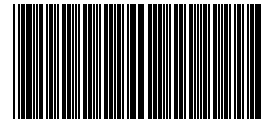




Filed: 5 July 2019 4:04 PM



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## Commercial List Response

### 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
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	Lendlease Corporation Limited, Defendant 1 Lendlease Responsible Entity Ltd as responsible entity for Lendlease Trust ABN 39 944 184 773 ARSN 128 052 595, Defendant 2
Legal representative	JASON LAWRENCE BETTS
Legal representative reference	
Telephone	02 9225 5000

### 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 Response (20190705 - Lendlease ats Pallas - Commercial List Response.pdf)

[attach.]

Form 7A (version 5)  
UCPR 14.3

## COMMERCIAL LIST RESPONSE

### COURT DETAILS

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

### TITLE OF PROCEEDINGS

Plaintiff	<b>David William Pallas and Julie Ann Pallas as trustees for the Pallas Family Superannuation Fund ABN 67 041 467 929</b>
First Defendant	<b>Lendlease Corporation Limited ACN 000 226 228</b>
Second Defendant	<b>Lendlease Responsibility Entity Ltd ABN 72 122 883 185 as responsible entity for Lendlease Trust ABN 39 944 184 773 ARSN 128 052 595</b>

### FILING DETAILS

Filed for	<b>The Defendants</b>
Filed in relation to	<b>The Plaintiff's claim</b>
Legal representative	Herbert Smith Freehills
Legal representative reference	82682656
Contact name and telephone	Jason Betts, (02) 9225 5000
Contact email	Jason.Betts@hsf.com

### PRELIMINARY MATTERS

- 1 Headings used in this Commercial List Response (**Response**) are for convenience only. They do not form part of the response to the Commercial List Statement filed on 18 April 2019 (the **CLS**).
- 2 Unless the context requires otherwise, the Defendants adopt the defined terms used in the CLS, but do not admit any factual assertions contained in, or in any way implied by, any defined term used in the CLS and repeated in this Response.
- 3 In this Response, the Defendants use "Lendlease" to refer to the Defendants, unless otherwise indicated.

## **NATURE OF THE DISPUTE**

- 1 Lendlease agrees with the summary of the nature of dispute set out in paragraphs 1 to 4.

## **ISSUES LIKELY TO ARISE**

- 1 Lendlease agrees with the issues that the Plaintiff believes are likely to arise and says that the following issues are also likely to arise:
- a. whether the Project Information and/or the Unreliable Performance Information (as those matters are defined in the CLS and to the extent they are proven):
    - i. was information of which McCann, Gupta and/or Laslett ought to have been aware, such that it was information that Lendlease was aware within the meaning of the ASX Listing Rules;
    - ii. was information that a reasonable person would expect to have a material effect on the price or value of the Securities;
    - iii. was within the exception to ASX Listing Rule 3.1 of the ASX Listing Rules by reason of the operation of ASX Listing Rule 3.1A because:
      1. the information comprised information that was insufficiently definite to warrant disclosure, and/or was generated for the internal management purposes of Lendlease;
      2. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
      3. a reasonable person would not have expected Lendlease to disclose the information;
  - b. whether, if the Plaintiff or any Group Member suffered the loss claimed or any loss at all (which is denied):
    - i. the Plaintiff or Group Member did so as a result partly of the Plaintiff's or Group Member's failure to take reasonable care, such that the damages which the Plaintiff or Group Member may recover in relation to the loss are to be reduced to the extent to which the Court thinks just and equitable having regard to the Plaintiff's or Group Member's share in the responsibility for the loss; and

- ii. Lendlease acted honestly and, having regard to all the circumstances of the case, Lendlease ought fairly be excused for any contravention of section 674(2) of the Corporations Act, such that the Court should relieve Lendlease wholly or partly from the liability to which it would otherwise be subject, or which might otherwise be imposed on it, because of any contravention of section 674(2) of the Corporations Act.

## **DEFENDANTS' RESPONSES TO PLAINTIFF'S CONTENTIONS**

### **A THE PLAINTIFF AND GROUP MEMBERS**

1 In answer to paragraph 1 of the CLS, Lendlease:

- a. admits that the Plaintiff has commenced this proceeding as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW);
- b. does not admit the allegations in subparagraph (a);
- c. denies that any person has suffered loss or damage as pleaded in subparagraph (b);
- d. does not admit subparagraph (c); and
- e. otherwise denies the paragraph.

2 Lendlease does not admit paragraph 2 of the CLS.

3 Lendlease admits paragraph 3 of the CLS.

### **B THE DEFENDANTS**

#### **B.1 Compliance and reporting requirements**

4 Lendlease admits paragraph 4 of the CLS.

5 In answer to paragraph 5 of the CLS, Lendlease:

- a. admits subparagraphs (a) and (b);
- b. denies subparagraph (c) and says that Lendlease has 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 ordinary security) which are traded on the OTC market in the United States of America under the ticker "LLESY";

- c. admits subparagraphs (d) and (e); and
- d. denies subparagraph (f) insofar as it is alleged that the Second Defendant was obliged by sections 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 the First Defendant 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 ASX Listing Rule 3.1A apply).

6 Lendlease admits paragraph 6 of the CLS.

## **B.2 Relevant Lendlease personnel**

7 On the basis that "all material times" refers to the period 17 October 2017 to 26 November 2018 (inclusive), Lendlease admits paragraph 7 of the CLS.

### **Particulars**

- 1) By a letter dated 7 June 2019, the Plaintiff (by its solicitors) confirmed that the phrase "at all material times" refers to the period of time from 17 October 2017 to 26 November 2018 (inclusive).

8 On the basis that "all material times" refers to the period 17 October 2017 to 26 November 2018 (inclusive), Lendlease admits paragraph 8 of the CLS.

9 Lendlease admits paragraph 9 of the CLS.

10 Lendlease admits paragraph 10 of the CLS.

11 In answer to paragraph 11 of the CLS, Lendlease:

- a. says that on 21 May 2019, Lendlease (by its solicitors) made a request for further and better particulars of the paragraph;
- b. says that on 7 June 2019, the Plaintiff (by its solicitors) responded to the request for further and better particulars of the paragraph and:
  - i. confirmed that the paragraph was intended to allege that by reason of the definition of "aware" in ASX Listing Rule 19.12, information of which any of McCann, Gupta, Dekker and Laslett 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 in turn information of which Lendlease was aware; and

- ii. said that it was alleged that Dekker and Laslett were “officers” of Lendlease (within the meaning of the ASX Listing Rules) because as Lendlease Group Head of Engineering and Building and Lendlease Chief Executive Officer Engineering and Services respectively, Dekker and Laslett were people who:
  - 1. made, or participated in the making of, decisions that affected a substantial part of Lendlease’s business; and/or
  - 2. had the capacity to affect significantly Lendlease’s financial standing;
- c. having regard to the particulars of the paragraph referred to in subparagraph (b) herein:
  - i. denies that any information of which Dekker and Laslett became aware, or which ought to have come into their possession in the course of the performance of their respective duties, was necessarily information of which Lendlease was aware; and
  - ii. denies that Dekker and Laslett were “officers” of Lendlease within the meaning of the ASX Listing Rules; and
- d. otherwise does not admit the paragraph.

