



**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL COURT**

Case: S ECI 2020 04505  
No. S ECI 2020 04505  
Filed on: 16/12/2021 03:47 PM

**BETWEEN**

**NICHOLAS JOHN GEHRKE AND LESTER BUCH**

Joint Plaintiffs

**-and-**

**FREEDOM FOODS GROUP LIMITED (ACN 002 814 235)**

First Defendant

**DELOITTE TOUCHE TOHMATSU (A FIRM) (ABN 74 490 121 060)**

Second Defendant

**CONSOLIDATED WRIT**

Filed pursuant to the Order of the Honourable Justice Nichols made 18 November 2021

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Date of Document: 16 December 2021  
Filed on behalf of: The Joint Plaintiffs  
Prepared by: Joint Lawyers for the Joint Plaintiffs:

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TO THE DEFENDANTS

TAKE NOTICE that this proceeding has been brought against you by the plaintiffs for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiffs which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by –

- (a) filing a "Notice of Appearance" in the Prothonotary's office, Level 2, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiffs' addresses for service, which are set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiffs may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

\*THE PROPER TIME TO FILE AN APPEARANCE is as follows –

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;

(e) in any other case, within 42 days after service of the writ.

FILED

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PROTHONOTARY

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

1. Place of trial – Melbourne.
2. Mode of trial – Judge.
3. This writ was filed for the plaintiffs by Slater and Gordon Lawyers and Phi Finney McDonald as solicitors for the plaintiffs.
4. The address of the first plaintiff, Mr Gehrke, is as follows: 99 Zischke Road, Regency Downs, Queensland, 4341.
5. The address for service of Mr Gehrke is: c/- Slater and Gordon Lawyers, 485 La Trobe Street, Melbourne, Victoria, 3000.
6. The email address for service of Mr Gehrke is: [Emma.PC@slatertgordon.com.au](mailto:Emma.PC@slatertgordon.com.au).
7. The address of the second plaintiff, Mr Buch, is as follows: 7 Olinda Street, Caulfield South, Victoria, 3162.
8. The address for service of Mr Buch is: c/- Phi Finney McDonald, Level 3, 325 Flinders Lane, Melbourne, Victoria, 3000.
9. The email address for service of Mr Buch is: [jeremy.zimet@phifinney-mcdonald.com](mailto:jeremy.zimet@phifinney-mcdonald.com).
10. The address of the first defendant is as follows: 80 Box Road, Caringbah, NSW, 2229.
11. The address of the second defendant is as follows: Grosvenor Place, 225 George Street, Sydney, NSW, 2000.



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COMMERCIAL COURT**

No. S ECI 2020 04505

**BETWEEN**

**NICHOLAS JOHN GEHRKE AND LESTER BUCH**

Joint Plaintiffs

**-and-**

**FREEDOM FOODS GROUP LIMITED (ACN 002 814 235)**

First Defendant

**DELOITTE TOUCHE TOHMATSU (A FIRM) (ABN 74 490 121 060)**

Second Defendant

**CONSOLIDATED STATEMENT OF CLAIM**

Filed pursuant to the Order of the Honourable of Justice Nichols made 18 November 2021

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Date of Document: 16 December 2021  
Filed on behalf of: The Joint Plaintiffs  
Prepared by: Joint Lawyers for the Joint Plaintiffs:

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## A INTRODUCTION

### A.1 The Plaintiffs and the Group Members

1. This proceeding is commenced as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) by the Plaintiffs on their own behalf and on behalf of all persons who (**Group Members**):

1.1. during the period between 7 December 2014 and 24 June 2020, inclusive (**Claim Period**), acquired:

(a) an interest in fully paid ordinary shares (**FNP Shares**) in the First Defendant (**FNP**);

(b) an interest in American Depository Receipts that represent FNP Shares (**FNP ADRs**); and/or

(c) long exposure to FNP Shares by entering into equity swap confirmations in respect of ordinary shares in FNP (**FNP Equity Swaps**);

1.2. have suffered loss or damage by reason of the conduct of the defendants as pleaded in this Consolidated Statement of Claim; and

1.3. were not during any part of the Claim Period, and are not as at the date of this Consolidated Statement of Claim, any of the following:

(a) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of either FNP or the Second Defendant (**Deloitte**);

(b) a related body corporate (as defined by s 50 of the *Corporations Act*) of either FNP or Deloitte;

(c) an associated entity (as defined by s 50AAA of the *Corporations Act*) of either FNP or Deloitte;

- (d) an officer or a close associate (as defined by s 9 of the Corporations Act) of either FNP or Deloitte; or
- (e) a Justice or the Chief Justice of the Supreme Court of Victoria, or a Justice or the Chief Justice of the High Court of Australia.

2. The First Plaintiff, Mr Gehrke acquired an interest in FNP Shares during the Claim Period.

**Particulars**

Details of the acquisitions of FNP Shares by the First Plaintiff are set out below:

Date	Transaction type	Number of FNP Shares	Price per share	Total amount paid (not including brokerage)
23 March 2018	Buy	1,154	\$5.18	\$5,977.72
19 June 2019	Buy	64	\$4.80	\$307.20

3. The Second Plaintiff, Mr Buch acquired an interest in FNP Shares during the Claim Period.

**Particulars**

Details of the acquisitions of FNP Shares by the Second Plaintiff are set out below:

Date	Transaction type	Number of FNP Shares	Price per share	Total amount paid (not including brokerage)
23 June 2020	Buy	6,000	\$3.57	\$21,420.00

4. Immediately prior to the commencement of this proceeding, there were more than seven Group Members.

## A.2 The Defendants

### A.2.1 *First Defendant: FNP*

5. FNP is and at all material times during the Claim Period was:
  - 5.1. incorporated pursuant to the Corporations Act and capable of being sued;
  - 5.2. carrying on business in Australia as a manufacturer and distributor of food and beverages, in particular, cereals, snacks, long-life beverages (both dairy and non-dairy) and canned seafood;
  - 5.3. listed on the Australian Securities Exchange (**ASX**):
    - (a) which is and was at all material times a ‘listing market’ within the meaning of s 674 of the Corporations Act; and
    - (b) of which Australian Securities Exchange Limited is and was at all material times the ‘market operator’ within the meaning of s 674 of the Corporations Act;
  - 5.4. a ‘person’ within the meaning of s 1041H of the Corporations Act;
  - 5.5. a ‘person’ within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
  - 5.6. a ‘person’ within the meaning of s 18 of the Australian Consumer Law (**ACL**) set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**), as applicable pursuant to s 131 of the CCA and one or more of the following:
    - (a) section 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
    - (b) section 28 of the *Fair Trading Act 1987* (NSW);
    - (c) section 16 of the *Fair Trading Act 1989* (Qld);
    - (d) section 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
    - (e) section 19 of the *Fair Trading Act 2010* (WA);

