

- (i) additional provisions for the Engineering Business would need to be taken as a consequence of the Projects, as follows:
- (A) as at 17 October 2017, the 17 October 2017 Provision Information, being approximately \$415.0 million for the Engineering Business;
 - (B) as at 17 November 2017, the 17 November 2017 Provision Information, being approximately \$363.2 million for the Engineering Business;
 - (C) as at 21 February 2018, the 21 February 2018 Provision Information, being approximately \$331.3 million for the Engineering Business;
 - (D) as at 31 May 2018, the 31 May 2018 Provision Information, being approximately \$393.6 million for the Engineering Business; and
 - (E) as at 22 August 2018, the 22 August 2018 Provision Information, being approximately \$415.5 million for the Engineering Business; and/or

Overstated profits

- (ii) by reason of the inadequate provisions, the profits were overstated and a reduction in published profits was required as follows:
- (A) as at 21 February 2018, the 31 December 2017 Profit Information, being a reduction in after-tax profits of \$231.9 million; and
 - (B) as at 22 August 2018, the 30 June 2018 Profit Information, being a reduction in after-tax profits of \$290.9 million.

B. Gupta

17 October 2017

43. By 17 October 2017, in relation to the **Engineering Business**:

- (a) Gupta had actual knowledge that the Engineering Business was underperforming;
- (b) Gupta had actual knowledge that there was erosion to the forecast GPM and contingency;
- (c) Gupta had actual knowledge, by 11 September 2017, by reason of his attendance at the Engineering Quarterly Business Review and/or by reason of him being in receipt of the Engineering Quarterly Business Review Presentation dated September 2017, of the Systemic Reporting and Performance Issues;⁵³
- (d) Gupta had actual knowledge, by 17 October 2017, by reason of him being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 or by being aware of its contents by reason of him attending the Board meeting on 17 October 2017, during which McCann presented on the topic and/or by reason of him meeting with Mike Zambelli on or about 10 October 2017 to discuss planning of reviews by the CoE, that there were six under-performing projects under review by the CoE which either had GPM loss position or GPM erosion;⁵⁴ and
- (e) given what Gupta actually knew in respect of each of the Projects and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 43(a) to 43(d) above and paragraphs 45, 47 and 49 below, Gupta:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

⁵³ Engineering Quarterly Business Review Presentation dated September 2017 [LLC.003.022.5081], attendees identified in Engineering Quarterly Business Review meeting Actions List dated 11 September 2017 [LLC.033.019.8302].

⁵⁴ CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 [LLC.002.010.5556], Minutes of the 17 October 2017 Board meeting [LLC.013.001.2327], email from Mike Zambelli to Matthew Winchur regarding materials for meeting with Gupta dated 9 October 2017 [LLC.033.021.0158].

44. Further and in the alternative to paragraph 43 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 17 October 2017 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review and Lendlease Board meetings identified and/or receipt of the documents identified in paragraph 43 above and paragraphs 45, 47 and 49 below, Gupta:
- (a) ought to have known the information particularised at paragraph 43 above and paragraphs 45, 47 and 49 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
45. By 17 October 2017, in relation to the **Gateway Upgrade North** project:
- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43 and 44 above;
 - (b) Gupta had actual knowledge that GUN was an underperforming and/or problem project;
 - (c) Gupta had actual knowledge that there was erosion of the forecast GPM and contingency;
 - (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) Gupta had actual knowledge, by 11 September 2017, by reason of his attendance at the Engineering Quarterly Business Review Presentation and/or the Engineering Quarterly Finance Review Presentation and/or by reason of him being in receipt of the presentation packs distributed to attendees, that:
 - (i) GUN was underperforming, in that it had been given a "red" risk rating and had been identified to be under time and under budget pressure;
 - (ii) there was an erosion of contingency, with only \$5.9m contingency remaining; and

- (iii) the then current forecast GPM remained at approximately \$51.6m for the GUN project;⁵⁵
- (f) Gupta had actual knowledge, by 16 October 2017, by reason of Gupta being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 and/or by reason of his attendance at the Board meeting on 17 October 2017 and/or by being aware of its contents by reason of him attending the Board meeting on 17 October 2017, during which McCann presented on the topic and/or by reason of him meeting with Mike Zambelli on or about 10 October 2017 to discuss planning of reviews by the CoE, that:
 - (i) the CoE had identified GUN to be a project that should be monitored;
 - (ii) the CoE had reviewed GUN and had provided an indication that its then “current view” was that there would be a GPM reduction to \$15m with further deterioration possible. This was due to, *inter alia*, cost overruns in traffic management, design growth and construction phase services;
 - (iii) there continued to be contingency erosion, with only \$3.6m of contingency remaining of the \$41.1m budget, being only 1.5% of the cost to complete of (\$233m);
 - (iv) a half day review of the GUN project was scheduled on 19 October 2017 for Laslett and the CoE; and
 - (v) the CoE had identified and reported on six underperforming projects, NCX, GUN, KSD, CityLink Tulla Widening, Caulfield to Dandenong Alliance and Tug Harbour;⁵⁶ and
- (g) given what Gupta actually knew in respect of the GUN project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 43 and 45(a) to 45(f) above, Gupta:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

⁵⁵ Engineering Quarterly Finance Review presentation pack dated September 2017 [LLC.003.022.5080], Engineering Quarterly Business Review presentation pack dated September 2017 [LLC.003.022.5081], attendees identified in Engineering Quarterly Business Review meeting Actions List dated 11 September 2017 [LLC.033.019.8302].

⁵⁶ CoE Update on Non-Performing Projects in Engineering [LLC.002.010.5556], Minutes of the 17 October 2017 Board meeting [LLC.013.001.2327], email from Mike Zambelli to Matthew Winchur regarding materials for meeting with Gupta dated 9 October 2017 [LLC.033.021.0158].

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

46. Further and in the alternative to paragraph 45 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 17 October 2017 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review and Lendlease Board meetings identified and/or receipt of the documents identified in paragraphs 43 and 45 above, Gupta:
- (a) ought to have known the information particularised at paragraphs 43 and 45 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
47. By 17 October 2017, in relation to the **Kingsford Smith Drive Upgrade** project:
- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43 and 44 above;
 - (b) Gupta had actual knowledge that KSD was an underperforming and/or problem project;
 - (c) Gupta had actual knowledge that there was erosion of the forecast GPM and contingency;
 - (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) Gupta had actual knowledge, by 11 September 2017, by reason of his attendance at the Quarterly Business Review and/or by reason of being in receipt of the Quarterly Business Review presentation dated September 2017, that the geotechnical conditions in the Brisbane River continued to impact progress and that Laslett was to meet with the Brisbane Lord Mayor to discuss project issues and opportunities for cost relief;⁵⁷

⁵⁷ Engineering Quarterly Business Review Presentation dated September 2017 [LLC.003.022.5081], attendees identified in Engineering Quarterly Business Review meeting Actions List dated 11 September 2017 [LLC.033.019.8302].

- (f) Gupta had actual knowledge, by 17 October 2017, by reason of him being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 and/or by reason of his attendance at the Board meeting on 17 October 2017 and/or by being aware of its contents by reason of him attending the Board meeting on 17 October 2017, during which McCann presented on the topic and/or by reason of him meeting with Mike Zambelli on or about 10 October 2017 to discuss planning of reviews by the CoE, that:
- (i) while the business was targeting a break even GPM of \$0 (zero), it was the CoE's view that the GPM was likely to be a loss of approximately (\$40m);
 - (ii) there were cost concerns from geotechnical issues along the bed of the Brisbane River and significant underground services;
 - (iii) the forecast completion date had moved from 5 July 2019 to 28 January 2020 and no time contingency remained;
 - (iv) the CoE anticipated completion date with appropriate time contingency was April 2020;
 - (v) the cost contingency had eroded; and
 - (vi) there was a significant reliance of \$70m;⁵⁸ and
- (g) given what Gupta actually knew in respect of the KSD project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 43 and 47(a) to 47(f) above, Gupta:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
- that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

48. Further and in the alternative to paragraph 47 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 17 October 2017 and

⁵⁸ CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 [LLC.002.010.5556], Minutes of the 17 October 2017 Board meeting [LLC.013.001.2327], email from Mike Zambelli to Matthew Winchur regarding materials for meeting with Tarun Gupta dated 9 October 2017 [LLC.033.021.0158].

given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review and Lendlease Board meetings identified and/or receipt of the documents identified in paragraphs 43 and 47 above, Gupta:

- (a) ought to have known the information particularised at paragraphs 43 and 47 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

49. By 17 October 2017, in relation to the **NorthConnex** project:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43 and 44 above;
- (b) Gupta had actual knowledge that NCX was an underperforming and/or problem project;
- (c) Gupta had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 17 October 2017, by reason of him being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 and/or by reason of his attendance at the Board meeting on 17 October 2017 and/or by being aware of its contents by reason of him attending the Board meeting on 17 October 2017, during which McCann presented on the topic and/or by reason of him meeting with Mike Zambelli on or about 10 October 2017 to discuss planning of reviews by the CoE, that:
 - (i) the likely GPM position for the NCX project (Lendlease share) would be a loss of approximately (\$100m);
 - (ii) the CoE had attended the NCX program review which identified significant program and cost overruns;
 - (iii) there had been an erosion of contingency of 7 months;

- (iv) the exposure to liquidated damages was approximately \$350,000 per day;
- (v) the CoE had formed the view that the NCX program was “under significant time pressure”;
- (vi) a further review would be carried out in November 2017;
- (vii) the largest issue was the requirement for deeper tunnel alignment which was anticipated to cost approximately \$130m and liability had not yet been established; and
- (viii) there were significant slippages in the tunnel works;⁵⁹ and
- (f) given what Gupta actually knew in respect of the NCX project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 43 and 49(a) to 49(e) above, Gupta:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

50. Further and in the alternative to paragraph 49 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 17 October 2017 and given Gupta’s position at Lendlease, his attendance at the Engineering Quarterly Business Review and Lendlease Board meetings identified and/or receipt of the documents identified in paragraphs 43 and 49 above, Gupta:
- (a) ought to have known the information particularised at paragraphs 43 and 49 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

⁵⁹ CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 [LLC.002.010.5556], Minutes of the 17 October 2017 Board meeting [LLC.013.001.2327], email from Mike Zambelli to Matthew Winchur regarding materials for meeting with Tarun Gupta dated 9 October 2017 [LLC.033.021.0158].

17 November 2017

51. By 17 November 2017, in relation to the **Engineering Business**:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43 to 50 above;
- (b) Gupta had actual knowledge that the Engineering Business continued to underperform;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by reason of him being in receipt of the Post ASX Announcement dated 23 October 2017, that after the ASX Announcement on 17 October 2017, market analysts:
 - (i) queried whether the projects identified were the same underperforming projects flagged in FY17;
 - (ii) as to the quantum of underperformance, sought assurance that the extent of problems had been accurately captured to ensure there was no further downside;
 - (iii) sought assurance that the problems were not systemic issues;
 - (iv) questioned when management was aware of the deterioration of the projects; and
 - (v) questioned how the review process was performed;

such that Gupta was actually aware that the market was, or would likely be, concerned and/or interested in that information;⁶⁰
- (f) Gupta had actual knowledge, by 15 November 2017, by reason of Gupta's attendance at the RMAC meeting on 15 November 2017, the Board meeting on

⁶⁰ Lendlease Post-ASX Announcement Update dated 23 October 2017 [LLC.022.046.7523].

15 November 2017 and/or by reason of being in receipt of the RMAC Report dated November 2017 and the Minutes of 15 November 2017 Board meeting, that:

- (i) the underperforming projects of the Engineering Business were listed as the number one Group wide risk and were identified to be high risk with a very large likely impact and risk;⁶¹
 - (ii) the Engineering Business had significantly increased its reliance assumptions in the quarter, including (\$33.7m) for GUN and (\$42.7m) for KSD;⁶²
 - (iii) the Steerco had been established to carry out an independent review of the Engineering Business and it comprised McCann, Labbad, Gupta and Pedersen;⁶³ and
 - (iv) the Group Forecast PAT for FY18 had been revised down to a profit of \$764m;⁶⁴
- (g) Gupta had actual knowledge, by 16 November 2017, by reason of Gupta attending the Board meeting on 16 November 2017 and/or by reason of being involved in the preparation of and/or in receipt of the CFO Memorandum dated November 2017, that:
- (i) the Group forecast FY18 PAT presented at 17 October 2017 included total contingency at the Group level of approximately \$65m post tax, of which \$50m post tax was being held against further downside risks in the Engineering Business;
 - (ii) the \$50m contingency to cover downside across the Engineering Business would be fully absorbed by the position shown as the “independent review scenario”;
 - (iii) the independent review was not yet complete;
 - (iv) PAT FY18 had a variance of (\$16m) and a GPM variance of a loss of (\$99m);

⁶¹ RMAC Report dated November 2017 [LLC.008.022.4073].

⁶² RMAC Report dated November 2017 [LLC.008.022.4073].

⁶³ Minutes of 15 November 2017 Board meeting [LLC.013.001.2576].

⁶⁴ Minutes of 15 November 2017 Board meeting [LLC.013.001.2576].

- (v) revenue and GPM at Group level had been revised down taking into account margin deterioration on projects in the Engineering Business; and
 - (vi) at the Engineering Business level, FY18 variance against budget was: revenue down (\$131m), GPM down (\$102m), EBITDA down (\$97m), Engineering PAT down (\$70m);⁶⁵ and
 - (h) given what Gupta actually knew in respect of each of the Projects and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 43, 45, 47, 49 and 51(a) to 51(g) above and paragraphs 53, 55 and 57 below, Gupta:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
52. Further and in the alternative to paragraph 51 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 17 November 2017 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 45, 47, 49 and 51 above and paragraphs 53, 55 and 57 below, Gupta:
- (a) ought to have known the information particularised at paragraphs 43, 45, 47, 49 and 51 above and paragraphs 53, 55 and 57 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

⁶⁵ CFO Memorandum dated 16 November 2017 [LLC.011.004.1484], Minutes of 16 November 2017 Board meeting [LLC.013.001.2576].

53. By 17 November 2017, in relation to the **Gateway Upgrade North** project:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 45, 46, 51 and 52 above;
- (b) Gupta had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 15 November 2017, by reason of Gupta attending the RMAC meeting on 15 November 2017 and/or by reason of him being in receipt of the RMAC presentation pack including the KPMG Report to the RMAC, that:
 - (i) GUN was identified as being 68.4% complete;
 - (ii) at contract inception, the GPM was approximately \$52.5m but was then forecast to be \$15m with an annual FY18 GPM result of a loss of (\$6.2m);
 - (iii) there was an assumed reliance of \$69.8m;
 - (iv) GUN remained an underperforming project and the various reasons for the underperformance, including that there were delays, design changes, difficult geotechnical conditions and resequencing of works;
 - (v) the delivery of the GUN project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to mitigate delays, changed requirements to remove and replace spoil and additional temporary traffic management;
 - (vi) there was further erosion in the likely GPM; and

- (vii) the GPM was contingent on large reliances. Specifically, the project was pursuing \$190.3m in claims of which it needed to recover \$69.1m in order to achieve the then current forecast GPM of \$15m;⁶⁶ and
- (f) given what Gupta actually knew in respect of the GUN project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 43, 45, 51 and 53(a) to 53(e) above, Gupta:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
- 54. Further and in the alternative to paragraph 53 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 17 November 2017 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Lendlease Board and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 45, 51 and 53 above, Gupta:
 - (a) ought to have known the information particularised at paragraphs 43, 45, 51 and 53 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
- 55. By 17 November 2017, in relation to the **Kingsford Smith Drive Upgrade** project:
 - (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 47, 48, 51 and 52 above;
 - (b) Gupta had actual knowledge that KSD remained an underperforming and/or problem project;

⁶⁶ RMAC Report dated November 2017 and KPMG Report to RMAC dated November 2017 [LLC.008.022.4073], attendees identified in minutes of RMAC meeting 15 November 2017 [LLC.011.008.2694].

- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 1 November 2017, by reason of him attending the Steerco Project Status Report presentation and/or by reason of being in receipt of the Steerco Project Status Report dated 1 November 2017, that:
 - (i) the forecast GPM had reduced from \$36.9m to \$0 (zero), or was a break even project;
 - (ii) there was a delay of approximately 9 months to the works; and
 - (iii) the delays were caused by, *inter alia*, changes in design scope and complexity, latent conditions (geotechnical) and works to marine structures;⁶⁷
- (f) Gupta had actual knowledge, by 16 November 2017, by reason of Gupta attending the Board meeting on 16 November 2017 and/or by reason of his involvement in the preparation of the CFO Report dated November 2017 and/or by reason of being in receipt of the Board meeting presentation pack dated November 2017 including the Risk and CoE Report, that the GPM for KSD had deteriorated from approximately \$36.9m to \$0 (zero) or break even;⁶⁸ and
- (g) given what Gupta actually knew in respect of the KSD project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 43, 47, 51 and 55(a) to 55(f) above, Gupta:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

⁶⁷ Steerco Project Status Report dated 1 November 2017 [LLC.002.010.4935], email from Mason to Steerco attendees dated 1 November 2017 [LLC.002.010.5009].

⁶⁸ Board meeting presentation pack dated November 2017 [LLC.013.001.2327], attendees identified in Minutes of 16 November 2017 Board meeting [LLC.013.001.2576].

56. Further and in the alternative to paragraph 55 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 17 November 2017 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 47, 51 and 55 above, Gupta:
- (a) ought to have known the information particularised at paragraphs 43, 47, 51 and 55 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
57. By 17 November 2017, in relation to the **NorthConnex** project:
- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 49, 50, 51 and 52 above;
 - (b) Gupta had actual knowledge that NCX remained an underperforming and/or problem project;
 - (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) Gupta had actual knowledge, by 18 October 2017, by reason of him being in receipt of the Supporting Documents to the NCX Monthly ACF Presentation dated 18 October 2017, that:
 - (i) the then likely GPM position for the NCX project (Lendlease share) would be a loss of approximately (\$228.9m); and
 - (ii) there was a (\$457.9m) variance in costs between tender and forecast at completion;⁶⁹

⁶⁹ Supporting Documents to NCX Monthly ACF Presentation dated 18 October 2017 [LLC.021.004.7504], email from Mason dated 22 October 2017 [LLC.021.004.7469].

- (f) Gupta had actual knowledge, by 22 October 2017, by reason of him being in receipt of the NCX Monthly Project Review dated 13 September 2017, that there were delays to the works being caused by the change of design and cracking in the tunnel lining and sequencing and that there were delays across many key targets;⁷⁰
- (g) Gupta had actual knowledge, by 16 November 2017, by reason of him attending the Board meeting on 16 November 2017 and/or by reason of him being involved in the preparation of the CFO Update on LLC FY18 Position, that:
- (i) as a result of an independent review carried out by Hinds Blunden, the GPM for NCX had deteriorated by a further (\$25m); and
 - (ii) the forecast completion date had moved to April 2020;⁷¹ and
- (h) given what Gupta actually knew in respect of the NCX project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 43, 49, 51 and 57(a) to 57(g) above, Gupta:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
- that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
58. Further and in the alternative to paragraph 57 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 17 November 2017 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Lendlease Board and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 49, 51 and 57 above, Gupta:
- (a) ought to have known the information particularised at paragraphs 43, 49, 51 and 57 above; and/or

⁷⁰ NCX Monthly Project Review dated 13 September 2017 [LLC.008.008.0560], email from Mason to McCann and others dated 22 October 2017 [LLC.008.008.0558].

⁷¹ CFO Memorandum dated 16 November 2017 [LLC.011.004.1484], Minutes of 16 November 2017 Board meeting [LLC.013.001.2576].

- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

21 February 2018

59. By 21 February 2018, in relation to the **Engineering Business**:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43 to 58 above;
- (b) Gupta had actual knowledge that the Engineering Business continued to underperform;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 19 February 2018, by reason of his attendance at the RMAC meeting on 19 February 2018 and/or by reason of him being in receipt of the KPMG Report to RMAC, that there were three material non-performing projects, being GUN, KSD and NCX, which were impacting the gross margin in the order of approximately \$225m, with GUN contributing approximately \$82m of the overall impact;⁷²
- (f) Gupta had actual knowledge, by 14 January 2018, by reason of him corresponding with McCann between 13 and 14 January 2018, that there was a disconnect between what was being reported at the project level and at the Group level and that the Group level reporting was unreasonably optimistic;⁷³
- (g) Gupta had actual knowledge, by 20 February 2018, by reason of him being responsible for the CFO presentation, presenting the CFO presentation on 20 February 2018 and/or by reason of being in receipt of the CFO Report, that:
 - (i) the Group would deliver PAT of approximately \$426m for HY18, which represents an 8% increase on the prior corresponding period;

⁷² KPMG Report to RMAC dated 12 February 2018 [LLC.022.014.0187], RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], attendees identified in Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

⁷³ Correspondence between Gupta and McCann dated 13 to 14 January 2018 [LLC.021.003.0773].

- (ii) Construction Australia was significantly down due to margin downside on key projects within the Engineering Business; and
 - (iii) as to the Engineering Business, the forecast variance against budget was: GPM (\$152m) and EBITDA (\$151M);⁷⁴ and
 - (h) given what Gupta actually knew in respect of each of the Projects and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 43, 45, 47, 49, 51, 53, 55, 57 and 59(a) to 59(g) above and paragraphs 61, 63 and 65 below, Gupta:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
60. Further and in the alternative to paragraph 59 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 21 February 2018 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 45, 47, 49, 51, 53, 55, 57 and 59 above and paragraphs 61, 63 and 65 below, Gupta:
- (a) ought to have known the information particularised at paragraphs 43, 45, 47, 49, 51, 53, 55, 57 and 59 above and paragraphs 61, 63 and 65 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
61. By 21 February 2018, in relation to the **Gateway Upgrade North** project:
- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 45, 46, 51, 52, 53, 54, 59 and 60 above;

⁷⁴ CFO Report dated 20 February 2018 [LLC.013.001.2926], Minutes of 20 February 2018 Board meeting [LLC.013.001.3379].

- (b) Gupta had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 14 February 2018, by reason of Gupta's membership of Steerco, his attendance at the Steerco Project Status Report presentation on 14 February 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated February 2018, that:
 - (i) the GUN project continued to be an underperforming project;
 - (ii) there was an increase in forecast costs of approximately \$91.0m against budget;
 - (iii) the GPM was continuing to erode with it being reported as \$4.4m prior to additional costs (\$4.5m) and reliance (\$17.5m) provisions, for a net Project position of (\$17.6m);
 - (iv) the project was pursuing \$140.4m of claims and relying on a net claim of \$44.8m (gross reliance excluding payment on account \$69.7m); and
 - (v) there was contingency erosion, with it now being \$3.9m compared to a budget of \$55.1m;⁷⁵
- (f) Gupta had actual knowledge, by 19 February 2018, by reason of Gupta's attendance at the RMAC meeting on 19 February 2018 and/or by reason of him being in receipt of the KPMG Report to RMAC dated 12 February 2018 and the RMAC presentation pack dated February 2018, that:
 - (i) the GPM or WOL P/L for GUN was forecast to be a loss of between approximately (\$17.6m) according to the RMAC presentation pack dated February 2018 and (\$61m) according to the KPMG Report to RMAC dated 12 February 2018;

⁷⁵ Steerco Project Status Report dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 meeting [LLC.002.009.0717].

- (ii) GUN was identified as being between 76.1% and 78% complete;
 - (iii) the GPM was then forecast to be (\$17.6m), a movement of (\$32.6m) since the last RMAC in October 2017;
 - (iv) there was an assumed reliance of \$69.1m;
 - (v) the RMAC presentation pack dated February 2018 identified that the delivery of the project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to mitigate delays and additional temporary traffic management;
 - (vi) the KPMG Report to RMAC dated 12 February 2018 identified that the deterioration in GPM was primarily due to \$78m cost increase from lower than expected productivity rates, additional structure and bridge piling costs and estimating errors at tender resulting in higher levels of excavation and spoil removal in various road verges, which was partly offset by \$20m client approved variations and claims;
 - (vii) the project was relying on \$44.8m relating to claims and variations in order to achieve the forecast margin;
 - (viii) the forecast GPM was largely contingent on Lendlease successfully pursuing various contractual and insurance claims, and that there was inherent uncertainty in Lendlease's success; and
 - (ix) the issues that were leading to the erosion of the GPM had been identified early in the project and, in some cases, during the tender phase;⁷⁶ and
- (g) given what Gupta actually knew in respect of the GUN project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 43, 45, 51, 53, 59 and 61(a) to 61(f) above, Gupta:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

⁷⁶ KPMG Report to RMAC dated 12 February 2018 [LLC.022.014.0187], RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], attendees identified in Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

62. Further and in the alternative to paragraph 61 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 21 February 2018 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 45, 51, 53, 59 and 61 above, Gupta:
- (a) ought to have known the information particularised at paragraphs 43, 45, 51, 53, 59 and 61 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
63. By 21 February 2018, in relation to the **Kingsford Smith Drive Upgrade** project:
- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 47, 48, 51, 52, 55, 56, 59 and 60 above;
 - (b) Gupta had actual knowledge that KSD remained an underperforming and/or problem project;
 - (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) Gupta had actual knowledge, by 14 February 2018, by reason of his attendance at the Steerco Project Status Report presentation and/or by reason of him being in receipt of the Steerco Project Status Report dated February 2018, that there was a projected loss against budget of (\$36.5m) with an additional cost provision

of (\$10m). The total project GPM was \$0 or break even, and the net project position including the cost provision was (\$10m);⁷⁷

- (f) Gupta had actual knowledge, by 12 February 2018, or alternatively 19 February 2018, by reason of his attendance at the RMAC meeting on 19 February 2018 and/or by reason of him being in receipt of the KPMG Report to RMAC dated 12 February 2018, that the forecast WOL P/L had deteriorated to a loss of approximately (\$22m) (including provisions) and that there had been initial project estimation issues including an inaccurate geotechnical report regarding the soil strength and/or river conditions and an optimistic view had been taken of risk and opportunities at tender stage;⁷⁸ and
 - (g) given what Gupta actually knew in respect of the KSD project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 43, 47, 51, 55, 59 and 63(a) to 63(f) above, Gupta:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
64. Further and in the alternative to paragraph 63 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 21 February 2018 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 47, 51, 55, 59 and 63 above, Gupta:
- (a) ought to have known the information particularised at paragraphs 43, 47, 51, 55, 59 and 63 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

⁷⁷ Steerco Project Status Report dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 [LLC.002.009.0717].

⁷⁸ KPMG Report to RMAC dated 12 February 2018 [LLC.022.014.0187], Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

65. By 21 February 2018, in relation to the **NorthConnex** project:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 49, 50, 51, 52, 57, 58, 59 and 60 above;
- (b) Gupta had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 7 December 2017, by reason of him being in receipt of the Engineering Quarterly Business Review report dated 7 December 2017, that:
 - (i) the company level forecast GPM was a loss of approximately (\$75m);
 - (ii) during the quarter the Engineering Business reduced its FY18 MPAT following the completion of project reviews, including NCX;
 - (iii) NCX was listed as being 48% complete;
 - (iv) significant cost variances had occurred since contract inception; and
 - (v) there was a strategy in place to pursue revenue from the client, however the then current forecast assumed no reliance;⁷⁹
- (f) Gupta had actual knowledge, by 10 January 2018, by reason of him being in receipt of an email from Simon Benson dated 10 January 2018, of the level of provision that would need to be taken at a Group level in order to have a coverage on a project position on NCX of (\$300m). Benson stated, “we have done this for you to consider how we might table this with the Board when keeping the right level of tension with the Engineering business”;⁸⁰

⁷⁹ Quarterly Business Review – Engineering Business report dated 7 December 2017 [LLC.008.020.4775], email from Jade Henningsen dated 7 December 2017 [LLC.008.020.4774].

⁸⁰ Email from Simon Benson to Gupta dated 10 January 2018 [LLC.021.036.6932].

- (g) Gupta had actual knowledge, by 13 January 2018, by reason of him being responsible for the preparation of the CFO Report for January 2018 dated 13 January 2018, that:
- (i) NCX was reporting a forecast GPM loss of approximately (\$126m) which was in line with the independent review scenario proposed by Hinds Blunden in November 2017; and
 - (ii) forecast loss plus an unwinding of the prior year profits had been recognised in the forecast reflecting the updated project position;⁸¹
- (h) Gupta had actual knowledge, by 16 February 2018, by reason of his attendance at the RMAC meeting or by reason of him being in receipt of the RMAC presentation pack, that:
- (i) the total project loss had deteriorated from a loss of approximately (\$149m) to a loss of approximately (\$207m);
 - (ii) an additional provision was raised for risks associated with staff demobilisation, a range of M&E risks such as resource rate increases, delay to program and productivity inefficiencies;
 - (iii) an increase in costs in the order of approximately (\$52.1m) was likely;
 - (iv) NCX was listed as being approximately 54.6% complete; and
 - (v) “Significant costs variances impacting margin have occurred since contract inception that relate to deeper alignment and geotechnical issues, productivity and programme, spoil removal and other tender items including Buildings and Civil”;⁸²
- (i) Gupta had actual knowledge, by 20 February 2018, by reason of him attending the Board meeting on 20 February 2018 and/or by reason of being in receipt of the Board presentation pack, and/or by reason of him being responsible for the preparation and delivery of the CFO Report dated February 2018, that:
- (i) the GPM for NCX was forecasted to be a loss of approximately (\$126m), a variance of (\$133m) from the \$7m profit budgeted for; and

⁸¹ CFO Report for January 2018 dated 13 January 2018 [LLC.021.003.0857].

⁸² RMAC Speakers Notes dated 16 February 2018 [LLC.003.024.8045], RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

- (ii) Construction Australia was significantly down on PAT due to margin downside on key projects within the Engineering Business;⁸³ and
 - (j) given what Gupta actually knew in respect of the NCX project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 43, 49, 51, 57, 59 and 65(a) to 65(i) above, Gupta:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
66. Further and in the alternative to paragraph 65 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 21 February 2018 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Lendlease Board and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 49, 51, 57, 59 and 65 above, Gupta:
- (a) ought to have known the information particularised at paragraphs 43, 49, 51, 57, 59 and 65 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

31 May 2018

67. By 31 May 2018, in relation to the **Engineering Business**:
- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43 to 66 above;
 - (b) Gupta had actual knowledge that the Engineering Business continued to underperform;

⁸³ CFO Report from 20 February 2018 Board presentation pack [LLC.013.001.2926], Minutes of 20 February 2018 Board meeting [LLC.013.001.3379].

- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified and further issues with the accuracy and reliability of cost forecasting had been identified (see paragraph 67(e) below and paragraph 69(f) below);
- (e) Gupta had actual knowledge, by 26 March 2018, by reason of Gupta's attendance at the Quarterly Business Review and/or by reason of him being in receipt of the Quarterly Business Review dated 26 March 2018, that:
 - (i) Lendlease was cautiously reviewing pipeline and strategy and was continuing to influence market and customers regarding expectations;
 - (ii) in depth project reviews were being conducted throughout the Engineering Business in March 2018;
 - (iii) potential impacts to the FY18 forecast as a result of the review would be run through Steerco before being incorporated into the March forecast;
 - (iv) during the quarter, the Engineering Business reduced its FY18 MPAT forecast from a loss of approximately (\$53m) to a loss of approximately (\$77m) due to provisioning;
 - (v) the draft FY19 business plan indicated FY19 MPAT of \$19m against prior forecast of \$75m;
 - (vi) the FY19 MPAT included (pre tax) "stretch targets" of \$13.7m; and
 - (vii) the then current FY18 (or FY19) MPAT did not include additional risk for problem projects (NCX, GUN, KSD);⁸⁴
- (f) Gupta had actual knowledge, by 19 April 2018, by reason of his attendance at the Board meeting on 17 to 19 April 2018 and/or by reason of his receipt of the CEO Report, that provisions held at the Group level against GUN, NCX and KSD had largely been absorbed and that while Lendlease remained on track to

⁸⁴ Quarterly Business Review dated 26 March 2018 [LLC.002.008.8898], attendees [LLC.002.008.8897], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

achieve target Group PAT through outperformance in the Property Australia Business, there was limited unallocated contingency;⁸⁵

- (g) Gupta had actual knowledge, by 19 April 2018, by reason of his attendance at the Board meeting on 17 to 19 April 2018 and/or by reason of him being in receipt of the Board presentation pack dated April 2018 including the Group Chief Commercial and Risk Officer Report dated 18 April 2018, that the magnitude of non-performing engineering projects continued to bring substantial aggregated risk to the Group;⁸⁶
- (h) Gupta had actual knowledge, by 24 May 2018, by reason of his attendance at the RMAC meeting on 24 May 2018 and/or by reason of his involvement in the preparation of and/or receipt of the RMAC Report dated May 2018, that:
 - (i) each of NCX, KSD and GUN, were listed as “very high likelihood” with NCX listed as “very large impact” and KSD and GUN listed as “large impact” for “operational issues”; and
 - (ii) there was a decline in profitability due to the known deterioration in projects in the Engineering Business;⁸⁷ and
- (i) given what Gupta actually knew in respect of each of the Projects and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65 and 67(a) to 67(h) above and paragraphs 69, 71 and 73 below, Gupta:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

68. Further and in the alternative to paragraph 67 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 31 May 2018 and given Gupta’s position at Lendlease, his attendance at the Engineering Quarterly Business

⁸⁵ CEO Report dated 17 April 2018 [LLC.013.001.3379], attendees identified in Minutes of the 17 to 19 April 2018 Board meeting [LLC.013.001.3902].

⁸⁶ Group Chief Commercial and Risk Officer Report dated 18 April 2018 [LLC.013.001.3379], attendees identified in Minutes of the 17 to 19 April 2018 Board meeting [LLC.013.001.3902].

⁸⁷ RMAC Report dated May 2018 [LLC.011.009.8254], attendees identified in Minutes of RMAC meeting 24 May 2018 [LLC.011.008.3750].

Review, Engineering Quarterly Finance Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65 and 67 above and paragraphs 69, 71 and 73 below, Gupta:

- (a) ought to have known the information particularised at paragraphs 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65 and 67 above and paragraphs 69, 71 and 73 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

69. By 31 May 2018, in relation to the **Gateway Upgrade North** project:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 45, 46, 51, 52, 53, 54, 59, 60, 61, 62, 67 and 68 above;
- (b) Gupta had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 13 March 2018, by reason of Gupta's membership of Steerco, his attendance at the Steerco Project Status Report presentation on 13 March 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated March 2018, that the net project GPM for GUN was being reported as a loss of approximately (\$17.6m);⁸⁸
- (f) Gupta had actual knowledge, by 26 March 2018, by reason of Gupta's attendance at the Engineering Quarterly Business Review on 26 March 2018 and/or by reason of him being in receipt of the Engineering Quarterly Business Review presentation dated March 2018, that:

⁸⁸ Steerco Project Status Report [LLC.002.008.8309], email from Letton to Steerco attendees dated 23 April 2018 [LLC.002.008.8308].

- (i) a two day review of the GUN project had been held on 12 and 13 March 2018;
 - (ii) the review established that the GUN project presented a key risk to the Engineering Business; and
 - (iii) the forecast GPM was being finalised;⁸⁹
- (g) Gupta had actual knowledge, by 24 April 2018 and 12 May 2018, by reason of Gupta's membership of Steerco, by reason of his attendance at the Steerco Project Status Report presentations on 24 April 2018 and 12 May 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated April and May 2018, that the forecast GPM for GUN was continuing to erode and was then a forecast loss of approximately (\$56m);⁹⁰ and
- (h) given what Gupta actually knew in respect of the GUN project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 43, 45, 51, 53, 59, 61, 67 and 69(a) to 69(g) above, Gupta:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
70. Further and in the alternative to paragraph 69 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 31 May 2018 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 45, 51, 53, 59, 61, 67 and 69 above, Gupta:

⁸⁹ Engineering Quarterly Business Review dated March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

⁹⁰ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369], Steerco Project Status Report dated May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

- (a) ought to have known the information particularised at paragraphs 43, 45, 51, 53, 59, 61, 67 and 69 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

71. By 31 May 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 47, 48, 51, 52, 55, 56, 59, 60, 63, 64, 67 and 68 above;
- (b) Gupta had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 24 April 2018, by reason of Gupta's membership of Steerco and/or by reason of his attendance at the Steerco Project Status Report presentation and/or by reason of being in receipt of the Steerco Project Status Report dated April 2018, that:
 - (i) the likely GPM was a loss of approximately (\$47.8m); and
 - (ii) there were delays to the works;⁹¹
- (f) Gupta had actual knowledge, by 12 May 2018, by reason of Gupta's membership of Steerco, by reason of his attendance at the Steerco Project Status Report presentation on 12 May 2018 and/or by reason of being in receipt of the Steerco Project Status Report dated May 2018, that there was no change to the GPM forecast loss between April 2018 and May 2018;⁹² and
- (g) given what Gupta actually knew in respect of the KSD project and the Engineering Business as a whole as at 31 May 2018 by reason of the

⁹¹ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369].