### **B.3 Lendlease’s business**

- 12 Lendlease admits paragraph 12 of the CLS.
- 13 Lendlease admits paragraph 13 of the CLS.
- 14 Lendlease admits paragraph 14 of the CLS.
- 15 Lendlease admits paragraph 15 of the CLS.
- 16 Lendlease admits paragraph 16 of the CLS.
- 17 In answer to paragraph 17 of the CLS, Lendlease:

- a. says that the pleading is embarrassing as it does not identify with sufficient specificity what is meant by “a significant proportion” in subparagraph (a), and “any significant increase” and “material adverse impact” in subparagraph (b);
- b. says that on 21 May 2019, Lendlease (by its solicitors) made a request for further and better particulars of the paragraph by asking what was meant by “a significant proportion” in subparagraph (a), and “any significant increase” and “material adverse impact” in subparagraph (b);
- c. says that on 7 June 2019, the Plaintiff (by its solicitors) responded to the request for further and better particulars and said that the phrases “a significant proportion” in subparagraph (a), and “any significant increase” and “material adverse impact” in subparagraph (b) had their “ordinary meaning”;
- d. says that the response to the request for particulars referred to in subparagraph (c) herein does not cure the embarrassing nature of the pleading referred to in subparagraph (a) herein; and
- e. under the cover of that objection, says that:
  - i. in Lendlease’s Appendix 4D and Half Year Consolidated Financial Report dated 21 February 2018 at page 9, it was reported that Lendlease’s Engineering Business contributed to 17% of the half year revenue generated by Lendlease’s construction segment;
  - ii. in Lendlease’s 2018 Annual Report dated 22 August 2018 at page 78, it was reported that Lendlease’s Engineering Business contributed to 19% of the full year revenue generated by Lendlease’s construction segment; and
  - iii. in Lendlease’s 2018 Annual Report dated 22 August 2018 at page 73, it was reported that 6% of the operating earnings before interest, tax, depreciation and amortization for the Lendlease group of companies was attributable to the construction segment; and
- f. otherwise denies the paragraph.

## **C RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES**

### **C.1 17 October 2017**

18 Lendlease admits paragraph 18 of the CLS.

- 19 In answer to paragraph 19 of the CLS, Lendlease:
- a. admits that by the 17 October 2017 Announcement, it made the statements set out in subparagraphs (a) and (c);
  - b. denies that it made the statement set out in subparagraph (b) and says that in the 17 October 2017 Announcement it made the statement that the HY18 EBITDA contribution from the Australian construction business was expected to be lower than the prior corresponding period; and
  - c. refers to and relies on the 17 October 2017 Announcement for its full force and effect.

## C.2 17 November 2017

20 Lendlease admits paragraph 20 of the CLS and says further that on 17 November 2017, it released to the market the addresses of the Chairman and Group CEO and Managing Director to be made at the 2017 AGM with the accompanying slide presentation (the **17 November 2017 Presentation**).

- 21 In answer to paragraph 21 of the CLS, Lendlease:
- a. in respect of the statements at subparagraphs (a) and (b), admits that at the 2017 AGM, McCann stated that “while the medium-term outlook for transport infrastructure activity in Australia continues to look positive, [Lendlease] recently announced there were some challenges in a small number of engineering projects. This will impact the earnings contribution from our construction segment in FY18. We expect this underperformance will be offset by outperformance in other parts of [Lendlease’s] business. Our diversification by both sector and geography ensures our business model is more resilient to market cycles and operational challenges”;
  - b. in respect of the statements at subparagraphs (c) and (d), admits that in response to a question from a holder of Securities and a representative of the Australian Shareholders Association, McCann stated that:
    - i. “The projects which have underperformed in [the Engineering Business] for [Lendlease] this year are a combination of projects, and the factors that have impacted are mispricing of some of the risk issues that emerge during the delivery of those projects. However, the good news is that our diversified business model means that the



outperformance in a number of our other businesses will absorb, in our view, the underperformance in [the Engineering Business]”; and

- ii. “We need to make sure that going forward our approach to risk management and pricing in [the Engineering Business] is best in class. We’ve made significant changes to our senior management team in that business and we’re cautious and conservative in our approach both to selecting projects that we bid for and in the analysis of the pricing of those projects. So certainly, our intention and securityholders’ expectation should be for improved performance in that business going forward”;
- c. says further that the statement referred to in subparagraph (a) herein was also set out in the 17 November 2017 Presentation at pages 18-19;
- d. says further that in the 2017 AGM, McCann also stated that “these projects can, however, be risky, and there are a number of issues that you need to manage in the delivery and execution of those projects. In pricing those projects, often they are in a very competitive bidding environment where you need to estimate both program and price upfront”;
- e. refers to and relies on the transcript of the 2017 AGM, as well as the 17 November 2017 Presentation, for their full force and effect; and
- f. otherwise denies the paragraph.

### **C.3 21 February 2018**

22 In answer to paragraph 22 of the CLS, Lendlease:

- a. admits subparagraph (a);
- b. in respect of subparagraph (b), admits that on 21 February 2018 it made an announcement to the ASX entitled “Lendlease Group Half Year 2018 Results Announcement, Presentation and Appendix” for its results for the half year ended 31 December 2017;
- c. in respect of subparagraph (c), admits that on 21 February 2018 it convened the 21 February 2018 Call, but does not admit that it convened the 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; and

d. otherwise denies the paragraph.