- (f) section 14 of the *Fair Trading Act 1987* (SA);
  - (g) section 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT); and/or
  - (h) section 27 of the *Consumer Affairs and Fair Trading Act 1990* (NT);
- 5.7. a ‘public company’ within the meaning of s 9 of the Corporations Act;
  - 5.8. a ‘listed disclosing entity’ within the meaning of s 111AL(1) of the Corporations Act;
  - 5.9. subject to and bound by the Australian Stock Exchange Listing Rules (**ASX Listing Rules**), which are and at all material times were ‘listing rules’ within the meaning of s 674 of the Corporations Act;
  - 5.10. obliged to immediately inform the ASX of any information concerning FNP that a reasonable person would expect to have a material effect on the price or value of FNP Shares, upon becoming aware of that information (unless any of the exceptions in ASX Listing Rule 3.1A were applicable) (the **Continuous Disclosure Obligations**); and

#### **Particulars**

Sections 111AP(1) and 674(1) of the Corporations Act and ASX Listing Rule 3.1.

- 5.11. traded over the counter in the United States of America under the ticker FRDZF (at a ratio of 1:1).
- 6. At all material times during the Claim Period, FNP Shares were:
    - 6.1. ‘ED securities’ within the meaning of s 111AE of the Corporations Act;
    - 6.2. ‘quoted ED securities’ within the meaning of s 111AM of the Corporations Act;
    - 6.3. ‘financial products’ within the meaning of ss 763A, 764A and 1041E of the Corporations Act;
    - 6.4. ‘financial products’ and ‘financial services’ within the meaning of ss 12BAA, 12BAB and 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth); and

- 6.5. able to be purchased and sold by investors on the ASX using the ASX code or designation 'FNP'.
7. At all material times during the Claim Period:
  - 7.1. FNP ADRs were able to be purchased and sold by investors over the counter using the code or designation 'FRDZF.PK'; and
  - 7.2. the price at which FNP ADRs traded over the counter reflected (i) the price of FNP Shares, and (ii) the exchange rate between Australian dollars and United States of America dollars.
8. At all material times during the Claim Period:
  - 8.1. there existed a market of investors and potential investors in FNP Equity Swaps; and
  - 8.2. the price by which FNP Equity Swaps were entered into were set by reference to the price of FNP Shares.

**A.2.2** *Second Defendant: Deloitte*

9. Deloitte is and at all material times during the Claim Period was:
  - 9.1. a partnership carrying on business, *inter alia*, in Victoria and New South Wales as accountants, auditors and advisors;
  - 9.2. operating under the partnership name 'Deloitte Touche Tohmatsu';
  - 9.3. able to be sued in the partnership name, pursuant to r 17.01 of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic);
  - 9.4. a partnership that included, among its partners and employees practicing in Victoria and New South Wales, persons who are and at all material times were registered company auditors within the meaning of s 9 and Part 9.2 of the Corporations Act;
  - 9.5. a 'person' within the meaning of:

- (a) sections 1041E and 1041H of the Corporations Act, by reason of s 761F of the Corporations Act;
- (b) section 12DA of the ASIC Act; and
- (c) section 18 of the ACL;

9.6. in the circumstances described in this Consolidated Statement of Claim, acting by a partner of the firm:

- (a) acting in the firm's name; and
- (b) acting in the ordinary course of the business of the firm and/or with the authority of their co-partners;

within the meaning of s 14 of the *Partnership Act 1958* (Vic) and s 10 of the *Partnership Act 1892* (NSW); and

9.7. engaged as the auditor for FNP.

### **Particulars**

Catherine Hill was the lead audit partner for FY2014.

Andrew J Coleman of Deloitte was the lead audit partner for FY2015 to FY2019.

David White of Deloitte was the lead audit partner for FY2020.

## **B OFFICERS OF FNP DURING THE CLAIM PERIOD**

### **B.1 Officers**

10. Mr Melvyn Miles (**Mr Miles**) was at all material times during the Claim Period until 14 August 2015:

- 10.1. an independent, non-executive director of FNP;
- 10.2. a member of the Audit, Risk and Compliance Committee; and

- 10.3. therefore, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
11. Mr Perry Gunner (**Mr Gunner**) was, at all material times during the Claim Period:
    - 11.1. an independent non-executive director of FNP;
    - 11.2. the Chairman of FNP;
    - 11.3. until 6 June 2019, a member of the Audit, Risk and Compliance Committee;
    - 11.4. from 6 June 2019:
      - (a) a member of the Finance and Audit Committee;
      - (b) a member of the Risk and Compliance Committee; and
    - 11.5. therefore, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
12. Mr Ronald Perich (**Mr R. Perich**) was, at all material times during the Claim Period:
    - 12.1. a non-executive director of FNP;
    - 12.2. until 6 June 2019, a member of the Audit, Risk and Compliance Committee; and
    - 12.3. therefore, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
13. Mr Anthony Perich (**Mr A. Perich**) was, at all material times during the Claim Period:
    - 13.1. a non-executive director of FNP;
    - 13.2. the Deputy Chairman of FNP;
    - 13.3. from 6 June 2019:
      - (a) a member of the Finance and Audit Committee;

- (b) a member of the Risk and Compliance Committee; and
- 13.4. therefore, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
- 14. Mr Michael Perich (**Mr M. Perich**) was, at all material times during the Claim Period:
  - 14.1. the alternate non-executive director for Mr R. Perich;
  - 14.2. until 4 December 2019, the alternate non-executive director for Mr A. Perich; and
  - 14.3. therefore, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
- 15. Mr Rory Macleod (**Mr Macleod**) was, at all material times during the Claim Period:
  - 15.1. an executive director;
  - 15.2. the Managing Director of FNP;
  - 15.3. the Chief Executive Officer of FNP;
  - 15.4. until 1 September 2016, the Company Secretary of FNP; and
  - 15.5. therefore, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
- 16. Mr Trevor Allen (**Mr Allen**) was, at all material times during the Claim Period:
  - 16.1. until 23 June 2020, an independent non-executive director of FNP;
  - 16.2. from 23 June 2020, a non-independent non-executive director of FNP;
  - 16.3. until 6 June 2019, the Chairman of the Audit, Risk and Compliance Committee;
  - 16.4. from on or around 6 June 2019:
    - (a) the Chairman of the Finance and Audit Committee;