⁹² Steerco Project Status Report May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

information identified in paragraphs 43, 47, 51, 55, 59, 63, 67 and 71(a) to 71(f) above, Gupta:

- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and
the Engineering Business as a whole.

72. Further and in the alternative to paragraph 71 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 31 May 2018 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 47, 51, 55, 59, 63, 67 and 71 above, Gupta:

- (a) ought to have known the information particularised at paragraphs 43, 47, 51, 55, 59, 63, 67 and 71 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

73. By 31 May 2018, in relation to the **NorthConnex** project:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 49, 50, 51, 52, 57, 58, 59, 60, 65, 66, 67 and 68 above;
- (b) Gupta had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 9 March 2018, by reason of his membership of Steerco and/or by reason of him being in receipt of the Steerco Project Status Report dated 13 March 2018, that there were deficiencies in the cost reporting

and programming disciplines on the project: “Finance & Commercial team to rollout cost reporting 101 training as a priority”;⁹³

- (f) Gupta had actual knowledge, by 1 April 2018, by reason of him referring to its contents in the CFO Report as supported by the CFO Report Engineering Supplementary Analysis dated April 2018, of the independent findings of Hinds Blunden, which found that there were deficiencies in the reporting on the NCX project, and that:
- (i) there was no or no up to date register of risks for the NCX project;
 - (ii) project level reporting on the NCX project may not provide an accurate picture of the financial and project risks;
 - (iii) even though the program presents as a robust plan for completion of the project, benefit would be realised by the systematic identification of project risks and the active ongoing management of mitigation strategies; and
 - (iv) without a complete risk register, “there was no transparency of the issues which have been included or excluded” and “emerging risks which are no longer current are not handled in a structured way”;⁹⁴
- (g) Gupta had actual knowledge, by 22 May 2018, by reason of his attendance at the Board meeting on 22 May 2018 and/or by reason of him presenting to the Lendlease Board and/or by reason of him being in receipt of the Lendlease Board presentation pack dated 22 May 2018, that:
- (i) the GPM for NCX was forecast to be a loss of approximately (\$144m);
 - (ii) the Hinds Blunden review indicated there was a likely loss of approximately (\$122m);
 - (iii) there was a turnaround forecast for the Engineering Business;
 - (iv) the then current position with the problem projects, and net impacts on earnings showed that the 31 December provision had been utilised in full, but there was “meaningful contingency at a Group level” and that a review

⁹³ Steerco Project Status Report dated 13 March 2018 [LLC.002.008.8309], email from Letton to Steerco attendees dated 9 March 2018 [LLC.002.008.8308].

⁹⁴ Hinds Blunden report dated 31 March 2018 [LLC.006.001.4585], CFO Report Engineering Supplementary Analysis dated April 2018 [LLC.021.053.2441].

would be conducted before year end to determine what additional provisions may be required; and

(v) an update on the FY18 forecast position showed that negative variations prior to forecast on some Engineering projects were updated following project reviews and while provisions held at Group level had largely been absorbed the Group remained on track to achieve target Group PAT through outperformance in the Property Australia Business;⁹⁵ and

(h) given what Gupta actually knew in respect of the NCX project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 43, 49, 51, 57, 59, 65, 67 and 73(a) to 73(g) above, Gupta:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

74. Further and in the alternative to paragraph 73 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 31 May 2018 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 49, 51, 57, 59, 65, 67 and 73 above, Gupta:

(a) ought to have known the information particularised at paragraphs 43, 49, 51, 57, 59, 65, 67 and 73 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

⁹⁵ Lendlease Board presentation pack dated 22 May 2018 [LLC.013.001.3902].

22 August 2018

75. By 22 August 2018, in relation to the **Engineering Business**:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43 to 74 above;
- (b) Gupta had actual knowledge that the Engineering Business continued to underperform;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 13 July 2018, by reason of his involvement in the preparation of the FY18 Health of the Business Report and/or attendance at the Board meeting on 11 to 13 July 2018 and/or receipt of the Board presentation pack dated July 2018, that FY18 was characterised by the businesses driving significant outperformance to offset the “very disappointing underperformance of the Engineering Business”;⁹⁶
- (f) Gupta had actual knowledge, by 20 August 2018, by reason of his attendance at the RMAC meeting on 20 August 2018, his involvement in the preparation of and/or receipt of the Executive Summary dated 20 August 2018 and KPMG report to RMAC, that:
 - (i) the construction performance was subdued driven by underperformance in the Engineering Business. Further provisions of \$38m had been taken outside the projects at a Group level; and
 - (ii) as to the accuracy of the R&O metrics, KPMG identified that:
 - (A) contingency had reduced close to nil in the periods leading up to the inflection point, being the point where GPM begins to deteriorate and contingency remained steady;

⁹⁶ Board meeting presentation pack including FY18 Health of the Business Report dated July 2018 [LLC.013.001.4559], Minutes of the July 2018 Board meeting [LLC.013.001.5001].

- (B) projects experienced a deterioration of GPM between 50 to 75% complete;
 - (C) at the inflection point in GPM, the net R&O at that point in time was significantly less than the actual GPM deterioration that had occurred subsequently, suggesting unidentified risks that came to fruition and some opportunities that did not crystallise;
 - (D) Lendlease was likely having an optimistic bias when assessing R&O;
 - (E) resolution of significant risks and uncertainties remained outstanding on a number of key problem projects; and
 - (F) the three material nonperforming projects (being GUN, KSD and NCX), were adversely impacting gross margin by \$248m;⁹⁷ and
- (g) given what Gupta actually knew in respect of each of the Projects and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73 and 75(a) to 75(f) above and paragraphs 77, 79 and 81 below, Gupta:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
76. Further and in the alternative to paragraph 75 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 22 August 2018 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73 and 75 above and paragraphs 77, 79 and 81 below, Gupta:

⁹⁷ Executive Summary dated 20 August 2018 and KPMG report to RMAC [LLC.011.009.8562], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

- (a) ought to have known the information particularised at paragraphs 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73 and 75 above and paragraphs 77, 79 and 81 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

77. By 22 August 2018, in relation to the **Gateway Upgrade North** project:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 45, 46, 51, 52, 53, 54, 59, 60, 61, 62, 67, 68, 69, 70, 75 and 76 above;
- (b) Gupta had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 25 July 2018, or alternatively 16 August 2018, by reason of Gupta's membership of Steerco, his attendance at the Steerco Project Status Report presentations on 15 June 2018, 25 July 2018 and 16 August 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated June, July and August 2018, that the forecast GPM had reduced further to a loss of approximately (\$70m) in July and August, which represented a negative deviation of approximately (\$14m) from the GPM in the prior forecast in the Steerco Project Status Report dated June 2018;⁹⁸
- (f) Gupta had actual knowledge, by 20 August 2018, by reason of Gupta's attendance at the RMAC meeting on 20 August 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated August 2018:
 - (i) that the GUN project was continuing to forecast a GPM loss of approximately (\$70m);

⁹⁸ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779], Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

- (ii) of the reasons for the deterioration in the GPM, including estimating errors at tender on geotechnical ground conditions, lower asphalt productivity rates and additional bridge piling costs resulting in significant resequencing and traffic management cost impacts;
 - (iii) that the project was pursuing claims/insurance recovery and was relying on \$69.1m (against a total claim value of approximately \$180.0m) to achieve the then current forecast margin of (\$56m). A provision of \$14m was being held at the Engineering Business corporate level against this reliance (equalling the total forecast GPM loss of approximately (\$70m)); and
 - (iv) that there was significant underperformance of the project, including as a result of matters that arose at or shortly after tender phase, which was likely to impact the remainder of the works;⁹⁹ and
- (g) given what Gupta actually knew in respect of the GUN project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 43, 45, 51, 53, 59, 61, 67, 69, 75 and 77(a) to 77(f) above, Gupta:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
78. Further and in the alternative to paragraph 77 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 22 August 2018 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 45, 51, 53, 59, 61, 67, 69, 75 and 77 above, Gupta:

⁹⁹ RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

- (a) ought to have known the information particularised at paragraphs 43, 45, 51, 53, 59, 61, 67, 69, 75 and 77 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

79. By 22 August 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 47, 48, 51, 52, 55, 56, 59, 60, 63, 64, 67, 68, 71, 72, 75 and 76 above;
- (b) Gupta had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 15 June 2018 and through July 2018, by reason of Gupta's attendance at the Steerco Project Status Report presentations on 15 June 2018 and 25 July 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated June and July 2018, that:
 - (i) the forecast GPM was reported as slightly decreased to a loss of (\$47.9m) in the Steerco Project Status Report dated June 2018 or remained the same as the May 2018 forecast of a loss of (\$47.8m) in the Steerco Project Status Report dated July 2018; and
 - (ii) as the works progressed through the first quarter, the productivity positions taken in the 2017 forecasts had proven to be optimistic;¹⁰⁰
- (f) Gupta had actual knowledge, by 16 August 2018, by reason of Gupta's membership of Steerco and/or by reason of his attendance at the Steerco Project Status Report presentation and/or by reason of him being in receipt of the Steerco Project Status Report dated August 2018, that:

¹⁰⁰ Steerco Project Status Reports dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Reports dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

- (i) an issue had emerged around the interaction between ground stabilisation works (jet grouting works) and the marine structures, which had the project team critically reviewing the design;
 - (ii) the then current indication was that there would likely be design changes and additional works necessary;
 - (iii) the forecast productivity had been optimistic and the project team had commenced increasing the most likely position; and
 - (iv) the forecast GPM remained at a loss of approximately (\$47.8m);¹⁰¹
- (g) Gupta had actual knowledge, by 21 August 2018, by reason of his attendance at the RMAC meeting on 20 August 2018, attendance at the Board meeting on 21 and 22 August 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated August 2018 and/or the Board presentation pack dated August 2018, that:
- (i) there remained a forecast GPM loss of approximately (\$47.8m); and
 - (ii) the risk relating to the jet grouting issue was under investigation, which represented additional complexities with the project and the progress of the works;¹⁰² and
- (h) given what Gupta actually knew in respect of the KSD project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 43, 47, 51, 55, 59, 63, 67, 71, 75 and 79(a) to 79(g) above, Gupta:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

80. Further and in the alternative to paragraph 79 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the

¹⁰¹ Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

¹⁰² RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Board presentation pack dated 21-22 August 2018 [LLC.013.001.5001], Minutes of Board meeting 21-22 August 2018 [LLC.013.001.5660], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

KSD project and the Engineering Business as a whole prior to 22 August 2018 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 47, 51, 55, 59, 63, 67, 71, 75 and 79 above, Gupta:

- (a) ought to have known the information particularised at paragraphs 43, 47, 51, 55, 59, 63, 67, 71, 75 and 79 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

81. By 22 August 2018, in relation to the **NorthConnex** project:

- (a) Gupta had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 43 above and the information referred to at paragraphs 43, 44, 49, 50, 51, 52, 57, 58, 59, 60, 65, 66, 67, 68, 73, 74, 75 and 76 above;
- (b) Gupta had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Gupta had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Gupta had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Gupta had actual knowledge, by 13 July 2018, by reason of him presenting to the Lendlease Board, his attendance at the Board meeting on 11 to 13 July 2018 and/or by reason of being in receipt of, preparing and/or presenting the Board Financial Update dated 24 June 2018 and the CFO Report from the July 2018 Board presentation pack, that the forecast FY18 GPM was a loss of approximately (\$162m) and the forecast WOL GPM was a loss of approximately (\$140m);¹⁰³
- (f) Gupta had actual knowledge, by 17 July 2018, or alternatively by 20 August 2018, by reason of his attendance at the RMAC meeting on 20 August 2018, that:

¹⁰³ Board Financial Update presented by Gupta in Board presentation pack dated June 2018 [LLC.013.001.4460], CFO Report from July 2018 Board presentation pack [LLC.013.001.4559].

- (i) the forecast GPM was a loss of approximately (\$240m); and
 - (ii) the forecast cost change aligned with movement in the forecast completion date to 25 May 2020;¹⁰⁴
- (g) Gupta had actual knowledge, by 25 July 2018, by reason of his membership of Steerco, and/or by reason of him being in receipt of the Steerco Project Status Report dated July 2018, that:
- (i) the forecast GPM was a loss of approximately (\$240m);
 - (ii) there were major variances to the budget; and
 - (iii) the program shifted from a completion date in December 2019 to May 2020, with the cost updated to reflect the associated burn rate and forecasting errors identified;¹⁰⁵
- (h) Gupta had actual knowledge, by 21 August 2018, by reason of preparing the NCX WOL Margin Reconciliation dated 21 August 2018, that:
- (i) a commercial agreement had been reached in respect of the NCX project, which reduced the negative margin;
 - (ii) the GPM reflective of the settlement was estimated to be a loss of approximately (\$130m), which included project direct costs to May 2020, offset by \$30m cash contribution from the client and LD relief agreed with the client to June 2020;
 - (iii) the GPM reflected what management believed were reasonable assumptions;
 - (iv) documentation recording the terms of settlement was being finalised; and
 - (v) the project was forecast to complete in May 2020 (previous completion December 2019);¹⁰⁶ and

¹⁰⁴ RMAC Speakers Notes dated 17 July 2018 [LLC.006.039.7775], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

¹⁰⁵ Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

¹⁰⁶ NCX WOL Margin Reconciliation dated 21 August 2018 [LLC.021.050.4313], email from Simon Benson to Gupta dated 21 August 2018 [LLC.021.050.4312].

(i) given what Gupta actually knew in respect of the NCX project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 43, 49, 51, 57, 59, 65, 67, 73, 75 and 81(a) to 81(h) above, Gupta:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

82. Further and in the alternative to paragraph 81 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 22 August 2018 and given Gupta's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Lendlease Board, Steerco and RMAC meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 43, 49, 51, 57, 59, 65, 67, 73, 75 and 81 above, Gupta:

(a) ought to have known the information particularised at paragraphs 43, 49, 51, 57, 59, 65, 67, 73, 75 and 81 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

The opinion that was actually formed and/or ought to have been formed based on the information and facts available to Gupta

83. Gupta had actual knowledge of the historical performance of the Projects as at each of the following dates:

(a) 17 October 2017, referred to above at paragraphs 43 to 50 and as summarised in the Badala Report at Table 11, Oct.17 Column (GUN), Table 31, Oct.17 Column (KSD) and Table 51, Sept.17 Column (NCX);

(b) 17 November 2017, referred to above at paragraphs 43 to 58 and as summarised in the Badala Report at Table 11, Oct.17 and Nov.17 Columns

(GUN), Table 31, Oct.17 and Nov.17 Columns (KSD) and Table 51, Sept.17 Column (NCX);

- (c) 21 February 2018, referred to above at paragraphs 43 to 66 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17 and Feb.18 Columns (GUN), Table 31, Oct.17, Nov.17 and Feb.18 Columns (KSD) and Table 51, Sept.17 and Dec.17 Columns (NCX);
- (d) 31 May 2018, referred to above at paragraphs 43 to 74 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18 and May.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18 and May.18 Columns (KSD) and Table 51, Sept.17, Dec.17 and Mar.18 Columns (NCX); and
- (e) 22 August 2018, referred to above at paragraphs 43 to 82 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (KSD) and Table 51, Sept.17, Dec.17, Mar.18 and Jun.18 Columns (NCX).

(Gupta Identified Dates).

84. At each of the Gupta Identified Dates, by reason of Gupta's:

- (a) Actual and/or constructive knowledge as particularised in:
 - (i) paragraphs 43 to 50 above in respect of the period prior to 17 October 2017;
 - (ii) paragraphs 43 to 58 above in respect of the period prior to 17 November 2017;
 - (iii) paragraphs 43 to 66 above in respect of the period prior to 21 February 2018;
 - (iv) paragraphs 43 to 74 above in respect of the period prior to 31 May 2018;
 - (v) paragraphs 43 to 82 above in respect of the period prior to 22 August 2018;

- (b) alternatively,
 - (i) actual and/or constructive knowledge as particularised in paragraphs 43 to 83 above; and
 - (ii) constructive knowledge based upon his ability to access information of the historical performance of the Projects in his capacity as Group Chief Financial Officer as at each relevant date, to the extent that historical performance is as summarised in:
 - (A) the Badala Report, at Table 11 (GUN), Table 31 (KSD) and Table 51 (NCX) and [97]-[190], [191]-[283] and [284]-[371]; and
 - (B) the documents considered and referred to by Peter Badala as identified and extracted by Document ID as the “Source File” or “Source” in Annexures A.1, A.2, B.1, B.2, C.1 and C.2 of that report for each relevant period; and
- (c) role as Group Chief Financial Officer;

Gupta:

- (d) had actual knowledge, ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him (as particularised in [84(a)] and [84(b)] above, insofar as the allegations are of actual knowledge), or which ought to have been known to him (as particularised in [84(a)] and [84(b)] above, insofar as the allegations are of constructive knowledge), that the provisions taken for the Engineering Business as a consequence of the Projects were inadequate; and
- (e) ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him, or which ought to have been known to him, that:

Provision Information

- (i) additional provisions for the Engineering Business would need to be taken as a consequence of the Projects, as follows:
 - (A) as at 17 October 2017, the 17 October 2017 Provision Information, being approximately \$415.0 million for the Engineering Business;

- (B) as at 17 November 2017, the 17 November 2017 Provision Information, being approximately \$363.2 million for the Engineering Business;
- (C) as at 21 February 2018, the 21 February 2018 Provision Information, being approximately \$331.3 million for the Engineering Business;
- (D) as at 31 May 2018, the 31 May 2018 Provision Information, being approximately \$393.6 million for the Engineering Business; and
- (E) as at 22 August 2018, the 22 August 2018 Provision Information, being approximately \$415.5 million for the Engineering Business; and/or

Overstated profits

- (ii) by reason of the inadequate provisions, the profits were overstated and a reduction in published profits was required as follows:
 - (A) as at 21 February 2018, the 31 December 2017 Profit Information, being a reduction in after-tax profits of \$231.9 million; and
 - (B) as at 22 August 2018, the 30 June 2018 Profit Information, being a reduction in after-tax profits of \$290.9 million.

C. Wilson

21 February 2018

85. By 21 February 2018, in relation to the **Engineering Business**:

- (a) Wilson had actual knowledge that the Engineering Business was underperforming;
- (b) Wilson had actual knowledge that there was erosion to the forecast GPM and contingency;
- (c) Wilson had actual knowledge, by 19 February 2018, by reason of his attendance at the RMAC meeting on 19 February 2018 and/or by reason of him being in receipt of the KPMG Report to RMAC, that there were three material non-performing projects, being GUN, KSD and NCX, which were impacting the gross

margin in the order of approximately \$225m, with GUN contributing approximately \$82m of the overall impact;¹⁰⁷

(d) Wilson had actual knowledge, by 20 February 2018, by reason of his attendance at the CFO Presentation on 20 February 2018 and/or by reason of him being in receipt of the CFO Report dated February 2018, that:

(i) the Group would deliver PAT of approximately \$426m for HY18, which represents an 8% increase on the prior corresponding period;

(ii) Construction Australia was significantly down due to margin downside on key projects within the Engineering Business; and

(iii) as to the Engineering Business, the forecast variance against budget was: GPM (\$152m) and EBITDA (\$151M);¹⁰⁸ and

(e) given what Wilson actually knew in respect of each of the Projects and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 85(a) to 85(d) above and paragraphs 87, 89 and 91 below, Wilson:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

86. Further and in the alternative to paragraph 85 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 21 February 2018 and given Wilson's position at Lendlease, his attendance at the Lendlease Board, RMAC and Steerco meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraph 85 above and paragraphs 87, 89 and 91 below, Wilson:

¹⁰⁷ KPMG Report to RMAC dated 12 February 2018 [LLC.022.014.0187], RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], attendees identified in Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

¹⁰⁸ CFO Report dated February 2018 [LLC.013.001.2926], Minutes of 20 February 2018 Board meeting [LLC.013.001.3379].

- (a) ought to have known the information particularised at paragraph 85 above and paragraphs 87, 89 and 91 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

87. By 21 February 2018, in relation to the **Gateway Upgrade North** project:

- (a) Wilson had actual knowledge of the information referred to at paragraphs 85 to 86 above;
- (b) Wilson had actual knowledge that GUN was an underperforming and/or problem project;
- (c) Wilson had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) Wilson had actual knowledge, by 1 February 2018, by reason of Wilson's receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017, that the position in October 2017 was that:
 - (i) the CoE had identified GUN to be a project that should be monitored;
 - (ii) the CoE had reviewed GUN and had provided an indication that its then "current view" was that there would be a GPM reduction to \$15m with further deterioration possible. This was due to, *inter alia*, cost overruns in traffic management, design growth and construction phase services;
 - (iii) there continued to be contingency erosion, with only \$3.6m of contingency remaining of the \$41.1m budget, being only 1.5% of the cost to complete of (\$233m);
 - (iv) a half day review of the GUN project was scheduled on 19 October 2017 for Laslett and the CoE; and
 - (v) the CoE had identified and reported on six underperforming projects, NCX, GUN, KSD, CityLink Tulla Widening, Caulfield to Dandenong Alliance and Tug Harbour;¹⁰⁹

¹⁰⁹ CoE Update on Non-Performing Projects in Engineering [LLC.002.010.5556], email from Mason to Wilson dated 1 February 2018 [LLC.008.007.6539].

- (e) Wilson had actual knowledge, by 14 February 2018, by reason of Wilson's membership of Steerco, his attendance at the Steerco Project Status Report presentation on 14 February 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated February 2018, that:
- (i) the GUN project continued to be an underperforming project;
 - (ii) there was an increase in forecast costs of approximately \$91.0m against budget;
 - (iii) the GPM was continuing to erode with it being reported as \$4.4m prior to additional costs (\$4.5m) and reliance (\$17.5m) provisions, for a net Project position of (\$17.6m);
 - (iv) the project was pursuing \$140.4m of claims and relying on a net claim of \$44.8m (gross reliance excluding payment on account \$69.7m); and
 - (v) there was contingency erosion, with it now being \$3.9m compared to a budget of \$55.1m;¹¹⁰
- (f) Wilson had actual knowledge, by 19 February 2018, by reason of Wilson's attendance at the RMAC meeting on 19 February 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated February 2018 and the KPMG Report to RMAC dated 12 February 2018, that:
- (i) the GPM or WOL P/L for GUN was forecast to be a loss of between approximately (\$17.6m) according to the RMAC presentation pack dated February 2018 and (\$61m) according to the KPMG Report to RMAC dated 12 February 2018;
 - (ii) GUN was identified as being between 76.1% and 78% complete;
 - (iii) the GPM was then forecast to be (\$17.6m), a movement of (\$32.6m) since the last RMAC in October 2017;
 - (iv) there was an assumed reliance of \$69.1m;
 - (v) the RMAC presentation pack dated February 2018 identified that the delivery of the project (time and cost) had been impacted by design

¹¹⁰ Steerco Project Status Report dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 meeting [LLC.002.009.0717].

changes, difficult geotechnical conditions, resequencing of works to mitigate delays and additional temporary traffic management;

- (vi) the KPMG Report to RMAC dated 12 February 2018 identified that the deterioration in GPM was primarily due to \$78m cost increase from lower than expected productivity rates, additional structure and bridge piling costs and estimating errors at tender resulting in higher levels of excavation and spoil removal in various road verges, partly offset by \$20m client approved variations and claims;
- (vii) the project was relying on \$44.8m relating to claims and variations in order to achieve the forecast margin;
- (viii) the forecast GPM was largely contingent on Lendlease successfully pursuing various contractual and insurance claims, and that there was inherent uncertainty in Lendlease's success; and
- (ix) the issues that were leading to the erosion of the GPM had been identified early in the project and, in some cases, during the tender phase;¹¹¹ and
- (g) given what Wilson actually knew in respect of the GUN project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 85 and 87(a) to 87(f) above, Wilson:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

88. Further and in the alternative to paragraph 87 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 21 February 2018 and given Wilson's position at Lendlease, his attendance at the Lendlease Board, RMAC and Steerco meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 85 and 87 above, Wilson:

¹¹¹ KPMG Report to RMAC dated 12 February 2018 [LLC.022.014.0187], RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], attendees identified in Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

- (a) ought to have known the information particularised at paragraphs 85 and 87 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
89. By 21 February 2018, in relation to the **Kingsford Smith Drive Upgrade** project:
- (a) Wilson had actual knowledge of the information referred to at paragraphs 85 to 86 above;
 - (b) Wilson had actual knowledge that KSD was an underperforming and/or problem project;
 - (c) Wilson had actual knowledge that there was erosion of the forecast GPM and contingency;
 - (d) Wilson had actual knowledge, by 14 February 2018, by reason of Wilson's attendance at the Steerco Project Status Report presentation on 14 February 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated February 2018, that there was a projected loss against budget of (\$36.5m) with an additional cost provision of (\$10m). The total project GPM was \$0 or break even, and the net project position including the cost provision was (\$10m);¹¹² and
 - (e) given what Wilson actually knew in respect of the KSD project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 85 and 89(a) to 89(d) above, Wilson:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
90. Further and in the alternative to paragraph 89 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 21 February 2018 and

¹¹² Steerco Project Status Report dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 meeting [LLC.002.009.0717].

given Wilson's position at Lendlease, his attendance at the Lendlease Board, RMAC and Steerco meetings identified and/or receipt of the documents identified in paragraphs 85 and 89 above, Wilson:

- (a) ought to have known the information particularised at paragraphs 85 and 89 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

91. By 21 February 2018, in relation to the **NorthConnex** project:

- (a) Wilson had actual knowledge of the information referred to at paragraphs 85 to 86 above;
- (b) Wilson had actual knowledge that NCX was an underperforming and/or problem project;
- (c) Wilson had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) Wilson had actual knowledge, by 1 February 2018, by reason of him being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017, that the position in October 2017 was that:
 - (i) the likely Lendlease GPM position would be a loss of approximately (\$100m);
 - (ii) the CoE had attended the NCX program review which identified significant program and cost overruns;
 - (iii) there had been an erosion of contingency of 7 months;
 - (iv) the exposure to liquidated damages was approximately \$350,000 per day;
 - (v) the CoE had formed the view that the NCX program was "under significant time pressure";
 - (vi) a review would be carried out in November 2017;

- (vii) the largest issue was the requirement for deeper tunnel alignment which was said to have a cost of approximately \$130m and liability had not yet been established; and
 - (viii) there were significant slippages in the tunnel works;¹¹³
 - (e) Wilson had actual knowledge, by 20 February 2018, by reason of him attending the Board meeting on 20 February 2018 and/or by reason of being in receipt of the Board presentation pack, that:
 - (i) the GPM for NCX was forecasted to be a loss of approximately (\$126m) a variance of (\$133m) from the \$7m profit budgeted for; and
 - (ii) Construction Australia was significantly down on PAT due to margin downside on key projects within the Engineering Business;¹¹⁴ and
 - (f) given what Wilson actually knew in respect of the NCX project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 85 and 91(a) to 91(e) above, Wilson:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
92. Further and in the alternative to paragraph 91 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 21 February 2018 and given Wilson's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 85 and 91 above, Wilson:
- (a) ought to have known the information particularised at paragraphs 85 and 91 above; and/or

¹¹³ CoE Update on Non-Performing Projects in Engineering [LLC.002.010.5556], email from Mason to Wilson dated 1 February 2018 [LLC.008.007.6539].

¹¹⁴ CFO Report from 20 February 2018 Board presentation pack [LLC.013.001.2926], Minutes of 20 February 2018 Board meeting [LLC.013.001.3379].

- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

31 May 2018

93. By 31 May 2018, in relation to the **Engineering Business**:

- (a) Wilson had actual knowledge of the information referred to at paragraphs 85 to 92 above;
- (b) Wilson had actual knowledge that the Engineering Business continued to underperform;
- (c) Wilson had actual knowledge that there was continued erosion to the forecast GPM and contingency;
- (d) Wilson had actual knowledge, by 6 March 2018, by reason of him being responsible for the preparation of and/or by reason of being in receipt of the draft Lendlease Group CCRO Report dated 6 March 2018 document, that:
- (i) a global strategic risk for Lendlease included unreliability or absence of data from the business to make informed strategic decisions or to intervene in underperforming projects quickly;
- (ii) the corporate culture did not support disciplined strategy execution, decisions and changes to agreed strategy were being made at bid or project execution phase in an uncontrolled environment with unintended consequences; and
- (iii) risks were identified in relation to each of the Projects and that the major engineering projects across Australia continued to bring substantial aggregated risk to the Group;¹¹⁵
- (e) Wilson had actual knowledge, by 26 March 2018, by reason of Wilson's attendance at the Quarterly Business Review and/or by reason of him being in receipt of the Quarterly Business Review presentation dated 26 March 2018, that:

¹¹⁵ Lendlease Group CCRO Report dated 6 March 2018 [LLC.020.001.4541], email from Kevin Bates to Wilson dated 6 March 2018 [LLC.020.001.4539].

- (i) Lendlease was cautiously reviewing pipeline and strategy and was continuing to influence market and customers regarding expectations;
- (ii) in depth project reviews were being conducted throughout the portfolio in March, with any potential impacts to the FY18 forecast as a result of those reviews would be run through Steerco before incorporating it into the March forecast;
- (iii) during the quarter, the Engineering Business reduced its FY18 MPAT forecast from a loss of approximately (\$53m) to a loss of approximately (\$77m) due to provisioning;
- (iv) the draft FY19 business plan indicated FY19 MPAT of \$19m against prior forecast of \$75m;
- (v) the FY19 MPAT included (pre tax) "stretch targets" of \$13.7m; and
- (vi) the then current FY18 (or FY19) MPAT did not include additional risk for problem projects (NCX, GUN, KSD);¹¹⁶
- (f) Wilson had actual knowledge, by 19 April 2018, by reason of his attendance at the Board meeting on 17 to 19 April 2018 and/or his being in receipt of the CEO Report, that provisions held at the Group level against GUN, NCX and KSD had largely been absorbed and that while Lendlease remained on track to achieve target Group PAT through outperformance in the Property Australia Business, there was limited unallocated contingency;¹¹⁷
- (g) Wilson had actual knowledge, by 19 April 2018, by reason of his attendance at the Board meeting on 17 to 19 April 2018 and/or by reason of him being responsible for the preparation of and/or by reason of him being in receipt of the Board presentation pack dated April 2018 including the Group Chief Commercial and Risk Officer Report dated April 2018, that the magnitude of non-performing engineering projects continued to bring substantial aggregated risk to the Group;¹¹⁸

¹¹⁶ Quarterly Business Review dated 26 March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

¹¹⁷ CEO Report dated 17 April 2018 [LLC.013.001.3379], attendees identified in Minutes of the 17 to 19 April 2018 Board meeting [LLC.013.001.3902].

¹¹⁸ Group Chief Commercial and Risk Officer Report dated 18 April 2018 [LLC.013.001.3379], attendees identified in Minutes of the 17 to 19 April 2018 Board meeting [LLC.013.001.3902].

- (h) Wilson had actual knowledge, by 24 May 2018, by reason of his attendance at the RMAC meeting on 24 May 2018 and/or by reason of him being in receipt of the RMAC Report dated May 2018, that:
- (i) each of NCX, KSD and GUN were listed as “very high likelihood” with NCX listed as “very large impact” and KSD and GUN listed as “large impact” for “operational issues”; and
 - (ii) there was a decline in profitability due to the known deterioration in projects in the Engineering Business;¹¹⁹ and
- (i) given what Wilson actually knew in respect of each of the Projects and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 85, 87, 89, 91 and 93(a) to 93(h) above and paragraphs 95, 97 and 99 below, Wilson:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
94. Further and in the alternative to paragraph 93 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 31 May 2018 and given Wilson’s position at Lendlease, his attendance at the Lendlease Board, RMAC, Steerco, Engineering Quarterly Business Review and GUN Project Review meetings identified, his membership of the Steerco and GUN Project Review committees identified and/or receipt of the documents identified in paragraphs 85, 87, 89, 91 and 93 above and paragraphs 95, 97 and 99 below, Wilson:
- (a) ought to have known the information particularised at paragraphs 85, 87, 89, 91 and 93 above and paragraphs 95, 97 and 99 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

¹¹⁹ RMAC Report dated May 2018 [LLC.011.009.8254], attendees identified in Minutes of RMAC meeting 24 May 2018 [LLC.011.008.3750].

95. By 31 May 2018, in relation to the **Gateway Upgrade North** project:

- (a) Wilson had actual knowledge of the information referred to at paragraphs 85, 86, 87, 88, 93 and 94 above;
- (b) Wilson had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Wilson had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Wilson had actual knowledge, by 12 and 13 March 2018, by reason of him being a reviewer during the two day GUN Project Review which took place on 12 and 13 March 2018, that:
 - (i) the forecast GPM was forecast to be a loss of approximately (\$51.0m);
 - (ii) the profit plan had been presented and there was a significant risk of further losses beyond the forecast loss of (\$51.0m);
 - (iii) there had been a significant slippage since the 50% project review in May 2017 and that there was a very high risk that the program would continue to slip, with the forecast margin loss increasing further;
 - (iv) close monitoring would be required for the forecast loss of (\$51.0m) to be achieved;
 - (v) the project was reported to be 80% complete with traffic lights being red for the project overall and cost report, schedule, design, PPP and cash;
 - (vi) there was no float in the program and there was a significant risk that it would slip further in the months before December 2018;
 - (vii) the executive summary stated that “there have been significant cost overruns over many parts of the project. There has been 10% design growth and \$20m overrun in the Construction Phase Services costs. There was \$71.6m of reliance and it was considered optimistic that a recovery of 50% will be achieved across all the many claims. There are a lot of areas open along the alignment and it will be critical to finish all the works before each stage is opened. The program is under extreme pressure and 41 days EOTs are still to be resolved. There are 6 critical

paths with less than 30 days float, so daily monitoring of productivity and program is critical";

- (viii) there had been significant cost overruns across the project and in many cost codes;
 - (ix) the cost reporting on the project was inadequate and there were errors in the reporting, which meant cost forecasting was not accurate;
 - (x) the lack of cost planning was raised in the October 2015 and the April 2016 design reviews, however the design was not controlled; and
 - (xi) at the 50% project review, in May 2017, the poor management of the Construction Phase Services was raised as a significant cost overrun, however, there was a significant loss forecast and the CPS was over budget;¹²⁰
- (e) Wilson had actual knowledge, by 13 March 2018, by reason of Wilson's membership of Steerco, his attendance at the Steerco Project Status Report presentation on 13 March 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated March 2018, that the net project GPM for GUN was being reported as a loss of approximately (\$17.6m);¹²¹
- (f) Wilson had actual knowledge, by 26 March 2018, by reason of Wilson's attendance at the Engineering Quarterly Business Review on 26 March 2018 and/or by reason of him being in receipt of the Engineering Quarterly Business Review dated March 2018, that:
- (i) a two day review of the GUN project had been held on 12 and 13 March 2018;
 - (ii) the review established that the GUN project presented a key risk to the Engineering Business; and
 - (iii) the forecast GPM was being finalised;¹²²

¹²⁰ 75% Project Review Attendance Summary dated 12 March 2018 [LLC.033.007.9445].

¹²¹ Steerco Project Status Report [LLC.002.008.8309], email from Letton to Steerco attendees dated 9 March 2018 [LLC.002.008.8308].