23 In answer to paragraph 23 of the CLS, Lendlease:

a. in respect of the statement at subparagraph (a):

- i. admits that the 1H18 Financial Report stated at page 9 that “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”;
- ii. admits that the 21 February 2018 Announcement at slide 38 referred to an EBITDA loss of \$26.1 million in the Construction segment (the comparative period being the half year ended 31 December 2016 (the prior corresponding period)); and
- iii. admits that in the 21 February 2018 Call Gupta stated that “The Construction segment delivered an EBITDA loss of \$26.1 million, driven by a small number of underperforming Engineering projects that Steve [McCann] has discussed. We acknowledge this is a disappointing result. The financial impact this period includes the reversal of previously booked margin and recognition of expected losses until the projects complete”;

b. in respect of the statement at subparagraph (b):

- i. admits that the 1H18 Financial Report stated at page 9 that “The result was impacted by the underperformance of a small number of Engineering projects in Australia”;
- ii. admits that the 21 February 2018 Announcement at slide 38 stated that the EBITDA loss in the construction segment was “impacted by a small number of underperforming engineering projects” in Australia and that the “HY18 EBITDA included the reversal of previously booked margin and recognition of expected losses”; and
- iii. admits that in the 21 February 2018 Call, the statement referred to in subparagraph (a)(iii) herein was made by Gupta;

c. in respect of the statement at subparagraph (c):

- i. admits that the 1H18 Financial Report stated at page 9 that “The EBITDA outcome was below the target EBITDA margin range of three to four per cent”; and
  - ii. admits that in the 21 February 2018 Call, Gupta stated that “In terms of EBITDA mix, the loss in the Construction segment has pushed each of the segments outside of their respective ranges...The Construction EBITDA margin is clearly well below the target range of 3-4 per cent”;
- d. in respect of the statement at subparagraph (d):
- i. admits that the 21 February 2018 Announcement at slide 38 of the Appendix stated that in the construction segment in Australia there was an “EBITDA loss of \$66.1 million” and that “EBITDA [was] impacted by a small number of underperforming projects”; and
  - ii. admits that on the 21 February 2018 Call, McCann stated that “Moving to our Construction segment on slide 18. A \$66 million EBITDA loss for the Australian Construction business, compared to an EBITDA profit of almost \$100 million in the prior corresponding period was due to deterioration in the performance of the Construction segment”;
- e. in respect of the statement at subparagraph (e):
- i. admits that the 1H18 Financial Report stated at page 9 that “Performance issues across a small number of Engineering projects were identified during the period. These projects are all at least 50 per cent complete. The impact of expected losses on these projects has been recognised in the result for the period, including the reversal of previously booked margin. 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”; and
  - ii. admits that in the 21 February 2018 Call, McCann stated:

“Moving to slide 8, I’ll address the challenges facing our Engineering business. The underperformance in a small number of projects has resulted in a loss for the Construction segment in the half. We are very disappointed in the outcome and are acutely aware of the impact this has had on market

confidence. To that end, we are focused on addressing these issues.

We identified the problems with these projects in the normal course of business, during their regular review cycles. We subsequently undertook a review of the Engineering portfolio to confirm that these problems were isolated and not more widespread”;

f. in respect of the statement at subparagraph (f):

- i. admits that in the 1H18 Financial Report, the statement referred to in subparagraph (e)(i) herein was made;
- ii. admits that the 21 February 2018 Announcement at slide 8 stated in respect of the Engineering Business that the “near term focus” was:

“Small number of underperforming projects:

- The HY18 EBITDA includes the reversal of previously booked margin and recognition of expected losses
- These projects are all at least 50% complete
- Margin impact until completion

Issues are project specific:

- Primarily logistics and geotechnical”; and

- iii. admits that in the 21 February 2018 Call, McCann stated that “The underperforming projects are all at least 50 per cent complete. We do not expect these projects will contribute to margin for their remaining lives and will therefore dampen the overall construction margin until they complete. The revenue backlog associated with the underperforming projects accounts for 20 per cent of the total Engineering backlog – as highlighted in the chart” (referring to slide 8 of the 21 February 2018 Announcement);

g. in respect of the statement at subparagraph (g):

- i. admits that the 1H18 Financial Report made the statement referred to in subparagraph (e)(i) herein;

- ii. admits that the 21 February 2018 Announcement at slide 8 made the statement referred to in subparagraph (f)(ii) herein; and
  - iii. admits that in the 21 February 2018 Call, Gupta made the statement referred to in subparagraph (a)(iii) herein;
- h. in respect of the statement at subparagraph (h):
- i. admits that the 1H18 Financial Report made the statement referred to in subparagraph (e)(i) herein;
  - ii. admits that the 21 February 2018 Announcement at slide 8 made the statement referred to in subparagraph (f)(ii) herein; and
  - iii. admits that in the 21 February 2018 Call, Gupta made the statement referred to in subparagraph (a)(iii) herein;
- i. in respect of the statement at subparagraph (i):
- i. admits that the 21 February 2018 Announcement at slide 8 made the statement referred to in subparagraph f(ii) herein; and
  - ii. admits that in the 21 February 2018 Call, McCann stated that “We identified the problems with these projects in the normal course of business, during their regular review cycles. We subsequently undertook a review of the Engineering portfolio to confirm that these problems were isolated and not more widespread. The issues are project specific and largely relate to logistical and geotechnical challenges which have a cascading impact on program and cost. These projects were bid and won in a competitive pricing environment. We are now more selective and disciplined in our bid strategy and place greater focus on the set-up phase of new projects. We believe this will be reflected in an improved performance in the new work we have won more recently”;
- j. in respect of the statement at subparagraph (j), admits that in the 21 February 2018 Call, Gupta stated, in response to a question from Ben Brayshaw from JP Morgan, that Lendlease had “reversed prior margin booked on the projects. We have looked at the rest of the life forecast for these projects, allowed for prudent contingencies and we’ve booked that forecast into the half year result”;

- k. says further that the 21 February 2018 Announcement included the following statement: “prospective financial information and forward looking statements, if any, have been based on current expectations about future events and are subject to risks, uncertainties and assumptions that could cause actual results to differ materially from the expectations expressed in, or implied from such information or statements”;
- l. refers to and relies on the 1H18 Financial Report, the 21 February 2018 Announcement and the 21 February 2018 Call for their full force and effect; and
- m. otherwise denies the paragraph.

#### **C.4 22 August 2018**

24 In answer to paragraph 24 of the CLS, Lendlease:

- a. admits subparagraph (a);
- b. admits subparagraph (b); and
- c. in respect of subparagraph (c), admits that it convened the 22 August 2018 Call but does not admit that it convened the 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.

25 In answer to paragraph 25 of the CLS, Lendlease:

- a. in respect of the statement at subparagraph (a), admits that the FY18 Annual Report stated at page 78 that “The Construction segment delivered an EBITDA of \$78.2 million, compared to \$338.3 million in the prior year”;
- b. in respect of the statement at subparagraph (b), admits that the FY18 Annual Report stated at page 78 that “Australian Construction delivered an EBITDA loss of \$23.1 million, impacted by weak performance in the Engineering business”;
- c. in respect of the statement at subparagraph (c):
  - i. admits that the 22 August 2018 Announcement at slide 10 of the FY18 financial results presentation stated that there was a “\$218m loss from Engineering and Services; solid Building performance”; and

- ii. admits that in the 22 August 2018 Call, Gupta stated that “The EBITDA loss from our Engineering and Services operations was \$218 million. This result includes the financial impact of the underperformance from a small number of Engineering projects. It also includes the second half impact of a negative outcome from a claim in the Services business that relates to a project completed in 2014”;
- d. in respect of the statement at subparagraph (d), admits that the 22 August 2018 Announcement at slide 41 of the FY18 financial results presentation stated under the heading “Construction FY18 – Drivers – Australia” that:
  - i. “FY18 Engineering and Services EBITDA includes the reversal of previously booked margin and recognition of expected losses on underperforming projects”; and
  - ii. “Services solid underlying performance but impact from adverse dispute outcome on a legacy project”;
- e. in respect of the statement at subparagraph (e):
  - i. admits that in the 22 August 2018 Call, Gupta made the statement referred to in subparagraph (c)(ii) herein;
  - ii. admits that in the 22 August 2018 Call, McCann stated:

“Moving on to our Construction segment on slide 18.