- (b) a member of the Risk and Compliance Committee;
- 16.5. from 23 June 2020, the Company Secretary of FNP; and
- 16.6. therefore, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
- 17. Mr Timothy Bryan (**Mr Bryan**) was at all material times during the Claim Period from 4 December 2019:
  - 17.1. the alternate non-executive director for Mr A. Perich; and
  - 17.2. therefore, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
- 18. Ms Genevieve Gregor (**Ms Gregor**) was at all material times during the Claim Period from 4 March 2020:
  - 18.1. an independent non-executive director of FNP;
  - 18.2. the Chair of the Risk and Compliance Committee;
  - 18.3. a member of the Finance and Audit Committee; and
  - 18.4. therefore, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
- 19. Ms Jane McKellar (**Ms McKellar**) was at all material times during the Claim Period from 8 May 2020:
  - 19.1. an independent non-executive director of FNP; and
  - 19.2. therefore, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
- 20. Mr Michael Bracka (**Mr Bracka**) was, at all material times during the Claim Period until about 1 November 2016:

- 20.1. the CEO – FNP Foods North America;
- 20.2. at least until 30 June 2016, was one of FNP’s ‘Key management personnel’ and/or an ‘Executive Officer’;

**Particulars**

FY2014 Full-Year Financial Report at p15; FY2015 Full-Year Financial Report at p 37; FY2016 Full-Year Financial Report at p 8.

- 20.3. in the capacities described in this paragraph (or any of them), a person who made, or participated in making decisions that affected the whole, or a substantial part, of the business of FNP, and/or had the capacity to affect significantly FNP’s financial standing; and
  - 20.4. by reason of paragraph 20.3 above, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
21. Mr Timothy Moses (**Mr Moses**) was, at all material times during the Claim Period:
- 21.1. from 7 December 2014 to on or around 30 June 2017, the General Manager of Group Operations of FNP (an Executive Officer position as identified in the relevant FNP Full-Year Report/s);
  - 21.2. from on or around 1 July 2017 to on or around 30 June 2018, the Chief Operations Officer of FNP;
  - 21.3. from on or around 1 July 2018 to 30 June 2019, the Strategic Development Director of FNP;
  - 21.4. from on or around 1 July 2019 to 24 June 2020, the Head of Operations of FNP (a Key Management Personnel position);
  - 21.5. at least from 1 July 2016, was one of FNP’s ‘Key management personnel’ and/or an ‘Executive Officer’;

## Particulars

FY2016 Full-Year Financial Report at pp 8-9; FY2017 Full-Year Financial Report at p 62; FY2018 Full-Year Financial Report at p 64; FY2019 Full-Year Financial Report at p 63; FY2020 Full-Year Financial Report at p 28.

- 21.6. in the capacities described in this paragraph (or any of them), a person who made, or participated in making decisions that affected the whole, or a substantial part, of the business of FNP, and/or had the capacity to affect significantly FNP's financial standing; and
  - 21.7. by reason of paragraph 21.6 above, an 'officer' of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
22. Mr Luke Collis (**Mr Collis**) was, at all material times during the Claim Period:
- 22.1. the General Manager – Commercial Finance of FNP;
  - 22.2. in that capacity, a person who made, or participated in making decisions that affected the whole, or a substantial part, of the business of FNP, and/or had the capacity to affect significantly FNP's financial standing; and
  - 22.3. by reason of paragraph 22.2 above, an 'officer' of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
23. Mr Peter Nathan (**Mr Nathan**) was, at all material times during the Claim Period:
- 23.1. the General Manager of FNP;
  - 23.2. in that capacity, a person who made, or participated in making decisions that affected the whole, or a substantial part, of the business of FNP, and/or had the capacity to affect significantly FNP's financial standing; and
  - 23.3. by reason of paragraph 23.2 above, an 'officer' of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
24. Mr Peter Brown (**Mr Brown**) was, at all material times during the Claim Period:

- 24.1. until about 1 January 2018, the Executive General Manager – Sales, Food Service & Convenience of FNP;
  - 24.2. from about 1 January 2018, the Country Director South East Asia & Middle East of FNP;
  - 24.3. in the capacities described in this paragraph (or either of them), a person who made, or participated in making decisions that affected the whole, or a substantial part, of the business of FNP, and/or had the capacity to affect significantly FNP's financial standing; and
  - 24.4. by reason of paragraph 24.3 above, an 'officer' of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
25. Mr Amine Haddad (**Mr Haddad**) was, at all material times during the Claim Period until 9 June 2020:
- 25.1. from 7 December 2014 to 9 June 2020, the Chief Executive Officer of Commercial Operations of FNP;
  - 25.2. at least from 1 July 2016, was one of FNP's 'Key management personnel' and/or an 'Executive Officer';

### **Particulars**

FY2014 Full-Year Financial Report at p 15; FY2015 Full-Year Financial Report at p 37; FY2016 Full-Year Financial Report at p 8; FY2017 Full-Year Financial Report at p 62; FY2018 Full-Year Financial Report at p 64; FY2019 Full-Year Financial Report at p 63; FY2020 Full-Year Financial Report at pp 8, 28.

- 25.3. in the capacities described in this paragraph (or any of them), a person who made, or participated in making decisions that affected the whole, or a substantial part, of the business of FNP, and/or had the capacity to affect significantly FNP's financial standing; and
- 25.4. by reason of paragraph 25.3 above, an 'officer' of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

26. Mr Campbell Nicholas (**Mr Nicholas**) was, at all material times during the Claim Period between 1 September 2016 and 23 June 2020:
- 26.1. the Chief Financial Officer of FNP;
  - 26.2. the Company Secretary of FNP;
  - 26.3. was one of FNP's 'Key management personnel' and/or an 'Executive Officer';

### **Particulars**

FY2017 Full-Year Financial Report at p 62; FY2018 Full-Year Financial Report at p 64; FY2019 Full-Year Financial Report at p 63; FY2020 Full-Year Financial Report at p 28.