¹²² Engineering Quarterly Business Review dated March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

- (g) Wilson had actual knowledge, by 24 April 2018 and 12 May 2018, by reason of Wilson's membership of Steerco, by reason of his attendance at the Steerco Project Status Report presentations on 24 April 2018 and 12 May 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated April and May 2018, that the forecast GPM for GUN was continuing to erode and was then a forecast loss of approximately (\$56m);¹²³ and
 - (h) given what Wilson actually knew in respect of the GUN project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 85, 87, 93 and 95(a) to 95(g) above, Wilson:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
96. Further and in the alternative to paragraph 95 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 31 May 2018 and given Wilson's position at Lendlease, his attendance at the Lendlease Board, RMAC, Steerco, Engineering Quarterly Business Review and GUN Project Review meetings identified, his membership of the Steerco and GUN Project Review committees identified and/or receipt of the documents identified in paragraphs 85, 87, 93 and 95 above, Wilson:
- (a) ought to have known the information particularised at paragraphs 85, 87, 93 and 95 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
97. By 31 May 2018, in relation to the **Kingsford Smith Drive Upgrade** project:
- (a) Wilson had actual knowledge of the information referred to at paragraphs 85, 86, 89, 90, 93 and 94 above;

¹²³ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369], Steerco Project Status Report dated May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

- (b) Wilson had actual knowledge that KSD remained an underperforming and/or problem project;
 - (c) Wilson had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Wilson had actual knowledge, by 24 April 2018, by reason of his attendance at the Steerco Project Status Report presentation and/or by being in receipt of the Steerco Project Status Report dated April 2018, that:
 - (i) the likely GPM was a loss of approximately (\$47.8m); and
 - (ii) there were delays to the works;¹²⁴
 - (e) Wilson had actual knowledge, by 12 May 2018, by reason of Wilson's attendance at the Steerco Project Status Report presentations on 12 May 2018 and/or by reason of being in receipt of the Steerco Project Status Report dated May 2018, that there was no change to the GPM forecast loss between April 2018 and May 2018;¹²⁵ and
 - (f) given what Wilson actually knew in respect of the KSD project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 85, 89, 93 and 97(a) to 97(e) above, Wilson:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
98. Further and in the alternative to paragraph 97 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 31 May 2018 and given Wilson's position at Lendlease, his attendance at the Lendlease Board, RMAC, Steerco and Engineering Quarterly Business Review meetings identified and/or receipt of the documents identified in paragraphs 85, 89, 93 and 97 above, Wilson:

¹²⁴ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369].

¹²⁵ Steerco Project Status Report May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

- (a) ought to have known the information particularised at paragraphs 85, 89, 93 and 97 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
99. By 31 May 2018, in relation to the **NorthConnex** project:
- (a) Wilson had actual knowledge of the information referred to at paragraphs 85, 86, 91, 92, 93 and 94 above;
 - (b) Wilson had actual knowledge that NCX remained an underperforming and/or problem project;
 - (c) Wilson had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Wilson had actual knowledge, by 9 March 2018, by reason of his membership of Steerco and/or by reason of him being in receipt of the Steerco Project Status Report dated 13 March 2018, that there were deficiencies in the cost reporting and programming disciplines on the project: "Finance & Commercial team to rollout cost reporting 101 training as a priority";¹²⁶
 - (e) Wilson had actual knowledge, by 26 March 2018, by reason of his attendance at the Quarterly Business Review and/or by reason of him being in receipt of the Quarterly Business Review dated 26 March 2018, that:
 - (i) during the quarter, the Engineering Business reduced its FY18 MPAT forecast from a loss of approximately (\$53m) to a loss of approximately (\$77m) due to provisioning;
 - (ii) the draft FY19 business plan indicated FY19 MPAT of \$19m against prior forecast of \$75m;
 - (iii) the FY19 MPAT included (pre tax) "stretch targets" of \$13.7m; and
 - (iv) the then current FY18 (or FY19) MPAT did not include additional risk for problem projects (NCX, GUN, KSD);¹²⁷

¹²⁶ Steerco Project Status Report dated 13 March 2018 [LLC.008.007.4878], email from Letton to Steerco attendees dated 9 March 2018 [LLC.002.008.8308].

¹²⁷ Quarterly Business Review dated 26 March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

- (f) Wilson had actual knowledge, as at 22 May 2018, by reason of his attendance at the Board meeting on 22 May 2018 and/or by reason of him presenting on Group strategy to the Lendlease Board and/or by reason of him being in receipt of the Board presentation pack, that:
- (i) the GPM for NCX was forecast to be a loss of approximately (\$144m);
 - (ii) the Hinds Blunden review indicated there was a likely loss of approximately (\$122m);
 - (iii) there was a turnaround forecast for the Engineering Business;
 - (iv) the then current position with the problem projects, and net impacts on earnings showed that the 31 December provision had been utilised in full, but there was “meaningful contingency at a Group level” and that a review would be conducted before year end to determine what additional provisions may be required; and
 - (v) an update on the FY18 forecast position showed that negative variations prior to forecast on some Engineering projects were updated following project reviews and while provisions held at Group level had largely been absorbed the Group remained on track to achieve target Group PAT through outperformance in the Property Australia Business;¹²⁸ and
- (g) given what Wilson actually knew in respect of the NCX project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 85, 91, 93 and 99(a) to 99(f) above, Wilson:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
100. Further and in the alternative to paragraph 99 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 31 May 2018 and given Wilson’s position at Lendlease, his attendance at the Lendlease Board, RMAC, Steerco and Engineering Quarterly Business Review meetings identified, his membership of the

¹²⁸ Lendlease Board presentation pack dated 22 May 2018 [LLC.013.001.3902].

Steerco committee identified and/or receipt of the documents identified in paragraphs 85, 91, 93 and 99 above, Wilson:

- (a) ought to have known the information particularised at paragraphs 85, 91, 93 and 99 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

22 August 2018

101. By 22 August 2018, in relation to the **Engineering Business**:

- (a) Wilson had actual knowledge of the information referred to at paragraphs 85 to 100 above;
- (b) Wilson had actual knowledge that the Engineering Business continued to underperform;
- (c) Wilson had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Wilson had actual knowledge, by 13 July 2018, by reason of his attendance at the Board meeting on 11 to 13 July 2018 and/or receipt of the Board presentation pack dated July 2018, that FY18 was characterised by the businesses driving significant outperformance to offset the “very disappointing underperformance of the Engineering Business”;¹²⁹
- (e) Wilson had actual knowledge, by 20 August 2018, by reason of his attendance at the RMAC meeting on 20 August 2018 and/or by reason of his receipt of the Executive Summary dated 20 August 2018 and the KPMG Report to RMAC, that:
 - (i) the construction performance was subdued driven by underperformance in the Engineering Business, further provisions of \$38m had been taken outside the projects at a Group level and had been segmented to the construction result; and
 - (ii) as to the accuracy of the R&O metrics, KPMG identified that:

¹²⁹ Board meeting presentation pack dated July 2018 [LLC.013.001.4559], Minutes of the July 2018 Board meeting [LLC.013.001.5001].

- (A) contingency had reduced close to nil in the periods leading up to the inflection point, being the point where GPM begins to deteriorate and contingency remained steady;
 - (B) projects experienced a deterioration of GPM between 50 to 75% complete;
 - (C) at the inflection point in GPM, the net R&O at that point in time was significantly less than the actual GPM deterioration that had occurred subsequently, suggesting unidentified risks that came to fruition and some opportunities that did not crystallise;
 - (D) Lendlease was likely having an optimistic bias when assessing R&O;
 - (E) resolution of significant risks and uncertainties remained outstanding on a number of key problem projects; and
 - (F) the three material nonperforming projects (being GUN, KSD and NCX), were adversely impacting gross margin by \$284m;¹³⁰ and
- (f) given what Wilson actually knew in respect of each of the Projects and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 85, 87, 89, 91, 93, 95, 97, 99 and 101(a) to 101(e) above and paragraphs 103, 105 and 107 below, Wilson:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
102. Further and in the alternative to paragraph 101 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 22 August 2018 and given Wilson's position at Lendlease, his attendance at the Lendlease Board, RMAC, Steerco, Engineering Quarterly Business Review and GUN Project Review meetings identified, his membership of the Steerco and GUN Project Review committees

¹³⁰ Executive Summary dated 20 August 2018 and KPMG report to RMAC [LLC.011.009.8562], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

identified and/or receipt of the documents identified in paragraphs 85, 87, 89, 91, 93, 95, 97, 99 and 101 above and paragraphs 103, 105 and 107 below, Wilson:

- (a) ought to have known the information particularised at paragraphs 85, 87, 89, 91, 93, 95, 97, 99 and 101 above and paragraphs 103, 105 and 107 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

103. By 22 August 2018, in relation to the **Gateway Upgrade North** project:

- (a) Wilson had actual knowledge of the information referred to at paragraphs 85, 86, 87, 88, 93, 94, 95, 96, 101 and 102 above;
- (b) Wilson had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Wilson had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Wilson had actual knowledge, by 25 July 2018, or alternatively 16 August 2018, by reason of Wilson's membership of Steerco, his attendance at the Steerco Project Status Report presentations on 15 June 2018 and 16 August 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated June, July and August 2018, that the forecast GPM had reduced further to a loss of approximately (\$70m) in July and August, which represented a negative deviation of approximately (\$14m) from the GPM in the prior forecast in the Steerco Project Status Report dated June 2018;¹³¹
- (e) Wilson had actual knowledge, by 20 August 2018, by reason of Wilson's attendance at the RMAC meeting on 20 August 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated 20 August 2018:
 - (i) that the GUN project was continuing to forecast a GPM loss of approximately (\$70m);

¹³¹ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779], Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

- (ii) of the reasons for the deterioration in the GPM, including estimating errors at tender on geotechnical ground conditions, lower asphalt productivity rates and additional bridge piling costs resulting in significant resequencing and traffic management cost impacts;
 - (iii) that the project was pursuing claims/insurance recovery and was relying on \$69.1m (against a total claim value of approximately \$180.0m) to achieve the then current forecast margin of (\$56m). A provision of \$14m was being held at the Lendlease Engineering corporate level against this reliance (equalling the total forecast GPM loss of approximately (\$70m)); and
 - (iv) that there was significant underperformance of the project, including as a result of matters that arose at or shortly after tender phase, which was likely to impact the remainder of the works;¹³² and
 - (f) given what Wilson actually knew in respect of the GUN project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 85, 87, 93, 95, 101 and 103(a) to 103(e) above, Wilson:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
104. Further and in the alternative to paragraph 103 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 22 August 2018 and given Wilson's position at Lendlease, his attendance at the Lendlease Board, RMAC, Steerco, Engineering Quarterly Business Review and GUN Project Review meetings identified, his membership of the Steerco and GUN Project Review committees identified and/or receipt of the documents identified in paragraphs 85, 87, 93, 95, 101 and 103 above, Wilson:

¹³² RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

- (a) ought to have known the information particularised at paragraphs 85, 87, 93, 95, 101 and 103 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

105. By 22 August 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Wilson had actual knowledge of the information referred to at paragraphs 85, 86, 89, 90, 93, 94, 97, 98, 101 and 102 above;
- (b) Wilson had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Wilson had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Wilson had actual knowledge, by 15 June 2018 and through July 2018, by reason of Wilson's membership of Steerco, his attendance at the Steerco Project Status Report presentation on 15 June 2018 and/or by reason of him being in receipt of the Steerco Presentations dated June and July 2018, that:
 - (i) the forecast GPM was reported as slightly decreased to a loss of (\$47.9m) in the Steerco Project Status Report dated June 2018 or remained the same as the May 2018 forecast of a loss of (\$47.8m) in the Steerco Project Status Report dated July 2018; and
 - (ii) as the works progressed through the first quarter, the productivity positions taken in the 2017 forecasts had proven to be optimistic;¹³³
- (e) Wilson had actual knowledge, by 16 August 2018, by reason of Wilson's membership of Steerco, his attendance at the Steerco Project Status Report presentation on 16 August 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated August 2018, that:
 - (i) an issue had emerged around the interaction between ground stabilisation works (jet grouting works) and the marine structures, which had the project team critically reviewing the design;

¹³³ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

- (ii) the then current indication was that there would likely be design changes and additional works necessary;
 - (iii) the forecast productivity had been optimistic and the project team had commenced increasing the most likely position; and
 - (iv) the forecast GPM remained at a loss of approximately (\$47.8m);¹³⁴
- (f) Wilson had actual knowledge, by 21 August 2018, by reason of his attendance at the RMAC meeting on 20 August 2018, attendance at the Board meeting on 21 and 22 August 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated August 2018 and/or the Board presentation pack dated August 2018, that:
- (i) there remained a forecast GPM loss of approximately (\$47.8m); and
 - (ii) the risk relating to the jet grouting issue was under investigation, which represented additional complexities with the project and the progress of the works;¹³⁵ and
- (g) given what Wilson actually knew in respect of the KSD project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 85, 89, 93, 97, 101 and 105(a) to 105(f) above, Wilson:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
- that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
106. Further and in the alternative to paragraph 105 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 22 August 2018 and given Wilson's position at Lendlease, his attendance at the Lendlease Board, RMAC, Steerco and Engineering Quarterly Business Review meetings identified, his

¹³⁴ Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

¹³⁵ RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Board presentation pack dated 21-22 August 2018 [LLC.013.001.5001], Minutes of Board meeting 21-22 August 2018 [LLC.013.001.5660], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 85, 89, 93, 97, 101 and 105 above, Wilson:

- (a) ought to have known the information particularised at paragraphs 85, 89, 93, 97, 101 and 105 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

107. By 22 August 2018, in relation to the **NorthConnex** project:

- (a) Wilson had actual knowledge of the information referred to at paragraphs 85, 86, 91, 92, 93, 94, 99, 100, 101 and 102 above;
- (b) Wilson had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Wilson had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Wilson had actual knowledge, by 13 July 2018, by reason of him presenting on Group strategy to the Lendlease Board, his attendance at the Board meeting on 11 to 13 July 2018 and/or by reason of being in receipt of the Board Financial Update Presentation by Gupta dated 24 June 2018 and the CFO Report from the Lendlease Board presentation pack dated July 2018, that the forecast FY18 GPM was a loss of approximately (\$162m) and the forecast WOL GPM was a loss of approximately (\$140m);¹³⁶
- (e) Wilson had actual knowledge, by 25 July 2018, by reason of his membership of Steerco and/or by reason of him being in receipt of the Steerco Project Status Report dated July 2018, that:
 - (i) the forecast GPM was a loss of approximately (\$240m);
 - (ii) there were major variances to the budget; and

¹³⁶ Board Financial Update Presentation by Gupta from Lendlease Board presentation pack dated 24 June 2018 [LLC.013.001.4460], CFO Report from Lendlease Board presentation pack dated July 2018 [LLC.013.001.4559].

- (iii) the program shifted from a completion date in December 2019 to May 2020, with the cost updated to reflect the associated burn rate and forecasting errors identified;¹³⁷ and
 - (f) given what Wilson actually knew in respect of the NCX project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 85, 91, 93, 99, 101 and 107(a) to 107(e) above, Wilson:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
- 108. Further and in the alternative to paragraph 107 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 22 August 2018 and given Wilson's position at Lendlease, his attendance at the Lendlease Board, RMAC, Steerco and Engineering Quarterly Business Review meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 85, 91, 93, 99, 101 and 107 above, Wilson:
 - (a) ought to have known the information particularised at paragraphs 85, 91, 93, 99, 101 and 107 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

The opinion that was actually formed and/or ought to have been formed based on the information and facts available to Wilson

- 109. Wilson had actual knowledge of the historical performance of the Projects as at each of the following dates:
 - (a) 21 February 2018, referred to above at paragraphs 85 to 92 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17 and Feb.18 Columns (GUN),

¹³⁷ Steerco Project Status Reports dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

Table 31, Oct.17, Nov.17 and Feb.18 Columns (KSD) and Table 51, Sept.17 and Dec.17 Columns (NCX);

- (b) 31 May 2018, referred to above at paragraphs 85 to 100 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18 and May.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18 and May.18 Columns (KSD) and Table 51, Sept.17, Dec.17 and Mar.18 Columns (NCX); and
- (c) 22 August 2018 referred to above at paragraphs 85 to 108 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (KSD) and Table 51, Sept.17, Dec.17, Mar.18 and Jun.18 Columns (NCX).

(Wilson Identified Dates).

110. At each of the Wilson Identified Dates, by reason of Wilson's:

- (a) actual and/or constructive knowledge as particularised in:
 - (i) paragraphs 85 to 92 above in respect of the period prior to 21 February 2018;
 - (ii) paragraphs 85 to 100 above in respect of the period prior to 31 May 2018;
 - (iii) paragraphs 85 to 108 above in respect of the period prior to 22 August 2018;
- (b) alternatively,
 - (i) actual and/or constructive knowledge as particularised in paragraphs 85 to 109 above; and
 - (ii) constructive knowledge based upon his ability to access information of the historical performance of the Projects in his capacity as Group Chief Commercial and Risk Officer as at each relevant date, to the extent that historical performance is as summarised in:
 - (A) the Badala Report, at Table 11 (GUN), Table 31 (KSD) and Table 51 (NCX) and [97]-[190], [191]-[283] and [284]-[371]; and

- (B) the documents considered and referred to by Peter Badala as identified and extracted by Document ID as the “Source File” or “Source” in Annexures A.1, A.2, B.1, B.2, C.1 and C.2 of that report for each relevant period; and
- (c) role as Group Chief Commercial and Risk Officer:

Wilson:

- (d) had actual knowledge, ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him (as particularised in [110(a)] and [110(b)] above, insofar as the allegations are of actual knowledge), or which ought to have been known to him (as particularised in [110(a)] and [110(b)] above, insofar as the allegations are of constructive knowledge), that the provisions taken for the Engineering Business as a consequence of the Projects were inadequate: and
- (e) ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him, or which ought to have been known to him, that:

Provision Information

- (i) additional provisions for the Engineering Business would need to be taken as a consequence of the Projects, as follows:
 - (A) the 17 October 2017 Provision Information, being approximately \$415.0 million for the Engineering Business which needed to be taken as at 17 October 2017;
 - (B) the 17 November 2017 Provision Information, being approximately \$363.2 million for the Engineering Business which needed to be taken as at 17 November 2017;
 - (C) as at 21 February 2018, the 21 February 2018 Provision Information, being approximately \$331.3 million for the Engineering Business;
 - (D) as at 31 May 2018, the 31 May 2018 Provision Information, being approximately \$393.6 million for the Engineering Business; and

- (E) as at 22 August 2018, the 22 August 2018 Provision Information, being approximately \$415.5 million for the Engineering Business; and/or

Overstated profits

- (ii) by reason of the inadequate provisions, the profits were overstated and a reduction in published profits was required as follows:
- (A) as at 21 February 2018, the 31 December 2017 Profit Information, being a reduction in after-tax profits of \$231.9 million; and
- (B) as at 22 August 2018, the 30 June 2018 Profit Information, being a reduction in after-tax profits of \$290.9 million.

D. Connor

17 November 2017

111. By 17 November 2017, in relation to the **Engineering Business**:

- (a) Connor had actual knowledge that the Engineering Business was underperforming;
- (b) Connor had actual knowledge that there was erosion to the forecast GPM and contingency;
- (c) Connor had actual knowledge, by 15 November 2017, by reason of Connor's attendance at the RMAC meeting on 15 November 2017, the Board meeting on 15 November 2017 and/or by reason of being in receipt of the RMAC Report dated November 2017 and the Minutes of the 15 November 2017 Board meeting, that:
- (i) the underperforming projects of the Engineering Business were listed as the number one Group wide risk and were identified to be high risk with a very large likely impact and risk; and
- (ii) the Engineering Business had significantly increased its reliance assumptions in the quarter, including (\$33.7m) for GUN and (\$42.7m) for KSD;¹³⁸

¹³⁸ RMAC Report dated November 2017 [LLC.008.022.4073].

- (d) Connor had actual knowledge, by 16 November 2017, by reason of Connor attending the Board meeting on 16 November 2017 and/or by being in receipt of the CFO Memorandum dated November 2017, that:
- (i) the Group forecast FY18 PAT presented at 17 October 2017 included total contingency at the Group level of approximately \$65m post tax of which \$50m post tax was being held against further downside risks in the Engineering Business;
 - (ii) the \$50m contingency to cover downside across the Engineering Business would be fully absorbed by the position shown as the “independent review scenario”;
 - (iii) the independent review was not yet complete;
 - (iv) PAT FY18 had a variance of (\$16m) and a GPM variance of a loss of (\$99m);
 - (v) revenue and GPM at Group level had been revised down taking into account margin deterioration on projects in the Engineering Business; and
 - (vi) at the Engineering Business level, FY18 variance against budget was: revenue down (\$131m), GPM down (\$102m), EBITDA down (\$97m), Engineering PAT down (\$70m);¹³⁹ and
- (e) given what Connor actually knew in respect of each of the Projects and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 111(a) to 111(d) above and paragraphs 113, 115 and 117 below, Connor:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
- that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

¹³⁹ CFO Memorandum dated 16 November 2017 [LLC.011.004.1484], Minutes of the 16 November 2017 Board meeting [LLC.013.001.2576].

112. Further and in the alternative to paragraph 111 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 17 November 2017 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraph 111 above and paragraphs 113, 115 and 117 below, Connor:

- (a) ought to have known the information particularised at paragraph 111 above and paragraphs 113, 115 and 117 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

113. By 17 November 2017, in relation to the **Gateway Upgrade North** project:

- (a) Connor had actual knowledge of the information referred to at paragraphs 111 and 112 above;
- (b) Connor had actual knowledge that GUN was an underperforming and/or problem project;
- (c) Connor had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) Connor had actual knowledge, by 15 November 2017, by reason of Connor's attendance at the relevant sections of the RMAC meeting on 15 November 2017 and/or by being in receipt of the RMAC presentation pack dated November 2017, that:
 - (i) GUN was identified as being 68.4% complete;
 - (ii) at contract inception, GPM was approximately \$52.5m but was then forecast to be \$15m with an annual FY18 GPM result of a loss of (\$6.2m);
 - (iii) there was an assumed reliance of \$69.8m;
 - (iv) the delivery of the project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to mitigate delays, changed requirements to remove and replace spoil and additional temporary traffic management;
 - (v) there was further erosion in the likely GPM; and

- (vi) the GPM was contingent on large reliances. Specifically, the project was pursuing \$190.3m in claims of which needed to recover \$69.1m in order to achieve the then current forecast GPM of \$15m;¹⁴⁰ and
 - (e) given what Connor actually knew in respect of the GUN project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 111 and 113(a) to 113(d) above, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
114. Further and in the alternative to paragraph 113 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 17 November 2017 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111 and 113 above, Connor:
- (a) ought to have known the information particularised at paragraphs 111 and 113 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
115. By 17 November 2017, in relation to the **Kingsford Smith Drive Upgrade** project:
- (a) Connor had actual knowledge of the information referred to at paragraphs 111 and 112 above;
 - (b) Connor had actual knowledge that KSD was an underperforming and/or problem project;
 - (c) Connor had actual knowledge that there was erosion of the forecast GPM and contingency;

¹⁴⁰ RMAC Report dated November 2017 [LLC.008.022.4073], attendees identified in minutes of RMAC meeting 15 November 2017 [LLC.011.008.2694].

- (d) Connor had actual knowledge, by 16 November 2017, by reason of Connor attending the relevant parts of the Board meeting on 16 November 2017 and/or by reason of being in receipt of the Board meeting presentation pack dated November 2017 including the Risk and CoE Report and the CFO Report, that the GPM for KSD had deteriorated from approximately \$36.9m to \$0 (zero) or break even;¹⁴¹ and
 - (e) given what Connor actually knew in respect of the KSD project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 111 and 115(a) to 115(d) above, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
116. Further and in the alternative to paragraph 115 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 17 November 2017 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111 and 115 above, Connor:
- (a) ought to have known the information particularised at paragraphs 111 and 115 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
117. By 17 November 2017, in relation to the **NorthConnex** project:
- (a) Connor had actual knowledge of the information referred to at paragraphs 111 and 112 above;
 - (b) Connor had actual knowledge that NCX was an underperforming and/or problem project;

¹⁴¹ Board meeting presentation pack dated November 2017 [LLC.013.001.2327], attendees identified in Minutes of 16 November 2017 Board meeting [LLC.013.001.2576].

- (c) Connor had actual knowledge that there was erosion of the forecast GPM and contingency;
 - (d) Connor had actual knowledge, by 16 November 2017, by reason of him attending the Board meeting on 16 November 2017 and/or by reason of him being in receipt of the CFO Update on LLC FY18 Position dated 16 November 2017, being a memorandum prepared by Gupta, that:
 - (i) as a result of an independent review carried out by Hinds Blunden, the GPM for NCX had deteriorated by a further (\$25m); and
 - (ii) the forecast completion date had moved to April 2020;¹⁴² and
 - (e) given what Connor actually knew in respect of the NCX project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 111 and 117(a) to 117(d) above, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
118. Further and in the alternative to paragraph 117 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 17 November 2017 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111 and 117 above, Connor:
- (a) ought to have known the information particularised at paragraphs 111 and 117 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

¹⁴² CFO Memorandum dated 16 November 2017 [LLC.011.004.1484], Minutes of 16 November 2017 Board meeting [LLC.013.001.2576].

21 February 2018

119. By 21 February 2018, in relation to the **Engineering Business**:

- (a) Connor had actual knowledge of the information referred to at paragraphs 111 to 118 above;
- (b) Connor had actual knowledge that the Engineering Business continued to underperform;
- (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Connor had actual knowledge, by 20 February 2018, by reason of him attending the CFO Presentation at the Board meeting on 20 February 2018 and/or by reason of being in receipt of the CFO Report, that:
 - (i) the Group would deliver PAT of approximately \$426m for HY18, which represents an 8% increase on the prior corresponding period;
 - (ii) Construction Australia was significantly down due to margin downside on key projects within the Engineering Business; and
 - (iii) as to the Engineering Business, the forecast variance against budget was: GPM (\$152m) and EBITDA (\$151M);¹⁴³ and
- (e) given what Connor actually knew in respect of each of the Projects and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 111, 113, 115, 117 and 119(a) to 119(d) above and paragraphs 121, 123 and 125 below, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

120. Further and in the alternative to paragraph 119 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the

¹⁴³ CFO Report dated 20 February 2018 [LLC.013.001.2926], Minutes of 20 February 2018 Board meeting [LLC.013.001.3379].

Projects and the Engineering Business as a whole prior to 21 February 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111, 113, 115, 117 and 119 above and paragraphs 121 and 125 below, Connor:

- (a) ought to have known the information particularised at paragraphs 111, 113, 115, 117 and 119 above and paragraphs 121, 123 and 125 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

121. By 21 February 2018, in relation to the **Gateway Upgrade North** project:

- (a) Connor had actual knowledge of the information referred to at paragraphs 111, 112, 113, 114, 119 and 120 above;
- (b) Connor had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Connor had actual knowledge, by 19 February 2018, by reason of Connor's attendance at the relevant section of the RMAC meeting on 19 February 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated February 2018, that:
 - (i) the GPM or WOL P/L for GUN was forecast to be a loss of approximately (\$17.6m);
 - (ii) GUN was identified as being 76.1% complete;
 - (iii) the GPM was then forecast to be (\$17.6m), a movement of (\$32.6m) since the last RMAC in October 2017;
 - (iv) there was an assumed reliance of \$69.1m;
 - (v) the delivery of the project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to mitigate delays and additional temporary traffic management;

- (vi) the project was relying on \$44.8m relating to claims and variations in order to achieve the forecast margin;
 - (vii) the forecast GPM was largely contingent on Lendlease successfully pursuing various contractual and insurance claims, and that there was inherent uncertainty in Lendlease's success; and
 - (viii) the issues that were leading to the erosion of the GPM had been identified early in the project and, in some cases, during the tender phase;¹⁴⁴ and
- (e) given what Connor actually knew in respect of the GUN project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 111, 113, 119 and 121(a) to 121(d) above, Connor:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
122. Further and in the alternative to paragraph 121 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 21 February 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111, 113, 119 and 121 above, Connor:
- (a) ought to have known the information particularised at paragraphs 111, 113, 119 and 121 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
123. By 21 February 2018, in relation to the **Kingsford Smith Drive Upgrade** project:
- (a) Connor had actual knowledge of the information referred to at paragraphs 111, 112, 115, 116, 119 and 120 above;

¹⁴⁴ RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], attendees identified in Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

- (b) Connor had actual knowledge that KSD remained an underperforming and/or problem project;
 - (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency; and
 - (d) given what Connor actually knew in respect of the KSD project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 111, 115, 119 and 123(a) to 123(c) above, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
124. Further and in the alternative to paragraph 123 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 21 February 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111, 115 and 119 above, Connor:
- (a) ought to have known the information particularised at paragraphs 111, 115, 119 and 123 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
125. By 21 February 2018, in relation to the **NorthConnex** project:
- (a) Connor had actual knowledge of the information referred to at paragraphs 111, 112, 117, 118, 119 and 120 above;
 - (b) Connor had actual knowledge that NCX remained an underperforming and/or problem project;
 - (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency;

- (d) Connor had actual knowledge, by 20 February 2018, by reason of him attending the Board meeting on 20 February 2018 and/or by reason of being in receipt of the Board presentation pack, that:
- (i) the GPM for NCX was forecasted to be a loss of approximately (\$126m) a variance of (\$133m) from the \$7m profit budgeted for; and
 - (ii) Construction Australia was significantly down on PAT due to margin downside on key projects within the Engineering Business;¹⁴⁵ and
- (e) given what Connor actually knew in respect of the NCX project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 111, 117, 119 and 125(a) to 125(d) above, Connor:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
126. Further and in the alternative to paragraph 125 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 21 February 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111, 117, 119 and 125 above, Connor:
- (a) ought to have known the information particularised at paragraphs 111, 117, 119 and 125 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

¹⁴⁵ CFO Report from 20 February 2018 Board presentation pack [LLC.013.001.2926], Minutes of 20 February 2018 Board meeting [LLC.013.001.3379].

31 May 2018

127. By 31 May 2018, in relation to the **Engineering Business**:

- (a) Connor had actual knowledge of the information referred to at paragraphs 111 to 126 above;
- (b) Connor had actual knowledge that the Engineering Business continued to underperform;
- (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Connor had actual knowledge, by 19 April 2018, by reason of his attendance at the Board meeting on 17 to 19 April 2018 and/or by reason of him being in receipt of the CEO Report, that provisions held at the Group level against GUN, NCX and KSD had largely been absorbed and that while Lendlease remained on track to achieve target Group PAT through outperformance in the Property Australia Business, there was limited unallocated contingency;¹⁴⁶
- (e) Connor had actual knowledge, by 19 April 2018, by reason of his attendance at the Board meeting on 17 to 19 April 2018 and/or by reason of him being in receipt of the Board presentation pack dated April 2018 including the Group Chief Commercial and Risk Officer Report dated April 2018, that the magnitude of non-performing engineering projects continued to bring substantial aggregated risk to the Group;¹⁴⁷ and
- (f) given what Connor actually knew in respect of each of the Projects and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 111, 113, 115, 117, 119, 121, 123, 125 and 127(a) to 127(e) above and paragraphs 129, 131 and 133 below, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

¹⁴⁶ CEO Report dated 17 April 2018 [LLC.013.001.3379], attendees identified in Minutes of the 17 to 19 April 2018 Board meeting [LLC.013.001.3902].

¹⁴⁷ Group Chief Commercial and Risk Officer Report dated 18 April 2018 [LLC.013.001.3379], attendees identified in Minutes of the 17 to 19 April 2018 Board meeting [LLC.013.001.3902].

128. Further and in the alternative to paragraph 127 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 31 May 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111, 113, 115, 117, 119, 121, 125 and 127 above, Connor:
- (a) ought to have known the information particularised at paragraphs 111, 113, 115, 117, 119, 121, 123, 125 and 127 above and paragraphs 129, 131 and 133 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
129. By 31 May 2018, in relation to the **Gateway Upgrade North** project:
- (a) Connor had actual knowledge of the information referred to at paragraphs 111, 112, 113, 114, 119, 120, 121, 122, 127 and 128 above;
 - (b) Connor had actual knowledge that GUN remained an underperforming and/or problem project;
 - (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency; and
 - (d) given what Connor actually knew in respect of the GUN project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 111, 113, 119, 121, 127 and 129(a) to 129(c) above, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
130. Further and in the alternative to paragraph 129 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 31 May 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC

meetings identified and/or receipt of the documents identified in paragraphs 111, 113, 119, 121 and 127 above, Connor:

- (a) ought to have known the information particularised at paragraphs 111, 113, 119, 121, 127 and 129 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

131. By 31 May 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Connor had actual knowledge of the information referred to at paragraphs 111, 112, 115, 116, 119, 120, 123, 124, 127 and 128 above;
- (b) Connor had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency; and
- (d) given what Connor actually knew in respect of the KSD project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 111, 115, 119, 123, 127 and 131(a) to 131(c) above, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

132. Further and in the alternative to paragraph 131 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 31 May 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111, 115, 119, and 127 above, Connor:

- (a) ought to have known the information particularised at paragraphs 111, 115, 119, 123, 127 and 131 above; and/or

- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

133. By 31 May 2018, in relation to the **NorthConnex** project:

- (a) Connor had actual knowledge of the information referred to at paragraphs 111, 112, 117, 118, 119, 120, 125, 126, 127 and 128 above;
- (b) Connor had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency; and
- (d) given what Connor actually knew in respect of the NCX project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 111, 117, 119, 125, 127 and 133(a) to 133(c) above, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

134. Further and in the alternative to paragraph 133 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 31 May 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111, 117, 119, 125 and 127 above, Connor:

- (a) ought to have known the information particularised at paragraphs 111, 117, 119, 125, 127 and 133 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

22 August 2018

135. By 22 August 2018, in relation to the **Engineering Business**:

- (a) Connor had actual knowledge of the information referred to at paragraphs 111 to 134 above;
- (b) Connor had actual knowledge that the Engineering Business continued to underperform;
- (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency; and
- (d) given what Connor actually knew in respect of each of the Projects and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 111, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131, 133 and 135(a) to 135(c) above and paragraphs 137, 139 and 141 below, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

136. Further and in the alternative to paragraph 135 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 22 August 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111, 113, 115, 117, 119, 121, 125 and 127 above and paragraphs 139 and 141 below, Connor:

- (a) ought to have known the information particularised at paragraphs 111, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131, 133 and 135 above and paragraphs 137, 139 and 141 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

137. By 22 August 2018, in relation to the **Gateway Upgrade North** project:

- (a) Connor had actual knowledge of the information referred to at paragraphs 111, 112, 113, 114, 119, 120, 121, 122, 127, 128, 129, 130, 135 and 136 above;
- (b) Connor had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency; and
- (d) given what Connor actually knew in respect of the GUN project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 111, 113, 119, 121, 127, 129, 135 and 137(a) to 137(c) above, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

138. Further and in the alternative to paragraph 137 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 22 August 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111, 113, 119, 121 and 127 above, Connor:

- (a) ought to have known the information particularised at paragraphs 111, 113, 119, 121, 127, 129, 135 and 137 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

139. By 22 August 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Connor had actual knowledge of the information referred to at paragraphs 111, 112, 115, 116, 119, 120, 123, 124, 127, 128, 131, 132, 135 and 136 above;

- (b) Connor had actual knowledge that KSD remained an underperforming and/or problem project;
 - (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Connor had actual knowledge, by 22 August 2018, by reason of his attendance at the Board meeting on 21 and 22 August 2018 and/or by reason of him being in receipt of the Board presentation pack dated August 2018, that:
 - (i) there remained a forecast GPM loss of approximately (\$47.8m); and
 - (ii) the risk relating to the jet grouting issue was under investigation, which represented additional complexities with the project and the progress of the works;¹⁴⁸ and
 - (e) given what Connor actually knew in respect of the KSD project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 111, 115, 119, 123, 127, 131, 135 and 139(a) to 139(d) above, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
140. Further and in the alternative to paragraph 139 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 22 August 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111, 115, 119, 127 and 139 above, Connor:
- (a) ought to have known the information particularised at paragraphs 111, 115, 119, 123, 127, 131, 135 and 139 above; and/or

¹⁴⁸ Board presentation pack dated 21-22 August 2018 [LLC.013.001.5001], Minutes of Board meeting 21-22 August 2018 [LLC.013.001.5660].

- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

141. By 22 August 2018, in relation to the **NorthConnex** project:

- (a) Connor had actual knowledge of the information referred to at paragraphs 111, 112, 117, 118, 119, 120, 125, 126, 127, 128, 133, 134, 135 and 136 above;
- (b) Connor had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Connor had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Connor had actual knowledge, by 13 July 2018, by reason of his attendance at the Board meeting on 11 to 13 July 2018 and/or by reason of being in receipt of the CFO Report from the Lendlease Board presentation pack dated July 2018, that the forecast FY18 GPM was a loss of approximately (\$162m) and the forecast WOL GPM was a loss of approximately (\$140m);¹⁴⁹ and
- (e) given what Connor actually knew in respect of the NCX project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 111, 117, 119, 125, 127, 133, 135 and 141(a) to 141(d) above, Connor:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

142. Further and in the alternative to paragraph 141 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 22 August 2018 and given Connor's position at Lendlease, his attendance at the Lendlease Board and RMAC meetings identified and/or receipt of the documents identified in paragraphs 111, 117, 119, 125, 127 and 141 above, Connor:

¹⁴⁹ CFO Report from Lendlease Board presentation pack dated July 2018 [LLC.013.001.4559], Minutes of the July 2018 Board meeting [LLC.013.001.5001].

- (a) ought to have known the information particularised at paragraphs 111, 117, 119, 125, 127, 133, 135 and 141 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

The opinion that was actually formed and/or ought to have been formed based on the information and facts available to Connor

143. Connor had actual knowledge of the historical performance of the Projects as at each of the following dates:

- (a) 17 November 2017, referred to above at paragraphs 111 to 118 and as summarised in the Badala Report at Table 11, Oct.17 and Nov.17 Columns (GUN), Table 31, Oct.17 and Nov.17 Columns (KSD) and Table 51, Sept.17 Column (NCX);
- (b) 21 February 2018, referred to above at paragraphs 111 to 126 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17 and Feb.18 Columns (GUN), Table 31, Oct.17, Nov.17 and Feb.18 Columns (KSD) and Table 51, Sept.17 and Dec.17 Columns (NCX);
- (c) 31 May 2018, referred to above at paragraphs 111 to 134 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18 and May.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18 and May.18 Columns (KSD) and Table 51, Sept.17, Dec.17 and Mar.18 Columns (NCX); and
- (d) 22 August 2018, referred to above at paragraphs 111 to 142 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (KSD) and Table 51, Sept.17, Dec.17, Mar.18 and Jun.18 Columns (NCX).

(Connor Identified Dates).

144. At each of the Connor Identified Dates, by reason of Connor's:

- (a) actual and/or constructive knowledge as particularised in:
 - (i) paragraphs 111 to 118 above in respect of the period prior to 17 November 2017;

- (ii) paragraphs 111 to 126 above in respect of the period prior to 21 February 2018;
- (iii) paragraphs 111 to 134 above in respect of the period prior to 31 May 2018;
- (iv) paragraphs 111 to 142 above in respect of the period prior to 22 August 2018;
- (b) alternatively,
 - (i) actual and/or constructive knowledge as particularised in paragraphs 111 to 143 above; and
 - (ii) constructive knowledge based upon his ability to access information of the historical performance of the Projects in his capacity as Managing Director of Building Australia as at each relevant date, to the extent that historical performance is as summarised in:
 - (A) the Badala Report, at Table 11 (GUN), Table 31 (KSD) and Table 51 (NCX) and [97]-[190], [191]-[283] and [284]-[371]; and
 - (B) the documents considered and referred to by Peter Badala as identified and extracted by Document ID as the "Source File" or "Source" in Annexures A.1, A.2, B.1, B.2, C.1 and C.2 of that report for each relevant period; and
- (c) role as Managing Director of Building Australia;

Connor:

- (d) had actual knowledge, ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him (as particularised in [144(a)] and [144(b)] above, insofar as the allegations are of actual knowledge), or which ought to have been known to him (as particularised in [144(a)] and [144(b)] above, insofar as the allegations are of constructive knowledge), that the provisions taken for the Engineering Business as a consequence of the Projects were inadequate; and

- (e) ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him, or which ought to have been known to him, that:

Provision Information

- (i) additional provisions for the Engineering Business would need to be taken as a consequence of the Projects, as follows:
- (A) the 17 October 2017 Provision Information, being approximately \$415.0 million for the Engineering Business which needed to be taken as at 17 October 2017:
 - (B) as at 17 November 2017, the 17 November 2017 Provision Information, being approximately \$363.2 million for the Engineering Business;
 - (C) as at 21 February 2018, the 21 February 2018 Provision Information, being approximately \$331.3 million for the Engineering Business;
 - (D) as at 31 May 2018, the 31 May 2018 Provision Information, being approximately \$393.6 million for the Engineering Business; and
 - (E) as at 22 August 2018, the 22 August 2018 Provision Information, being approximately \$415.5 million for the Engineering Business; and/or

Overstated profits

- (ii) by reason of the inadequate provisions, the profits were overstated and a reduction in published profits was required as follows:
- (A) as at 21 February 2018, the 31 December 2017 Profit Information, being a reduction in after-tax profits of \$231.9 million; and
 - (B) as at 22 August 2018, the 30 June 2018 Profit Information, being a reduction in after-tax profits of \$290.9 million.

E. Dekker

31 May 2018

145. By 31 May 2018, in relation to the **Engineering Business**:

- (a) Dekker had actual knowledge that the Engineering Business was underperforming;
- (b) Dekker had actual knowledge that there was erosion to the forecast GPM and contingency;
- (c) Dekker had actual knowledge, by 24 May 2018, by reason of his attendance at the relevant sections of the RMAC meeting on 24 May 2018 and/or by reason of him being in receipt of the RMAC Report dated May 2018, that:
 - (i) each of NCX, KSD and GUN were listed as “very high likelihood”, with NCX listed as “very large impact” and KSD and GUN listed as “large impact” for “operational issues”; and
 - (ii) there was a decline in profitability due to the known deterioration in the projects in the Engineering Business;¹⁵⁰ and
- (d) given what Dekker actually knew in respect of each of the Projects and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 145(a) to 145(c) above and paragraphs 147, 149 and 151 below, Dekker:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

146. Further and in the alternative to paragraph 145 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 31 May 2018 and given Dekker’s position at Lendlease, his attendance at the RMAC, Steerco and Lendlease

¹⁵⁰ RMAC Report dated May 2018 [LLC.011.009.8254], Attendees identified in Minutes of RMAC meeting 24 May 2018 [LLC.011.008.3750].

Board meetings identified and/or receipt of the documents identified in paragraph 145 above and paragraphs 147, 149 and 151 below, Dekker:

- (a) ought to have known the information particularised at paragraph 145 above and paragraphs 147, 149 and 151 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

147. By 31 May 2018, in relation to the **Gateway Upgrade North** project:

- (a) Dekker had actual knowledge of the information referred to at paragraphs 145 to 146 above;
- (b) Dekker had actual knowledge that GUN was an underperforming and/or problem project;
- (c) Dekker had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) Dekker had actual knowledge, by 12 May 2018, by reason of his attendance at the Steerco Project Status Report presentation on 12 May 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated May 2018:
 - (i) that the forecast GPM for GUN had reduced to a loss of approximately (\$56m);
 - (ii) of the reasons for the loss being incurred; and
 - (iii) of the value of net reliances, being approximately \$62.5m;¹⁵¹ and
- (e) given what Dekker actually knew in respect of the GUN project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 145 and 147(a) to 147(d) above, Dekker:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

¹⁵¹ Steerco Project Status Report May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

148. Further and in the alternative to paragraph 147 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 31 May 2018 and given Dekker's position at Lendlease, his attendance at the RMAC and Steerco meetings identified, and/or receipt of the documents identified in paragraphs 145 and 147 above, Dekker:

- (a) ought to have known the information particularised at paragraphs 145 and 147 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

149. By 31 May 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Dekker had actual knowledge of the information referred to at paragraphs 145 to 146 above;
- (b) Dekker had actual knowledge that KSD was an underperforming and/or problem project;
- (c) Dekker had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) Dekker had actual knowledge, by 12 May 2018, by reason of his attendance at the Steerco Project Status Report presentation on 12 May 2018 and/or by being in receipt of the Steerco Presentation dated May 2018, that:
 - (i) the likely GPM was a loss of approximately (\$47.8m); and
 - (ii) there were delays to the works;¹⁵² and
- (e) given what Dekker actually knew in respect of the KSD project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 145 and 149(a) to 149(d) above, Dekker:
 - (i) had actual knowledge;

¹⁵² Steerco Project Status Report May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

150. Further and in the alternative to paragraph 149 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 31 May 2018 and given Dekker's position at Lendlease, his attendance at the RMAC and Steerco meetings identified and/or receipt of the documents identified in paragraphs 145 and 149 above, Dekker:

(a) ought to have known the information particularised at paragraphs 145 and 149 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

151. By 31 May 2018, in relation to the **NorthConnex** project:

(a) Dekker had actual knowledge of the information referred to at paragraphs 145 to 146 above;

(b) Dekker had actual knowledge that NCX was an underperforming and/or problem project;

(c) Dekker had actual knowledge that there was erosion of the forecast GPM and contingency;

(d) Dekker had actual knowledge, by 22 May 2018, by reason of his attendance at the Board meeting on 22 May 2018 and/or by reason of him being in receipt of the Lendlease Board presentation pack dated 22 May 2018, that:

(i) the GPM for NCX was forecast to be a loss of approximately (\$144m);

(ii) the Hinds Blunden review indicated there was a likely loss of approximately (\$122m);

(iii) there was a turnaround forecast for the Engineering Business;

(iv) the then current position with the problem projects and net impacts on earnings showed that the 31 December provision had been utilised in full,

but there was “meaningful contingency at a Group level” and that a review would be conducted before year end to determine what additional provisions may be required; and

(v) an update on the FY18 forecast position showed that negative variations prior to forecast on some Engineering projects were updated following project reviews and while provisions held at Group level had largely been absorbed, the Group remained on track to achieve target Group PAT through outperformance in the Property Australia Business;¹⁵³ and

(e) given what Dekker actually knew in respect of the NCX project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 145 and 151(a) to 151(d) above, Dekker:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

152. Further and in the alternative to paragraph 151 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 31 May 2018 and given Dekker’s position at Lendlease, his attendance at the RMAC and Lendlease Board meetings identified, and/or receipt of the documents identified in paragraphs 145 and 151 above, Dekker:

(a) ought to have known the information particularised at paragraphs 145 and 151 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

22 August 2018

153. By 22 August 2018, in relation to the **Engineering Business**:

(a) Dekker had actual knowledge of the information referred to at paragraphs 145 to 152 above;

¹⁵³ Lendlease Board presentation pack dated 22 May 2018 [LLC.013.001.3902].

- (b) Dekker had actual knowledge that the Engineering Business continued to underperform;
 - (c) Dekker had actual knowledge that there was continued erosion of the forecast GPM and contingency; and
 - (d) given what Dekker actually knew in respect of each of the Projects and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 145, 147, 149, 151 and 153(a) to 153(c) above and paragraphs 155, 157 and 159 below, Dekker:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
154. Further and in the alternative to paragraph 153 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 22 August 2018 and given Dekker's position at Lendlease, his attendance at the RMAC, Steerco and Lendlease Board meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 145 ,147, 149, 151 above and paragraphs 155, 157 and 159 below, Dekker:
- (a) ought to have known the information particularised at paragraphs 145 ,147, 149, 151 and 153 above and paragraphs 155, 157 and 159 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
155. By 22 August 2018, in relation to the **Gateway Upgrade North** project:
- (a) Dekker had actual knowledge of the information referred to at paragraphs 145, 146, 147, 148, 153 and 154 above;
 - (b) Dekker had actual knowledge that GUN remained an underperforming and/or problem project;
 - (c) Dekker had actual knowledge that there was continued erosion of the forecast GPM and contingency;

- (d) Dekker had actual knowledge, by 25 July 2018, or alternatively 16 August 2018, by reason of Dekker's attendance at the Steerco Project Status Report presentations on 15 June 2018, 25 July 2018 and 16 August 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated June, July and August 2018, that the forecast GPM had reduced further to a loss of approximately (\$70m) in July and August, which represented a negative deviation of approximately (\$14m) from the GPM in the prior forecast in the Steerco Project Status Report dated June 2018;¹⁵⁴
- (e) Dekker had actual knowledge, by 20 August 2018, by reason of Dekker's attendance at the relevant sections of the RMAC meeting on 20 August 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated August 2018, that:
- (i) the GUN project was continuing to forecast a GPM loss of approximately (\$70m);
 - (ii) the reasons for the deterioration in the GPM, including estimating errors at tender on geotechnical ground conditions, lower asphalt productivity rates and additional bridge piling costs resulting in significant resequencing and traffic management cost impacts;
 - (iii) the project was pursuing claims/insurance recovery and was relying on \$69.1m (against a total claim value of approximately \$180.0m) to achieve the then current forecast margin of (\$56m). A provision of \$14m was being held at the Engineering Business corporate level against this reliance (equalling the total forecast GPM loss of approximately (\$70m)); and
 - (iv) there was significant underperformance of the project, including as a result of matters that arose at or shortly after tender phase, which was likely to impact the remainder of the works;¹⁵⁵ and
- (f) given what Dekker actually knew in respect of the GUN project and the Engineering Business as a whole as at 22 August 2018 by reason of the

¹⁵⁴ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779], Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

¹⁵⁵ RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

information identified in paragraphs 145, 147, 153 and 155(a) to 155(e) above, Dekker:

- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

156. Further and in the alternative to paragraph 155 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 22 August 2018 and given Dekker's position at Lendlease, his attendance at the RMAC and Steerco meetings identified and/or receipt of the documents identified in paragraphs 145, 147 and 155 above, Dekker:

- (a) ought to have known the information particularised at paragraphs 145, 147, 153 and 155 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

157. By 22 August 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Dekker had actual knowledge of the information referred to at paragraphs 145, 146, 149, 150, 153 and 154 above;
- (b) Dekker had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Dekker had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Dekker had actual knowledge, by 15 June 2018 and through July 2018, by reason of Dekker's attendance at the Steerco Project Status Report presentations on 15 June 2018 and 25 July 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated June 2018 and July 2018, that:
 - (i) the forecast GPM was reported as slightly decreased to a loss of (\$47.9m) in the Steerco Project Status Report dated June 2018 or

remained the same as the May 2018 forecast of a loss of (\$47.8m) in the Steerco Project Status Report dated July 2018; and

- (ii) as the works progressed through the first quarter, the productivity positions taken in the 2017 forecasts had proven to be optimistic;¹⁵⁶
- (e) Dekker had actual knowledge, by 16 August 2018, by reason of Dekker's attendance at the Steerco Project Status Report presentation and/or by reason of him being in receipt of the Steerco Project Status Report dated August 2018, that:
 - (i) an issue had emerged around the interaction between ground stabilisation works (jet grouting works) and the marine structures, which had the project team critically reviewing the design;
 - (ii) the then current indication was that there would likely be design changes and additional works necessary;
 - (iii) the forecast productivity had been optimistic and the project team had commenced increasing the most likely position; and
 - (iv) the forecast GPM remained at a loss of approximately (\$47.8m);¹⁵⁷
- (f) Dekker had actual knowledge, by 21 August 2018, by reason of his attendance at the RMAC meeting on 20 August 2018, attendance at the Board meeting on 21 and 22 August 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated August 2018 and/or the Board presentation pack dated August 2018, that:
 - (i) there remained a forecast GPM loss of approximately (\$47.8m); and
 - (ii) the risk relating to the jet grouting issue was under investigation, which represented additional complexities with the project and the progress of the works;¹⁵⁸ and

¹⁵⁶ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

¹⁵⁷ Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

¹⁵⁸ RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Board presentation pack dated 21-22 August 2018 [LLC.013.001.5001], Minutes of Board meeting 21-22 August 2018 [LLC.013.001.5660], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

- (g) given what Dekker actually knew in respect of the KSD project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 145, 149, 153 and 157(a) to 157(f) above, Dekker:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
158. Further and in the alternative to paragraph 157 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 22 August 2018 and given Dekker's position at Lendlease, his attendance at the RMAC and Steerco meetings identified and/or receipt of the documents identified in paragraphs 145, 149 and 157 above, Dekker:
- (a) ought to have known the information particularised at paragraphs 145, 149, 153 and 157 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
159. By 22 August 2018, in relation to the **NorthConnex** project:
- (a) Dekker had actual knowledge of the information referred to at paragraphs 145, 146, 151, 152, 153 and 154 above;
 - (b) Dekker had actual knowledge that NCX remained an underperforming and/or problem project;
 - (c) Dekker had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Dekker had actual knowledge, by 25 July 2018, by reason of his membership of Steerco and/or by reason of him being in receipt of the Steerco Project Status Report dated July 2018, that:
 - (i) the forecast GPM was a loss of approximately (\$240m);

- (ii) there were major variances to the budget; and
 - (iii) the program shifted from a completion date in December 2019 to May 2020, with the cost updated to reflect the associated burn rate and forecasting errors identified;¹⁵⁹ and
 - (e) given what Dekker actually knew in respect of the NCX project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 145, 151, 153 and 159(a) to 159(d) above, Dekker:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
160. Further and in the alternative to paragraph 159 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 22 August 2018 and given Dekker's position at Lendlease, his attendance at the RMAC, Steerco and Lendlease Board meetings identified, his membership of the Steerco committee identified and/or receipt of the documents identified in paragraphs 145, 151 and 159 above, Dekker:
- (a) ought to have known the information particularised at paragraphs 145, 151, 153 and 159 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

¹⁵⁹ Steerco Project Status Reports dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

The opinion that was actually formed and/or ought to have been formed based on the information and facts available to Dekker

161. Dekker had actual knowledge of the historical performance of the Projects as at each of the following dates:
- (a) 31 May 2018, referred to above at paragraphs 145 to 152 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18 and May.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18 and May.18 Columns (KSD) and Table 51, Sept.17, Dec.17 and Mar.18 Columns (NCX); and
 - (b) 22 August 2018, referred to above at paragraphs 145 to 160 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (KSD) and Table 51, Sept.17, Dec.17, Mar.18 and Jun.18 Columns (NCX).

(Dekker Identified Dates).

162. At each of the Dekker Identified Dates, by reason of Dekker's:
- (a) actual and/or constructive knowledge as particularised in:
 - (i) paragraphs 145 to 152 above in respect of the period prior to 31 May 2018;
 - (ii) paragraphs 145 to 160 above in respect of the period prior to 22 August 2018;
 - (b) alternatively,
 - (i) actual and/or constructive knowledge as particularised in paragraphs 145 to 161 above; and
 - (ii) constructive knowledge based upon his ability to access information of the historical performance of the Projects in his capacity as Chief Executive Officer of Lendlease Engineering (from about mid September 2018 until early December 2018) and as the Lendlease Group Head of Engineering and Building (from 1 May 2018) as at each relevant date, to the extent that historical performance is as summarised in:

- (A) the Badala Report, at Table 11 (GUN), Table 31 (KSD) and Table 51 (NCX) and [97]-[190], [191]-[283] and [284]-[371]; and
- (B) the documents considered and referred to by Peter Badala as identified and extracted by Document ID as the “Source File” or “Source” in Annexures A.1, A.2, B.1, B.2, C.1 and C.2 of that report for each relevant period; and
- (c) role as Chief Executive Officer of Lendlease Engineering from about mid September 2018 until early December 2018 and as the Lendlease Group Head of Engineering and Building from 1 May 2018;

Dekker:

- (d) had actual knowledge, ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him (as particularised in [162(a)] and [162(b)] above, insofar as the allegations are of actual knowledge), or which ought to have been known to him (as particularised in [162(a)] and [162(b)] above, insofar as the allegations are of constructive knowledge), that the provisions taken for the Engineering Business as a consequence of the Projects were inadequate; and
- (e) ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him, or which ought to have been known to him, that:

Provision Information

- (i) additional provisions for the Engineering Business would need to be taken as a consequence of the Projects, as follows:
 - (A) the 17 October 2017 Provision Information, being approximately \$415.0 million for the Engineering Business which needed to be taken as at 17 October 2017;
 - (B) the 17 November 2017 Provision Information, being approximately \$363.2 million for the Engineering Business which needed to be taken as at 17 November 2017;

- (C) the 21 February 2018 Provision Information, being approximately \$331.3 million for the Engineering Business which needed to be taken as at 21 February 2018;
- (D) as at 31 May 2018, the 31 May 2018 Provision Information, being approximately \$393.6 million for the Engineering Business; and
- (E) as at 22 August 2018, the 22 August 2018 Provision Information, being approximately \$415.5 million for the Engineering Business; and/or

Overstated profits

- (ii) by reason of the inadequate provisions, the profits were overstated and a reduction in published profits was required as follows:
 - (A) the 31 December 2017 Profit Information, being a reduction in after-tax profits of \$231.9 million, which needed to be published as at 21 February 2018; and
 - (B) as at 22 August 2018, the 30 June 2018 Profit Information, being a reduction in after-tax profits of \$290.9 million.

F. Laslett

17 October 2017

163. By 17 October 2017, in relation to the **Engineering Business**:

- (a) Laslett had actual knowledge that the Engineering Business was underperforming;
- (b) Laslett had actual knowledge that there was erosion to the forecast GPM and contingency;
- (c) Laslett had actual knowledge, by 11 September 2017, by reason of his involvement in the preparation of and/or by reason of him being in receipt of the Engineering Quarterly Finance Review dated September 2017, that:
 - (i) the FY18 Budget included \$63.7m of provisions;

- (ii) the FY18 reforecast would require those provisions to be released in a number of areas to cover the risks across NCX, GUN and KSD. The remaining provision was required for further uncertainty with reliances;
- (iii) as to FY18 R&O, the risks identified included time and cost pressure on NCX, GUN and GSD, resolution of TUG claims and project completion, achievement of regional stretch targets, recovery of reliances; and
- (iv) as to FY19 MPAT, there was a “significant unidentified stretch” included in the FY19 target, mega projects do not achieve 20% complete until FY20, impacting FY19, MPAT and margins, the continued bidding on mega projects was essential for achieving target business size;¹⁶⁰
- (d) Laslett had actual knowledge, by 11 September 2017, by reason of his attendance at the Engineering Quarterly Business Review on 11 September 2017 and/or by reason of him being in receipt of the Engineering Quarterly Business Review dated September 2017, of the Systemic Reporting and Performance Issues;¹⁶¹
- (e) Laslett had actual knowledge, by 7 October 2017, by reason of Laslett’s attendance at the Engineering Business Board meeting on or about 31 August 2017 and/or by being in receipt of the KPMG Engineering Business Board Report dated 11 August 2017, that there were at least three underperforming projects in the Engineering Business, being KSD, NCX and GUN;¹⁶²
- (f) Laslett had actual knowledge, by 16 October 2017, by reason of his involvement in the preparation of and/or by reason of him being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017, that NCX, GUN and KSD were all underperforming projects and that there were six underperforming projects under review by the CoE which either had GPM loss position or GPM erosion;¹⁶³ and

¹⁶⁰ Engineering Quarterly Finance Review dated September 2017 [LLC.003.022.5080].

¹⁶¹ Engineering Quarterly Business Review Presentation dated September 2017 [LLC.003.022.5081], attendees identified in Engineering Quarterly Business Review meeting Actions List dated 11 September 2017 [LLC.033.019.8302].

¹⁶² KPMG Lendlease Engineering Business Board Report dated 18 August 2017 [LLC.003.034.1011], KPMG Lendlease Engineering Board Report for the year ending 30 June 2017 issued 11 August 2017 to Paul Teasdale [LLC.002.033.8545], email from Paul Teasdale to Laslett dated 7 October 2017 [LLC.002.033.8544].

¹⁶³ CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 [LLC.008.007.6540], email from Mason to Laslett dated 16 October 2017 [LLC.002.010.5555].

- (g) given what Laslett actually knew in respect of each of the Projects and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 163(a) to 163(f) above and paragraphs 165, 167 and 169 below, Laslett:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
164. Further and in the alternative to paragraph 163 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 17 October 2017 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review and Engineering Business Board meetings identified and/or receipt of the documents identified in paragraph 163 above and paragraphs 165, 167 and 169 below, Laslett:
- (a) ought to have known the information particularised at paragraph 163 above and paragraphs 165, 167 and 169 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
165. By 17 October 2017, in relation to the **Gateway Upgrade North** project:
- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163 and 164 above;
 - (b) Laslett had actual knowledge that GUN was an underperforming and/or problem project;
 - (c) Laslett had actual knowledge that there was erosion of the forecast GPM and contingency;
 - (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;

- (e) Laslett had actual knowledge, by 11 September 2017, by reason of Laslett's attendance at the Engineering Quarterly Business Review Presentation on 11 September 2017 and/or the Engineering Quarterly Finance Review Presentation in September 2017 and/or by reason of him being in receipt of the presentation packs distributed to attendees that:
- (i) GUN was underperforming, in that it had been given a "red" risk rating and had been identified to be under time and under budget pressure;
 - (ii) there was an erosion of contingency, with only \$5.9m contingency remaining; and
 - (iii) the then current forecast GPM remained at approximately \$51.6m for the GUN project;¹⁶⁴
- (f) Laslett had actual knowledge, by 3 October 2017, by reason of Laslett being in receipt of the Engineering Business FY18 Risk and Opportunities document, that GUN was forecasted to have a:
- (i) target FY18 GPM of (\$14.7m), Likely FY18 GPM of (\$19.7m), Best FY18 GPM of (\$9.7m) and Worst FY18 GPM of (\$26.7m), with the then current FY18 forecast stated to be a profit of \$20m;
 - (ii) target HY18 GPM of (\$23.4m), Likely HY18 GPM of (\$28.4m), Best HY18 GPM of (\$13.4m) and Worst HY18 GPM of (\$28.4m); and
 - (iii) target GPM outcome of \$17.0m, Likely GPM of \$12.0m, Best GPM of \$22.0m and Worst GPM of \$5.0m;¹⁶⁵
- (g) Laslett had actual knowledge, by 7 October 2017, by reason of Laslett's attendance at the Engineering Business Board meeting on or about 31 August 2017 and/or by being in receipt of the KPMG Engineering Business Board Report dated 11 August 2017, that:
- (i) there was erosion of contingency to \$5.9m (representing 2% of forecast costs to complete) compared to a contingency of \$34m at the start of the

¹⁶⁴ Engineering Quarterly Finance Review presentation pack dated September 2017 [LLC.003.022.5080], Engineering Quarterly Business Review presentation pack dated September 2017 [LLC.003.022.5081], attendees identified in Engineering Quarterly Business Review meeting Actions List dated 11 September 2017 [LLC.033.019.8302].

¹⁶⁵ Engineering Business FY18 Risk and Opportunities [LLC.002.022.4851], email from Laslett to Krile 3 October 2017 [LLC.002.022.4850].

- project (6% of the costs to complete) which had been predominately utilised/released for design costs and escalation costs; and
- (ii) a net revenue reliance of approximately \$20.9m related to unapproved variations and claims, such that there was a risk that the forecast revenue was unrealistic;¹⁶⁶
- (h) Laslett had actual knowledge, by 16 October 2017, by reason of him being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017, that:
- (i) the CoE had identified GUN to be a project that should be monitored;
- (ii) the CoE had reviewed GUN and had provided an indication that its then “current view” was that there would be a GPM reduction to \$15m with further deterioration possible. This was due to, *inter alia*, cost overruns in traffic management, design growth and construction phase services;
- (iii) there continued to be contingency erosion, with only \$3.6m of contingency remaining of the \$41.1m budget, being only 1.5% of the cost to complete of (\$233m);
- (iv) a half day review of the GUN project was scheduled on 19 October 2017 for Laslett and the CoE; and
- (v) the CoE had identified and reported on six underperforming projects, NCX, GUN, KSD, CityLink Tulla Widening, Caulfield to Dandenong Alliance and Tug Harbour;¹⁶⁷ and
- (i) given what Laslett actually knew in respect of the GUN project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 163 and 165(a) to 165(h) above, Laslett:
- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,

¹⁶⁶ KPMG Lendlease Engineering Board Report for the year ending 30 June 2017 issued 11 August 2017 to Paul Teasdale [LLC.002.033.8545], email from Paul Teasdale to Laslett dated 7 October 2017 [LLC.002.033.8544].

¹⁶⁷ CoE Update on Non-Performing Projects in Engineering [LLC.002.010.5556], email from Mason to Laslett dated 16 October 2017 [LLC.002.010.5555].

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

166. Further and in the alternative to paragraph 165 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 17 October 2017 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review and Engineering Business Board meetings identified and/or receipt of the documents identified in paragraphs 163 and 165 above, Laslett:
- (a) ought to have known the information particularised at paragraphs 163 and 165 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
167. By 17 October 2017, in relation to the **Kingsford Smith Drive Upgrade** project:
- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163 and 164 above;
 - (b) Laslett had actual knowledge that KSD was an underperforming and/or problem project;
 - (c) Laslett had actual knowledge that there was erosion of the forecast GPM and contingency;
 - (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) Laslett had actual knowledge, by 11 September 2017, by reason of his attendance at the Quarterly Business Review and/or by reason of being in receipt of the Quarterly Business Review presentation dated September 2017, that the geotechnical conditions in the Brisbane River continued to impact progress and that Laslett was to meet with the Brisbane Lord Mayor to discuss project issues and opportunities for cost relief;¹⁶⁸

¹⁶⁸ Engineering Quarterly Business Review Presentation dated September 2017 [LLC.003.022.5081], attendees identified in Engineering Quarterly Business Review meeting Actions List dated 11 September 2017 [LLC.033.019.8302].

- (f) Laslett had actual knowledge, by 29 September 2017, by reason of him being in receipt of a Cost Summary as at 26 September 2017 following a project review by the CoE, that there was a negative variance in the forecast cost to complete from the last approved forecast of approximately (\$75m) and variance to budget of approximately (\$74m);¹⁶⁹
- (g) Laslett had actual knowledge, by 3 October 2017, by reason of Laslett being in receipt of the Engineering Business FY18 Risk and Opportunities document, that KSD was forecasted to have a:
- (i) target FY18 GPM of (\$28.8m), Likely FY18 GPM of (\$33.8m), Best FY18 GPM of (\$12.8m) and Worst FY18 GPM of (\$43.8m), with the then current FY18 forecast stated to be a profit of \$13.1m;
 - (ii) target HY18 GPM of (\$33.7m), Likely HY18 GPM of (\$38.7m), Best HY18 GPM of (\$13.7m) and Worst HY18 GPM of (\$48.7m); and
 - (iii) target GPM outcome of (\$5.0m), Likely GPM of (\$10.0m), Best GPM of \$11.0m and Worst GPM of (\$20.0m);¹⁷⁰
- (h) Laslett had actual knowledge, by 7 October 2017, by reason of Laslett's attendance at the Engineering Business Board meeting on or about 31 August 2017 and/or by being in receipt of the KPMG Engineering Business Board Report dated 11 August 2017, that:
- (i) the program had been delayed and was now under significant pressure;
 - (ii) deficiencies in the design had been identified and there was a potential claim against the geotechnical engineers, Golder, for approximately \$22.2m as a result, however, Golder's liability was contractually capped at \$10m;
 - (iii) there remained significant risks that could have an impact on program and costs; and

¹⁶⁹ Cost Summary dated 26 September 2017 [LLC.003.024.7426], email from Lea-Anne Lohse to Mason, Laslett and others dated 29 September 2017 [LLC.003.024.7424]. This was reflected in the Project in Delivery Report dated 26 September 2017, which provided for a forecast GPM of a loss of (\$37,307,795). Project in Delivery Report dated 26 September 2017 [LLC.033.026.1828].

¹⁷⁰ Engineering Business FY18 Risk and Opportunities [LLC.002.022.4851], email from Laslett to Krile 3 October 2017 [LLC.002.022.4850].

- (iv) the forecast GPM was approximately \$36.9m;¹⁷¹
 - (i) Laslett had actual knowledge, by 16 October 2017, by reason of being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017, that:
 - (i) while the business was targeting a break even GPM of \$0 (zero), it was the CoE's view that the GPM was likely to be a loss of approximately (\$40m);
 - (ii) there were cost concerns from geotechnical issues along the bed of the Brisbane River and significant underground services;
 - (iii) the forecast completion date had moved from 5 July 2019 to 28 January 2020 and no time contingency remained;
 - (iv) the CoE anticipated completion date with appropriate time contingency was April 2020;
 - (v) the cost contingency had eroded; and
 - (vi) there was a significant reliance of \$70m;¹⁷² and
 - (j) given what Laslett actually knew in respect of the KSD project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 163 and 167(a) to 167(i) above, Laslett:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
168. Further and in the alternative to paragraph 167 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 17 October 2017 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly

¹⁷¹ KPMG Lendlease Engineering Board Report for the year ending 30 June 2017 issued 11 August 2017 to Paul Teasdale [LLC.002.033.8545], email Paul Teasdale to Laslett dated 7 October 2017 [LLC.002.033.8544].

¹⁷² CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 [LLC.002.010.5556], email from Mason to Laslett dated 16 October 2017 [LLC.002.010.5555].

Business Review and Engineering Business Board meetings identified and/or receipt of the documents identified in paragraphs 163 and 167 above, Laslett:

- (a) ought to have known the information particularised at paragraphs 163 and 167 above and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

169. By 17 October 2017, in relation to the **NorthConnex** project:

- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163 and 164 above;
- (b) Laslett had actual knowledge that NCX was an underperforming and/or problem project;
- (c) Laslett had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 1 October 2017, by reason of him being involved in preparing and/or by reason of him being in receipt of the October 2017 Monthly Management Report – NSW document, that:
 - (i) the NCX margin adjustment had led to a reported loss of approximately (\$79.9m) to the NSW MPAT, leading to overall EBITDA of (\$76.6m);
 - (ii) in the reporting period, Lendlease’s reported margins for NCX changed “quite drastically”;
 - (iii) NCX was estimated to be approximately 48% complete and was reporting a loss of approximately (\$75m);
 - (iv) NCX was classified as a problem project; and
 - (v) contingencies held on the project were quickly eroded and that “NCX GPM strike red lights across both projects due to reduction in GPM as

per latest forecast. Contingency usage red lights are in line with reduction in GPM”.¹⁷³

- (f) Laslett had actual knowledge, by 3 October 2017, by reason of Laslett being in receipt of the Engineering Business FY18 Risk and Opportunities document, that NCX was forecasted to have a:
 - (i) target FY18 GPM of (\$24.7m), Likely FY18 GPM of (\$24.7m), Best FY18 GPM of \$1.3m and Worst FY18 GPM of (\$49.7m), with the then current FY18 forecast stated to be a profit of \$31.8m;
 - (ii) target HY18 GPM of (\$25.0m), Likely HY18 GPM of (\$25.0m), Best HY18 GPM of \$0 (zero) and Worst HY18 GPM of (\$50.0m); and
 - (iii) target GPM outcome of \$2.4m, Likely GPM of \$2.4m, Best GPM of \$27.4m and Worst GPM of (\$22.6m);¹⁷⁴
- (g) Laslett had actual knowledge, by 16 October 2017, by reason of his involvement in the CoE review and/or by reason of him being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017, that:
 - (i) the likely GPM position for the NCX project (Lendlease share) would be a loss of approximately (\$100m);
 - (ii) the CoE had attended the NCX program review which identified significant program and cost overruns;
 - (iii) there had been an erosion of contingency of 7 months;
 - (iv) the exposure to liquidated damages was approximately \$350,000 per day;
 - (v) the CoE had formed the view that the NCX program was “under significant time pressure”;
 - (vi) a further review would be carried out in November 2017;

¹⁷³ October 2017 Monthly Management Report – NSW dated 30 September 2017 [LLC.033.019.4541], email from Letton to Laslett and others on or around 30 September 2017 [LLC.033.019.4539].

¹⁷⁴ Engineering Business FY18 Risk and Opportunities [LLC.002.022.4851], email from Laslett to Krile 3 October 2017 [LLC.002.022.4850].