The Construction segment returned to profitability in the second half of the year with EBITDA of \$104.3 million. As I noted earlier, the financial performance of our Engineering and Services business was not where it needs to be. We are working hard to drive improvement.

While it is our policy not to comment on individual projects, our client Transurban noted at their results that the timeframe of NorthConnex is under review. I confirm that NorthConnex was one of the Engineering projects that we identified as underperforming and subsequently informed the market about in October last year. The issues noted last year included logistical and geotechnical challenges, both of which have been experienced on NorthConnex.

The financial result of the Engineering & Services business that Tarun [Gupta] addressed, incorporates the anticipated cost for completing NorthConnex, with the overall position broadly in line with our assessment at the half year”;

- f. in respect of the statement at subparagraph (f), admits that in the 22 August 2018 Call, McCann made the statement referred to in subparagraph (e)(ii) herein;
- g. in respect of the statement at subparagraph (g):
  - i. admits that the 22 August 2018 Announcement at slide 41 of the FY18 financial results presentation made the statement referred to in subparagraph (d)(ii) herein;
  - ii. admits that in the 22 August 2018 Call:
    - 1. Gupta made the statement referred to in subparagraph (c)(ii) herein; and
    - 2. in response to a question from Rob Freeman of Macquarie, McCann stated that “A claim Rob that related back to 2014. There was reliance in our numbers back then which then went through a litigation process and the outcome was negative and it was in the second half. It took us a bit by surprise, but that’s impacted the performance in the second half of the year”;
- h. in respect of the statement at subparagraph (h):
  - i. admits that the 22 August 2018 Announcement at slide 41 of the FY18 financial results presentation stated that “Underperforming projects will not contribute to margin for their remaining life and will therefore impact the overall construction margin until they complete”; and
  - ii. admits that in the 22 August 2018 Call, McCann said in response to a question from Rob Freeman of Macquarie that “the projects that we’ve written down won’t contribute to margin going forward, which is why we’ve also said you’ve got to factor in a drag in FY19 because of that impact. We’ve made our own assessment. I think I said before there’s still two years to go. Don’t read anything into that timeframe. What I



mean is we've got two more financial years of those projects to run through";

- i. in respect of the statement at subparagraph (i), admits that in the 22 August 2018 Call, McCann stated that "The financial result of the Engineering & Services business that Tarun [Gupta] addressed, incorporates the anticipated cost for completing NorthConnex, with the overall position broadly in line with our assessment at the half year";
- j. in respect of the statement at subparagraph (j), admits that in the 22 August 2018 Call, McCann made the statement referred to in subparagraph (i) herein;
- k. says further that the 22 August 2018 Announcement included the following statement: "prospective financial information and forward looking statements, if any, have been based on current expectations about future events and are subject to risks, uncertainties and assumptions that could cause actual results to differ materially from the expectations expressed in, or implied from such information or statements";
- l. refers to and relies on the FY18 Annual Report, the 22 August 2018 Announcement and the 22 August 2018 Call for their full force and effect; and
- m. otherwise denies the paragraph.

#### **C.5 9 November 2018**

26 In answer to paragraph 26 of the CLS, Lendlease:

- a. admits subparagraph (a); and
- b. in respect of subparagraph (b), admits that it convened the 9 November 2018 Call but does not admit that it convened the 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.

27 In answer to paragraph 27 of the CLS, Lendlease:

- a. in respect of the statement at subparagraph (a):
  - i. admits that the 9 November 2018 Announcement stated that "Lendlease announces that it has identified further underperformance in the financial position of its Engineering and Service Business"; and

- ii. admits that in the 9 November 2018 Call, McCann stated that “today we announced we have identified further underperformance in the financial position of our Engineering and Services Business”;
- b. in respect of the statement at subparagraph (b):
  - i. admits that the 9 November 2018 Announcement stated that “To account for this underperformance it is anticipated Lendlease will take a provision in the order of \$350 million after tax for 1H19”; and
  - ii. admits that in the 9 November 2018 Call, McCann stated that “We expect to take a provision of approximately \$350 million after tax in our Engineering and Services business for first half 2019 resulting predominately from further underperformance in a small number of projects. These were the projects that we had previously identified as having underperformance”;
- c. in respect of the statement at subparagraph (c):
  - i. admits that the 9 November 2018 Announcement stated that “this underperformance predominantly relates to further deterioration in the small number of projects previously identified”; and
  - ii. admits that in the 9 November 2018 Call, McCann made the statement referred to in subparagraph (b)(ii) herein;
- d. in respect of the statement at subparagraph (d):
  - i. admits that the 9 November 2018 Announcement stated that “This [underperformance of the Engineering Business] is attributed to a number of issues including lower productivity in the post tunnelling phases of NorthConnex; and excessive wet weather, access issues and remedial work arising from defective design on other projects”; and
  - ii. admits that in the 9 November 2018 Call, McCann stated that “The underperformance is attributed to a number of issues including lower productivity in the post tunnelling phases of NorthConnex. It also relates to excessive wet weather, access issues and remedial work arising from defective design on other projects”; and
- e. otherwise denies the paragraph.

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

28 In answer to paragraph 28 of the CLS, Lendlease:

- a. admits that the price of the Securities fell over the period identified, as particularised in paragraph (1) of the particulars to paragraph 28 of the CLS;
- b. admits that the price of the ADRs fell over the period identified, as particularised in subparagraphs (2)(a) and (b) of the particulars to paragraph 28 of the CLS;
- c. denies subparagraph (2)(c) of the particulars to paragraph 28 of the CLS, and says that the price of the ADRs fell from a closing price of \$9.48 on 12 November 2018 to a closing price of \$9.34 on 13 November 2018; and
- d. otherwise does not admit the paragraph.