- 26.4. in the capacities described in this paragraph (or either of them), a person who made, or participated in making decisions that affected the whole, or a substantial part, of the business of FNP, and/or had the capacity to affect significantly FNP's financial standing; and
  - 26.5. by reason of paragraph 26.4 above, an 'officer' of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
27. Ms Amber Stanley (**Ms Stanley**) (also known as Amber Hollenstein) was at all material times during the Claim Period:
- 27.1. from about 18 December 2017, the Group General Counsel of FNP;
  - 27.2. from about 31 October 2019 until 8 March 2020, a Company Secretary of FNP;
  - 27.3. in the capacities described in this paragraph (or either of them), a person who made, or participated in making decisions that affected the whole, or a substantial part, of the business of FNP, and/or had the capacity to affect significantly FNP's financial standing; and
  - 27.4. by reason of paragraph 27.3 above, an 'officer' of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

28. Ms Stephanie Graham (**Ms Graham**) was, at all material times during the Claim Period from about 1 March 2018:
- 28.1. from about 1 March 2018 until about 1 December 2018, the Group Financial Controller of FNP;
  - 28.2. from about 1 April 2019 onwards, the Group General Manager – Corporate Development of FNP;
  - 28.3. in the capacities described in this paragraph (or either of them), a person who made, or participated in making decisions that affected the whole, or a substantial part, of the business of FNP, and/or had the capacity to affect significantly FNP’s financial standing; and
  - 28.4. by reason of paragraph 28.3 above, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.
29. Mr Brendan Radford (**Mr Radford**) was at all material times during the Claim Period from about 1 January 2020:
- 29.1. CEO, Commercial Operations;
  - 29.2. in that capacity, a person who made, or participated in making decisions that affected the whole, or a substantial part, of the business of FNP, and/or had the capacity to affect significantly FNP’s financial standing; and
  - 29.3. by reason of paragraph 29.2 above, an ‘officer’ of FNP within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12.

**B.2 The knowledge of the officers of FNP is the knowledge of FNP**

30. By reason of the matters pleaded in paragraphs 10 to 29 above, any information of which any or all of the persons referred to in those paragraphs (collectively, the **FNP Officers**):
- 30.1. had; or

30.2. which ought reasonably to have come into their possession in the course of the performance of their respective duties as officers of FNP;

was information of which FNP was 'aware', for the purpose of ASX Listing Rules 3.1 and 19.12 and s 674 of the Corporations Act.

## **C FINANCIAL REPORTING**

### **C.1 FNP's Reporting Obligations**

#### **C.1.1 *Full-Year Financial Reports and Half-Year Financial Reports – Corporations Act***

31. At all material times during the Claim Period, FNP was required by:

31.1. section 292 of the Corporations Act – to prepare financial reports for each financial year; and

31.2. section 302 of the Corporations Act – to prepare financial reports for each half-year.

32. During the Claim Period, FNP's financial reports for each financial year (**Full-Year Financial Reports**):

32.1. were required by s 295 of the Corporations Act to include a signed directors' declaration about the statements and notes, including (but not limited to) a declaration as to whether, in the directors' opinion, the financial statement and notes were in accordance with the Corporations Act, including ss 296 and 297;

32.2. were required by s 296(1) of the Corporations Act to comply with the accounting standards made by the Australian Accounting Standards Board (**AASB**) pursuant to s 334(1) of the Corporations Act (**Australian Accounting Standards**);

32.3. were required by s 297 of the Corporations Act to give a true and fair view of the financial position and performance of FNP (and its controlled entities);

- 32.4. were required by s 301 of the Corporations Act to be audited in accordance with Division 3 of Part 2M.3 of Chapter 2M of the Corporations Act, and FNP was required to obtain an auditor's report in respect of its Full-Year Financial Reports;
  - 32.5. were required by s 314(1) of the Corporations Act to be sent by FNP to its shareholders together with a copy of the corresponding auditor's report; and
  - 32.6. were required by s 319 of the Corporations Act to be lodged with the Australian Securities and Investments Commission (**ASIC**).
33. During the Claim Period, FNP's financial reports for each half-year (**Half-Year Financial Reports**):
- 33.1. were required by s 304 of the Corporations Act to comply with the Australian Accounting Standards;
  - 33.2. were required by s 305 of the Corporations Act to give a true and fair view of the financial position and performance of FNP (and its controlled entities);
  - 33.3. were required by s 302 of the Corporations Act to be audited or reviewed in accordance with Division 3 of Part 2M.3 of Chapter 2M of the Corporations Act, and FNP was required to obtain an auditor's report in respect of its Half-Year Financial Reports; and
  - 33.4. were required by ss 302 and 320 of the Corporations Act to be lodged with ASIC.

**C.1.2** *ASX Listing Rules*

34. At all material times, pursuant to ASX Listing Rules 4.3A, 4.3B and 4.5.1:
- 34.1. FNP was obliged to lodge with the ASX by no later than two months after the end of the financial year a preliminary final report containing the information stipulated by Appendix 4E of the ASX Listing Rules (**Preliminary Final Report**);
  - 34.2. the Preliminary Final Report was required to comply with the Australian Accounting Standards; and



- 34.3. FNP was obliged to lodge with the ASX, by no later than three months after the end of a financial year, FNP's Full-Year Financial Report.
35. At all material times, pursuant to ASX Listing Rules 4.2A and 4.2B, FNP was obliged to lodge with the ASX by no later than two months after the end of a financial half-year:
- 35.1. FNP's Half-Year Financial Report; and
- 35.2. a half-year report containing the information stipulated by Appendix 4D of the ASX Listing Rules.

## **C.2 Deloitte's auditing obligations**

36. At all material times during the Claim Period, Deloitte was required to conduct its audits of the Full-Year Financial Reports:
- 36.1. in accordance with s 307 of the Corporations Act, which required it to form an opinion on, *inter alia*, whether:
- (a) FNP's Full-Year Financial Reports were in accordance with the Corporations Act, including (1) whether they gave a true and fair view of the financial position and performance of FNP, and (2) whether they complied with the Australian Accounting Standards;
  - (b) Deloitte had been given all information, explanation and assistance necessary for the conduct of the audits; and
  - (c) FNP had kept financial records sufficient to enable a financial report to be prepared and audited;
- 36.2. pursuant to s 307A of the Corporations Act, in accordance with the applicable auditing standards (being the standards the subject of s 336 of the Corporations Act) (**Australian Auditing Standards**);

- 36.3. in accordance with s 308 of the Corporations Act, which required Deloitte to prepare an auditor's report in respect of FNP's Full-Year Financial Reports that reported on the matters referred to in paragraphs 36.1 and 36.2 above; and
- 36.4. in accordance with s 311 of the Corporations Act, which required Deloitte to notify ASIC in writing as soon as practicable (and in any case, within 28 days) if it became aware of circumstances that:
- (a) it had reasonable grounds to suspect amounted to a contravention of the Corporations Act (either a significant contravention within the meaning of s 311(4) of the Corporations Act, or one that Deloitte believed had not been or would not be adequately dealt with by commenting on it in the relevant auditor's report, or bringing it to the attention of FNP's directors);
  - (b) amounted to an attempt to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit; or
  - (c) amounted to an attempt to otherwise interfere with the proper conduct of the audit;