- (vii) the largest issue was the requirement for deeper tunnel alignment which was anticipated to cost approximately \$130m and liability had not yet been established; and
 - (viii) there were significant slippages in the tunnel works;¹⁷⁵ and
 - (h) given what Laslett actually knew in respect of the NCX project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 163 and 169(a) to 169(g) above, Laslett:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
170. Further and in the alternative to paragraph 169 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 17 October 2017 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review and Engineering Business Board meetings identified and/or receipt of the documents identified in paragraphs 163 and 169 above, Laslett:
- (a) ought to have known the information particularised at paragraphs 163 and 169 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

17 November 2017

171. By 17 November 2017, in relation to the **Engineering Business**:
- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163 to 170 above;
 - (b) Laslett had actual knowledge that the Engineering Business continued to underperform;

¹⁷⁵ CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 [LLC.002.010.5556].

- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 15 November 2017, by reason of Laslett's attendance at the RMAC meeting on 15 November 2017 and/or by reason of being in receipt of the RMAC Report dated November 2017, that:
 - (i) the underperforming projects of the Engineering Business were listed as the number one Group wide risk and were identified to be high risk with a very large likely impact and risk; and
 - (ii) the Engineering Business had significantly increased its reliance assumptions in the quarter, including (\$33.7m) for GUN and (\$42.7m) for KSD;¹⁷⁶
- (f) Laslett had actual knowledge, by 16 November 2017, by reason of Laslett attending the Board meeting on 16 November 2017 and/or by being in receipt of the CFO Memorandum dated November 2017, that:
 - (i) the Group forecast FY18 PAT presented at 17 October 2017 included total contingency at the Group level of approximately \$65m post tax, of which \$50m post tax was being held against further downside risks in the Engineering Business;
 - (ii) the \$50m contingency to cover downside across the Engineering Business would be fully absorbed by the position shown as the "independent review scenario";
 - (iii) the independent review was not yet complete;
 - (iv) PAT FY18 had a variance of (\$16m) and a GPM variance of a loss of (\$99m);
 - (v) revenue and GPM at Group level had been revised down taking into account margin deterioration on projects in the Engineering Business; and

¹⁷⁶ RMAC Report dated November 2017 [LLC.008.022.4073].

- (vi) at the Engineering Business level, FY18 variance against budget was: revenue down (\$131m), GPM down (\$102m), EBITDA down (\$97m), Engineering PAT down (\$70m);¹⁷⁷ and
 - (g) given what Laslett actually knew in respect of each of the Projects and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 163, 165, 167, 169, 171(a) to 171(f) above and paragraphs 173, 175 and 177 below, Laslett:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
172. Further and in the alternative to paragraph 171 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 17 November 2017 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business Board, RMAC, Lendlease Board, GUN's Internal Project Review Presentation and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 165, 167, 169, 171 above and paragraphs 173, 175 and 177 below, Laslett:
- (a) ought to have known the information particularised at paragraphs 163, 165, 167, 169, 171 above and paragraphs 173, 175 and 177 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
173. By 17 November 2017, in relation to the **Gateway Upgrade North** project:
- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 165, 166, 171 and 172 above;
 - (b) Laslett had actual knowledge that GUN remained an underperforming and/or problem project;

¹⁷⁷ CFO Memorandum dated 16 November 2017 [LLC.011.004.1484], Minutes of the 16 November 2017 Board meeting [LLC.013.001.2576].

- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 19 October 2017, by reason of his attendance at the Internal Project Review presentation that occurred on 18 or 19 October 2017, that:
 - (i) GUN was approximately 6.5 months behind on cash flow basis;
 - (ii) there was a negative program variance to progress, including for late design, increased complexity in traffic staging, reduced productivity and weather events; and
 - (iii) in order to achieve the new target margin of \$15m, delivery on the then current identified reliances (of \$71.7m) was required and further revenue opportunities would need to deliver up to \$55.1m. A strategy, including the involvement of consultants was established;¹⁷⁸
- (f) Laslett had actual knowledge, by 15 November 2017, by reason of Laslett attending the relevant sections of the RMAC meeting on 15 November 2017 and/or by reason of him being in receipt of the RMAC presentation pack dated November 2017, that:
 - (i) GUN was identified as being 68.4% complete;
 - (ii) at contract inception, the GPM was approximately \$52.5m but was then forecast to be \$15m with an annual FY18 GPM result of a loss of (\$6.2m);
 - (iii) there was an assumed reliance of \$69.8m;
 - (iv) GUN remained an underperforming project and the various reasons for the underperformance, including that there were delays, design changes, difficult geotechnical conditions and resequencing of works;
 - (v) the delivery of the project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to

¹⁷⁸ Internal Project Review Presentation [LLC.006.073.9200], attendees identified in Agenda to CEO/EGM Project Review GUN dated 19 October 2017 [LLC.003.048.3139].

mitigate delays, changed requirements to remove and replace spoil and additional temporary traffic management;

- (vi) there was further erosion in the likely GPM; and
- (vii) the GPM was contingent on large reliances. Specifically, the project was pursuing \$190.3m in claims of which it needed to recover \$69.1m in order to achieve the then current forecast GPM of \$15m;¹⁷⁹ and

(g) given what Laslett actually knew in respect of the GUN project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 163, 165, 171 and 173(a) to 173(f) above, Laslett:

- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

174. Further and in the alternative to paragraph 173 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 17 November 2017 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business Board, RMAC, Lendlease Board and GUN's Internal Project Review Presentation meetings identified and/or receipt of the documents identified in paragraphs 163, 165, 171 and 173 above, Laslett:

- (a) ought to have known the information particularised at paragraphs 163, 165, 171 and 173 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

¹⁷⁹ RMAC Report dated November 2017 [LLC.008.022.4073], attendees identified in minutes of RMAC meeting 15 November 2017 [LLC.011.008.2694].

175. By 17 November 2017, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 167, 168, 171 and 172 above;
- (b) Laslett had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 1 November 2017, by reason of him attending the Steerco Project Status Report presentation and/or by being in receipt of the Steerco Presentation dated 1 November 2017, that:
 - (i) the forecast GPM had reduced from \$36.9m to \$0 (zero), or was a break even project;
 - (ii) there was a delay of approximately 9 months to the works; and
 - (iii) the delays were caused by, *inter alia*, changes in design scope and complexity, latent conditions (geotechnical) and works to marine structures;¹⁸⁰
- (f) Laslett had actual knowledge, by 16 November 2017, by reason of Laslett attending the relevant parts of the Board meeting on 16 November 2017 and/or by reason of being in receipt of the Board Meeting presentation pack dated November 2017 including the Risk and CoE Report and the CFO Report, that the GPM for KSD had deteriorated from approximately \$36.9m to \$0 (zero) or break even;¹⁸¹ and
- (g) given what Laslett actually knew in respect of the KSD project and the Engineering Business as a whole as at 17 November 2017 by reason of the

¹⁸⁰ Steerco Project Status Report dated 1 November 2017 [LLC.002.010.4935], email from Mason to Steerco attendees dated 1 November 2017 [LLC.002.010.5009].

¹⁸¹ Board meeting presentation pack dated November 2017 [LLC.013.001.2327], attendees identified in Minutes of 16 November 2017 Board meeting [LLC.013.001.2576].

information identified in paragraphs 163, 167, 171 and 175(a) to 175(f) above, Laslett:

- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

176. Further and in the alternative to paragraph 175 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 17 November 2017 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Business Board, RMAC, Lendlease Board and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 167, 171 and 175 above, Laslett:

- (a) ought to have known the information particularised at paragraphs 163, 167, 171 and 175 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

177. By 17 November 2017, in relation to the **NorthConnex** project:

- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 169, 170, 171 and 172 above;
- (b) Laslett had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 15 November 2017, by reason of his attendance at the relevant sections of the RMAC meeting on 15 November 2017 and/or by reason of him being in receipt of the RMAC presentation pack, that:

- (i) the GPM could be in the order of a loss of approximately (\$90m); and
 - (ii) a provision of \$14.9m was being held on NCX;¹⁸² and
 - (f) given what Laslett actually knew in respect of the NCX project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 163, 169, 171 and 177(a) to 177(e) above, Laslett:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
178. Further and in the alternative to paragraph 177 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 17 November 2017 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Business Board, RMAC and Lendlease Board meetings identified and/or receipt of the documents identified in paragraphs 163, 169, 171 and 177 above, Laslett:
- (a) ought to have known the information particularised at paragraphs 163, 169, 171 and 177 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

21 February 2018

179. By 21 February 2018, in relation to the **Engineering Business**:
- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163 to 178 above;
 - (b) Laslett had actual knowledge that the Engineering Business continued to underperform;

¹⁸² RMAC presentation pack dated 15 November 2017 [LLC.008.022.4073], attendees identified in minutes of RMAC meeting 15 November 2017 [LLC.011.008.2694].

- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) Laslett had actual knowledge, by 20 February 2018, by reason of his attendance at the Board meeting on 20 February 2018 and/or by reason of being in receipt of the CFO Report dated 20 February 2018, that:
 - (i) the Group would deliver PAT of approximately \$426m for HY18, which represents an 8% increase on the prior corresponding period;
 - (ii) Construction Australia was significantly down due to margin downside on key projects within the Engineering Business; and
 - (iii) as to the Engineering Business, the forecast variance against budget was: GPM (\$152m) and EBITDA (\$151M);¹⁸³ and
 - (f) given what Laslett actually knew in respect of each of the Projects and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 163, 165, 167, 169, 171, 173, 175, 177, 179(a) to 179(e) above and paragraphs 181, 183 and 185 below, Laslett:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
180. Further and in the alternative to paragraph 179 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 21 February 2018 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business Board, RMAC, Lendlease Board, GUN's Internal Project Review Presentation and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 165, 167, 169, 171, 173, 175, 177 and 179 above and paragraphs 181, 183 and 185 below, Laslett:

¹⁸³ CFO Report dated 20 February 2018 [LLC.013.001.2926], Minutes of 20 February 2018 Board meeting [LLC.013.001.3379].

- (a) ought to have known the information particularised at paragraphs 163, 165, 167, 169, 171, 173, 175, 177 and 179 above and paragraphs 181, 183 and 185 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

181. By 21 February 2018, in relation to the **Gateway Upgrade North** project:

- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 165, 166, 171, 172, 173, 174, 179 and 180 above;
- (b) Laslett had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 14 February 2018, by reason of Laslett's attendance at the Steerco Project Status Report presentations on 14 February 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated February 2018, that:
 - (i) the GUN project continued to be an underperforming project;
 - (ii) there was an increase in forecast costs of approximately \$91.0m against budget;
 - (iii) the GPM was continuing to erode with it being reported as \$4.4m prior to additional costs (\$4.5m) and reliance (\$17.5m) provisions, for a net Project position of (\$17.6m);
 - (iv) the project was pursuing \$140.4m of claims and relying on a net claim of \$44.8m (gross reliance excluding payment on account \$69.7m); and

- (v) there was contingency erosion, with it now being \$3.9m compared to a budget of \$55.1m;¹⁸⁴
- (f) Laslett had actual knowledge, by 19 February 2018, by reason of being provided with the KPMG Engineering Business Board Report dated 5 February 2018, that:
 - (i) the GUN project continued to experience challenges with the GPM eroding to \$4.4m from \$52.5m in June 2017;
 - (ii) risk remained in respect of achieving the forecast productivity rates and successful negotiations of reliance positions;
 - (iii) the GPM was continuing to erode, with a sensitivity analysis indicating a possible GPM loss of approximately (\$46.6m) if key assumptions were not achieved. Management's position was reported to be a forecasted GPM loss of approximately (\$17.6m) compared to the project team position of \$4.4m profit; and
 - (iv) Lendlease management had allocated a further \$4.5m provision outside the project, given the risks associated with the project;¹⁸⁵
- (g) Laslett had actual knowledge, by 19 February 2018, by reason of Laslett's attendance at the relevant section of the RMAC meeting on 19 February 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated February 2018, that:
 - (i) the GPM or WOL P/L for GUN was forecast to be a loss of approximately (\$17.6m);
 - (ii) GUN was identified as being 76.1% complete;
 - (iii) the GPM was then forecast to be (\$17.6m), a movement of (\$32.6m) since the last RMAC in October 2017;
 - (iv) there was an assumed reliance of \$69.1m;

¹⁸⁴ Steerco Project Status Report dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 meeting [LLC.002.009.0717].

¹⁸⁵ KPMG Engineering Business Board Report dated 5 February 2018 [LLC.003.021.1645], email from Letton to Laslett dated 19 February 2018 [LLC.002.009.0315].

- (v) the delivery of the project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to mitigate delays and additional temporary traffic management;
 - (vi) the project was relying on \$44.8m relating to claims and variations in order to achieve the forecast margin;
 - (vii) the forecast GPM was largely contingent on Lendlease successfully pursuing various contractual and insurance claims, and that there was inherent uncertainty in Lendlease's success; and
 - (viii) the issues that were leading to the erosion of the GPM had been identified early in the project and, in some cases, during the tender phase;¹⁸⁶ and
 - (h) given what Laslett actually knew in respect of the GUN project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 163, 165, 171, 173, 179 and 181(a) to 181(g) above, Laslett:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
182. Further and in the alternative to paragraph 181 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 21 February 2018 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business Board, RMAC, Lendlease Board, GUN's Internal Project Review Presentation and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 165, 171, 173, 179 and 181 above, Laslett:
- (a) ought to have known the information particularised at paragraphs 163, 165, 171, 173, 179 and 181 above; and/or

¹⁸⁶ RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], attendees identified in Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

183. By 21 February 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 167, 168, 171, 172, 175, 176, 179 and 180 above;
- (b) Laslett had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 14 February 2018, by reason of his attendance at the Steerco Project Status Report presentation on 14 February 2018 and/or by being in receipt of the Steerco Project Status Report dated February 2018, that there was a projected loss against budget of (\$36.5m) with an additional cost provision of (\$10m). The total project GPM was \$0 (zero) or break even, and the net project position including the cost provision was (\$10m);¹⁸⁷
- (f) Laslett had actual knowledge, by 19 February 2018, by reason of being provided with the KPMG Engineering Business Board Report dated 5 February 2018, that:
 - (i) the KSD GPM had eroded to \$0 (zero), or break even with an additional provision of \$10m being held outside of the project;
 - (ii) a number of challenges remained relating to completing piling in the river and the civil productivity rates being achieved; and
 - (iii) a sensitivity analysis indicated a possible GPM loss of approximately (\$29.0m) if key assumptions were not achieved. Management's position

¹⁸⁷ Steerco Project Status Report dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 meeting [LLC.002.009.0717].

was reported to be a forecasted GPM loss of approximately (\$10.0m) compared to the project team position of \$0 profit;¹⁸⁸ and

(g) given what Laslett actually knew in respect of the KSD project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 163, 167, 171, 175, 179 and 183(a) to 183(f) above, Laslett:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

184. Further and in the alternative to paragraph 183 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 21 February 2018 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Business Board, RMAC, Lendlease Board and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 167, 171, 175, 179 and 183 above, Laslett:

(a) ought to have known the information particularised at paragraphs 163, 167, 171, 175, 179 and 183 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

185. By 21 February 2018, in relation to the **NorthConnex** project:

(a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 169, 170, 171, 172, 177, 178, 179 and 180 above;

(b) Laslett had actual knowledge that NCX remained an underperforming and/or problem project;

¹⁸⁸ KPMG Engineering Business Board Report dated 5 February 2018 [LLC.003.021.1645], email from Letton to Laslett dated 19 February 2018 [LLC.002.009.0315].

- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 7 December 2017, by reason of him being in receipt of the Engineering Quarterly Business Review report dated 7 December 2017, that:
 - (i) the company level forecast GPM was a loss of approximately (\$75m);
 - (ii) during the quarter the Engineering Business reduced its FY18 MPAT following the completion of project reviews, including NCX;
 - (iii) NCX was listed as being 48% complete;
 - (iv) significant cost variances had occurred since contract inception; and
 - (v) there was a strategy in place to pursue revenue from the client, however the then current forecast assumes no reliance;¹⁸⁹
- (f) Laslett had actual knowledge, by 25 January 2018, that Lendlease personnel, O'Rourke and Moore, identified issues with the forecasting employed on the project and were requested to report on these issues by Laslett: "One to discuss re Craig's [Laslett's] feedback below ... Forecasting There seemed to be a disconnect between the operational team driving delivery and programming and cost projection. Massive variances fell out overnight on both time and cost that would have been accruing for many months un-flagged. Damien is wrestling with this now given the entrenched custom and practice. Needs accountable owners on the hook to get it right";¹⁹⁰
- (g) Laslett had actual knowledge, by 16 February 2018, by reason of his attendance at the RMAC meeting and/or by reason of him being in receipt of the RMAC presentation pack, that:
 - (i) the total project loss had deteriorated from a loss of approximately (\$149m) to a loss of approximately (\$207m);

¹⁸⁹ Quarterly Business Review – Engineering Business report dated 7 December 2017 [LLC.008.020.4775], email from Jade Henningsen dated 7 December 2017 [LLC.008.020.4774].

¹⁹⁰ Email from Ben O'Rourke to Geoff Moore dated 25 January 2018 [LLC.084.026.7615].

- (ii) an additional provision was raised for risks associated with staff demobilisation, a range of M&E risks such as resource rate increases, delay to program and productivity inefficiencies;
 - (iii) an increase in costs in the order of approximately (\$52.1m) was likely;
 - (iv) NCX was listed as being approximately 54.6% complete; and
 - (v) “Significant costs variances impacting margin have occurred since contract inception that relate to deeper alignment and geotechnical issues, productivity and programme, spoil removal and other tender items including Buildings and Civil”;¹⁹¹
- (h) Laslett had actual knowledge, by 19 February 2018, by reason of being provided with the KPMG Engineering Business Board Report dated 5 February 2018, that the information provided at the Quarterly Business Review on 7 December 2017 remained largely unchanged;¹⁹²
- (i) Laslett had actual knowledge, by 21 February 2018, by reason of him being in receipt of the NCX Monthly Project Reviews, that there were delays to the works being caused by the change of design and cracking in the tunnel lining and sequencing and that there were delays across many key targets;¹⁹³ and
- (j) given what Laslett actually knew in respect of the NCX project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 163, 169, 171, 177, 179 and 185(a) to 185(i) above, Laslett:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

¹⁹¹ RMAC Speakers Notes dated 16 February 2018 [LLC.003.024.8045], RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

¹⁹² KPMG Engineering Business Board Report dated 5 February 2018 [LLC.003.021.1645], email from Letton to Laslett dated 19 February 2018 [LLC.002.009.0315].

¹⁹³ NCX Monthly Project Review dated 13 September 2017 [LLC.008.008.0560], email from Roleen Kumar to Laslett dated 13 September 2017 [LLC.008.008.0558]; NCX Monthly Project Review dated 11 October 2017 [LLC.002.034.4825], email from Roleen Kumar to Laslett dated 11 October 2017 [LLC.002.034.4824]; NCX Monthly Project Review dated October 2017 [LLC.071.001.7005]; NCX Monthly Project Review dated November 2017 [LLC.071.001.6854]; NCX Monthly Project Review dated 12 January 2018 [LLC.002.009.1832], email from Roleen Kumar to Laslett dated 12 January 2018 [LLC.002.009.1831]; NCX Monthly Project Review dated 14 February 2018 [LLC.002.008.8933], email from Roleen Kumar to Laslett dated 14 February 2018 [LLC.002.008.8932].

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

186. Further and in the alternative to paragraph 185 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 21 February 2018 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Business Board, RMAC and Lendlease Board meetings identified and/or receipt of the documents identified in paragraphs 163, 169, 171, 177, 179 and 185 above, Laslett:
- (a) ought to have known the information particularised at paragraphs 163, 169, 171, 177, 179 and 185 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

31 May 2018

187. By 31 May 2018, in relation to the **Engineering Business**:
- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163 to 186 above;
 - (b) Laslett had actual knowledge that the Engineering Business continued to underperform;
 - (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified and further issues with the accuracy and reliability of cost forecasting had been identified (see paragraph 187(f) below and paragraph 189(f) below);
 - (e) Laslett had actual knowledge, by 14 March 2018, by reason of his attendance at the Engineering Quarterly Finance Review on 14 March 2018, that the

problem projects, including NCX, GUN and KSD had the Engineering Business in a loss position for FY18;¹⁹⁴

- (f) Laslett had actual knowledge, by 26 March 2018, by reason of his attendance at the Quarterly Business Review and/or by reason of him being in receipt of the Quarterly Business Review document dated 26 March 2018, that:
 - (i) Lendlease was cautiously reviewing pipeline and strategy and was continuing to influence market and customers regarding expectations;
 - (ii) in depth project reviews were being conducted throughout the Engineering Business in March;
 - (iii) potential impacts to the FY18 forecast as a result of the review would be run through Steerco before being incorporated into the March forecast;
 - (iv) during the quarter, the Engineering Business reduced its FY18 MPAT forecast from a loss of approximately (\$53m) to a loss of approximately (\$77m) due to provisioning;
 - (v) the draft FY19 business plan indicated FY19 MPAT of \$19m against prior forecast of \$75m;
 - (vi) the FY19 MPAT included (pre tax) "stretch targets" of \$13.7m; and
 - (vii) the then current FY18 (or FY19) MPAT did not include additional risk for problem projects (NCX, GUN, KSD);¹⁹⁵
- (g) Laslett had actual knowledge, by 19 April 2018, by reason of his attendance at the Board meeting on 17 to 19 April 2018 and/or his being in receipt of the CEO Report dated 17 April 2018, that provisions held at the Group level against GUN, NCX and KSD have largely been absorbed and that while Lendlease remained on track to achieve target Group PAT through outperformance in the Property Australia Business, there was limited unallocated contingency;¹⁹⁶
- (h) Laslett had actual knowledge, by 19 April 2018, by reason of his attendance at the Board meeting on 17 to 19 April 2018 and/or by reason of him being in

¹⁹⁴ Engineering Quarterly Finance Review dated 14 March 2018 [LLC.002.008.8920].

¹⁹⁵ Quarterly Business Review dated 26 March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

¹⁹⁶ CEO Report dated 17 April 2018 [LLC.013.001.3379], attendees identified in Minutes of the 17 to 19 April 2018 Board meeting [LLC.013.001.3902].

receipt of the Board presentation pack dated April 2018 including the Group Chief Commercial and Risk Officer Report dated April 2018, that the magnitude of non-performing engineering projects continued to bring substantial aggregated risk to the Group;¹⁹⁷

(i) Laslett had actual knowledge, by 24 May 2018, by reason of his attendance during the relevant sections of the RMAC meeting on 24 May 2018 and/or by reason of him being in receipt of the RMAC Report dated May 2018, that:

(i) each of NCX, KSD and GUN were listed as “very high likelihood” with NCX listed as “very large impact” and KSD and GUN listed as “large impact” for “operational issues”; and

(ii) there was a decline in profitability due to the known deterioration in projects in the Engineering Business;¹⁹⁸ and

(j) given what Laslett actually knew in respect of each of the Projects and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183, 185 and 187(a) to 187(i) above and paragraphs 189, 191 and 193 below, Laslett:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

188. Further and in the alternative to paragraph 187 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 31 May 2018 and given Laslett’s position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business Board, RMAC, Lendlease Board, GUN’s Internal Project Review Presentation and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 165, 167, 169,

¹⁹⁷ Group Chief Commercial and Risk Officer Report dated April 2018 [LLC.013.001.3379], attendees identified in Minutes of the 17 to 19 April 2018 Board meeting [LLC.013.001.3902].

¹⁹⁸ RMAC Report dated 24 May 2018 [LLC.011.009.8254], attendees identified in Minutes of RMAC meeting 24 May 2018 [LLC.011.008.3750].

171, 173, 175, 177, 179, 181, 183, 185 and 187 above and paragraphs 189, 191 and 193 below, Laslett:

- (a) ought to have known the information particularised at paragraphs 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183, 185 and 187 above and paragraphs 189, 191 and 193 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

189. By 31 May 2018, in relation to the **Gateway Upgrade North** project:

- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 165, 166, 171, 172, 173, 174, 179, 180, 181, 182, 187 and 188 above;
- (b) Laslett had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 13 March 2018, by reason of Laslett's attendance at the Steerco Project Status Report presentation on 13 March 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated March 2018, that the net project GPM for GUN was being reported as a loss of approximately (\$17.6m);¹⁹⁹
- (f) Laslett had actual knowledge, by 26 March 2018, by reason of Laslett's attendance at the Engineering Quarterly Business Review on 26 March 2018 and/or by reason of him being in receipt of the 75% Project Review Attendance Summary dated 12 March 2018 and the Engineering Quarterly Business Review dated March 2018, that:

¹⁹⁹ Steerco Project Status Report [LLC.002.008.8309], email from Letton to Steerco attendees dated 9 March 2018 [LLC.002.008.8308].

- (i) a two day review of the GUN project had been held on 12 and 13 March 2018;
 - (ii) the review established that the GUN project presented a key risk to the Engineering Business;
 - (iii) the forecast GPM had further eroded to a likely loss of approximately (\$51.0m) with a significant risk of further losses beyond the forecast loss;
 - (iv) close monitoring would be required for the forecast loss of (\$51.0m) to be achieved;
 - (v) there had been “significant” costs overruns;
 - (vi) there were reliances of approximately \$71.6m and it was considered that a 50% recovery was optimistic;
 - (vii) there was significant slippage to the program, with a very high risk that the program would continue to slip, with the forecast margin loss increasing further;
 - (viii) the cost reporting had been found to be inadequate and incorrect, which had led to inaccurate cost forecasting; and
 - (ix) the lack of cost planner had been raised at both October 2015 and April 2016 design reviews, however, it had not been addressed;²⁰⁰
- (g) Laslett had actual knowledge, by 24 April 2018 and 12 May 2018, by reason of Laslett’s attendance at the Steerco Project Status Report presentations on 24 April 2018 and 12 May 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated April and May 2018, that the forecast GPM for GUN was continuing to erode and was then a forecast loss of approximately (\$56m);²⁰¹

²⁰⁰ 75% Project Review Attendance Summary dated 12 March 2018 [LLC.033.007.9445], Engineering Quarterly Business Review dated March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

²⁰¹ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369], Steerco Project Status Report May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

- (h) Laslett had actual knowledge, by 14 May 2018, by reason of him receiving the Project Profit Plan Report dated 13 May 2018, that the target GPM was a loss of approximately (\$60m);²⁰²
 - (i) Laslett had actual knowledge, by 29 May 2018, notwithstanding the information referred to above, that a decision appeared to have been made to “hold margin”;²⁰³ and
 - (j) given what Laslett actually knew in respect of the GUN project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 163, 165, 171, 173, 179, 181, 187 and 189(a) to 189(i) above, Laslett:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
190. Further and in the alternative to paragraph 189 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 31 May 2018 and given Laslett’s position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business Board, RMAC, Lendlease Board, GUN’s Internal Project Review Presentation and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 165, 171, 173, 179, 181, 187 and 189 above, Laslett:
- (a) ought to have known the information particularised at paragraphs 163, 165, 171, 173, 179, 181, 187 and 189 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

²⁰² Project Profit Plan dated 13 May 2018 [LLC.003.027.7381], email Donna Gallaher to Laslett, Letton and others dated 14 May 2018 [LLC.003.027.7380].

²⁰³ Email from Donna Gallaher to Glenn McIlroy, Warren Crowther and others [LLC.003.015.0195]. The costs in the Internal Cost Movement Summary dated 29 May 2018 [LLC.003.015.0196] were \$781.5m, which if applied to the ‘Target’ Revenue of \$725.6m in the Project Profit Plan Report at (h) above would result in a GPM of approximately (\$55.9m).

191. By 31 May 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 167, 168, 171, 172, 175, 176, 179, 180, 183, 184, 187 and 188 above;
- (b) Laslett had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 9 April 2018, by reason of him being a recipient of the Cost Movement Explanation document dated 16 March 2018, that:
 - (i) the forecast cost to complete had risen to approximately \$547.325m; and
 - (ii) this represented a variance from last approved forecast of approximately (\$47.8m);²⁰⁴
- (f) Laslett had actual knowledge, by 24 April 2018, by reason of Laslett's attendance at the Steerco Project Status Report presentation on 24 April 2018 and/or by reason of being in receipt of the Steerco Project Status Report dated April 2018, that:
 - (i) the likely GPM was a loss of approximately (\$47.8m); and
 - (ii) there were delays to the works;²⁰⁵
- (g) Laslett had actual knowledge, by 12 May 2018, by reason of Laslett's attendance at the Steerco Project Status Report presentation on 12 May 2018 and/or by reason of being in receipt of the Steerco Project Status Report dated May 2018, that there was no change to the GPM forecast loss between April 2018 and May 2018;²⁰⁶ and

²⁰⁴ Cost Movement Explanation dated 16 March 2018 [LLC.002.008.6223].

²⁰⁵ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369].

²⁰⁶ Steerco Project Status Report dated May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

- (h) given what Laslett actually knew in respect of the KSD project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 163, 167, 171, 175, 179, 183, 187 and 191(a) to 191(g) above, Laslett:
- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
192. Further and in the alternative to paragraph 191 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 31 May 2018 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business Board, RMAC, Lendlease Board and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 167, 171, 175, 179, 183, 187 and 191 above, Laslett:
- (a) ought to have known the information particularised at paragraphs 163, 167, 171, 175, 179, 183, 187 and 191 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
193. By 31 May 2018, in relation to the **NorthConnex** project:
- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 169, 170, 171, 172, 177, 178, 179, 180, 185, 186, 187 and 188 above;
- (b) Laslett had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;

- (e) Laslett had actual knowledge, by 13 March 2018, by reason of his attendance at the Steerco Project Status Report presentation on 13 March 2018, that there were deficiencies in the cost reporting and programming disciplines on the project: “Finance & Commercial team to rollout cost reporting 101 training as a priority”;²⁰⁷
- (f) Laslett had actual knowledge, by 23 March 2018, by reason of his involvement in the preparation of and/or by reason of him being in receipt of the Engineering Business R&O Positions document dated 23 March 2018, that:
 - (i) the likely loss for NCX would be approximately (\$240.9m);
 - (ii) the completion date was set for January 2020; and
 - (iii) in terms of overall profit, NCX will lead to a (\$340m) loss. Most likely completion is set for July 2020. This assumes a \$48.7m contingency and \$70m in liquidated damages;²⁰⁸
- (g) Laslett had actual knowledge, by 23 March 2018, an updated Hinds Blunden report was provided to Damien Hertslet, which noted that:
 - (i) there was no or no up to date register of risks for the NCX project;
 - (ii) project level reporting on the NCX project may not provide an accurate picture of the financial and project risks;
 - (iii) even though the program presents as a robust plan for completion of the project, benefit would be realised by the systematic identification of project risks and the active ongoing management of mitigation strategies; and
 - (iv) without a complete risk register, “there is no transparency of the issues which have been included or excluded” and “emerging risks which are no longer current are not handled in a structured way”;²⁰⁹

²⁰⁷ Steerco Project Status Report dated 13 March 2018 [LLC.008.007.4878], email from Letton to Steerco attendees dated 9 March 2018 [LLC.002.008.8308].

²⁰⁸ Engineering Business R&O Positions dated 23 March 2018 [LLC.002.008.8732].

²⁰⁹ Hinds Blunden Report dated 23 March 2018 [LLC.006.001.4585]. It can be inferred that Laslett was actually aware of the contents of the Hinds Blunden Report dated 23 March 2018, by reason of the fact that reports of this kind were ordinarily circulated to Lendlease Officers including Laslett and that Laslett was closely involved with the NCX project (email from Mason to McCann, Gupta, Laslett and others dated 22 December 2017 attaching an earlier Hinds Blunden report dated 22 December 2017 [LLC.003.048.5051], email from Steve Wille to Laslett and others regarding the earlier Hinds Blunden report dated 22 December 2017 [LLC.002.009.7380]).

- (h) Laslett had actual knowledge, by 14 May 2018, by reason of him being in receipt of the NCX Monthly Project Review Internal Report dated 14 May 2018, that there were construction issues delaying the progress of the works, including that defects in the cast insitu wall in the M2 shaft had been exposed, there was cracking and shear movement in portions of the tunnel resulting in lost production and there was an approximately 158 day slippage to the program;²¹⁰
 - (i) Laslett had actual knowledge, by 10 May 2018, by reason of him creating the NCX Risk Management Records document (or causing or instructing it to be created), that:
 - (i) the NCX project had undergone a detailed forecast review in March;
 - (ii) there was significant risk in the final cost to complete and the project completion date remained; and
 - (iii) significant cost variances have occurred since contract inception;²¹¹
 - (j) Laslett had actual knowledge, by 28 May 2018, by reason of him being in receipt of the April 2018 Monthly Management Report – New South Wales, that NCX was being stated to be approximately 65% complete;²¹² and
 - (k) given what Laslett actually knew in respect of the NCX project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 163, 169, 171, 177, 179, 185, 187 and 193(a) to 193(j) above, Laslett:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
194. Further and in the alternative to paragraph 193 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 31 May 2018 and given

²¹⁰ NCX Monthly Project Review Internal Report dated 1 May 2018 [LLC.002.008.4184], email from Roleen Kumar to Laslett and others dated 14 May 2018 [LLC.002.008.4181].

²¹¹ NCX Risk Management Records dated 10 May 2018 [LLC.033.001.2780], email from Mike Zambelli dated 10 May 2018 [LLC.006.031.7743], email from Mike Zambelli dated 10 May 2018 [LLC.006.033.1827].

²¹² April 2018 Monthly Management Report New South Wales dated 28 May 2018 [LLC.003.028.0168], email from Letton to Laslett and others on or around 28 May 2018 [LLC.033.022.9252].

Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business Board, RMAC, Lendlease Board and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 169, 171, 177, 179, 185, 187 and 193 above, Laslett:

- (a) ought to have known the information particularised at paragraphs 163, 169, 171, 177, 179, 185, 187 and 193 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

22 August 2018

195. By 22 August 2018, in relation to the **Engineering Business**:

- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163 to 194 above;
- (b) Laslett had actual knowledge that the Engineering Business continued to underperform;
- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified; and
- (e) given what Laslett actually knew in respect of each of the Projects and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183, 185, 187, 189, 191, 193 and 195(a) to 195(d) above and paragraphs 197, 199 and 201 below, Laslett:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

196. Further and in the alternative to paragraph 195 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 22 August 2018 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business Board, RMAC, Lendlease Board, GUN's Internal Project Review Presentation and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183, 185, 187, 189, 191 and 193 above and paragraphs 197, 199 and 201 below, Laslett:
- (a) ought to have known the information particularised at paragraphs 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183, 185, 187, 189, 191, 193 and 195 above and paragraphs 197, 199 and 201 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
197. By 22 August 2018, in relation to the **Gateway Upgrade North** project:
- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 165, 166, 171, 172, 173, 174, 179, 180, 181, 182, 187, 188, 189, 190, 195 and 196 above;
 - (b) Laslett had actual knowledge that GUN remained an underperforming and/or problem project;
 - (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) Laslett had actual knowledge, by 8 June 2018, by reason of Laslett being in receipt of the Engineering Monthly Management Report dated 31 May 2018, that:
 - (i) a key risk was reliance shortfalls and further margin deterioration on problem projects and that the GUN position assumes 100% recovery on reliances; and

- (ii) this made the forecast GPM for GUN unreasonable;²¹³
- (f) Laslett had actual knowledge, by 25 July 2018, or alternatively 16 August 2018, by reason of Laslett's attendance at the Steerco Project Status Report presentations on 15 June 2018, 25 July 2018 and 16 August 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated June, July and August 2018, that the forecast GPM had reduced further to a loss of approximately (\$70m) in July and August, which represented a negative deviation of approximately (\$14m) from the GPM in the prior forecast in the Steerco Project Status Report dated June 2018;²¹⁴
- (g) Laslett had actual knowledge, by 13 August 2018, by reason of Laslett's membership of the Engineering Business Board and/or receiving the KPMG Engineering Business Board Report dated 10 August 2018, that:
 - (i) notwithstanding the fact that the forecast GPM had risen to a loss of approximately \$70m as reported in the Steerco Project Status Report dated July 2018, KPMG reported to the Engineering Business Board that the GPM was only a loss of approximately (\$56m); and
 - (ii) this information was outdated, inaccurate and unrealistic;²¹⁵
- (h) Laslett had actual knowledge, by 20 August 2018, by reason of Laslett's attendance at the relevant sections of the RMAC meeting on 20 August 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated August 2018, that:
 - (i) the GUN project was continuing to forecast a GPM loss of approximately (\$70m);
 - (ii) the reasons for the deterioration in the GPM, including estimating errors at tender on geotechnical ground conditions, lower asphalt productivity rates and additional bridge piling costs resulting in significant resequencing and traffic management cost impacts;

²¹³ Engineering Monthly Report dated 31 May 2018 [LLC.002.008.3451], email Alexandra Tams copied to Laslett, Letton and others dated 8 June 2018 [LLC.002.008.3450].