**C.7 16 November 2018**

29 Lendlease admits paragraph 29 of the CLS.

30 In answer to paragraph 30 of the CLS, Lendlease:

- a. in respect of the statement at subparagraph (a), admits that in the 2018 AGM McCann stated that “I want to provide some further information regarding the provision and the Engineering business. Approximately 90 per cent of the \$350 million post tax provision relates to three projects. These projects also impacted the FY18 results”;
- b. in respect of the statement at subparagraph (b), admits that in the 2018 AGM McCann stated that “Further deterioration on NorthConnex and two other projects was identified during reviews completed last week. Due to client confidentiality and commercial considerations, we are unable to name the latter two projects... NorthConnex is approximately 65 per cent complete. The tunnel boring phase is now complete and was delivered at a cost within the range estimated in our previous provision. Unfortunately, productivity rates and costs on recently commenced phases of work have not achieved our estimates and we have now reforecast these costs. We have also reforecast costs arising from the acceleration of the mechanical and electrical works, the final major phase of the NorthConnex project”;

- c. in respect of the statement at subparagraph (c), admits that in the 2018 AGM McCann stated that “The second project, which is approximately 90 per cent complete, has 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”;
- d. in respect of the statement at subparagraph (d), admits that in the 2018 AGM McCann stated that “The third project is approximately 75 per cent complete. We have 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 provision for delay and other ancillary costs”;
- e. refers to and relies on the transcript of the 2018 AGM for its full force and effect; and
- f. otherwise denies the paragraph.

#### **C.8 26 November 2018**

31 In answer to paragraph 31 of the CLS, Lendlease admits that it convened a call with market analysts on 26 November 2018 but does not admit that it convened the 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.

32 In answer to paragraph 32 of the CLS, Lendlease:

- a. in respect of the statement at subparagraph (a), admits that McCann stated during the 26 November 2018 Call that “As noted at the AGM, approximately 90 per cent of the \$350 million post tax provision relates to the three projects and in the last week, the clients of the two previously unnamed projects have confirmed them as Gateway Upgrade North and Kingsford Smith Drive, both in Queensland and of course we’ve already discussed NorthConnex in New South Wales”;
- b. in respect of the statement at subparagraph (b), admits that McCann stated during the 26 November 2018 Call that “Gateway Upgrade North, which is approximately 90 per cent complete, has experienced unforeseen access issues, which has resulted 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”;

- c. in respect of the statement at subparagraph (c), admits that McCann stated during the 26 November 2018 Call that “Kingsford Smith Drive, the third project, is approximately 75 per cent complete. Significant remedial work is required as a result of the identification of a design defect. The council has stated that further works, including ground anchors being drilled up to 15 metres into the underlying bedrock, will be required along the 1.2 kilometre riverfront section, to provide additional support for the structure. In addition to the costs of rectification work, this has result in increased provisions for delay and other ancillary costs”;
- d. refers to and relies on the transcript of the 26 November 2018 Call for its full force and effect; and
- e. otherwise denies the paragraph.

## **D Representations made by Lendlease**

### **D.1 Representations on 17 November 2017**

33 In answer to paragraph 33 of the CLS, Lendlease:

- a. repeats paragraphs 20 and 21 herein;
- b. denies that it made the 17 November 2017 Representations as pleaded in paragraph 33 of the CLS;
- c. says that to the extent it made the statements referred to in paragraph 21 herein, those statements were:

- i. statements of Lendlease’s opinion; and/or
- ii. representations as to future matters,

of which Lendlease had reasonable grounds for making as at 17 November 2017; and

- d. says further that to the extent Lendlease made the 17 November Representations by the statements referred to in paragraph 21 herein or by any other statements made in the 2017 AGM (which is denied), and those

representations were representations as to future matters, Lendlease had reasonable grounds for making them.

**Particulars of reasonable grounds**

1) See **Schedule 1** to this Response.

34 In answer to paragraph 34 of the CLS, Lendlease:

- a. repeats paragraphs 20, 21 and 33 herein; and
- b. otherwise denies the paragraph.

35 In answer to paragraph 35 of the of the CLS, Lendlease:

- a. repeats paragraphs 20, 21 to 25, 33 and 34 herein;
- b. otherwise denies the paragraph.

**D.2 Representations on 21 February 2018**

36 In answer to paragraph 36 of the CLS, Lendlease:

- a. repeats paragraphs 22 and 23 herein;
- b. denies that it made the 21 February 2018 Representations as pleaded in paragraph 36 of the CLS;
- c. says that to the extent it made the statements referred to in paragraph 23 herein, those statements were:
  - i. statements of Lendlease's opinion; and/or
  - ii. representations as to future matters,
    - of which Lendlease had reasonable grounds for making as at 21 February 2018; and
- d. says further that to the extent Lendlease made the 21 February Representations by the statements referred to in paragraph 23 herein or by any other statement made in the 1H18 Financial Report, 21 February 2018 Announcement or 21 February 2018 Call (which is denied), and those representations were representations as to future matters, Lendlease had reasonable grounds for making them.

**Particulars of reasonable grounds**

1) See **Schedule 2** to this Response.

- 37 In answer to paragraph 37 of the CLS, Lendlease:
- a. repeats paragraphs 22, 23 and 36 herein; and
  - b. otherwise denies the paragraph.

- 38 In answer to paragraph 38 of the CLS, Lendlease:
- a. repeats paragraphs 22 to 25, 36 and 37 herein; and
  - b. otherwise denies the paragraph.

**D.3 Representations on 22 August 2018**

- 39 In answer to paragraph 39 of the CLS, Lendlease:
- a. repeats paragraphs 24 and 25 herein;
  - b. denies that it made the 22 August 2018 Representations as pleaded in paragraph 39 of the CLS;
  - c. says that to the extent it made the statements referred to in paragraph 25 herein, those statements were:
    - i. statements of opinion; and/or
    - ii. representations as to future matters,  
  
of which Lendlease had reasonable grounds for making as at 22 August 2018; and
  - d. says further that to the extent Lendlease made the 22 August 2018 Representations by the statements referred to in paragraph 25 herein or by any other statements made in the FY18 Annual Report, 22 August 2018 Announcement or 22 August 2018 Call (which is denied), and those representations were representations as to future matters, Lendlease had reasonable grounds for making them.

**Particulars of reasonable grounds**

1) See **Schedule 3** to this Response.

- 40 In answer to paragraph 40 of the CLS, Lendlease:
- a. repeats paragraphs 24, 25 and 39 herein; and
  - b. otherwise denies the paragraph.

- 41 In answer to paragraph 41 of the CLS, Lendlease:
- a. repeats paragraphs 24, 25, 39 and 40 herein; and
  - b. otherwise denies the paragraph.