**(Deloitte's Statutory Audit Obligations).**

37. Further, at all material times during the Claim Period, Deloitte was required to conduct its reviews of the Half-Year Financial Reports:
- 37.1. pursuant to s 309 of the Corporations Act, which required it to form an opinion and report on, *inter alia*, whether Deloitte became aware of any matter in the course of the review that made it believe that FNP's Half-Year Report did not comply with Division 2 of Part 2M.3 of Chapter 2M of the Corporations Act, which Division relevantly included the requirements for FNP's financial reports:
- (a) to comply with the Australian Accounting Standards (pursuant to s 304 of the Corporations Act);
  - (b) to give a true and fair view of FNP's position and performance (pursuant to s 305 of the Corporations Act); and

37.2. pursuant to s 307A of the Corporations Act, which required Deloitte to comply with the Australian Auditing Standards which included Auditing Standard on Review Engagements ASRE 2410, “Review of a financial report performed by the independent auditor of the entity” (**ASRE 2410**),

**(Deloitte’s Statutory Review Obligations).**

38. At all material times during the Claim Period, compliance with the Australian Auditing Standards required Deloitte (**Auditing Standards Audit Obligations**), when conducting an audit of FNP’s Full-Year Financial Reports, relevantly:

38.1. to obtain an understanding of:

- (a) FNP and its environment, including its internal control and relevant controls relating to the risks, to enable Deloitte to identify and assess risks of material misstatement;

**Particulars (38.1(a))**

ASA 200 (October 2009) at [7]; ASA 200 (November 2013) at [7]; ASA 200 (December 2015) at [7]; ASA 200 (December 2018) at [7]; ASA 315 (June 2011) at [3], [5], [12], [20], [25]; ASA 315 (November 2013) at [3], [5], [12], [20], [25]; ASA 315 (December 2015) at [3], [5], [12], [20], [25].

- (b) FNP’s objectives and strategies, and those related business risks that may result in risks of material misstatement;
- (c) the measurement and review of FNP’s financial performance;
- (d) FNP’s internal control relevant to the audit and control environment, including whether FNP’s management, with oversight of those charged with governance, has created and maintained a culture of honesty and ethical behaviour;
- (e) FNP’s processes for:
  - (i) identifying business risks relevant to financial reporting objectives;

- (ii) estimating the significance of the risks;
- (iii) assessing the likelihood of their occurrence; and
- (iv) deciding about actions to address those risks;

**Particulars (38.1(b) to 38.1(e))**

ASA 315 (June 2011) at [11(d) and (e)] and [12]-[15]; ASA 315 (November 2013) at [11(d) and (e)] and [12]-[15]; ASA 315 (December 2015) at [11(d) and (e)] and [12]-[15].

- 38.2. to obtain an understanding, and evaluate the appropriateness, of FNP's selection and application of accounting policies, including the reasons for changes thereto;

**Particulars**

ASA 315 (June 2011) at [11(c)]; ASA 315 (November 2013) at [11(c)]; ASA 315 (December 2015) at [11(c)].

- 38.3. to determine whether any of the risks identified are, in Deloitte's judgement, a significant risk, including:

- (a) whether the risk is a risk of fraud;
- (b) whether the risk is related to recent significant, economic, accounting or other developments and, therefore, requires specific attention;
- (c) the degree of subjectivity in the measurement of financial information related to the risk, especially those measurements involving a wide range of measurement uncertainty;

**Particulars**

ASA 315 (June 2011) at [28]; ASA 315 (November 2013) at [28]; ASA 315 (December 2015) at [28].

- 38.4. to exercise professional judgement and maintain professional scepticism throughout the planning and performance of the audit, recognising that circumstances may exist that cause a financial report to be materially misstated;

**Particulars**

ASA 200 (October 2009) at [7] and [15]-[16]; ASA 200 (November 2013) at [7] and [15]-[16]; ASA 200 (December 2015) at [7] and [15]-[16]; ASA 200 (December 2018) at [7] and [15]-[16].

- 38.5. to obtain sufficient and appropriate audit evidence, including about whether material misstatements exist (through designing and implementing appropriate responses to the assessed risk of material misstatement), to reduce audit risk to an acceptably low level, and thereby enable Deloitte to draw reasonable conclusions on which to base its opinion; and

**Particulars**

ASA 200 (October 2009) at [7], [17]; ASA 200 (November 2013) at [7], [17]; ASA 200 (December 2015) at [7], [17]; ASA 200 (December 2018) at [7], [17]; ASA 315 (June 2011) at [3]; ASA 315 (November 2013) at [3]; ASA 315 (December 2015) at [3]; ASA 500 (June 2011) at [6]; ASA 500 (November 2013) at [6]; ASA 500 (December 2015) at [6]; ASA 500 (May 2017) at [6].

- 38.6. to express a qualified opinion or adverse opinion where Deloitte was not able to obtain sufficient appropriate audit evidence as to a material financial report assertion.

**Particulars**

ASA 330 (October 2009) at [27]; ASA 330 (December 2015) at [27].

39. Further, at all material times during the Claim Period, compliance with the Australian Auditing Standards required Deloitte, when conducting a review of FNP's Half-Year Financial Reports (**Auditing Standards Review Obligations**), relevantly:

- 39.1. to plan and perform the review by exercising professional judgment and with an attitude of professional scepticism, recognising that circumstances may exist that cause a Half-Year Report to require a material adjustment for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework;

**Particulars**

ASRE 2410 (July 2013) at [10], [15].

- 39.2. to obtain an understanding of FNP and its environment, including its internal control, as it relates to the preparation of both the annual and interim or other financial reports, sufficient to plan and conduct the engagement so as to be able to:
- (a) identify the types of potential material misstatements and consider the likelihood of their occurrence; and
  - (b) select the enquiries, analytical and other review procedures that will provide Deloitte with a basis for reporting whether anything had come to its attention that caused it to believe that the financial report was not prepared, in all material respects, in accordance with the applicable financial reporting framework;

**Particulars**

ASRE 2410 (July 2013) at [13], [15].

- 39.3. to obtain evidence that the financial report agrees or reconciles with the underlying accounting records of FNP; and

**Particulars**

ASRE 2410 (July 2013) at [17].

- 39.4. to express a qualified or adverse conclusion where a matter comes to Deloitte's attention that causes it to believe that a material adjustment should be made to the financial report for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework.