²¹⁴ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779], Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

²¹⁵ KPMG Engineering Business Board Report dated 10 August 2018 [LLC.003.033.9342], email from Katrina Smith to Engineering Business Board attendees dated 13 August 2018 [LLC.002.008.0326].

- (iii) the project was pursuing claims/insurance recovery and was relying on \$69.1m (against a total claim value of approximately \$180.0m) to achieve the then current forecast margin of (\$56m). A provision of \$14m was being held at the Engineering Business corporate level against this reliance (equalling the total forecast GPM loss of approximately (\$70m)); and
 - (iv) there was significant underperformance of the project, including as a result of matters that arose at or shortly after tender phase, which was likely to impact the remainder of the works;²¹⁶ and
 - (i) given what Laslett actually knew in respect of the GUN project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 163, 165, 171, 173, 179, 181, 187, 189, 195 and 197(a) to 197(h) above, Laslett:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
198. Further and in the alternative to paragraph 197 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 22 August 2018 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business Board, RMAC, Lendlease Board, GUN's Internal Project Review Presentation and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 165, 171, 173, 179, 181, 187, 189 and 197 above, Laslett:
- (a) ought to have known the information particularised at paragraphs 163, 165, 171, 173, 179, 181, 187, 189, 195 and 197 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

²¹⁶ RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

199. By 22 August 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 167, 168, 171, 172, 175, 176, 179, 180, 183, 184, 187, 188, 191, 192, 195 and 196 above;
- (b) Laslett had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 15 June 2018 and through July 2018, by reason of Laslett's attendance at the Steerco Project Status Report presentations on 15 June 2018 and 25 July 2018 and/or by reason of him being in receipt of the Steerco Project Review Reports dated June 2018 and July 2018, that:
 - (i) the forecast GPM was reported as slightly decreased to a loss of (\$47.9m) in the Steerco Presentation dated June 2018 or remained the same as the May 2018 forecast of a loss of (\$47.8m) in the Steerco Presentation dated July 2018; and
 - (ii) as the works progressed through the first quarter, the productivity positions taken in the 2017 forecasts had proven to be optimistic;²¹⁷
- (f) Laslett had actual knowledge, by 16 August 2018, by reason of Laslett's attendance at the Steerco Project Status Report presentation and/or by reason of him being in receipt of the Steerco Presentation dated August 2018, that:
 - (i) an issue had emerged around the interaction between ground stabilisation works (jet grouting works) and the marine structures, which had the project team critically reviewing the design;

²¹⁷ Steerco Project Review Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Review Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

- (ii) the then current indication was that there would likely be design changes and additional works necessary;
 - (iii) the forecast productivity had been optimistic and the project team had commenced increasing the most likely position; and
 - (iv) the forecast GPM remained at a loss of approximately (\$47.8m);²¹⁸
- (g) Laslett had actual knowledge, by 22 August 2018, by reason of his attendance at the RMAC meeting on 20 August 2018, attendance at the Board meeting on 21 and 22 August 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated August 2018 and/or the Board presentation pack dated August 2018, that:
- (i) there remained a forecast GPM loss of approximately (\$47.8m); and
 - (ii) the risk relating to the jet grouting issue was under investigation, which represented additional complexities with the project and the progress of the works;²¹⁹ and
- (h) given what Laslett actually knew in respect of the KSD project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 163, 167, 171, 175, 179, 183, 187, 191, 195 and 199(a) to 199(g) above, Laslett:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
200. Further and in the alternative to paragraph 199 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 22 August 2018 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business

²¹⁸ Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

²¹⁹ RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Board presentation pack dated 21-22 August 2018 [LLC.013.001.5001], Minutes of Board meeting 21-22 August 2018 [LLC.013.001.5660], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

Board, RMAC, Lendlease Board and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 167, 171, 175, 179, 183, 187, 191 and 199 above, Laslett:

- (a) ought to have known the information particularised at paragraphs 163, 167, 171, 175, 179, 183, 187, 191, 195 and 199 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

201. By 22 August 2018, in relation to the **NorthConnex** project:

- (a) Laslett had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 163 above and the information referred to at paragraphs 163, 164, 169, 170, 171, 172, 177, 178, 179, 180, 185, 186, 187, 188, 193, 194, 195 and 196 above;
- (b) Laslett had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Laslett had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Laslett had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Laslett had actual knowledge, by 26 June 2018, by reason of him creating (or causing to be created) and/or by reason of being in receipt of the May 2018 Monthly Management Report – New South Wales dated 26 June 2018, that:
 - (i) the GPM % had been impacted by negative GPM for NCX which contributes 45% of revenue for FY. GPM movement relates to winddowns in October 17 to March 18 and reduced % to complete and slower progress; and
 - (ii) NCX had reduced GPM through various reviews. Contingency had been used to fund the changes in forecast. Design was running behind schedule. DSJV was underperforming and strategies to mitigate were being explored;²²⁰

²²⁰ May 2018 Monthly Management Report – New South Wales dated 26 June 2018 [LLC.002.008.3199], email from Letton to Laslett and others on or around 26 June 2018 [LLC.002.008.3198].

- (f) Laslett had actual knowledge, by 17 July 2018, by reason of him being in receipt of the RMAC Speakers Notes, that:
- (i) the forecast GPM was a loss of approximately (\$240m); and
 - (ii) the forecast cost change aligned with movement in the forecast completion date to 25 May 2020;²²¹
- (g) Laslett had actual knowledge, by 25 July 2018, by reason of his attendance at the Steerco Project Status Report presentation on 25 July 2018 and/or by reason of him being in receipt of the Steerco Status Report document dated July 2018, that:
- (i) the forecast GPM was a loss of approximately (\$240m);
 - (ii) there were major variances to the budget; and
 - (iii) the program shifted from a completion date in December 2019 to May 2020, with the cost updated to reflect the associated burn rate and forecasting errors identified;²²²
- (h) Laslett had actual knowledge, by 9 August 2018, by reason of his involvement in the preparation of and/or by reason of him being in receipt of the Engineering Portfolio Report dated 9 August 2018 and/or by reason of his receipt of that document that the forecast GPM was a loss of approximately (\$120.4m);²²³ and
- (i) given what Laslett actually knew in respect of the NCX project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 163, 169, 171, 177, 179, 185, 187, 193, 195 and 201(a) to 201(h) above, Laslett:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
- that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

²²¹ RMAC Speakers Notes dated 17 July 2018 [LLC.006.039.7775], email from Robert Soosai to Anthony Blackburne and others regarding timeline for provision of RMAC Speakers Notes to Laslett [LLC.003.034.2588].

²²² Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

²²³ Engineering Portfolio Report dated 9 August 2018 [LLC.002.007.9033], email from Matthew Winchur dated 9 August 2018 [LLC.002.007.9032].

202. Further and in the alternative to paragraph 201 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 22 August 2018 and given Laslett's position at Lendlease, his attendance at the Engineering Quarterly Business Review, Engineering Quarterly Finance Review, Engineering Business Board, RMAC, Lendlease Board and Steerco meetings identified and/or receipt of the documents identified in paragraphs 163, 169, 171, 177, 179, 185, 187, 193 and 201 above, Laslett:

- (a) ought to have known the information particularised at paragraphs 163, 169, 171, 177, 179, 185, 187, 193, 195 and 201 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

The opinion that was actually formed and/or ought to have been formed based on the information and facts available to Laslett

203. Laslett had actual knowledge of the historical performance of the Projects as at each of the following dates:

- (a) 17 October 2017, referred to above at paragraphs 163 to 170 and as summarised in the Badala Report at Table 11, Oct.17 Column (GUN), Table 31, Oct.17 Column (KSD) and Table 51, Sept.17 Column (NCX);
- (b) 17 November 2017, referred to above at paragraphs 163 to 178 and as summarised in the Badala Report at Table 11, Oct.17 and Nov.17 Columns (GUN), Table 31, Oct.17 and Nov.17 Columns (KSD) and Table 51, Sept.17 Column (NCX);
- (c) 21 February 2018, referred to above at paragraphs 163 to 186 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17 and Feb.18 Columns (GUN), Table 31, Oct.17, Nov.17 and Feb.18 Columns (KSD) and Table 51, Sept.17 and Dec.17 Columns (NCX);
- (d) 31 May 2018, referred to above at paragraphs 163 to 194 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18 and May.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18 and May.18 Columns (KSD) and Table 51, Sept.17, Dec.17 and Mar.18 Columns (NCX); and

- (e) 22 August 2018, referred to above at paragraphs 163 to 202 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (KSD) and Table 51, Sept.17, Dec.17, Mar.18 and Jun.18 Columns (NCX).

(Laslett Identified Dates).

204. At each of the Laslett Identified Dates, by reason of Laslett's:

- (a) actual and/or constructive knowledge as particularised in:
- (i) paragraphs 163 to 170 above in respect of the period prior to 17 October 2017;
 - (ii) paragraphs 163 to 178 above in respect of the period prior to 17 November 2017;
 - (iii) paragraphs 163 to 186 above in respect of the period prior to 21 February 2018;
 - (iv) paragraphs 163 to 194 above in respect of the period prior to 31 May 2018;
 - (v) paragraphs 163 to 202 above in respect of the period prior to 22 August 2018;
- (b) alternatively,
- (i) actual and/or constructive knowledge as particularised in paragraphs 163 to 203 above; and
 - (ii) constructive knowledge based upon his ability to access information of the historical performance of the Projects in his capacity as Chief Executive Officer of the Engineering Business as at each relevant date, to the extent that historical performance is as summarised in:
 - (A) the Badala Report, at Table 11 (GUN), Table 31 (KSD) and Table 51 (NCX) and [97]-[190], [191]-[283] and [284]-[371]; and
 - (B) the documents considered and referred to by Peter Badala as identified and extracted by Document ID as the "Source File" or

“Source” in Annexures A.1, A.2, B.1, B.2, C.1 and C.2 of that report for each relevant period; and

- (c) role as Chief Executive Officer of the Engineering Business;

Laslett:

- (d) had actual knowledge, ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him (as particularised in [204(a)] and [204(b)] above, insofar as the allegations are of actual knowledge), or which ought to have been known to him (as particularised in [204(a)] and [204(b)] above, insofar as the allegations are of constructive knowledge), that the provisions taken for the Engineering Business as a consequence of the Projects were inadequate; and
- (e) ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him, or which ought to have been known to him, that:

Provision Information

- (i) additional provisions for the Engineering Business would need to be taken as a consequence of the Projects, as follows:
- (A) as at 17 October 2017, the 17 October 2017 Provision Information, being approximately \$415.0 million for the Engineering Business;
- (B) as at 17 November 2017, the 17 November 2017 Provision Information, being approximately \$363.2 million for the Engineering Business;
- (C) as at 21 February 2018, the 21 February 2018 Provision Information, being approximately \$331.3 million for the Engineering Business;
- (D) as at 31 May 2018, the 31 May 2018 Provision Information, being approximately \$393.6 million for the Engineering Business; and
- (E) as at 22 August 2018, the 22 August 2018 Provision Information, being approximately \$415.5 million for the Engineering Business; and/or

Overstated profits

- (ii) by reason of the inadequate provisions, the profits were overstated and a reduction in published profits was required as follows:
 - (A) as at 21 February 2018, the 31 December 2017 Profit Information, being a reduction in after-tax profits of \$231.9 million; and
 - (B) as at 22 August 2018, the 30 June 2018 Profit Information, being a reduction in after-tax profits of \$290.9 million.

G. Letton**17 October 2017**

205. By 17 October 2017, in relation to the **Engineering Business**:

- (a) Letton had actual knowledge that the Engineering Business was underperforming;
- (b) Letton had actual knowledge that there was erosion to the forecast GPM and contingency; and
- (c) given what Letton actually knew in respect of each of the Projects and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 205(a) to 205(b) above and paragraphs 207, 209 and 211 below, Letton:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

206. Further and in the alternative to paragraph 205 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 17 October 2017 and given Letton's position at Lendlease and/or receipt of the document identified in paragraph 211 below, Letton:

- (a) ought to have known the information particularised at paragraph 205 above and paragraphs 207, 209, and 211 below; and/or

- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

207. By 17 October 2017, in relation to the **Gateway Upgrade North** project:

- (a) Letton had actual knowledge of the information referred to at paragraphs 205 and 206 above;
- (b) Letton had actual knowledge that GUN was an underperforming and/or problem project;
- (c) Letton had actual knowledge that there was erosion of the forecast GPM and contingency; and
- (d) given what Letton actually knew in respect of the GUN project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 205 and 207(a) to 207(c) above, Letton:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

208. Further and in the alternative to paragraph 207 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 17 October 2017 and given Letton's position at Lendlease, Letton:

- (a) ought to have known the information particularised at paragraphs 205 and 207 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

209. By 17 October 2017, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Letton had actual knowledge of the information referred to at paragraphs 205 and 206 above;
- (b) Letton had actual knowledge that KSD was an underperforming and/or problem project;

- (c) Letton had actual knowledge that there was erosion of the forecast GPM and contingency; and
 - (d) given what Letton actually knew in respect of the KSD project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 205 and 209(a) to 209(c) above, Letton:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
210. Further and in the alternative to paragraph 209 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 17 October 2017 and given Letton's position at Lendlease, Letton:
- (a) ought to have known the information particularised at paragraphs 205 and 209 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
211. By 17 October 2017, in relation to the **NorthConnex** project:
- (a) Letton had actual knowledge of the information referred to at paragraphs 205 and 206 above;
 - (b) Letton had actual knowledge that NCX was an underperforming and/or problem project;
 - (c) Letton had actual knowledge that there was erosion of the forecast GPM and contingency;
 - (d) Letton had actual knowledge, by 12 October 2017, by reason of her involvement in the preparation of and/or by reason of her being in receipt of the Engineering Business FY18 Forecast dated 12 October 2017, that the best case Lendlease share of the GPM represented a loss of approximately either (\$162m) or,

alternatively, (\$100.5m), with the worst case loss of approximately either (\$203.3m) or, alternatively, (\$201.8m);²²⁴ and

(e) given what Letton actually knew in respect of the NCX project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 205 and 211(a) to 211(d) above, Letton:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

212. Further and in the alternative to paragraph 211 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 17 October 2017 and given Letton's position at Lendlease and/or receipt of the document identified in paragraph 211 above, Letton:

(a) ought to have known the information particularised at paragraphs 205 and 211 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

17 November 2017

213. By 17 November 2017, in relation to the **Engineering Business**:

(a) Letton had actual knowledge of the information referred to at paragraphs 205 to 212 above;

(b) Letton had actual knowledge that the Engineering Business continued to underperform;

(c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;

²²⁴ LLE FY18 Forecast dated 6:14pm 12 October 2017 [LLC.003.024.9305], email from Anthony Blackburne to Letton dated 6:14pm 12 October 2017 [LLC.003.024.9304]; LLE FY18 Forecast dated 11:13pm 12 October 2017 [LLC.002.010.5023], email from Yudesh Redhi to Letton and Laslett dated 11:13pm 12 October 2017 [LLC.002.010.5022].

- (d) Letton had actual knowledge, by 2 November 2017, by reason of her being in receipt of the Engineering Quarterly Business Review Presentation dated September 2017, of the Systemic Reporting and Performance Issues,²²⁵
- (e) Letton had actual knowledge, by 15 November 2017, by reason of Letton's attendance at the RMAC meeting on 15 November 2017 and/or by reason of being in receipt of the RMAC Report dated November 2017, that:
 - (i) the underperforming projects of the Engineering Business were listed as the number one Group wide risk and were identified to be high risk with a very large likely impact and risk; and
 - (ii) the Engineering Business had significantly increased its reliance assumptions in the quarter, including (\$33.7m) for GUN and (\$42.7m) for KSD;²²⁶
- (f) Letton had actual knowledge, by 16 November 2017, by reason of Letton attending the Board meeting on 16 November 2017 and/or by being in receipt of the CFO Memorandum dated November 2017, that:
 - (i) the Group forecast FY18 PAT presented at 17 October 2017 included total contingency at the Group level of approximately \$65m post tax, of which \$50m post tax was being held against further downside risks in the Engineering Business;
 - (ii) the \$50m contingency to cover downside across the Engineering Business would be fully absorbed by the position shown as the "independent review scenario";
 - (iii) the independent review was not yet complete;
 - (iv) PAT FY18 had a variance of (\$16m) and a GPM variance of a loss of (\$99m);
 - (v) revenue and GPM at Group level had been revised down taking into account margin deterioration on projects in the Engineering Business; and

²²⁵ Engineering Quarterly Business Review Presentation dated September 2017 [LLC.003.022.5081], email from James St Clair to Letton dated 2 November 2017 [LLC.003.022.5079].

²²⁶ RMAC Report dated November 2017 [LLC.008.022.4073].

- (vi) at the Engineering Business level, FY18 variance against budget was: revenue down (\$131m), GPM down (\$102m), EBITDA down (\$97m), Engineering PAT down (\$70m);²²⁷ and
 - (g) given what Letton actually knew in respect of each of the Projects and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 205, 207, 209, 211 and 213(a) to 213(f) above and paragraphs 215, 217 and 219 below, Letton:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
214. Further and in the alternative to paragraph 213 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 17 November 2017 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board, GUN's Internal Project Review and Steerco meetings identified and/or receipt of the documents identified in paragraphs 211 and 213 above and paragraphs 215, 217 and 219 below, Letton:
- (a) ought to have known the information particularised at paragraphs 205, 207, 209, 211 and 213 above and paragraphs 215, 217 and 219 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
215. By 17 November 2017, in relation to the **Gateway Upgrade North** project:
- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 207, 208, 213 and 214 above;
 - (b) Letton had actual knowledge that GUN remained an underperforming and/or problem project;

²²⁷ CFO Memorandum dated 16 November 2017 [LLC.011.004.1484], Minutes of the 16 November 2017 Board meeting [LLC.013.001.2576].

- (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Letton had actual knowledge, by 19 October 2017, by reason of her attendance at the Internal Project Review presentation that occurred on 18 or 19 October 2017, that:
 - (i) GUN was approximately 6.5 months behind on cash flow basis;
 - (ii) there was a negative program variance to progress, including for late design, increased complexity in traffic staging, reduced productivity and weather events; and
 - (iii) in order to achieve the new target margin of \$15m, delivery on the then current identified reliances (of \$71.7m) was required and further revenue opportunities would need to deliver up to \$55.1m. A strategy, including the involvement of consultants was established;²²⁸
- (f) Letton had actual knowledge, by 2 November 2017, by reason of Letton being in receipt of the Engineering Quarterly Business Review Presentation dated September 2017 and/or the Engineering Quarterly Finance Review Presentation dated September 2017, that:
 - (i) GUN was underperforming, in that it had been given a “red” risk rating and had been identified to be under time and under budget pressure;
 - (ii) there was an erosion of contingency, with only \$5.9m contingency remaining; and
 - (iii) the then current forecast GPM remained at approximately \$51.6m for the GUN project as at September 2017;²²⁹
- (g) Letton had actual knowledge, by 15 November 2017, by reason of Letton attending the relevant sections of the RMAC meeting on 15 November 2017

²²⁸ Internal Project Review Presentation [LLC.006.073.9200], attendees identified in Agenda to CEO/EGM Project Review GUN dated 19 October 2017 [LLC.003.048.3139].

²²⁹ Engineering Quarterly Finance Review presentation pack dated September 2017 [LLC.003.022.5080], Engineering Quarterly Business Review presentation pack dated September 2017 [LLC.003.022.5081], email from James St Clair to Letton dated 2 November 2017 [LLC.003.022.5079].

and/or by reason of her being in receipt of RMAC presentation pack dated November 2017, that:

- (i) GUN was identified as being 68.4% complete;
- (ii) at contract inception, GPM was approximately \$52.5m but was then forecast to be \$15m with an annual FY18 GPM result of a loss of (\$6.2m);
- (iii) there was an assumed reliance of \$69.8m;
- (iv) GUN remained an underperforming project and the various reasons for the underperformance, including that there were delays, design changes, difficult geotechnical conditions and resequencing of works;
- (v) the delivery of the project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to mitigate delays, changed requirements to remove and replace spoil and additional temporary traffic management;
- (vi) there was further erosion in the likely GPM; and
- (vii) the GPM was contingent on large reliances. Specifically, the project was pursuing \$190.3m in claims of which it needed to recover \$69.1m in order to achieve the then current forecast GPM of \$15m;²³⁰
- (h) Letton had actual knowledge, by 17 November 2017, by reason of Letton being in receipt of the KPMG Engineering Business Board Report dated 11 August 2017, that:
 - (i) there was erosion of contingency to \$5.9m (representing 2% of forecast costs to complete) compared to a contingency of \$34m at the start of the project (6% of the costs to complete) which had been predominately utilised/released for design costs and escalation costs; and
 - (ii) a net revenue reliance of approximately \$20.9m related to unapproved variations and claims, such that there was a risk that the forecast revenue was unrealistic;²³¹ and

²³⁰ RMAC Report dated November 2017 and KPMG Report to RMAC dated November 2017 [LLC.008.022.4073], attendees identified in minutes of RMAC meeting 15 November 2017 [LLC.011.008.2694].

²³¹ KPMG Lendlease Engineering Board Report for the year ending 30 June 2017 issued 11 August 2017 to Paul Teasdale [LLC.002.033.8545], email from James St Clair to Letton dated 17 November 2017 [LLC.003.021.1188].

- (i) given what Letton actually knew in respect of the GUN project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 205, 207, 213 and 215(a) to 215(h) above, Letton:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
216. Further and in the alternative to paragraph 215 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 17 November 2017 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board and GUN's Internal Project Review meetings identified and/or receipt of the documents identified in paragraphs 213 and 215 above, Letton:
- (a) ought to have known the information particularised at paragraphs 205, 207, 213 and 215 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
217. By 17 November 2017, in relation to the **Kingsford Smith Drive Upgrade** project:
- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 209, 210, 213 and 214 above;
 - (b) Letton had actual knowledge that KSD remained an underperforming and/or problem project;
 - (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) Letton had actual knowledge, by 24 October 2017, by reason of her being in receipt of a Cost Summary as at 26 September 2017 following a project review

by the CoE, that there was a negative variance in the forecast cost to complete from the last approved forecast of approximately (\$75m) and variance to budget of approximately (\$74m);²³²

- (f) Letton had actual knowledge, by 1 November 2017, by reason of her assisting preparations for and/or her being in attendance at the Steerco Project Status Report presentation and/or by being in receipt of the Steerco Project Status Report dated 1 November 2017, that:
 - (i) the forecast GPM had reduced from \$36.9m to \$0 (zero), or was a break even project;
 - (ii) there was a delay of approximately 9 months to the works; and
 - (iii) the delays were caused by, *inter alia*, changes in design scope and complexity, latent conditions (geotechnical) and works to marine structures;²³³
- (g) Letton had actual knowledge, by 2 November 2017, by reason of her being in receipt of the Engineering Quarterly Business Review Presentation dated September 2017, that the geotechnical conditions in the Brisbane River continued to impact progress and that Laslett was to meet with the Brisbane Lord Mayor to discuss project issues and opportunities for cost relief;²³⁴
- (h) Letton had actual knowledge, by 17 November 2017, by reason of Letton being in receipt of the KPMG Engineering Business Board Report dated 11 August 2017, that:
 - (i) the program had been delayed and was now under significant pressure;
 - (ii) deficiencies in the design had been identified and there was a potential claim against the geotechnical engineers, Golder, for approximately \$22.2m as a result, however, Golder's liability was contractually capped at \$10m;

²³² Cost Summary dated 26 September 2017 [LLC.003.024.7426], email from Lea-Anne Lohse to Letton dated 24 October 2017 [LLC.003.024.7424]. This was reflected in the Project in Delivery Report dated 26 September 2017, which provided for a forecast GPM of a loss of (\$37,307,795), Project in Delivery Report dated 26 September 2017 [LLC.033.026.1828].

²³³ Steerco Project Status Report dated 1 November 2017 [LLC.002.010.4935], email from Letton to Mason dated 1 November 2017 [LLC.002.010.5009].

²³⁴ Engineering Quarterly Business Review Presentation dated September 2017 [LLC.003.022.5081], email from James St Clair to Letton dated 2 November 2017 [LLC.003.022.5079].

- (iii) there remained significant risks that could have an impact on program and costs; and
 - (iv) the forecast GPM was approximately \$36.9m as at 11 August 2017;²³⁵ and
 - (i) given what Letton actually knew in respect of the KSD project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 205, 209, 213 and 217(a) to 217(h) above, Letton:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
218. Further and in the alternative to paragraph 217 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 17 November 2017 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board and Steerco meetings identified and/or receipt of the documents identified in paragraphs 213 and 217 above, Letton:
- (a) ought to have known the information particularised at paragraphs 205, 209, 213 and 217 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
219. By 17 November 2017, in relation to the **NorthConnex** project:
- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 211, 212, 213 and 214 above;
 - (b) Letton had actual knowledge that NCX remained an underperforming and/or problem project;

²³⁵ KPMG Lendlease Engineering Board Report for the year ending 30 June 2017 issued 11 August 2017 to Paul Teasdale [LLC.002.033.8545], email from James St Clair to Letton dated 17 November 2017 [LLC.003.021.1188].

- (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) Letton had actual knowledge, by 2 November 2017, by reason of her involvement in the preparation of and/or by reason of her being in receipt of the Engineering Quarterly Finance Review Presentation dated 2 November 2017, that:
 - (i) the forecast GPM had a variance of (\$215.9m) between tender and the then current forecast, (\$120m) of which was attributed to "Deeper alignment impact";
 - (ii) that the timely completion of updated designs for the project was continuing to cause significant delays to the program; and
 - (iii) that there was a risk geological conditions will continue to deteriorate, impacting further on program, design, and cost;²³⁶ and
 - (f) given what Letton actually knew in respect of the NCX project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 205, 211, 213 and 219(a) to 219(e) above, Letton:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
220. Further and in the alternative to paragraph 219 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 17 November 2017 and given Letton's position at Lendlease, her attendance at the RMAC and Lendlease Board meetings identified and/or receipt of the documents identified in paragraphs 211, 213 and 219 above, Letton:

²³⁶ Engineering Quarterly Finance Review Presentation dated September 2017 [LLC.003.022.5080], email from James St Clair to Letton dated 2 November 2017 [LLC.003.022.5079].

- (a) ought to have known the information particularised at paragraphs 205, 211, 213 and 219 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

21 February 2018

221. By 21 February 2018, in relation to the **Engineering Business**:

- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205 to 220 above;
- (b) Letton had actual knowledge that the Engineering Business continued to underperform;
- (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified; and
- (e) given what Letton actually knew in respect of each of the Projects and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 205, 207, 209, 211, 213, 215, 217, 219 and 221(a) to 221(d) above and paragraphs 223, 225 and 227 below, Letton:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

222. Further and in the alternative to paragraph 221 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 21 February 2018 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board, GUN's Internal Project Review and Steerco meetings identified and/or receipt of the documents identified in paragraphs 211, 213, 215, 217 and 219 above and paragraphs 223, 225 and 227 below, Letton:

- (a) ought to have known the information particularised at paragraphs 205, 207, 209, 211, 213, 215, 217, 219 and 221 above and paragraphs 223, 225 and 227 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

223. By 21 February 2018, in relation to the **Gateway Upgrade North** project:

- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 207, 208, 213, 214, 215, 216, 221 and 222 above;
- (b) Letton had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Letton had actual knowledge, by 15 December 2017, by reason of Letton assisting in the preparations of the KPMG Audit Presentation, and/or attending the KPMG Audit Presentation on 18 December 2017 and/or by being in receipt of the KPMG – Audit Presentation dated 18 December 2017, that the forecast loss for GUN had eroded by approximately (\$50.7m) to a forecast GPM of approximately \$4.4m profit;²³⁷
- (f) Letton had actual knowledge, by 5 February 2018, by reason of being provided with the KPMG Engineering Business Board Report dated 5 February 2018, that:
 - (i) the GUN project continued to experience challenges with the GPM eroding to \$4.4m from \$52.5m in June 2017;
 - (ii) risk remained in respect of achieving the forecast productivity rates and successful negotiations of reliance positions;

²³⁷ KPMG – Audit Presentation dated 18 December 2017 [LLC.003.007.9174], email from Lea-Anne Lohse to Letton and others dated 15 December 2017 [LLC.003.007.9173].

- (iii) the GPM was continuing to erode, with a sensitivity analysis indicating a possible GPM loss of approximately (\$46.6m) if key assumptions were not achieved. Management's position was reported to be a forecasted GPM loss of approximately (\$17.6m) compared to the project team position of \$4.4m profit; and
- (iv) Lendlease management had allocated a further \$4.5m provision outside the project, given the risks associated with the project;²³⁸
- (g) Letton had actual knowledge, by 14 February 2018, by reason of her attendance at the Steerco Project Status Report presentation on 14 February 2018 and/or by reason of her being in receipt of the Steerco Project Status Report dated February 2018, that:
 - (i) the GUN project continued to be an underperforming project;
 - (ii) there was an increase in forecast costs of approximately \$91.0m against budget;
 - (iii) the GPM was continuing to erode with it being reported as \$4.4m prior to additional costs (\$4.5m) and reliance (\$17.5m) provisions, for a net Project position of (\$17.6m);
 - (iv) the project was pursuing \$140.4m of claims and relying on a net claim of \$44.8m (gross reliance excluding payment on account \$69.7m); and
 - (v) there was contingency erosion, with it now being \$3.9m compared to a budget of \$55.1m;²³⁹
- (h) Letton had actual knowledge, by 19 February 2018, by reason of Letton's attendance at the relevant section of the RMAC meeting on 19 February 2018 and/or by reason of her being in receipt of the RMAC presentation pack dated 19 February 2018, that:
 - (i) the GPM or WOL P/L for GUN was forecast to be a loss of approximately (\$17.6m);
 - (ii) GUN was identified as being 76.1% complete;

²³⁸ KPMG Engineering Business Board Report dated 5 February 2018 [LLC.003.021.1645], email from KPMG to Letton dated 5 February 2018 [LLC.003.021.1644].

²³⁹ Steerco Project Status Report dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 meeting [LLC.002.009.0717].

- (iii) the GPM was then forecast to be (\$17.6m), a movement of (\$32.6m) since the last RMAC in October 2017;
 - (iv) there was an assumed reliance of \$69.1m;
 - (v) the delivery of the project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to mitigate delays and additional temporary traffic management;
 - (vi) the project was relying on \$44.8m relating to claims and variations in order to achieve the forecast margin;
 - (vii) the forecast GPM was largely contingent on Lendlease successfully pursuing various contractual and insurance claims, and that there was inherent uncertainty in Lendlease's success; and
 - (viii) the issues that were leading to the erosion of the GPM had been identified early in the project and, in some cases, during the tender phase;²⁴⁰ and
- (i) given what Letton actually knew in respect of the GUN project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 205, 207, 213, 215, 221 and 223(a) to 223(h) above, Letton:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
224. Further and in the alternative to paragraph 223 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 21 February 2018 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board, GUN's Internal Project Review and Steerco meetings identified and/or receipt of the documents identified in paragraphs 213, 215 and 223 above, Letton:

²⁴⁰ RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], attendees identified in Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

- (a) ought to have known the information particularised at paragraphs 205, 207, 213, 215, 221 and 223 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

225. By 21 February 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 209, 210, 213, 214, 217, 218, 221 and 222 above;
- (b) Letton had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Letton had actual knowledge, by 5 February 2018, by reason of being provided with the KPMG Engineering Business Board Report dated 5 February 2018, that:
 - (i) the KSD GPM had eroded to \$0 (zero), or break even with an additional provision of \$10m being held outside of the project;
 - (ii) a number of challenges remained relating to completing piling in the river and the civil productivity rates being achieved; and
 - (iii) a sensitivity analysis indicated a possible GPM loss of approximately (\$29.0m) if key assumptions were not achieved. Management's position was reported to be a forecasted GPM loss of approximately (\$10.0m) compared to the project team position of \$0 profit;²⁴¹ and
- (f) Letton had actual knowledge, by 14 February 2018, by reason of her attendance at the Steerco Project Status Report presentation and/or by being in receipt of the Steerco Presentation dated February 2018, that there was a projected loss against budget of (\$36.5m) with an additional cost provision of (\$10m). The total

²⁴¹ KPMG Engineering Business Board Report dated 5 February 2018 [LLC.003.021.1645], email from KPMG to Letton dated 5 February 2018 [LLC.003.021.1644].

project GPM was \$0 or break even, and the net project position including the cost provision was (\$10m);²⁴² and

(g) given what Letton actually knew in respect of the KSD project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 205, 209, 213, 217, 221 and 225(a) to 225(f) above, Letton:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

226. Further and in the alternative to paragraph 225 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 21 February 2018 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board and Steerco meetings identified and/or receipt of the documents identified in paragraphs 213, 217 and 225 above, Letton:

(a) ought to have known the information particularised at paragraphs 205, 209, 213, 217, 221 and 225 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

227. By 21 February 2018, in relation to the **NorthConnex** project:

(a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 211, 212, 213, 214, 219, 220, 221 and 222 above;

(b) Letton had actual knowledge that NCX remained an underperforming and/or problem project;

(c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;

²⁴² Steerco Project Status Report dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 meeting [LLC.002.009.0717].

- (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Letton had actual knowledge, by 7 December 2017, by reason of her being in receipt of the Engineering Quarterly Business Review report dated 7 December 2017, that:
 - (i) the company level forecast GPM was a loss of approximately (\$75m);
 - (ii) during the quarter the Engineering Business reduced its FY18 MPAT following the completion of project reviews, including NCX;
 - (iii) NCX was listed as being 48% complete;
 - (iv) significant cost variances had occurred since contract inception; and
 - (v) there was a strategy in place to pursue revenue from the client, however the then current forecast assumes no reliance;²⁴³
- (f) Letton had actual knowledge, by 19 January 2018, by reason of her being in receipt of the Ernst &Young (EY) NCX Completion Memorandum dated 19 January 2018, that:
 - (i) the forecast GPM was a loss of approximately (\$149.9m);
 - (ii) EY noted that, as a result of the very limited level of contingency adopted, it was EY's view that the project was then currently sitting at the optimistic end of the reasonable range of outcomes, however, "as noted by HB and as confirmed via our review of project documentation and discussions with senior project management, the forecast does appear to be achievable and there does appear to be more conservatism built into it than previous forecasts. On this basis, we consider that the position adopted by management as at 31 December 2017 sits at the higher end of a reasonable range of outcomes, but is ultimately reasonable at this time"; and
 - (iii) there was a risk of exposure to liquidated damages in the order of approximately \$330,000 per day, which would equate to approximately

²⁴³ Quarterly Business Review – Engineering Business report dated 7 December 2017 [LLC.008.020.4775], email from Jade Henningsen dated 7 December 2017 [LLC.008.020.4774].

\$10m a month. This was considered to be a risk, given the lack of time contingency;²⁴⁴

- (g) Letton had actual knowledge, by 5 February 2018, by reason of being provided with the KPMG Engineering Business Board Report dated 5 February 2018, that the information provided at the Quarterly Business Review on 7 December 2017 remained largely unchanged;²⁴⁵
- (h) Letton had actual knowledge, by 16 February 2018, by reason of her attendance at the RMAC meeting on 16 February 2018 and/or by reason of her being in receipt of the RMAC presentation pack dated February 2018, that:
 - (i) the total project loss had deteriorated from a loss of approximately (\$149m) to a loss of approximately (\$207m);
 - (ii) additional provision was raised for risks associated with staff demobilisation, a range of M&E risks such as resource rate increases, delay to program and productivity inefficiencies;
 - (iii) an increase in costs in the order of approximately (\$52.1m) was likely;
 - (iv) NCX was listed as being approximately 54.6% complete; and
 - (v) "Significant costs variances impacting margin have occurred since contract inception that relate to deeper alignment and geotechnical issues, productivity and programme, spoil removal and other tender items including Buildings and Civil";²⁴⁶
- (i) Letton had actual knowledge, by 21 February 2018, by reason of her being in receipt of the NCX Monthly Project Reviews, that there were delays to the works being caused by the change of design and cracking in the tunnel lining and sequencing and that there were delays across many key targets;²⁴⁷ and

²⁴⁴ Ernst & Young NCX Completion Memorandum dated 19 January 2018 [LLC.003.025.1571].