## **E Continuous disclosure contraventions**

### **E.1 Information concerning the Projects**

- 42 In answer to paragraph 42 of the CLS, Lendlease:
- a. in respect of subparagraph (a), says that the expressions “financial periods after FY18” and “materially adversely affected” are embarrassing and liable to be struck out and, under the cover of that objection, denies the subparagraph;
  - b. in respect of subparagraph (b), says that the expressions “financial periods after FY18” and “materially adversely affected” are embarrassing and liable to be struck out and, under the cover of that objection, denies the subparagraph; and
  - c. in respect of subparagraph (c):
    - i. says that the expressions “restructured and de-risked” and “reliably be expected to positively contribute” are embarrassing and liable to be struck out;
    - ii. says that it is not alleged or particularised how, by reason of Lendlease’s awareness of the information pleaded in subparagraphs 42(a) and (b) of the CLS (which is denied), Lendlease was also aware of the matters pleaded in subparagraph 42(c) of the CLS; and
    - iii. under the cover of those objections, denies the subparagraph.

### **Particulars**

- 1) On 21 May 2019, Lendlease (by its solicitors) made a request for further and better particulars of the subparagraph in the following terms:



- a) what is meant by the phrases “restructured and de-risked” and “reliably be expected to positively contribute”; and
  - b) if it is alleged that McCann and Gupta ought to have been aware of the information in subparagraph 42(c) of the CLS by reason of their alleged knowledge of the underperformance of the Projects (which is denied), this does not sufficiently articulate how McCann and Gupta ought to have further known that the Engineering Business would need to be restructured and de-risked in the manner pleaded in subparagraph 42(c) of the CLS.
- 2) On 7 June 2019, the Plaintiff (by its solicitors) responded to the request for further and better particulars and stated that:
- a) the phrases “restructured and de-risked” and “reliably be expected to positively contribute” “have their ordinary meaning”;
  - b) it is alleged that Lendlease was aware (within the meaning of ASX Listing Rule 19.12) of the Project Information by reason of McCann, Gupta and/or Laslett being aware (within the meaning of ASX Listing Rule 19.12) of the Project Information, but that it is not alleged that McCann, Gupta and/or Lastlett in fact came into possession of the Project Information; and
  - c) the allegation in subparagraph 42(c) of the CLS, including the basis upon which McCann, Gupta and/or Lastlett ought to have been aware of the Project Information, has been sufficiently particularised.

- 3) Lendlease denies that the Project Information existed by the start of, and throughout, the Relevant Period including by reason of the matters referred to in Schedules 1 to 3 herein.

## **E.2 Information concerning the Regular Project Reviews**

43 In answer to paragraph 43 of the CLS, Lendlease:

- a. says that the pleading is embarrassing in that it is not identified with sufficient particularity what information Lendlease was alleged to have been aware of such that it was likely, or there was a material risk of the matters pleaded in subparagraphs 43(a), (b) and (c) of the CLS; and
- b. under the cover of that objection, denies the paragraph.

### **Particulars**

- 1) On 21 May 2019, Lendlease (by its solicitors) made a request for further and better particulars of the paragraph noting that, for the reasons identified in respect of paragraph 42 of the CLS, paragraph 43 of the CLS was also inadequately particularised.
- 2) On 7 June 2019, the Plaintiff (by its solicitors) referred to its response to the request for particulars to paragraph 42 of the CLS (which is relevantly set out in the particulars to paragraph 42 herein).
- 3) Lendlease denies that the Unreliable Performance Information existed by the start of, and throughout, the Relevant Period including by reason of the matters referred to in Schedules 1 to 3 herein.

## **E.3 Continuous disclosure contraventions**

44 In answer to paragraph 44 of the CLS, Lendlease:

- a. repeats paragraphs 42 and 43 herein;
- b. otherwise denies the paragraph; and

c. says further that:

- i. the Non-disclosed Information was not information of which Lendlease was aware (within the meaning of the ASX Listing Rules) and hence it was not required to be disclosed under section 674(2) of the Corporations Act;
- ii. if the Non-disclosed Information was information of which Lendlease was aware (which is denied), Lendlease denies that such Non-disclosed Information was information that a reasonable person would expect to have a material effect on the price or value of the Securities as pleaded; and
- iii. if the Non-disclosed Information was information of which Lendlease was aware (which is denied) and the Non-disclosed Information was information that a reasonable person would expect to have a material effect on the price or value of the Securities (which is also denied), then the Non-disclosed Information was within an exception to ASX Listing Rule 3.1 provided by ASX Listing Rule 3.1A because:
  1. the information as pleaded:
    - a. comprises matters of supposition or was insufficiently definite to warrant disclosure; and/or
    - b. was generated for the internal management purposes of Lendlease;
  2. the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
  3. a reasonable person would not have expected Lendlease to disclose that information,

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

45 In answer to paragraph 45 of the CLS, Lendlease:

- a. repeats paragraphs 42 to 44 herein; and
- b. otherwise denies the paragraph.

46 In answer to paragraph 46 of the CLS, Lendlease:

- a. repeats paragraphs 42 to 45 herein; and
- b. otherwise denies the paragraph.

47 In answer to paragraph 47 of the CLS, Lendlease:

- a. repeats paragraphs 42 to 46 herein; and
- b. otherwise denies the paragraph.

## **F MISLEADING OR DECEPTIVE CONDUCT**

### **F.1 Misleading conduct contraventions from 17 November 2017**

48 In answer to paragraph 48 of the CLS, Lendlease:

- a. repeats paragraphs 33 to 35 herein;
- b. admits that to the extent the 17 November 2017 Representations and/or the 17 November 2017 Basis Representations were made or failed to be corrected (which is denied), that conduct was conduct engaged in by Lendlease in trade or commerce, and in relation to the Securities; and
- c. otherwise denies the paragraph.

49 In answer to paragraph 49 of the CLS, Lendlease:

- a. repeats paragraph 26, 27, 29 to 33, 35, 42, 43 and 48 herein; and
- b. otherwise denies the paragraph.

50 In answer to paragraph 50 of the CLS, Lendlease:

- a. repeats paragraphs 26, 27, 29 to 33, 35, 42, 43, 48 and 49 herein; and
- b. otherwise denies the paragraph.

51 In answer to paragraph 51 of the CLS, Lendlease:

- a. repeats paragraphs 26, 27, 29 to 35, 42, 43, 48 to 50 herein; and
- b. otherwise denies the paragraph.

52 In answer to paragraph 52 herein, Lendlease:

- a. repeats paragraphs 48 to 51 herein; and

- b. otherwise denies the paragraph.

## **F.2 Misleading conduct contraventions from 21 February 2018**

53 In answer to paragraph 53 of the CLS, Lendlease:

- a. repeats paragraphs 36 to 38 herein;
- b. admits that to the extent the 21 February 2018 Representations and/or the 21 February 2018 Basis Representations were made or failed to be corrected (which is denied), that conduct was conduct engaged in by Lendlease in trade or commerce, and in relation to the Securities; and
- c. otherwise denies the paragraph.