## Particulars

ASRE 2410 (July 2013) at [33]-[34].

### **D FNP ACCOUNTING POLICIES**

#### **D.1 FNP FY2014 Policies**

40. In accordance with the FY2014 Full-Year Financial Report, during FY2014:

- 40.1. FNP's inventory policy was to the effect that inventories were measured at the lower of cost and net realisable value;
- 40.2. FNP's tangible asset policy was to the effect that plant and equipment, motor vehicles and equipment under finance lease were stated at cost less accumulated depreciation and impairment;
- 40.3. FNP's CWIP policy was to the effect that:
  - (a) construction in progress was stated at cost;
  - (b) 'cost' in this regard included expenditure that was directly attributable to the acquisition or construction of the item; and
  - (c) In the event that settlement of all or part of the purchase consideration was deferred, cost was determined by discounting the amounts payable in the future to their present value as at the date of acquisition;
- 40.4. FNP's revenue policy was to the following effect:
  - (a) revenue was measured at the fair value of the consideration received or receivable, and was reduced for terms, rebates and other similar allowances;
  - (b) revenue from the sale of goods was recognised when all of the following conditions were satisfied:

- (i) FNP had transferred to the buyer the significant risks and rewards of ownership of the goods;
  - (ii) FNP retained neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;
  - (iii) the amount of revenue could be measured reliably; and
  - (iv) it was probable that the economic benefits associated with the transaction would flow to the entity; and the costs incurred or to be incurred in respect of the transaction could be measured reliably; and
- 40.5. FNP's intangible asset impairment policy was to the effect that impairment of goodwill or other intangible assets required an estimation of the value in use of the cash generating units to which the goodwill or other intangible assets were allocated (which estimation required FNP's directors to estimate the future cash flows expected to arise from the cash generating unit and a suitable discount rate in order to calculate the present value).

#### **Particulars (40)**

FY2014 Full-Year Financial Report at pp 35, 36, 38, 39, 40.

#### **D.2 FNP FY2015 Policies**

41. In accordance with the FY2015 Full-Year Financial Report, during FY2015:
- 41.1. FNP's inventory policy was as set out in the FY2014 Full-Year Financial Report;
  - 41.2. FNP's tangible asset policy was as set out in the FY2014 Full-Year Financial Report;
  - 41.3. FNP's CWIP policy was to the effect that to the effect that construction in progress was stated at cost;
  - 41.4. FNP's revenue policy was to the effect that:



- (a) revenue was measured at the fair value of the consideration received or receivable, and was reduced for terms, rebates and other similar allowances;
- (b) Revenue from the sale of goods was recognised when all the following conditions were satisfied:
  - (i) the significant risks and rewards of ownership of the goods had been transferred;
  - (ii) the amount of revenue could be measured reliably;
  - (iii) it was probable the revenue would be received; and
  - (iv) the costs incurred or to be incurred in respect of the transaction could be measured reliably; and

41.5. FNP's intangible asset impairment policy was as set out in the FY2014 Full-Year Financial Report.

#### **Particulars (41)**

FY2015 Full-Year Financial Report at pp 52, 54, 55, 56.

### **D.3 FNP FY2016 Policies**

42. In accordance with the FY2016 Full-Year Financial Report, during FY2016:

- 42.1. FNP's inventory policy was as set out in the FY2014 Full-Year Financial Report;
- 42.2. FNP's tangible asset policy was as set out in the FY2014 Full-Year Financial Report;
- 42.3. FNP's CWIP policy was to the effect that capital work in progress was stated at cost;
- 42.4. FNP's revenue policy was as set out in the FY2015 Full-Year Financial Report; and
- 42.5. FNP's intangible asset impairment policy was as set out in the FY2014 Full-Year Financial Report.

## Particulars (42)

FY2016 Full-Year Financial Report at pp 31, 34, 35, 37.

### D.4 FNP FY2017 Policies

43. In accordance with the FY2017 Full-Year Financial Report, during FY2017:

43.1. FNP's inventory policy was as set out in the FY2014 Full-Year Financial Report;

43.2. FNP's tangible asset policy was as set out in the FY2014 Full-Year Financial Report;

43.3. FNP's CWIP policy was to the effect that:

- (a) capital work in progress was stated at cost;
- (b) capital work in progress included all expenditure directly attributable to bringing the asset to its working condition for its intended use, and included the estimated cost of dismantling and removing the asset and restoring the site (where applicable);
- (c) 'cost' in this regard included installation costs, delivery costs, consultant's costs incurred to install the asset, fit out costs and labour costs of dedicated project staff associated with these projects. Start-up costs and similar pre-production costs did not form part of the cost of an asset unless they were necessary to bring the asset to its working condition. Initial operating losses incurred prior to an asset achieving planned performance must be recognised as an expense;
- (d) costs would initially be recognised as a CWIP asset from the time that it satisfied the general recognition criteria for assets under the Australian Accounting Standards. The approval (as required by the relevant delegation of authority) to proceed with a project was the point in time when FNP was able to satisfy the recognition criteria; and
- (e) FNP formally assessed whether project costs were to be reclassified from CWIP at December and June each year, taking into consideration when the Commissioning

Phase of each asset had been completed i.e. when the asset was in the location and condition necessary for it to be capable of operating in the manner intended by management. At that point, it would be classified as property, plant and equipment, to be depreciated over the useful life of the asset;

43.4. FNP's revenue policy was as set out in the FY2015 Full-Year Financial Report;

43.5. FNP's capitalised development policy was to the effect that:

- (a) expenditure on research activities would be recognised as an expense in the period in which it was incurred;
- (b) however, an internally generated intangible asset arising from development (or from the development phase of an internal project) would be recognised if, and only if all of the following were demonstrated following approval from the Board:
  - (i) the technical feasibility of completing the intangible asset so that it would be available for use or sale;
  - (ii) its intention to complete the intangible asset and use or sell it;
  - (iii) its ability to use or sell the intangible asset;
  - (iv) how the intangible asset would generate probable future economic benefits. Among other things, FNP could demonstrate the existence of a market for the output of the intangible asset or the intangible asset itself or, if it was to be used internally, the usefulness of the intangible asset;
  - (v) the availability of adequate technical, financial and other resources to complete the development and to use or sell the intangible asset; and
  - (vi) its ability to measure reliably the expenditure attributable to the intangible asset during its development;

- (c) the amount initially recognised for internally generated intangible assets would be the sum of the expenditure incurred from the date when the intangible asset first met the recognition criteria listed above together with the approval from the Board;
  - (d) where no internally generated intangible asset could be recognised, development expenditure would be recognised in profit and loss in the period in which it was incurred; and
  - (e) subsequent to initial recognition, internally generated intangible assets would be reported at cost less accumulated amortisation and accumulated impairment losses, on the same basis as intangible assets acquired separately;
- 43.6. FNP's intangible asset impairment policy was as set out in the FY2014 Full-Year Financial Report.