²⁴⁵ KPMG Engineering Business Board Report dated 5 February 2018 [LLC.003.021.1645], email from KPMG to Letton dated 5 February 2018 [LLC.003.021.1644].

²⁴⁶ RMAC Speakers Notes dated 16 February 2018 [LLC.003.024.8045], RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], attendees identified in Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

²⁴⁷ NCX Monthly Project Review dated 13 September 2017 [LLC.008.008.0560], email from Roleen Kumar to Letton dated 13 September 2017 [LLC.008.008.0558]; NCX Monthly Project Review dated 11 October 2017 [LLC.002.034.4825], email from Roleen Kumar to Letton dated 11 October 2017 [LLC.002.034.4824]; NCX Monthly Project Review dated 12 January 2018 [LLC.002.009.1832], email from Roleen Kumar to Letton dated 12 January 2018 [LLC.002.009.1831]; NCX Monthly Project Review dated 14 February 2018 [LLC.002.008.8933], email from Roleen Kumar to Letton dated 14 February 2018 [LLC.002.008.8932].

(j) given what Letton actually knew in respect of the NCX project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 205, 211, 213, 219, 221 and 227(a) to 227(i) above, Letton:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

228. Further and in the alternative to paragraph 227 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 21 February 2018 and given Letton's position at Lendlease, her attendance at the RMAC and Lendlease Board meetings identified and/or receipt of the documents identified in paragraphs 211, 213, 219 and 227 above, Letton:

(a) ought to have known the information particularised at paragraphs 205, 211, 213, 219, 221 and 227 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

31 May 2018

229. By 31 May 2018, in relation to the **Engineering Business**:

(a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205 to 228 above;

(b) Letton had actual knowledge that the Engineering Business continued to underperform;

(c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;

(d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified and further issues with the accuracy and reliability

of cost forecasting had been identified (see paragraph 229(f) below and paragraph 231(g) below);

- (e) Letton had actual knowledge, by 14 March 2018, by reason of Letton's attendance at the Engineering Quarterly Finance Review on 14 March 2018, that the problem projects, including NCX, GUN and KSD had the Engineering Business in a loss position for FY18;²⁴⁸
- (f) Letton had actual knowledge, by 26 March 2018, by reason of Letton's attendance at the Quarterly Business Review and/or by reason of her being in receipt of the Quarterly Business Review dated 26 March 2018, that:
 - (i) Lendlease was cautiously reviewing pipeline and strategy and was continuing to influence market and customers regarding expectations;
 - (ii) in depth project reviews were being conducted throughout the Engineering Business in March;
 - (iii) potential impacts to the FY18 forecast as a result of the review would be run through Steerco before being incorporated into the March forecast;
 - (iv) during the quarter, the Engineering Business reduced its FY18 MPAT forecast from a loss of approximately (\$53m) to a loss of approximately (\$77m) due to provisioning;
 - (v) the draft FY19 business plan indicated FY19 MPAT of \$19m against prior forecast of \$75m;
 - (vi) the FY19 MPAT included (pre tax) "stretch targets" of \$13.7m; and
 - (vii) the then current FY18 (or FY19) MPAT did not include additional risk for problem projects (NCX, GUN, KSD);²⁴⁹
- (g) Letton had actual knowledge, by 24 May 2018, by reason of her attendance during the relevant sections of the RMAC meeting on 24 May 2018 and/or by reason of her being in receipt of the RMAC Report dated May 2018, that:

²⁴⁸ Engineering Quarterly Finance Review dated 14 March 2018 [LLC.002.008.8920].

²⁴⁹ Quarterly Business Review dated 26 March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

- (i) each of NCX, KSD and GUN were listed as “very high likelihood” with NCX listed as “very large impact” and KSD and GUN listed as “large impact” for “operational issues”; and
 - (ii) there was a decline in profitability due to the known deterioration in projects in the Engineering Business;²⁵⁰ and
- (h) given what Letton actually knew in respect of each of the Projects and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 205, 207, 209, 211, 213, 215, 217, 219, 221, 223, 225, 227 and 229(a) to 229(g) above and paragraphs 231, 233 and 235 below, Letton:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
230. Further and in the alternative to paragraph 229 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 31 May 2018 and given Letton’s position at Lendlease, her attendance at the RMAC, Lendlease Board, GUN’s Internal Project Review, Steerco, Engineering Quarterly Business Review and Engineering Quarterly Finance Review meetings identified and/or receipt of the documents identified in paragraphs 211, 213, 215, 217, 219, 223, 225, 227 and 229 above and paragraphs 231, 233 and 235 below, Letton:
- (a) ought to have known the information particularised at paragraphs 205, 207, 209, 211, 213, 215, 217, 219, 221, 223, 225, 227 and 229 above and paragraphs 231, 233 and 235 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

²⁵⁰ RMAC Report dated 24 May 2018 [LLC.011.009.8254], attendees identified in Minutes of RMAC meeting 24 May 2018 [LLC.011.008.3750].

231. By 31 May 2018, in relation to the **Gateway Upgrade North** project:

- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 207, 208, 213, 214, 215, 216, 221, 222, 223, 224, 229 and 230 above;
- (b) Letton had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Letton had actual knowledge, by 12 and 13 March 2018, by reason of her being a reviewer during the two day GUN Project Review which took place on 12 and 13 March 2018, that:
 - (i) the forecast GPM was now forecast to be a loss of approximately (\$51.0m);
 - (ii) the profit plan had been presented and there was a significant risk of further losses beyond the forecast loss of (\$51.0m);
 - (iii) there had been a significant slippage since the 50% project review in May 2017 and that there was a very high risk that the program would continue to slip, with the forecast margin loss increasing further;
 - (iv) close monitoring would be required for the forecast loss of (\$51.0m) to be achieved;
 - (v) the project was reported to be 80% complete with traffic lights being red for the project overall and cost report, schedule, design, PPP and cash;
 - (vi) there was no float in the program and there was a significant risk that it would slip further in the months before December 2018;
 - (vii) the executive summary stated that “there have been significant cost overruns over many parts of the project. There has been 10% design growth and \$20m overrun in the Construction Phase Services costs. There is \$71.6m of reliance and it is considered optimistic that a recovery

of 50% will be achieved across all the many claims. There are a lot of areas open along the alignment and it will be critical to finish all the works before each stage is opened. The program is under extreme pressure and 41 days EOTs are still to be resolved. There are 6 critical paths with less than 30 days float, so daily monitoring of productivity and program is critical”;

- (viii) there had been significant cost overruns across the project and in many cost codes;
- (ix) the cost reporting on the project was inadequate and there were errors in the reporting, which meant cost forecasting was not accurate;
- (x) the lack of cost planning was raised in the October 2015 and the April 2016 design reviews, however the design was not controlled; and
- (xi) at the 50% project review, in May 2017, the poor management of the Construction Phase Services was raised as a significant cost overrun, however, there was a significant loss forecast and the CPS was over budget;²⁵¹
- (f) Letton had actual knowledge, by 13 March 2018, by reason of Letton’s attendance at the Steerco Project Status Report presentation on 13 March 2018 and/or by reason of her being in receipt of the Steerco Project Status Report dated March 2018, that the net project GPM for GUN was being reported as a loss of approximately (\$17.6m);²⁵²
- (g) Letton had actual knowledge, by 26 March 2018, by reason of Letton’s attendance at the Engineering Quarterly Business Review on 26 March 2018 and/or by reason of her being in receipt of the Engineering Quarterly Business Review dated March 2018, that:
 - (i) a two day review of the GUN project had been held on 12 and 13 March 2018;
 - (ii) the review established that the GUN project presented a key risk to the Engineering Business; and

²⁵¹ 75% Project Review Attendance Summary dated 12 March 2018 [LLC.033.007.9445].

²⁵² Steerco Project Status Report [LLC.002.008.8309], email from Letton to Steerco attendees dated 9 March 2018 [LLC.002.008.8308].

- (iii) the forecast GPM was being finalised;²⁵³
- (h) Letton had actual knowledge, by 24 April 2018 and 12 May 2018, by reason of Letton's attendance at the Steerco Project Status Report presentations on 24 April 2018 and 12 May 2018 and/or by reason of her being in receipt of the Steerco Project Status Reports dated April and May 2018, that the forecast GPM for GUN was continuing to erode and was then a forecast loss of approximately (\$56m);²⁵⁴
- (i) Letton had actual knowledge, by 14 May 2018, by reason of her receiving the Project Profit Plan Report dated 13 May 2018, that the target GPM was a loss of approximately (\$60m);²⁵⁵
- (j) Letton had actual knowledge, by 29 May 2018, notwithstanding the information referred to above, that a decision appeared to have been made to "hold margin";²⁵⁶ and
- (k) given what Letton actually knew in respect of the GUN project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 205, 207, 213, 215, 221, 223, 229 and 231(a) to 231(j) above, Letton:
- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,
- that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
232. Further and in the alternative to paragraph 231 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 31 May 2018 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board, GUN's

²⁵³ Engineering Quarterly Business Review dated March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

²⁵⁴ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369], Steerco Project Status Report dated May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

²⁵⁵ Project Profit Plan dated 13 May 2018 [LLC.003.027.7381], email Donna Gallaher to Laslett, Letton and others dated 14 May 2018 [LLC.003.027.7380].

²⁵⁶ Email from Donna Gallaher to Glenn McIlroy, Warren Crowther and others [LLC.003.015.0195]. The costs in the Internal Cost Movement Summary dated 29 May 2018 [LLC.003.015.0196] were \$781.5m, which if applied to the 'Target' Revenue of \$725.6m in the Project Profit Plan Report at (i) above would result in a GPM of approximately (\$55.9m).

Internal Project Review, Steerco, Engineering Quarterly Business Review and Engineering Quarterly Finance Review meetings identified and/or receipt of the documents identified in paragraphs 213, 215, 223, 229 and 231 above, Letton:

- (a) ought to have known the information particularised at paragraphs 205, 207, 213, 215, 221, 223, 229 and 231 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

233. By 31 May 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 209, 210, 213, 214, 217, 218, 221, 222, 225, 226, 229 and 230 above;
- (b) Letton had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Letton had actual knowledge, by 24 April 2018, by reason of her attending the Steerco Project Status Report presentation and/or by reason of being in receipt of the Steerco Project Status Report dated April 2018, that:
 - (i) the likely GPM was a loss of approximately (\$47.8m); and
 - (ii) there were delays to the works;²⁵⁷
- (f) Letton had actual knowledge, by 12 May 2018, by reason of her attendance at the Steerco Project Status Report presentation on 12 May 2018 and/or by reason of being in receipt of the Steerco Project Status Report dated May 2018, that there was no change to the GPM forecast loss between April 2018 and May 2018;²⁵⁸ and

²⁵⁷ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Ashley Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369].

²⁵⁸ Steerco Project Status Report May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

- (g) given what Letton actually knew in respect of the KSD project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 205, 209, 213, 217, 221, 225, 229 and 233(a) to 233(f) above, Letton:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
234. Further and in the alternative to paragraph 233 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 31 May 2018 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board, Steerco, Engineering Quarterly Business Review and Engineering Quarterly Finance Review meetings identified and/or receipt of the documents identified in paragraphs 213, 217, 225, 229 and 233 above, Letton:
- (a) ought to have known the information particularised at paragraphs 205, 209, 213, 217, 221, 225, 229 and 233 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
235. By 31 May 2018, in relation to the **NorthConnex** project:
- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 211, 212, 213, 214, 219, 220, 221, 222, 227, 228, 229 and 230 above;
 - (b) Letton had actual knowledge that NCX remained an underperforming and/or problem project;
 - (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;

- (e) Letton had actual knowledge, by 23 March 2018, by reason of her involvement in the preparation of and/or by reason of her being in receipt of the Engineering Business R&O Positions document dated 23 March 2018, that:
- (i) the likely loss for NCX would be approximately (\$240.9m);
 - (ii) the completion date was set for January 2020; and
 - (iii) in terms of overall profit, NCX will lead to a (\$340m) loss. Most likely completion is set for July 2020. This assumed a \$48.7m contingency and \$70m in liquidated damages;²⁵⁹
- (f) Letton had actual knowledge, by 1 May 2018, by reason of her being in receipt of the NCX Monthly Project Review Internal Report dated 1 May 2018, that there were construction issues delaying the progress of the works, including that defects in the cast insitu wall in the M2 shaft had been exposed and there was cracking and shear movement, resulting in lost production and there was an approximately 158 day slippage to the program;²⁶⁰
- (g) Letton had actual knowledge, by 28 May 2018, by reason of her being in receipt of the April 2018 Monthly Management Report – New South Wales, that NCX was being stated to be approximately 65% complete;²⁶¹ and
- (h) given what Letton actually knew in respect of the NCX project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 205, 211, 213, 219, 221, 227, 229 and 235(a) to 235(g) above, Letton:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

236. Further and in the alternative to paragraph 235 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the

²⁵⁹ Engineering Business R&O Positions dated 23 March 2018 [LLC.002.008.8732].

²⁶⁰ NCX Monthly Project Review Internal Report dated 1 May 2018, [LLC.002.008.4184], email from Roleen Kumar to Letton and others dated 14 May 2018 [LLC.002.008.4181].

²⁶¹ April 2018 Monthly Management Report – New South Wales dated 28 May 2018 [LLC.003.028.0168], email from Letton to Laslett and others on or around 28 May 2018 [LLC.033.022.9252].

NCX project and the Engineering Business as a whole prior to 31 May 2018 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board, Engineering Quarterly Business Review and Engineering Quarterly Finance Review meetings identified and/or receipt of the documents identified in paragraphs 211, 213, 219, 227, 229 and 235 above, Letton:

- (a) ought to have known the information particularised at paragraphs 205, 211, 213, 219, 221, 227, 229 and 235 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

22 August 2018

237. By 22 August 2018, in relation to the **Engineering Business**:

- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205 to 236 above;
- (b) Letton had actual knowledge that the Engineering Business continued to underperform;
- (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified; and
- (e) given what Letton actually knew in respect of each of the Projects and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 205, 207, 209, 211, 213, 215, 217, 219, 221, 223, 225, 227, 229, 231, 233, 235 and 237(a) to 237(d) above and 239, 241 and 243 below, Letton:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

238. Further and in the alternative to paragraph 237 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 22 August 2018 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board, GUN's Internal Project Review, Steerco, Engineering Quarterly Business Review and Engineering Quarterly Finance Review meetings identified and/or receipt of the documents identified in paragraphs 211, 213, 215, 217, 219, 223, 225, 227, 229, 231, 233 and 235 above and paragraphs 239, 241 and 243 below, Letton:
- (a) ought to have known the information particularised at paragraphs 205, 207, 209, 211, 213, 215, 217, 219, 221, 223, 225, 227, 229, 231, 233, 235 and 237 above and paragraphs 239, 241 and 243 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
239. By 22 August 2018, in relation to the **Gateway Upgrade North** project:
- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 207, 208, 213, 214, 215, 216, 221, 222, 223, 224, 229, 230, 231, 232, 237 and 238 above;
 - (b) Letton had actual knowledge that GUN remained an underperforming and/or problem project;
 - (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) Letton had actual knowledge, by 8 June 2018, by reason of Letton being in receipt of the Engineering Monthly Management Report dated 31 May 2018, that:
 - (i) a key risk was reliance shortfalls and further margin deterioration on problem projects and that the GUN position assumes 100% recovery on reliances; and

- (ii) this made the forecast GPM for GUN unreasonable;²⁶²
- (f) Letton had actual knowledge, by 25 July 2018, or alternatively 16 August 2018, by reason of Letton's attendance at the Steerco Project Status Report presentations on 15 June 2018, 25 July 2018 and 16 August 2018 and/or by reason of her being in receipt of the Steerco Project Status Reports dated June, July and August 2018, that the forecast GPM had reduced further to a loss of approximately (\$70m) in July and August, which represented a negative deviation of approximately (\$14m) from the GPM in the prior forecast in the Steerco Project Status Report dated June 2018;²⁶³
- (g) Letton had actual knowledge, by 13 August 2018, by reason of Letton receiving the KPMG Engineering Business Board Report addressed to her dated 10 August 2018 as a report for the Engineering Business Board, and, given the significance of the information:
 - (i) notwithstanding the fact that the forecast GPM had risen to a loss of approximately \$70m as reported in the Steerco Project Status Report dated July 2018, KPMG reported to the Engineering Business Board that the GPM was only a loss of approximately (\$56m); and
 - (ii) this information was outdated, inaccurate and unrealistic;²⁶⁴
- (h) Letton had actual knowledge, by 20 August 2018, by reason of Letton's attendance at the relevant sections of the RMAC meeting on 20 August 2018 and/or by reason of her being in receipt of the RMAC presentation pack dated August 2018, that:
 - (i) the GUN project was continuing to forecast a GPM loss of approximately (\$70m);
 - (ii) the reasons for the deterioration in the GPM, including estimating errors at tender on geotechnical ground conditions, lower asphalt productivity

²⁶² Engineering Monthly Report dated 31 May 2018 [LLC.002.008.3451], email Alexandra Tams copied to Laslett, Letton and others dated 8 June 2018 [LLC.002.008.3450].

²⁶³ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco Attendees dated 24 July 2018 [LLC.002.008.0779], Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco Attendees dated 15 August 2018 [LLC.002.005.5174].

²⁶⁴ KPMG Engineering Business Board Report dated 10 August 2018 [LLC.003.033.9342], email from Katrina Smith to Engineering Business Board attendees dated 13 August 2018 [LLC.002.008.0326].

rates and additional bridge piling costs resulting in significant resequencing and traffic management cost impacts;

(iii) the project was pursuing claims/insurance recovery and was relying on \$69.1m (against a total claim value of approximately \$180.0m) to achieve the then current forecast margin of (\$56m). A provision of \$14m was being held at the Engineering Business corporate level against this reliance (equalling the total forecast GPM loss of approximately (\$70m)); and

(iv) there was significant underperformance of the project, including as a result of matters that arose at or shortly after tender phase, which was likely to impact the remainder of the works;²⁶⁵ and

(i) given what Letton actually knew in respect of the GUN project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 205, 207, 213, 215, 221, 223, 229, 231, 237 and 239(a) to 239(h) above, Letton:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

240. Further and in the alternative to paragraph 239 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 22 August 2018 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board, GUN's Internal Project Review, Steerco, Engineering Quarterly Business Review and Engineering Quarterly Finance Review meetings identified and/or receipt of the documents identified in paragraphs 213, 215, 223, 229, 231 and 239 above, Letton:

(a) ought to have known the information particularised at paragraphs 205, 207, 213, 215, 221, 223, 229, 231, 237 and 239 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

²⁶⁵ RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

241. By 22 August 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 209, 210, 213, 214, 217, 218, 221, 222, 225, 226, 229, 230, 233, 234, 237 and 238 above;
- (b) Letton had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Letton had actual knowledge, by 15 June 2018 and through July 2018, by reason of her attendance at the Steerco Project Status Report presentations on 15 June 2018 and 25 July 2018 and/or by reason of her being in receipt of the Steerco Project Status Reports dated June 2018 and July 2018, that:
 - (i) the forecast GPM was reported as slightly decreased to a loss of (\$47.9m) in the Steerco Project Status Report dated June 2018 and remained the same as the May 2018 forecast of a loss of (\$47.8m) in the Steerco Project Status Report dated July 2018; and
 - (ii) as the works progressed through the first quarter, the productivity positions taken in the 2017 forecasts had proven to be optimistic;²⁶⁶
- (f) Letton had actual knowledge, by 16 August 2018, by reason of Letton's attendance at the Steerco Project Status Report presentation and/or by reason of her being in receipt of the Steerco Project Status Report dated August 2018, that:
 - (i) an issue had emerged around the interaction between ground stabilisation works (jet grouting works) and the marine structures, which had the project team critically reviewing the design;

²⁶⁶ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

- (ii) the then current indication was that there would likely be design changes and additional works necessary;
 - (iii) the forecast productivity had been optimistic and the project team had commenced increasing the most likely position; and
 - (iv) the forecast GPM remained at a loss of approximately (\$47.8m);²⁶⁷
- (g) Letton had actual knowledge, by 22 August 2018, by reason of Letton's attendance at the RMAC meeting on 20 August 2018 and/or by reason of her being in receipt of the RMAC presentation pack dated August 2018, that:
- (i) there remained a forecast GPM loss of approximately (\$47.8m); and
 - (ii) the risk relating to the jet grouting issue was under investigation, which represented additional complexities with the project and the progress of the works;²⁶⁸ and
- (h) given what Letton actually knew in respect of the KSD project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 205, 209, 213, 217, 221, 225, 229, 233, 237 and 241(a) to 241(g) above, Letton:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
242. Further and in the alternative to paragraph 241 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 22 August 2018 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board, Steerco, Engineering Quarterly Business Review and Engineering Quarterly Finance Review meetings identified and/or receipt of the documents identified in paragraphs 213, 217, 225, 229, 233 and 241 above, Letton:

²⁶⁷ Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

²⁶⁸ RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

- (a) ought to have known the information particularised at paragraphs 205, 209, 213, 217, 221, 225, 229, 233, 237 and 241 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

243. By 22 August 2018, in relation to the **NorthConnex** project:

- (a) Letton had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 213 above and the information referred to at paragraphs 205, 206, 211, 212, 213, 214, 219, 220, 221, 222, 227, 228, 229, 230, 235, 236, 237 and 238 above;
- (b) Letton had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Letton had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Letton had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Letton had actual knowledge, by 26 June 2018, by reason of her being in receipt of the May 2018 Monthly Management Report – New South Wales dated 26 June 2018, that:
 - (i) the GPM % had been impacted by negative GPM for NCX which contributes 45% of revenue for FY. GPM movement relates to winddowns in October 17 to March 18 and reduced % to complete and slower progress; and
 - (ii) NCX had reduced GPM through various reviews. Contingency had been used to fund the changes in forecast. Design was running behind schedule. DSJV was underperforming and strategies to mitigate were being explored;²⁶⁹
- (f) Letton had actual knowledge, by 9 August 2018, by reason of her involvement in the preparation of the Engineering Portfolio Report dated 9 August 2018

²⁶⁹ May 2018 Monthly Management Report – New South Wales dated 26 June 2018 prepared by Letton and Laslett [LLC.002.008.3199], email from Isabella Morehouse on 26 June 2018 [LLC.002.008.3198].

and/or by reason of her receipt of that document, that the forecast GPM was a loss of approximately (\$120.4m);²⁷⁰ and

(g) given what Letton actually knew in respect of the NCX project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 205, 211, 213, 219, 221, 227, 229, 235, 237 and 243(a) to 243(f) above, Letton:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

244. Further and in the alternative to paragraph 243 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 22 August 2018 and given Letton's position at Lendlease, her attendance at the RMAC, Lendlease Board, Engineering Quarterly Business Review and Engineering Quarterly Finance Review meetings identified and/or receipt of the documents identified in paragraphs 211, 213, 219, 227, 229, 235 and 243 above, Letton:

(a) ought to have known the information particularised at paragraphs 205, 211, 213, 219, 221, 227, 229, 235, 237 and 243 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

The opinion that was actually formed and/or ought to have been formed based on the information and facts available to Letton

245. Letton had actual knowledge of the historical performance of the Projects as at each of the following dates:

(a) 17 October 2017, referred to above at paragraphs 205 to 212 and as summarised in the Badala Report at Table 11, Oct.17 Column (GUN), Table 31, Oct.17 Column (KSD) and Table 51, Sept.17 Column (NCX);

²⁷⁰ Engineering Portfolio Report dated 9 August 2018 [LLC.002.007.9033], email from Matthew Winchur dated 9 August 2018 [LLC.002.007.9032].

- (b) 17 November 2017, referred to above at paragraphs 205 to 220 and as summarised in the Badala Report at Table 11, Oct.17 and Nov.17 Columns (GUN), Table 31, Oct.17 and Nov.17 Columns (KSD) and Table 51, Sept.17 Column (NCX);
- (c) 21 February 2018, referred to above at paragraphs 205 to 228 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17 and Feb.18 Columns (GUN), Table 31, Oct.17, Nov.17 and Feb.18 Columns (KSD) and Table 51, Sept.17 and Dec.17 Columns (NCX);
- (d) 31 May 2018, referred to above at paragraphs 205 to 236 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18 and May.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18 and May.18 Columns (KSD) and Table 51, Sept.17, Dec.17 and Mar.18 Columns (NCX); and
- (e) 22 August 2018, referred to above at paragraphs 205 to 244 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (KSD) and Table 51, Sept.17, Dec.17, Mar.18 and Jun.18 Columns (NCX).

(Letton Identified Dates).

246. At each of the Letton Identified Dates, by reason of Letton's:

- (a) actual and/or constructive knowledge as particularised in:
 - (i) paragraphs 205 to 212 above in respect of the period prior to 17 October 2017;
 - (ii) paragraphs 205 to 220 above in respect of the period prior to 17 November 2017;
 - (iii) paragraphs 205 to 228 above in respect of the period prior to 21 February 2018;
 - (iv) paragraphs 205 to 236 above in respect of the period prior to 31 May 2018;
 - (v) paragraphs 205 to 244 above in respect of the period prior to 22 August 2018;

- (b) alternatively,
 - (i) actual and/or constructive knowledge as particularised in paragraphs 205 to 245 above; and
 - (ii) constructive knowledge based upon her ability to access information of the historical performance of the Projects in her capacity as Chief Financial Officer of the Engineering Business as at each relevant date, to the extent that historical performance is as summarised in:
 - (A) the Badala Report, at Table 11 (GUN), Table 31 (KSD) and Table 51 (NCX) and [97]-[190], [191]-[283] and [284]-[371]; and
 - (B) the documents considered and referred to by Peter Badala as identified and extracted by Document ID as the “Source File” or “Source” in Annexures A.1, A.2, B.1, B.2, C.1 and C.2 of that report for each relevant period; and
- (c) role as Chief Financial Officer of the Engineering Business;

Letton:

- (d) had actual knowledge, ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to her (as particularised in [246(a)] and [246(b)] above, insofar as the allegations are of actual knowledge), or which ought to have been known to her (as particularised in [246(a)] and [246(b)] above, insofar as the allegations are of constructive knowledge), that the provisions taken for the Engineering Business as a consequence of the Projects were inadequate; and
- (e) ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to her, or which ought to have been known to her, that:

Provision Information

- (i) additional provisions for the Engineering Business would need to be taken as a consequence of the Projects, as follows:
 - (A) as at 17 October 2017, the 17 October 2017 Provision Information, being approximately \$415.0 million for the Engineering Business;

- (B) as at 17 November 2017, the 17 November 2017 Provision Information, being approximately \$363.2 million for the Engineering Business;
- (C) as at 21 February 2018, the 21 February 2018 Provision Information, being approximately \$331.3 million for the Engineering Business;
- (D) as at 31 May 2018, the 31 May 2018 Provision Information, being approximately \$393.6 million for the Engineering Business; and
- (E) as at 22 August 2018, the 22 August 2018 Provision Information, being approximately \$415.5 million for the Engineering Business; and/or

Overstated profits

- (ii) by reason of the inadequate provisions, the profits were overstated and a reduction in published profits was required as follows:
 - (A) as at 21 February 2018, the 31 December 2017 Profit Information, being a reduction in after-tax profits of \$231.9 million; and
 - (B) as at 22 August 2018, the 30 June 2018 Profit Information, being a reduction in after-tax profits of \$290.9 million.

H. Mason

17 October 2017

247. By 17 October 2017, in relation to the **Engineering Business**:

- (a) Mason had actual knowledge that the Engineering Business was underperforming;
- (b) Mason had actual knowledge that there was erosion to the forecast GPM and contingency;
- (c) Mason had actual knowledge, by 11 September 2017, by reason of his attendance at the Engineering Quarterly Business Review on 11 September 2017, and/or by reason of him being in receipt of the Engineering Quarterly

Business Review Presentation dated September 2017, of the Systemic Reporting and Performance Issues;²⁷¹ and

(d) given what Mason actually knew in respect of each of the Projects and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 247(a) to 247(c) above and paragraphs 249, 251 and 253 below, Mason:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

248. Further and in the alternative to paragraph 247 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 17 October 2017 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review and GUN's Internal Project Review meetings identified and/or receipt of the documents identified in paragraph 247 above and paragraphs 249, 251 and 253 below, Mason:

(a) ought to have known the information particularised at paragraph 247 above and paragraphs 249, 251 and 253 below; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

249. By 17 October 2017, in relation to the **Gateway Upgrade North** project:

(a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247 and 248 above;

(b) Mason had actual knowledge that GUN was an underperforming and/or problem project;

²⁷¹ Engineering Quarterly Business Review Presentation dated September 2017 [LLC.003.022.5081], attendees identified in Engineering Quarterly Business Review meeting Actions List dated 11 September 2017 [LLC.033.019.8302].

- (c) Mason had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 18 May 2017, by reason of his attendance at the Project Review summary and/or by reason of him being in receipt of the Project Review Attendance Summary document dated 18 May 2017, that:
 - (i) there was a high risk that the forecast margin could reduce further by the end of 2017, and it would depend on Lendlease meeting the program and “ramping down the team to meet the projected timeframes”;
 - (ii) design risk was listed as a “red traffic light”;
 - (iii) only 15% of the contingency allowance remained, which Lendlease identified to be “concerning when the project is at 53% complete”;
 - (iv) there was only 48 days float to completion;
 - (v) the R&O table listed the worst as a loss of (\$49.2m), most likely a loss of (\$12.8m) and best a profit of \$3.6m;
 - (vi) the mitigation of the risks set identified in the Project Review Attendance Summary was “critical to reducing margin erosion”; and
 - (vii) there was a high risk of margin erosion below 7.4%;²⁷²
- (f) Mason had actual knowledge, by 11 September 2017, by reason of Mason’s attendance at the Engineering Quarterly Business Review Presentation and/or the Engineering Quarterly Finance Review Presentation and/or by reason of him being in receipt of the presentation packs distributed to attendees that:
 - (i) GUN was underperforming, in that it had been given a “red” risk rating and had been identified to be under time and under budget pressure;
 - (ii) there was an erosion of contingency, with only \$5.9m contingency remaining; and

²⁷² Project Review Attendance Summary dated 18 May 2017 [LLC.006.106.9172].

- (iii) the then current forecast profit margin remained at approximately \$51.6m for the GUN project;²⁷³
- (g) Mason had actual knowledge, by 16 October 2017, by reason of his involvement in the preparation of and/or by reason of him being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017, that:
 - (i) the CoE had identified GUN to be a project that should be monitored;
 - (ii) the CoE had reviewed GUN and had provided an indication that its then “current view” was that there would be a GPM reduction to \$15m with further deterioration possible. This was due to, *inter alia*, cost overruns in traffic management, design growth and construction phase services;
 - (iii) there continued to be contingency erosion, with only \$3.6m of contingency remaining of the \$41.1m budget, being only 1.5% of the cost to complete of (\$233m);
 - (iv) a half day review of the GUN project was scheduled on 19 October 2017 for Laslett and the CoE; and
 - (v) the CoE had identified and reported on six underperforming projects, NCX, GUN, KSD, CityLink Tulla Widening, Caulfield to Dandenong Alliance and Tug Harbour;²⁷⁴ and
- (h) given what Mason actually knew in respect of the GUN project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 247 and 249(a) to 249(g) above, Mason:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

²⁷³ Engineering Quarterly Finance Review presentation pack dated September 2017 [LLC.003.022.5080], Engineering Quarterly Business Review presentation pack dated September 2017 [LLC.003.022.5081], attendees identified in Engineering Quarterly Business Review meeting Actions List dated 11 September 2017 [LLC.033.019.8302].

²⁷⁴ CoE Update on Non-Performing Projects in Engineering [LLC.002.010.5556], email from Mason to McCann and another on 16 October 2017 [LLC.008.007.6539].

250. Further and in the alternative to paragraph 249 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 17 October 2017 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review and GUN's Internal Project Review meetings identified and/or receipt of the documents identified in paragraphs 247 and 249 above, Mason:

- (a) ought to have known the information particularised at paragraphs 247 and 249 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

251. By 17 October 2017, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247 and 248 above;
- (b) Mason had actual knowledge that KSD was an underperforming and/or problem project;
- (c) Mason had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 16 October 2017, by reason of his involvement in the preparation of and/or by reason of him being in receipt of the CoE Update on Non-Performing Projects in Engineering dated 16 October 2017, that:
 - (i) while the business was targeting a break even GPM of \$0 (zero), it was the CoE's view that the GPM was likely to be a loss of approximately (\$40m);
 - (ii) there were cost concerns from geotechnical issues along the bed of the Brisbane River and significant underground services;
 - (iii) the forecast completion date had moved from 5 July 2019 to 28 January 2020 and no time contingency remained;

- (iv) the CoE anticipated completion date with appropriate time contingency was April 2020;
 - (v) the cost contingency had eroded; and
 - (vi) there was a significant reliance of \$70m;²⁷⁵ and
 - (f) given what Mason actually knew in respect of the KSD project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 247 and 251(a) to 251(e) above, Mason:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
252. Further and in the alternative to paragraph 251 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 17 October 2017 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review meeting identified and/or receipt of the documents identified in paragraphs 247 and 251 above, Mason:
- (a) ought to have known the information particularised at paragraphs 247 and 251 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
253. By 17 October 2017, in relation to the **NorthConnex** project:
- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247 and 248 above;
 - (b) Mason had actual knowledge that NCX was an underperforming and/or problem project;

²⁷⁵ CoE Update on Non-Performing Projects in Engineering dated 16 October 2017 [LLC.002.010.5556], email from Mason to McCann and another on 16 October 2017 [LLC.008.007.6539].

- (c) Mason had actual knowledge that there was erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 16 October 2017, by reason of his involvement in the CoE review and/or by reason of him being in receipt of the CoE report, that:
 - (i) the likely GPM position for the NCX project (Lendlease share) would be a loss of approximately (\$100m);
 - (ii) the CoE had attended the NCX program review which identified significant program and cost overruns;
 - (iii) there had been an erosion of contingency of 7 months;
 - (iv) the exposure to liquidated damages was approximately \$350,000 per day;
 - (v) the CoE had formed the view that the NCX program was “under significant time pressure”;
 - (vi) a further review would be carried out in November 2017;
 - (vii) the largest issue was the requirement for deeper tunnel alignment which was anticipated to cost approximately \$130m and liability had not yet been established; and
 - (viii) there were significant slippages in the tunnel works;²⁷⁶ and
- (f) given what Mason actually knew in respect of the NCX project and the Engineering Business as a whole as at 17 October 2017 by reason of the information identified in paragraphs 247 and 253(a) to 253(e) above, Mason:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

²⁷⁶ CoE Update on Non-Performing projects in Engineering dated 16 October 2017 [LLC.002.010.5556], email from Mason to McCann and another on 16 October 2017 [LLC.008.007.6539].

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

254. Further and in the alternative to paragraph 253 above, by 17 October 2017, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 17 October 2017 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review meeting identified and/or receipt of the documents identified in paragraphs 247 and 253 above, Mason:

- (a) ought to have known the information particularised at paragraphs 247 and 253 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

17 November 2017

255. By 17 November 2017, in relation to the **Engineering Business**:

- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247 to 254 above;
- (b) Mason had actual knowledge that the Engineering Business continued to underperform;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 15 November 2017, by reason of Mason's attendance at the RMAC meeting on 15 November 2017 and/or by reason of being in receipt of the RMAC Report dated November 2017, that:
 - (i) the underperforming projects of the Engineering Business were listed as the number one Group wide risk and were identified to be high risk with a very large likely impact and risk; and

- (ii) the Engineering Business had significantly increased its reliance assumptions in the quarter, including (\$33.7m) for GUN and (\$42.7m) for KSD;²⁷⁷ and
 - (f) given what Mason actually knew in respect of each of the Projects and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 247, 249, 251, 253 and 255(a) to 255(e) above and paragraphs 257, 259 and 261 below, Mason:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
256. Further and in the alternative to paragraph 255 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 17 November 2017 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, GUN's Internal Project Review and Steerco meetings identified and/or receipt of the documents identified in paragraphs 247, 249, 251, 253 and 255 above and paragraphs 257, 259 and 261 below, Mason:
- (a) ought to have known the information particularised at paragraphs 247, 249, 251, 253 and 255 above and paragraphs 257, 259 and 261 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
257. By 17 November 2017, in relation to the **Gateway Upgrade North** project:
- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247, 248, 249, 250, 255 and 256 above;
 - (b) Mason had actual knowledge that GUN remained an underperforming and/or problem project;

²⁷⁷ RMAC Report dated November 2017 [LLC.008.022.4073].

- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 15 November 2017, by reason of Mason's attendance at the relevant sections of the RMAC meeting on 15 November 2017 and/or by reason of him being in receipt of the RMAC presentation pack dated November 2017, that:
 - (i) GUN was identified as being 68.4% complete;
 - (ii) at contract inception, the GPM was approximately \$52.5m but was then forecast to be \$15m with an annual FY18 GPM result of a loss of (\$6.2m);
 - (iii) there was an assumed reliance of \$69.8m;
 - (iv) GUN remained an underperforming project and the various reasons for the underperformance, including that there were delays, design changes, difficult geotechnical conditions and resequencing of works;
 - (v) the delivery of the project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to mitigate delays, changed requirements to remove and replace spoil and additional temporary traffic management;
 - (vi) there was further erosion in the likely GPM; and
 - (vii) the GPM was contingent on large reliances. Specifically, the project was pursuing \$190.3m in claims of which it needed to recover \$69.1m in order to achieve the then current forecast GPM of \$15m;²⁷⁸ and
- (f) given what Mason actually knew in respect of the GUN project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 247, 249, 255 and 257(a) to 257(e) above, Mason:
 - (i) had actual knowledge;

²⁷⁸ RMAC Report dated November 2017 [LLC.008.022.4073], attendees identified in minutes of RMAC meeting 15 November 2017 [LLC.011.008.2694].

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

258. Further and in the alternative to paragraph 257 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 17 November 2017 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC and GUN's Internal Project Review meetings identified and/or receipt of the documents identified in paragraphs 247, 249, 255 and 257 above, Mason:

(a) ought to have known the information particularised at paragraphs 247, 249, 255 and 257 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

259. By 17 November 2017, in relation to the **Kingsford Smith Drive Upgrade** project:

(a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247, 248, 251, 252, 255 and 256 above;

(b) Mason had actual knowledge that KSD remained an underperforming and/or problem project;

(c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;

(d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;

(e) Mason had actual knowledge, by 1 November 2017, by reason of him attending the Steerco Project Status Report presentation and/or by being in receipt of the Steerco Project Status Report dated 1 November 2017, that:

(i) the forecast GPM had reduced from \$36.9m to \$0 (zero), or break even;

(ii) there was a delay of approximately 9 months to the works; and

- (iii) the delays were caused by, *inter alia*, changes in design scope and complexity, latent conditions (geotechnical) and works to marine structures;²⁷⁹ and
 - (f) given what Mason actually knew in respect of the KSD project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 247, 251, 255 and 259(a) to 259(e) above, Mason:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
260. Further and in the alternative to paragraph 259 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 17 November 2017 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC and Steerco meetings identified and/or receipt of the documents identified in paragraphs 247, 251, 255 and 259 above, Mason:
- (a) ought to have known the information particularised at paragraphs 247, 251, 255 and 259 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.
261. By 17 November 2017, in relation to the **NorthConnex** project:
- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247, 248, 253, 254, 255 and 256 above;
 - (b) Mason had actual knowledge that NCX remained an underperforming and/or problem project;

²⁷⁹ Steerco Project Status Report dated 1 November 2017 [LLC.002.010.4935], email from Mason to Steerco attendees dated 1 November 2017 [LLC.002.010.5009].

- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
 - (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
 - (e) Mason had actual knowledge, by 18 October 2017, by reason of him being in receipt of the Supporting Documents to the NCX Monthly ACF Presentation, that:
 - (i) the likely Lendlease GPM position would be a loss of approximately (\$228.9m); and
 - (ii) there was a (\$457.9m) variance in costs between tender and forecast at completion;²⁸⁰
 - (f) Mason had actual knowledge, by 15 November 2017, by reason of him being in receipt of the RMAC presentation pack, that:
 - (i) the GPM could be in the order of a loss of approximately (\$90m); and
 - (ii) a provision of \$14.9m was being held on NCX;²⁸¹ and
 - (g) given what Mason actually knew in respect of the NCX project and the Engineering Business as a whole as at 17 November 2017 by reason of the information identified in paragraphs 247, 253, 255 and 261(a) to 261(f) above, Mason:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
262. Further and in the alternative to paragraph 261 above, by 17 November 2017, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 17 November 2017 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly

²⁸⁰ Supporting Documents in NCX Monthly ACF Presentation dated 18 October 2017 [LLC.021.004.7504], email from Mason dated 22 October 2017 [LLC.021.004.7469].

²⁸¹ RMAC presentation pack dated 15 November 2017 [LLC.008.022.4073].

Business Review and RMAC meetings identified and/or receipt of the documents identified in paragraphs 247, 253, 255 and 261 above, Mason:

- (a) ought to have known the information particularised at paragraphs 247, 253, 255 and 261 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

21 February 2018

263. By 21 February 2018, in relation to the **Engineering Business**:

- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247 to 262 above;
- (b) Mason had actual knowledge that the Engineering Business continued to underperform;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified; and
- (e) given what Mason actually knew in respect of each of the Projects and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 247, 249, 251, 253, 255, 257, 259, 261 and 263(a) to 263(d) above and paragraphs 265, 267 and 269 below, Mason:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

264. Further and in the alternative to paragraph 263 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 21 February 2018 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business

Review, RMAC, GUN's Internal Project Review and Steerco meetings identified and/or receipt of the documents identified in paragraphs 247, 249, 251, 253, 255, 257, 259 and 261 above and paragraphs 265, 267 and 269 below, Mason:

- (a) ought to have known the information particularised at paragraphs 247, 249, 251, 253, 255, 257, 259, 261 and 263 above and paragraphs 265, 267 and 269 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

265. By 21 February 2018, in relation to the **Gateway Upgrade North** project:

- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247, 248, 249, 250, 255, 256, 257, 258, 263 and 264 above;
- (b) Mason had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 14 February 2018, by reason of Mason's attendance at the Steerco Project Status Report presentation on 14 February 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated February 2018, that:
 - (i) the GUN project continued to be an underperforming project;
 - (ii) there was an increase in forecast costs of approximately \$91.0m against budget;
 - (iii) the GPM was continuing to erode with it being reported as \$4.4m prior to additional costs (\$4.5m) and reliance (\$17.5m) provisions, for a net Project position of (\$17.6m);
 - (iv) the project was pursuing \$140.4m of claims and relying on a net claim of \$44.8m (gross reliance excluding payment on account \$69.7m); and

- (v) there was contingency erosion, with it now being \$3.9m compared to a budget of \$55.1m;²⁸²
- (f) Mason had actual knowledge, by 19 February 2018, by reason of Mason's attendance at the relevant section of the RMAC meeting on 19 February 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated February 2018, that:
 - (i) the GPM or WOL P/L for GUN was forecast to be a loss of approximately (\$17.6m);
 - (ii) GUN was identified as being 76.1% complete;
 - (iii) the GPM was then forecast to be (\$17.6m), a movement of (\$32.6m) since the last RMAC in October 2017;
 - (iv) there was an assumed reliance of \$69.1m;
 - (v) the delivery of the project (time and cost) had been impacted by design changes, difficult geotechnical conditions, resequencing of works to mitigate delays and additional temporary traffic management;
 - (vi) the project was relying on \$44.8m relating to claims and variations in order to achieve the forecast margin;
 - (vii) the forecast GPM was largely contingent on Lendlease successfully pursuing various contractual and insurance claims, and that there was inherent uncertainty in Lendlease's success; and
 - (viii) the issues that were leading to the erosion of the GPM had been identified early in the project and, in some cases, during the tender phase;²⁸³ and
- (g) given what Mason actually knew in respect of the GUN project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 247, 249, 255, 257, 263 and 265(a) to 265(f) above, Mason:
 - (i) had actual knowledge;

²⁸² Steerco Project Status Report dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 meeting [LLC.002.009.0717].

²⁸³ RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283], attendees identified in Minutes of RMAC meeting on 19 February 2018 [LLC.011.008.3733].

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

266. Further and in the alternative to paragraph 265 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 21 February 2018 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, GUN's Internal Project Review and Steerco meetings identified and/or receipt of the documents identified in paragraphs 247, 249, 255, 257 and 265 above, Mason:

- (a) ought to have known the information particularised at paragraphs 247, 249, 255, 257, 263 and 265 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

267. By 21 February 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247, 248, 251, 252, 255, 256, 259, 260, 263 and 264 above;
- (b) Mason had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 14 February 2018, by reason of his attendance at the Steerco Project Status Report presentation on 14 February 2018 and/or by being in receipt of the Steerco Project Status Report dated February 2018, that there was a projected loss against budget of (\$36.5m) with an additional

cost provision of (\$10m). The total project GPM was \$0 (zero) or break even, and the net project position including the cost provision was (\$10m);²⁸⁴ and

(f) given what Mason actually knew in respect of the KSD project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 247, 251, 255, 259, 263 and 267(a) to 267(e) above, Mason:

(i) had actual knowledge;

(ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

268. Further and in the alternative to paragraph 267 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 21 February 2018 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC and Steerco meetings identified and/or receipt of the documents identified in paragraphs 247, 251, 255, 259 and 267 above, Mason:

(a) ought to have known the information particularised at paragraphs 247, 251, 255, 259, 263 and 267 above; and/or

(b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

269. By 21 February 2018, in relation to the **NorthConnex** project:

(a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247, 248, 253, 254, 255, 256, 261, 262, 263 and 264 above;

(b) Mason had actual knowledge that NCX remained an underperforming and/or problem project;

(c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;

²⁸⁴ Steerco presentation dated February 2018 [LLC.002.009.0716], attendees identified in Steerco Agenda for 14 February 2018 meeting [LLC.002.009.0717].

- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 7 December 2017, by reason of him being in receipt of the Engineering Quarterly Business Review report dated 7 December 2017, that:
 - (i) the company level forecast GPM was a loss of approximately (\$75m);
 - (ii) during the quarter the Engineering Business reduced its FY18 MPAT following the completion of project reviews, including NCX;
 - (iii) NCX was listed as being 48% complete;
 - (iv) significant cost variances had occurred since contract inception; and
 - (v) there was a strategy in place to pursue revenue from the client, however the then current forecast assumed no reliance;²⁸⁵
- (f) Mason had actual knowledge, by 19 February 2018, by reason of him being in attendance at the RMAC meeting on 19 February 2018, or by reason of him being in receipt of the RMAC presentation pack, that:
 - (i) the total project loss had deteriorated from a loss of approximately (\$149m) to a loss of approximately (\$207m);
 - (ii) an additional provision was raised for risks associated with staff demobilisation, a range of M&E risks such as resource rate increases, delay to program and productivity inefficiencies;
 - (iii) an increase in costs in the order of approximately (\$52.1m) was likely;
 - (iv) NCX was listed as being approximately 54.6% complete; and
 - (v) “Significant costs variances impacting margin have occurred since contract inception that relate to deeper alignment and geotechnical issues, productivity and programme, spoil removal and other tender items including Buildings and Civil”;²⁸⁶

²⁸⁵ Quarterly Business Review – Engineering Business Report dated 7 December 2017 [LLC.008.020.4775], email from Jade Henningsen dated 7 December 2017 [LLC.008.020.4774]; Engineering Business Board Report dated 31 December 2017 [LLC.003.021.1645].

²⁸⁶ RMAC Speakers Notes dated 16 February 2018 [LLC.003.024.8045], RMAC presentation pack dated 19 February 2018 [LLC.008.006.0283].

- (g) Mason had actual knowledge, by 21 February 2018, by reason of him being in receipt of the NCX Monthly Project Reviews, that there were delays to the works being caused by the change of design and cracking in the tunnel lining and sequencing and that there were delays across many key targets;²⁸⁷ and
 - (h) given what Mason actually knew in respect of the NCX project and the Engineering Business as a whole as at 21 February 2018 by reason of the information identified in paragraphs 247, 253, 255, 261, 263 and 269(a) to 269(g) above, Mason:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
270. Further and in the alternative to paragraph 269 above, by 21 February 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 21 February 2018 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review and RMAC meetings identified and/or receipt of the documents identified in paragraphs 247, 253, 255, 261 and 269 above, Mason:
- (a) ought to have known the information particularised at paragraphs 247, 253, 255, 261, 263 and 269 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

31 May 2018

271. By 31 May 2018, in relation to the **Engineering Business**:
- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247 to 270 above;

²⁸⁷ NCX Monthly Project Review dated 13 September 2017 [LLC.008.008.0560], email from Roleen Kumar to Mason dated 13 September 2017 [LLC.008.008.0558]; NCX Monthly Project Review dated 11 October 2017 [LLC.002.034.4825], email from Roleen Kumar to Mason dated 11 October 2017 [LLC.002.034.4824]; NCX Monthly Project Review dated 12 January 2018 [LLC.002.009.1832], email from Roleen Kumar to Mason dated 12 January 2018 [LLC.002.009.1831]; NCX Monthly Project Review dated 14 February 2018 [LLC.002.008.8933], email from Roleen Kumar to Mason dated 14 February 2018 [LLC.002.008.8932].

- (b) Mason had actual knowledge that the Engineering Business continued to underperform;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified and further issues with the accuracy and reliability of cost forecasting had been identified (see paragraph 271(e) below and paragraph 273(g) below);
- (e) Mason had actual knowledge, by 26 March 2018, by reason of Mason's attendance at the Quarterly Business Review and/or by reason of him being in receipt of the Quarterly Business Review dated 26 March 2018, that:
 - (i) Lendlease was cautiously reviewing pipeline and strategy and was continuing to influence market and customers regarding expectations;
 - (ii) in depth project reviews were being conducted throughout the Engineering Business in March;
 - (iii) potential impacts to the FY18 forecast as a result of the review would be run through Steerco before being incorporated into the March forecast;
 - (iv) during the quarter, the Engineering Business reduced its FY18 MPAT forecast from a loss of approximately (\$53m) to a loss of approximately (\$77m) due to provisioning;
 - (v) the draft FY19 business plan indicated FY19 MPAT of \$19m against prior forecast of \$75m;
 - (vi) the FY19 MPAT included (pre tax) "stretch targets" of \$13.7m; and
 - (vii) the then current FY18 (or FY19) MPAT did not include additional risk for problem projects (NCX, GUN, KSD);²⁸⁸
- (f) Mason had actual knowledge, by 24 May 2018, by reason of his attendance at the RMAC meeting on 24 May 2018 and/or by reason of his involvement in the preparation of and/or receipt of the RMAC Report dated May 2018, that:

²⁸⁸ Quarterly Business Review dated 26 March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

- (i) each of NCX, KSD and GUN were listed as “very high likelihood” with NCX listed as “very large impact” and KSD and GUN listed as “large impact” for “operational issues”; and
 - (ii) there was a decline in profitability due to the known deterioration in projects in the Engineering Business;²⁸⁹ and
- (g) given what Mason actually knew in respect of each of the Projects and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 247, 249, 251, 253, 255, 257, 259, 261, 263, 265, 267, 269 and 271(a) to 271(f) above and paragraphs 273, 275 and 277 below, Mason:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
272. Further and in the alternative to paragraph 271 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 31 May 2018 and given Mason’s position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, GUN’s Internal Project Review and Steerco meetings identified and/or receipt of the documents identified in paragraphs 247, 249, 251, 253, 255, 257, 259, 261, 265, 267, 269 and 271 above and paragraphs 273, 275 and 277 below , Mason:
- (a) ought to have known the information particularised at paragraphs 247, 249, 251, 253, 255, 257, 259, 261, 263, 265, 267, 269 and 271 above and paragraphs 273, 275 and 277 below; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.
273. By 31 May 2018, in relation to the **Gateway Upgrade North** project:
- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at

²⁸⁹ RMAC Report dated May 2018 [LLC.011.009.8254], attendees identified in Minutes of RMAC meeting 24 May 2018 [LLC.011.008.3750].

paragraphs 247, 248, 249, 250, 255, 256, 257, 258, 263, 264, 265, 266, 271 and 272 above;

- (b) Mason had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 12 and 13 March 2018, by reason of Mason attending the two day GUN Project Review which took place on 12 and 13 March 2018, that:
 - (i) the forecast GPM was now forecast to be a loss of approximately (\$51.0m);
 - (ii) the profit plan had been presented and there was a significant risk of further losses beyond the forecast loss of (\$51.0m);
 - (iii) there had been a significant slippage since the 50% project review in May 2017 and that there was a very high risk that the program would continue to slip with the forecast margin loss increasing further;
 - (iv) close monitoring would be required for the forecast loss of (\$51.0m) to be achieved;
 - (v) the project was reported to be 80% complete with traffic lights being red for the project overall and cost report, schedule, design, PPP and cash;
 - (vi) there was no float in the program and there was a significant risk that it would slip further in the months before December 2018;
 - (vii) the executive summary stated that “there have been significant cost overruns over many parts of the project. There has been 10% design growth and \$20m overrun in the Construction Phase Services costs. There is \$71.6m of reliance and it is considered optimistic that a recovery of 50% will be achieved across all the many claims. There are a lot of areas open along the alignment and it will be critical to finish all the works

before each stage is opened. The program is under extreme pressure and 41 days EOTs are still to be resolved. There are 6 critical paths with less than 30 days float, so daily monitoring of productivity and program is critical”;

- (viii) there had been significant cost overruns across the project and in many cost codes;
- (ix) the cost reporting on the project was inadequate and there were errors in the reporting, which meant cost forecasting was not accurate;
- (x) the lack of cost planning was raised in the October 2015 and the April 2016 design reviews, however the design was not controlled; and
- (xi) at the 50% project review, in May 2017, the poor management of the Construction Phase Services was raised as a significant cost overrun, however, there was a significant loss forecast and the CPS was over budget;²⁹⁰
- (f) Mason had actual knowledge, by 13 March 2018, by reason of Mason’s attendance at the Steerco Project Status Report presentation on 13 March 2018 and/or by reason of him being in receipt of the Steerco Project Status Report dated March 2018, that the net project GPM for GUN was being reported as a loss of approximately (\$17.6m);²⁹¹
- (g) Mason had actual knowledge, by 26 March 2018, by reason of his attendance at the Engineering Quarterly Business Review on 26 March 2018 and/or by reason of him being in receipt of the Engineering Quarterly Business Review dated March 2018, that:
 - (i) a two day review of the GUN project had been held on 12 and 13 March 2018;
 - (ii) the review established that the GUN project presented a key risk to the Engineering Business; and
 - (iii) the forecast GPM was being finalised;²⁹²

²⁹⁰ 75% Project Review Attendance Summary dated 12 March 2018 [LLC.033.007.9445].

²⁹¹ Steerco Presentation [LLC.002.008.8309], email from Letton to Steerco attendees dated 9 March 2018 [LLC.002.008.8308].

²⁹² Engineering Quarterly Business Review dated March 2018 [LLC.002.008.8898], attendees identified in Actions from Lendlease Engineering QBR on 26 March 2018 [LLC.033.003.2242].

- (h) Mason had actual knowledge, by 24 April 2018 and 12 May 2018, by reason of Mason's attendance at the Steerco Project Status Report presentation on 12 May 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated April and May 2018, that the forecast GPM for GUN was continuing to erode and was then a forecast loss of approximately (\$56m);²⁹³ and
- (i) given what Mason actually knew in respect of the GUN project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 247, 249, 255, 257, 263, 265, 271 and 273(a) to 273(h) above, Mason:
- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,
- that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
274. Further and in the alternative to paragraph 273 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 31 May 2018 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, GUN's Internal Project Review and Steerco meetings identified and/or receipt of the documents identified in paragraphs 247, 249, 255, 257, 265, 271 and 273 above, Mason:
- (a) ought to have known the information particularised at paragraphs 247, 249, 255, 257, 263, 265, 271 and 273 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.
275. By 31 May 2018, in relation to the **Kingsford Smith Drive Upgrade** project:
- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at

²⁹³ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369], Steerco Project Status Report May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

paragraphs 247, 248, 251, 252, 255, 256, 259, 260, 263, 264, 267, 268, 271 and 272 above;

- (b) Mason had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 24 April 2018, by reason of Mason being in receipt of the Steerco Project Status Reports dated April 2018, that:
 - (i) the likely GPM was a loss of approximately (\$47.8m); and
 - (ii) there were delays to the works;²⁹⁴
- (f) Mason had actual knowledge, by 12 May 2018, by reason of Mason's attendance at the Steerco Project Status Report presentation on 12 May 2018 and/or by reason of being in receipt of the Steerco Project Status Report dated May 2018, that there was no change to the GPM forecast loss between April 2018 and May 2018;²⁹⁵ and
- (g) given what Mason actually knew in respect of the KSD project and the Engineering Business as a whole as at 31 May 2018 by reason of the information identified in paragraphs 247, 251, 255, 259, 263, 267, 271 and 275(a) to 275(f) above, Mason:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

276. Further and in the alternative to paragraph 275 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the

²⁹⁴ Steerco Project Status Report dated April 2018 [LLC.002.008.6372], email from Mason to Steerco attendees dated 23 April 2018 [LLC.002.008.6369].

²⁹⁵ Steerco Project Status Report dated May 2018 [LLC.002.008.4680], email from Mason to Steerco attendees dated 11 May 2018 [LLC.002.008.4679].

KSD project and the Engineering Business as a whole prior to 31 May 2018 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC and Steerco meetings identified and/or receipt of the documents identified in paragraphs 247, 251, 255, 259, 267, 271 and 275 above, Mason:

- (a) ought to have known the information particularised at paragraphs 247, 251, 255, 259, 263, 267, 271 and 275 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

277. By 31 May 2018, in relation to the **NorthConnex** project:

- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247, 248, 253, 254, 255, 256, 261, 262, 263, 264, 269, 270, 271 and 272 above;
- (b) Mason had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 1 May 2018, by reason of him being in receipt of the NCX Monthly Project Review Internal Report dated 1 May 2018, that there were construction issues delaying the progress of the works, including that defects in the cast insitu wall in the M2 shaft had been exposed, there was cracking and shear movement in portions of the tunnel resulting in lost production and there was an approximately 158 day slippage to the program;²⁹⁶ and
- (f) given what Mason actually knew in respect of the NCX project and the Engineering Business as a whole as at 31 May 2018 by reason of the

²⁹⁶ NCX Monthly Project Review Internal Report dated 1 May 2018 [LLC.002.008.4184], email from Roleen Kumar to Mason and others dated 14 May 2018 [LLC.002.008.4181].

information identified in paragraphs 247, 253, 255, 261, 263, 269, 271 and 277(a) to 277(e) above, Mason:

- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

278. Further and in the alternative to paragraph 277 above, by 31 May 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 31 May 2018 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review and RMAC meetings identified and/or receipt of the documents identified in paragraphs 247, 253, 255, 261, 269, 271 and 277 above, Mason:

- (a) ought to have known the information particularised at paragraphs 247, 253, 255, 261, 263, 269, 271 and 277 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

22 August 2018

279. By 22 August 2018, in relation to the **Engineering Business**:

- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247 to 278 above;
- (b) Mason had actual knowledge that the Engineering Business continued to underperform;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified; and
- (e) given what Mason actually knew in respect of each of the Projects and the Engineering Business as a whole as at 22 August 2018 by reason of the

information identified in paragraphs 247, 249, 251, 253, 255, 257, 259, 261, 263, 265, 267, 269, 271, 273, 275, 277 and 279(a) to 279(d) above and paragraphs 281, 283 and 285 below, Mason:

- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

280. Further and in the alternative to paragraph 279 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the Projects and the Engineering Business as a whole prior to 22 August 2018 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, GUN's Internal Project Review and Steerco meetings identified and/or possession of the documents identified in paragraphs 247, 249, 251, 253, 255, 257, 259, 261, 265, 267, 269, 271, 273, 275 and 277 above and paragraphs 281, 283 and 285 below, Mason:

- (a) ought to have known the information particularised at paragraphs 247, 249, 251, 253, 255, 257, 259, 261, 263, 265, 267, 269, 271, 273, 275, 277 and 279 above and paragraphs 281, 283 and 285 below; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of each of the Projects and the Engineering Business as a whole.

281. By 22 August 2018, in relation to the **Gateway Upgrade North** project:

- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247, 248, 249, 250, 255, 256, 257, 258, 263, 264, 265, 266, 271, 272, 273, 274, 279 and 280 above;
- (b) Mason had actual knowledge that GUN remained an underperforming and/or problem project;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;

- (e) Mason had actual knowledge, by 25 July 2018, or alternatively 16 August 2018, by reason of Mason's attendance at the Steerco Project Status Report presentations on 15 June 2018, 25 July 2018 and 16 August 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated June, July and August 2018, that the forecast GPM had reduced further to a loss of approximately (\$70m) in July and August, which represented a negative deviation of approximately (\$14m) from the GPM in the prior forecast in the Steerco Project Status Report dated June 2018;²⁹⁷
- (f) Mason had actual knowledge, by 20 August 2018, by reason of Mason's attendance at the relevant sections of the RMAC meeting on 20 August 2018 and/or by reason of him being in receipt of the RMAC presentation pack dated August 2018, that:
- (i) the GUN project was continuing to forecast a GPM loss of approximately (\$70m);
 - (ii) the reasons for the deterioration in the GPM, including estimating errors at tender on geotechnical ground conditions, lower asphalt productivity rates and additional bridge piling costs resulting in significant resequencing and traffic management cost impacts;
 - (iii) the project was pursuing claims/insurance recovery and was relying on \$69.1m (against a total claim value of approximately \$180.0m) to achieve the then current forecast margin of (\$56m). A provision of \$14m was being held at the Engineering Business corporate level against this reliance (equalling the total forecast GPM loss of approximately (\$70m)); and
 - (iv) there was significant underperformance of the project, including as a result of matters that arose at or shortly after tender phase, which was likely to impact the remainder of the works;²⁹⁸ and
- (g) given what Mason actually knew in respect of the GUN project and the Engineering Business as a whole as at 22 August 2018 by reason of the

²⁹⁷ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779], Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

²⁹⁸ RMAC presentation pack dated 20 August 2018 [LLC.011.009.8562], Minutes of the 20 August 2018 RMAC meeting [LLC.011.008.4819].

information identified in paragraphs 247, 249, 255, 257, 263, 265, 271, 273, 279 and 281(a) to 281(f) above, Mason:

- (i) had actual knowledge;
- (ii) alternatively, ought to have formed the opinion,

that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

282. Further and in the alternative to paragraph 281 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the GUN project and the Engineering Business as a whole prior to 22 August 2018 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC, GUN's Internal Project Review and Steerco meetings identified and/or receipt of the documents identified in paragraphs 247, 249, 255, 257, 265, 271, 273 and 281 above, Mason:

- (a) ought to have known the information particularised at paragraphs 247, 249, 255, 257, 263, 265, 271, 273, 279 and 281 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the GUN project and the Engineering Business as a whole.

283. By 22 August 2018, in relation to the **Kingsford Smith Drive Upgrade** project:

- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247, 248, 251, 252, 255, 256, 259, 260, 263, 264, 267, 268, 271, 272, 275, 276, 279 and 280 above;
- (b) Mason had actual knowledge that KSD remained an underperforming and/or problem project;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 15 June 2018 and through July 2018, by reason of Mason's attendance at the Steerco Project Status Report

presentations on 15 June 2018 and 25 July 2018 and/or by reason of him being in receipt of the Steerco Project Status Reports dated June 2018 and July 2018, that:

- (i) the forecast GPM was reported as slightly decreased to a loss of (\$47.9m) in the Steerco Project Status Report dated June 2018 or remained the same as the May 2018 forecast of a loss of (\$47.8m) in the Steerco Project Status Report dated July 2018; and
 - (ii) as the works progressed through the first quarter, the productivity positions taken in the 2017 forecasts had proven to be optimistic;²⁹⁹
- (f) Mason had actual knowledge, by 16 August 2018, by reason of Mason's attendance at the Steerco Project Status Report presentation and/or by reason of him being in receipt of the Steerco Project Status Report dated August 2018, that:
- (i) an issue had emerged around the interaction between ground stabilisation works (jet grouting works) and the marine structures, which had the project team critically reviewing the design;
 - (ii) the then current indication was that there would likely be design changes and additional works necessary;
 - (iii) the forecast productivity had been optimistic and the project team had commenced increasing the most likely position; and
 - (iv) the forecast GPM remained at a loss of approximately (\$47.8m);³⁰⁰ and
- (g) given what Mason actually knew in respect of the KSD project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 247, 251, 255, 259, 263, 267, 271, 275, 279 and 283(a) to 283(f) above, Mason:
- (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,

²⁹⁹ Steerco Project Status Report dated June 2018 [LLC.002.008.2151], email from Mason to Steerco attendees dated 14 June 2018 [LLC.002.008.2148], Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

³⁰⁰ Steerco Project Status Report dated August 2018 [LLC.002.005.5175], email from Mason to Steerco attendees dated 15 August 2018 [LLC.002.005.5174].

that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

284. Further and in the alternative to paragraph 283 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the KSD project and the Engineering Business as a whole prior to 22 August 2018 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC and Steerco meetings identified and/or receipt of the documents identified in paragraphs 247, 251, 255, 259, 267, 271, 275 and 283 above, Mason:

- (a) ought to have known the information particularised at paragraphs 247, 251, 255, 259, 263, 267, 271, 275, 279 and 283 above; and/or
- (b) ought to have formed the opinion that an inadequate provision had been made in respect of the KSD project and the Engineering Business as a whole.

285. By 22 August 2018, in relation to the **NorthConnex** project:

- (a) Mason had actual knowledge of the Systemic Performance and Reporting Issues referred to at paragraph 247 above and the information referred to at paragraphs 247, 248, 253, 254, 255, 256, 261, 262, 263, 264, 269, 270, 271, 272, 277, 278, 279 and 280 above;
- (b) Mason had actual knowledge that NCX remained an underperforming and/or problem project;
- (c) Mason had actual knowledge that there was continued erosion of the forecast GPM and contingency;
- (d) Mason had actual knowledge that the Systemic Performance and Reporting Issues had not been rectified;
- (e) Mason had actual knowledge, by 25 July 2018, by reason of his membership of Steerco, and/or by reason of him being the sender of the Steerco Project Status Report dated July 2018, that:
 - (i) the forecast GPM was a loss of approximately (\$240m);
 - (ii) there were major variances to the budget; and

- (iii) the program shifted from a completion date in December 2019 to May 2020, with the cost updated to reflect the associated burn rate and forecasting errors identified;³⁰¹ and
 - (f) given what Mason actually knew in respect of the NCX project and the Engineering Business as a whole as at 22 August 2018 by reason of the information identified in paragraphs 247, 253, 255, 261, 263, 269, 271, 277, 279 and 285(a) to 285(e) above, Mason:
 - (i) had actual knowledge;
 - (ii) alternatively, ought to have formed the opinion,
that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.
286. Further and in the alternative to paragraph 285 above, by 22 August 2018, given the significance of the information identified in (a) below to the financial performance of the NCX project and the Engineering Business as a whole prior to 22 August 2018 and given Mason's position at Lendlease, his attendance at the Engineering Quarterly Business Review, RMAC and Steerco meetings identified and/or possession of the reports identified in paragraphs 247, 253, 255, 261, 269, 271, 277 and 285 above, Mason:
- (a) ought to have known the information particularised at paragraphs 247, 253, 255, 261, 263, 269, 271, 277, 279 and 285 above; and/or
 - (b) ought to have formed the opinion that an inadequate provision had been made in respect of the NCX project and the Engineering Business as a whole.

The opinion that was actually formed and/or ought to have been formed based on the information and facts available to Mason

287. Mason had actual knowledge of the historical performance of the Projects as at each of the following dates:
- (a) 17 October 2017, referred to above at paragraphs 247 to 254 and as summarised in the Badala Report at Table 11, Oct.17 Column (GUN), Table 31, Oct.17 Column (KSD) and Table 51, Sept.17 Column (NCX);

³⁰¹ Steerco Project Status Report dated July 2018 [LLC.002.008.0780], email from Mason to Steerco attendees dated 24 July 2018 [LLC.002.008.0779].

- (b) 17 November 2017, referred to above at paragraphs 247 to 262 and as summarised in the Badala Report at Table 11, Oct.17 and Nov.17 Columns (GUN), Table 31, Oct.17 and Nov.17 Columns (KSD) and Table 51, Sept.17 Column (NCX);
- (c) 21 February 2018, referred to above at paragraphs 247 to 270 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18 and May.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18 and May.18 Columns (KSD) and Table 51, Sept.17, Dec.17 and Mar.18 Columns (NCX);
- (d) 31 May 2018, referred to above at paragraphs 247 to 278 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18 and May.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18 and May.18 Columns (KSD) and Table 51, Sept.17, Dec.17 and Mar.18 Columns (NCX); and
- (e) 22 August 2018, referred to above at paragraphs 247 to 286 and as summarised in the Badala Report at Table 11, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (GUN), Table 31, Oct.17, Nov.17, Feb.18, May.18 and Aug.18 Columns (KSD) and Table 51, Sept.17, Dec.17, Mar.18 and Jun.18 Columns (NCX).

(Mason Identified Dates).

288. At each of the Mason Identified Dates, by reason of Mason's:

- (a) actual and/or constructive knowledge as particularised in:
 - (i) paragraphs 247 to 254 above in respect of the period prior to 17 October 2017;
 - (ii) paragraphs 247 to 262 above in respect of the period prior to 17 November 2017;
 - (iii) paragraphs 247 to 270 above in respect of the period prior to 21 February 2018;
 - (iv) paragraphs 247 to 278 above in respect of the period prior to 31 May 2018;
 - (v) paragraphs 247 to 286 above in respect of the period prior to 22 August 2018;

- (b) alternatively,
 - (i) actual and/or constructive knowledge as particularised in paragraphs 247 to 287 above; and
 - (ii) constructive knowledge based upon his ability to access information of the historical performance of the Projects in his capacity as the Head of Operational Risk for Lendlease as at each relevant date, to the extent that historical performance is as summarised in:
 - (A) the Badala Report, at Table 11 (GUN), Table 31 (KSD) and Table 51 (NCX) and [97]-[190], [191]-[283] and [284]-[371]; and
 - (B) the documents considered and referred to by Peter Badala as identified and extracted by Document ID as the “Source File” or “Source” in Annexures A.1, A.2, B.1, B.2, C.1 and C.2 of that report for each relevant period; and
- (c) role as Head of Operational Risk for Lendlease;

Mason:

- (d) had actual knowledge, ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him (as particularised in [288(a)] and [288(b)] above, insofar as the allegations are of actual knowledge), or which ought to have been known to him (as particularised in [288(a)] and [288(b)] above, insofar as the allegations are of constructive knowledge), that the provisions taken for the Engineering Business as a consequence of the Projects were inadequate; and
- (e) ought to have known and/or ought to have formed the opinion, by reason of the facts, matters and circumstances known to him, or which ought to have been known to him, that:

Provision Information

- (i) additional provisions for the Engineering Business would need to be taken as a consequence of the Projects, as follows:
 - (A) as at 17 October 2017, the 17 October 2017 Provision Information, being approximately \$415.0 million for the Engineering Business;

- (B) as at 17 November 2017, the 17 November 2017 Provision Information, being approximately \$363.2 million for the Engineering Business;
- (C) as at 21 February 2018, the 21 February 2018 Provision Information, being approximately \$331.3 million for the Engineering Business;
- (D) as at 31 May 2018, the 31 May 2018 Provision Information, being approximately \$393.6 million for the Engineering Business; and
- (E) as at 22 August 2018, the 22 August 2018 Provision Information, being approximately \$415.5 million for the Engineering Business; and/or

Overstated profits

- (ii) by reason of the inadequate provisions, the profits were overstated and a reduction in published profits was required as follows:
 - (A) as at 21 February 2018, the 31 December 2017 Profit Information, being a reduction in after-tax profits of \$231.9 million; and
 - (B) as at 22 August 2018, the 30 June 2018 Profit Information, being a reduction in after-tax profits of \$290.9 million.