54 In answer to paragraph 54 of the CLS, Lendlease:

- a. repeats paragraphs 26, 27, 29 to 32, 36, 38, 42, 43 and 53 herein; and
- b. otherwise denies the paragraph.

55 In answer to paragraph 55 of the CLS, Lendlease:

- a. repeats paragraphs 26, 27, 29 to 32, 36, 38, 42, 43, 53 and 54 herein; and
- b. otherwise denies the paragraph.

56 In answer to paragraph 56 of the CLS, Lendlease:

- a. repeats paragraphs 26, 27, 29 to 32, 36 to 38, 42, 43, 53 to 55 herein; and
- b. otherwise denies the paragraph.

57 In answer to paragraph 57 of the CLS, Lendlease:

- a. repeats paragraphs 53 to 56 herein; and
- b. otherwise denies the paragraph.

## **F.3 Misleading conduct contraventions from 22 August 2018**

58 In answer to paragraph 58 of the CLS, Lendlease:

- a. repeats paragraphs 39 to 41 herein;
- b. admits that to the extent the 22 August 2018 Representations and/or the 22 August 2018 Basis Representations were made or failed to be corrected

(which is denied), that conduct was conduct engaged in by Lendlease in trade or commerce, and in relation to the Securities; and

c. otherwise denies the paragraph.

59 In answer to paragraph 59 of the CLS, Lendlease:

- a. repeats paragraphs 26, 27, 29 to 32, 39, 41 to 43 and 58 herein; and
- b. otherwise denies the paragraph.

60 In answer to paragraph 60 of the CLS, Lendlease:

- a. repeats paragraphs 26, 27, 29 to 32, 39, 41 to 43, 58 and 59 herein; and
- b. otherwise denies the paragraph.

61 In answer to paragraph 61 of the CLS, Lendlease:

- a. repeats paragraphs 26, 27, 29 to 32, 39 to 43 and 58 to 60 herein; and
- b. otherwise denies the paragraph.

62 In answer to paragraph 62 of the CLS, Lendlease:

- a. repeats paragraphs 58 to 61 herein; and
- b. otherwise denies the paragraph.

## **G CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS**

### **G.1 Acquisition of Securities and ADRs**

63 In answer to paragraph 63 of the CLS, Lendlease:

- a. admits that during the Relevant Period the Plaintiff acquired Securities as set out in paragraph 3 of the CLS; and
- b. otherwise does not admit the paragraph.

64 Lendlease does not admit paragraph 64 of the CLS.

### **G.2 Market based causation**

65 In answer to paragraph 65 of the CLS, Lendlease:

- a. repeats paragraphs 5 to 6 and 44 to 62 herein; and

- b. otherwise denies the paragraph.
- 66 In answer to paragraph 66 of the CLS, Lendlease:
- a. repeats paragraph 65 herein; and
  - b. otherwise denies the paragraph.
- 67 In answer to paragraph 67 of the CLS, Lendlease:
- a. repeats paragraphs 65 and 66 herein; and
  - b. otherwise denies the paragraph.
- 68 In answer to paragraph 68 of the CLS, Lendlease:
- a. repeats paragraphs 65 to 67 herein; and
  - b. otherwise denies the paragraph.
- 69 In answer to paragraph 69 of the CLS, Lendlease:
- a. repeats paragraphs 65 to 68 herein; and
  - b. otherwise denies the paragraph.
- G.3 Reliance**
- 70 Lendlease denies paragraph 70 of the CLS.
- G.4 Loss and damage**
- 71 Lendlease denies paragraph 71 of the CLS.
- 72 In further answer to the CLS, insofar as the Plaintiff and Group Members make claims pursuant to:
- a. section 1014I(1) of the Corporations Act in relation to economic loss caused by conduct of Lendlease that was allegedly done in contravention of section 1041H of the Corporations Act;
  - b. section 12GF(1) of the ASIC Act in relation to economic loss caused by conduct of Lendlease that was allegedly done in contravention of section 12DA of the ASIC Act; and

- c. section 236 of the Australian Consumer Law in relation to economic loss caused by conduct of Lendlease that was allegedly done in contravention of section 18 of the Australian Consumer Law,

Lendlease pleads as follows:

- d. if and to the extent that the Plaintiff or any Group Member failed to have adequate regard to the 17 November 2017 Presentation, the statements made in the 2017 AGM, the 1H18 Financial Report, the 21 February 2018 Announcement, the 21 February 2018 Call, the FY18 Annual Report, the 22 August 2018 Announcement, the 22 August 2018 Call, the 9 November 2018 Announcement, the 9 November 2018 Call and the statements made in the 2018 AGM in full, then, if the Plaintiff or Group Member suffered the loss claimed or any loss at all (which is denied), the Plaintiff or Group Member did so as a result wholly or partly of the Plaintiff's or Group Member's failure to take reasonable care;
- e. Lendlease did not intend to cause the loss claimed by the Plaintiff or any Group Member or any loss at all and, if Lendlease caused that loss (which is denied), it did not do so fraudulently; and
- f. in the premises, if the Plaintiff or any Group Member suffered the loss claimed or any loss at all (which is denied), the damages which the Plaintiff or any Group Member may recover in relation to the loss are to be reduced to the extent to which the Court thinks just and equitable having regard to the Plaintiff's or Group Member's share in the responsibility for the loss.

#### **Particulars**

- i. Lendlease relies on section 1041I(1B) of the Corporations Act, section 12GF(1B) of the ASIC Act, and section 137B of the *Competition and Consumer Act 2010* (Cth).

73 In further answer to the CLS, insofar as:

- a. the Plaintiff and Group Members make claims to compensation pursuant to section 1317HA(1) of the Corporations Act for damage resulting from one or more of Lendlease's alleged contraventions of section 674(2) of the Corporations Act; and



- b. it appears to the Court that Lendlease has, or may have, contravened section 674(2) of the Corporations Act (which is denied),

Lendlease pleads as follows:

- c. Lendlease has acted honestly;
- d. having regard to all the circumstances of the case, Lendlease ought fairly be excused for any contravention of section 674(2) of the Corporations Act; and
- e. in the premises, the Court should relieve Lendlease wholly or partly from the liability to which it would otherwise be subject, or which might otherwise be imposed of it, because of any contravention of section 674(2) of the Corporations Act.

#### **Particulars**

- i. Lendlease relies on section 1317S of the Corporations Act.

74. In further answer to the whole of the CLS, Lendlease denies that the Plaintiff and Group Members are entitled to the relief sought or to any relief at all.

**QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE**

1 None at this time.

**STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION**

- 1 The parties have not attempted formal mediation.
- 2 Lendlease is willing to proceed to mediation at an appropriate time but considers there can be no effective mediation without class closure.