#### **Particulars (43)**

FY2017 Full-Year Financial Report at pp 29, 31, 33, 35.

#### **D.5 FNP FY2018 Policies**

44. In accordance with the FY2018 Full-Year Financial Report, during FY2018:
- 44.1. FNP's inventory policy was as set out in the FY2014 Full-Year Financial Report;
  - 44.2. FNP's tangible asset policy was as set out in the FY2014 Full-Year Financial Report;
  - 44.3. FNP's CWIP policy was as set out in the FY2017 Full-Year Financial Report;
  - 44.4. FNP's revenue policy was as set out in the FY 2015 Full-Year Financial Report;
  - 44.5. FNP's capitalised development policy was to the effect that:
    - (a) Expenditure on research activities would be recognised as an expense in the period in which it is incurred;

- (b) an internally generated intangible asset arising from development (or from the development phase of an internal project) would be recognised if, and only if, all of the following were demonstrated:
  - (i) the technical feasibility of completing the intangible asset so that it would be available for use or sale;
  - (ii) the intention to complete the intangible asset and use or sell it;
  - (iii) the ability to use or sell the intangible asset;
  - (iv) how the intangible asset would generate probable future economic benefits. Among other things, FNP could demonstrate the existence of a market for the output of the intangible asset or the intangible asset itself or, if it was to be used internally, the usefulness of the intangible asset;
  - (v) the availability of adequate technical, financial and other resources to complete the development and to use or sell the intangible asset; and
  - (vi) its ability to measure reliably the expenditure attributable to the intangible asset during its development;
- (c) the amount initially recognised for internally generated intangible assets would be the sum of the expenditure incurred from the date when the intangible asset first met the recognition criteria listed above;
- (d) where no internally generated intangible asset could be recognised, development expenditure would be recognised in profit and loss in the period in which it was incurred; and
- (e) subsequent to initial recognition, internally generated intangible assets would be reported at cost less accumulated amortisation and accumulated impairment losses, on the same basis as intangible assets that were acquired separately; and

- 44.6. FNP's intangible asset impairment policy was as set out in the FY2014 Full-Year Financial Report.

#### **Particulars (44)**

FY2018 Full-Year Financial Report at pp 28 31, 36, 38, 39.

#### **D.6 FNP FY2019 Policies**

45. In accordance with the FY2019 Full-Year Financial Report, during FY2019:
- 45.1. FNP's inventory policy was as set out in the FY2014 Full-Year Financial Report;
- 45.2. FNP's tangible asset policy was as set out in the FY2014 Full-Year Financial Report;
- 45.3. FNP's CWIP policy was to the effect that:
- (a) capital work in progress was stated at cost less impairment (if any);
  - (b) capital work in progress included all expenditure directly attributable to bringing the asset to its working condition for its intended use, and included the estimated cost of dismantling and removing the asset and restoring the site (where applicable);
  - (c) 'cost' in this regard included installation costs, delivery costs, consultant's costs incurred to install the asset, fit out costs and labour costs of dedicated project staff associated with these projects. Start-up costs and similar pre-production costs would not form part of the cost of an asset unless they were necessary to bring the asset to its working condition. Initial operating losses incurred prior to an asset achieving planned performance must be recognised as an expense;
  - (d) the costs would initially be recognised as a CWIP asset from the time that it satisfied the general recognition criteria for assets under the Australian Accounting Standards. The approval (as required by the relevant delegation of authority) to proceed with a project was the point in time when Freedom was able to satisfy the recognition criteria; and

- (e) FNP formally assessed whether project costs were to be reclassified from CWIP on a quarterly basis each year, taking into consideration when the Commissioning Phase of each asset had been completed i.e. when the asset was in the location and condition necessary for it to be capable of operating in the manner intended by management. At that point, it would be classified as property, plant and equipment, to be depreciated over the useful life of the asset;

45.4. FNP's revenue policy was to the effect that:

- (a) revenue was measured at the fair value of the consideration received or receivable, and was reduced for terms, rebates and similar allowances;
- (b) revenue from the sale of goods was recognised when all of the following conditions were satisfied:
  - (i) identification of contract;
  - (ii) identification of the performance obligations in the contract;
  - (iii) determination of the transaction price;
  - (iv) allocation of the transaction price to the performance obligations in the contract; and
  - (v) recognition of revenue when performance obligations were satisfied;

45.5. FNP's capitalised development policy was as set out in the FY2018 Full-Year Financial Report; and

45.6. FNP's intangible asset impairment policy was as set out in the FY2014 Full-Year Financial Report.

#### **Particulars (45)**

FY2019 Full-Year Financial Report at pp 35, 38, 42, 44, 45.

**E HALF-YEARLY AND ANNUAL RESULTS & EQUITY RAISING – FINANCIAL POSITION AND PERFORMANCE REPRESENTATIONS (FNP AND DELOITTE)**

**E.1 FNP’s Full-Year Financial Report and Half-Year Financial Report representations: 1H2015-1H2020**

46. On or about the dates that FNP’s Full-Year Financial Reports and Half-Year Financial Reports were published (as set out in Schedule 2), FNP represented to the market that:

46.1. it had achieved the financial results presented in each of the Full-Year Financial Reports and Half-Year Financial Reports (together, **FNP Financial Reports**) (**FNP Financial Results Representations**);

46.2. the FNP Financial Reports had been prepared in compliance with, *inter alia*, the Corporations Act and the Australian Accounting Standards (**FNP Compliance with Standards Representations**);

46.3. the FNP Financial Reports gave a true and fair view of its financial position and performance during the reporting period (**FNP True and Fair View Representations**); and

46.4. it had in place and applied adequate systems and controls to:

(a) provide management and/or the Board with reasonably accurate and reliable information to be used in the preparation of the FNP Financial Reports; and

(b) ensure appropriate monitoring and management of, and compliance with, all relevant regulatory and legal requirements applicable to the preparation of the FNP Financial Reports during the Claim Period (as set out in paragraphs 31 to 35 above) (**FNP Systems and Control Representations**),

(the FNP Financial Results Representations, the FNP Compliance with Standards Representations, the FNP True and Fair View Representations, and the FNP Systems and Controls Representations, are together and in any combination referred to as the **FNP Accounts Representations**).