**SIGNATURE OF LEGAL REPRESENTATIVE**

I certify under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature



Capacity

Jason Betts, Legal Representative

Date of signature

5 July 2019

**FURTHER DETAILS ABOUT FILING PARTY****Filing party**

Name	Lendlease Corporation Limited and Lendlease Responsibility Entity Ltd as responsible entity for Lendlease Trust
Address	Level 14, Tower Three International Towers Sydney Exchange Place, 300 Barangaroo Avenue Barangaroo NSW 2000

**Legal representative for filing party**

Name	Jason Betts
Practising certificate number	31327
Firm	Herbert Smith Freehills
Address	Level 33 161 Castlereagh Street Sydney NSW 2000
DX address	361 Sydney
Telephone	(02) 9225 5000
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Email	jason.betts@hsf.com
Electronic service address	jason.betts@hsf.com

**SCHEDULE 1****Particulars of reasonable grounds as at 17 November 2017**

At 17 November 2017, Lendlease had reasonable grounds for making the statements referred to in paragraph 21 of the Response by reason of the following matters.

1. At all material times, Lendlease had in place business practices for determining the actual and projected performance of the Projects and the impact for the results of the Lendlease group as a whole. Those business practices included:
  - a. regular project reviews and regular management reviews;
  - b. Quarterly Business Reviews where the performance of the three segments of Lendlease's business were reviewed;
  - c. regular meetings of the Lendlease Risk Management and Audit Committee, a committee of the Lendlease Board; and
  - d. regular meetings of the Lendlease Board.
2. Further, by 17 November 2017, an Engineering Steering Committee had been established with a mandate to, amongst other things, review and manage the performance of certain projects within the Engineering Business, including the Projects.
3. As at 17 November 2017, a small number of engineering projects were experiencing project-specific challenges, for which provisions had been taken.
4. As at 17 November 2017:
  - a. with respect to Gateway Upgrade North:
    - i. the project was approximately 70% complete; and
    - ii. Lendlease had made key personnel changes including appointing a new regional EGM and had identified strategies to improve the project's performance including the continued recovery of revenue through claims and recoveries, weekly tracking of progress, a wet weather mitigation strategy, an independent productivity review and a further technical review by personnel within the Engineering Business;
  - b. with respect to Kingsford Smith Drive:
    - i. the project was approximately 50% complete; and
    - ii. Lendlease had made key personnel changes including appointing a new regional EGM and Project Director and had identified strategies to improve the project's performance including continued scope reduction, acceleration measures, specification relaxations, cash improvement, the recovery of revenue through claims and recoveries, as well consideration of alternative contractual arrangements;
  - c. with respect to NorthConnex:
    - i. the project was approximately 40% complete; and
    - ii. Lendlease had identified strategies to improve the project's performance including a strategy to pursue revenue from the client, improved governance and reporting, a continued focus from senior management, streamlining of

commissioning and handover requirements, a scope review and a pursuit of procurement savings from mechanical and electrical works.

5. As at 17 November 2017, external reviews had also been conducted in respect of the Projects and/or the performance of the Engineering Business, including the forecasts for the Projects and the amounts provisioned in respect of them.

**SCHEDULE 2****Particulars of reasonable grounds as at 21 February 2018**

At 21 February 2018, Lendlease had reasonable grounds for making the statements referred to in paragraph 23 of the Response by reason of the following matters.

1. Lendlease repeats Schedule 1.
2. Further, by 21 February 2018, the Engineering Steering Committee continued to hold regular meetings to review and manage the performance of certain projects within the Engineering Business, including the Projects.
3. As at 21 February 2018, Lendlease continued to take provisions, as appropriate, in respect of a small number of engineering projects experiencing project-specific challenges.
4. As at 21 February 2018:
  - a. with respect to Gateway Upgrade North:
    - i. the project was approximately 78% complete; and
    - ii. Lendlease was continuing to pursue claims and recoveries and progress various cost reduction strategies to mitigate against further margin erosion;
  - b. with respect to Kingsford Smith Drive:
    - i. the project was approximately 60% complete; and
    - ii. Lendlease had entered into a deed of amendment with the client that had increased the contract value and had progressed various other cost reduction strategies to mitigate against further margin erosion; and
  - c. with respect to NorthConnex:
    - i. the project was approximately 50% complete; and
    - ii. Lendlease made key personnel changes including appointing a new Executive Project Director and had formulated strategies to mitigate against further margin erosion including staff retention of key personnel, continuing to pursue claims and recoveries, and reviewing design options for waterproofing, ventilation redesign and traffic loops.
5. As at 21 February 2018, external reviews had also been conducted in respect of the Projects and/or the performance of the Engineering Business, including the forecasts for the Projects and the amounts provisioned in respect of them.

### SCHEDULE 3

#### Particulars of reasonable grounds as at 22 August 2018

As at 22 August 2018, Lendlease had reasonable grounds for making the statements referred to in paragraph 25 of the Response by reason of the following matters.

1. Lendlease repeats Schedules 1 and 2.
2. Further, by 22 August 2018, the Engineering Steering Committee continued to hold regular meetings to review and manage the performance of certain projects within the Engineering Business, including the Projects.
3. As at 22 August 2018, Lendlease continued to take provisions, as appropriate, in respect of a small number of engineering projects experiencing project-specific challenges.
4. Lendlease's financial results took into account "Whole of Life Project Reconciliations" for the Projects, with those reconciliations reflecting the outcome of project reviews that had been conducted in accordance with the business practices for determining the actual and projected performance of the projects referred to in paragraphs 1 and 2 of Schedule 1.
5. Lendlease's financial results reflected an allocation from the Lendlease group corporate provision to the Lendlease construction segment, which includes the Engineering Business.
6. As at 22 August 2018:
  - a. with respect to Gateway Upgrade North:
    - i. the project was approximately 90% complete; and
    - ii. Lendlease's claims team was working to review and progress claims, recoveries and variations;
  - b. with respect to Kingsford Smith Drive:
    - i. the project was approximately 75% complete; and
    - ii. to mitigate against further losses in respect of the project, ongoing workshops were being held with the Brisbane City Council to develop time mitigation strategies and risks were being actively monitored and managed; and
  - c. with respect to NorthConnex:
    - i. the project was approximately 64% complete;
    - ii. to mitigate against further losses in respect of the project, commercial discussions with the client were ongoing and draft terms of settlement were advanced; and
    - iii. the remaining tunnel breakthrough dates were occurring as planned (or earlier) with less than 50 metres of Tunnel Heading remaining to be excavated, and commercial and cost controls were improving.
7. As at 22 August 2018, external reviews had also been conducted in respect of the Projects and/or the performance of the Engineering Business, including the forecasts for the Projects and the amounts provisioned in respect of them.