## Particulars

FNP's Full-Year Financial Reports and Half-Year Financial Reports were published on the dates specified in Schedule 2 to this SOC.

The financial results provided in each Full-Year Financial Report and Half-Year Financial Report are set out in Schedule 2 to this SOC.

The representations referred to in paragraphs 46.1 to 46.3 were stated expressly in each of the Full-Year Financial Reports and Half-Year Financial Reports.

The representations referred to in paragraph 46.4 were implied by one or more of the following matters:

- (i) FNP's presentation of its FNP Financial Reports as being accurate and having been prepared in compliance with the Corporations Act and the Australian Accounting Standards;
- (ii) the absence of any qualification as to the unreliability of any of FNP's internal systems or controls, in circumstances where:
  - (A) by reason of the matters pleaded in paragraphs 32.3 and 33.2 above, the FNP Full-Year Financial Reports and Half-Year Financial Reports were required to give a true and fair view of the financial position and performance of FNP (and its controlled entities);
  - (B) by reason of the matters pleaded in paragraphs 5.10 and 30 above, FNP was required to disclose to the market any material information which any officer of FNP had, or which reasonably ought to have come into their possession in the course of their duties; and
  - (C) the directors' declarations in each of the financial reports, which were signed by Mr Macleod (Managing Director / Managing Director and CEO).

**E.2 Deloitte’s Full-Year Audit Report and Half-Year Review Report representations: 1H2015-1H2020**

*Half-Year Financial Reports*

47. During the Claim Period, each of FNP’s Half-Year Financial Reports included an Independent Auditor’s Half-Year Review Report (**Deloitte Half-Year Review Report**) which was:
- 47.1. prepared by Deloitte; and
  - 47.2. signed by the lead audit partner on behalf of Deloitte.
48. In each of its Deloitte Half-Year Review Reports Deloitte represented to the market that:
- 48.1. it had conducted its review in accordance with ASRE 2410;
  - 48.2. it had not become aware of any matters that made it believe that the applicable financial report was not in accordance with the Corporations Act, including:
    - (a) giving a true and fair view of the financial position of FNP in the period to which it applied;
    - (b) complying with Accounting Standard AASB 134 *Interim Financial Reporting* and the Corporations Regulations; and
  - 48.3. it had exercised the skill and care to be expected of a competent professional company auditor in the conduct of its review of the financial report,
- (for each reporting period, a **Deloitte Half-Year Review Representation**).

**Particulars**

The representations referred to in paragraphs 48.1 and 48.2 were stated expressly in each Deloitte Half-Year Review Report contained in FNP’s Half-Year Financial Reports during the Claim Period.

The representations referred to in paragraphs 48.3 above were implied by the conduct of Deloitte in issuing each Deloitte Half-Year Review Report, containing the express statements particularised immediately above.

*Deloitte Full-Year Audit Reports*

49. During the Claim Period, each of FNP's Full-Year Financial Reports included an Independent Auditor's Report (**Deloitte Full-Year Audit Report**) which was:

- 49.1. prepared by Deloitte; and
- 49.2. signed by Deloitte and the lead audit partner.

**Particulars**

Catherine Hill was the lead audit partner for FY2014.

Andrew Coleman was the lead audit partner between FY2015 and FY2019, inclusive.

David White of Deloitte was the lead audit partner for FY2020.

50. In each of its Deloitte Full-Year Audit Reports during the Claim Period, Deloitte represented to the market that:

- 50.1. it had conducted its audit as in accordance with the Australian Auditing Standards;
- 50.2. it had planned and performed the audit to enable it to obtain reasonable assurance whether its report was free from material misstatement (and had nothing to report in that regard);
- 50.3. in its opinion, it had obtained sufficient and appropriate audit evidence to provide a basis for its audit opinion;
- 50.4. it had reasonable grounds for the opinion referred to in paragraph 50.3 and had exercised due care and skill in forming that opinion;
- 50.5. in its opinion, each Full-Year Financial Report:
  - (a) was in accordance with the Corporations Act;

- (b) gave a true and fair view of the financial position of FNP as at the end of each relevant financial year; and
  - (c) complied with the Australian Accounting Standards and the Corporations Regulations;
- 50.6. it had reasonable grounds for the opinion referred to in paragraph 50.5 and had exercised due care and skill in forming that opinion; and
- 50.7. it had exercised the reasonable skill and care to be expected of a competent professional company auditor in the conduct of its audit,

(for each reporting period, a **Deloitte Full-Year Audit Representation**).

### **Particulars**

The representations referred to in paragraphs 50.1, 50.2, 50.3 and 50.5 above were stated expressly in each Deloitte Full-Year Audit Report contained in each of FNP's Full-Year Financial Reports during the Claim Period.

The representations referred to in paragraphs 50.4, 50.6 and 50.7 above were implied by the conduct of Deloitte in issuing each Deloitte Full-Year Audit Report, containing the express statements particularised in the preceding paragraph.

### **E.3 FNP Equity raising representations: FY2015, FY2016, FY2018 and FY2019**

51. On 21 October 2015, 7 December 2016, 16 March 2018, and 23 May 2019, FNP released statements to the ASX, each entitled "Cleansing Notice Under Section 708AA(2)(f) of the Corporations Act 2001 (Cth)" and concerning a proposed equity raise (**FNP Cleansing Notices**).
52. By each of the FNP Cleansing Notices, FNP represented to the market that, as at the date of each such notice:
- 52.1. it had complied with:
    - (a) all applicable provisions of Chapter 2M of the Corporations Act; and
    - (b) section 674 of the Corporations Act;

52.2. FNP had no ‘excluded information’, of the type referred to in (relevantly) s 708AA(8) of the Corporations Act, to disclose in the FNP Cleansing Notice in question; and

52.3. FNP had disclosed, via the FNP Cleansing Notice in question or otherwise, all information that investors and their professional advisers would reasonably require for the purpose of making an informed assessment of the assets, liabilities, financial position and performance, profits, losses and prospects of FNP, or the rights and liabilities attaching to FNP Shares,

(collectively, the **FNP Equity Raising Representations**).

### **Particulars**

The representations referred to in paragraphs 52.1 and 52.2 above were expressly stated in each of the FNP Cleansing Notices, on p 1 at points (c) and (d).

The representation referred to in paragraph 52.3 above was partly express and partly implied. Insofar as it was express, point (d) on p 1 of each of the FNP Cleansing Notices stated:

*as at the date of this notice, there is no “excluded information” of the type referred to in sections 708AA(8) and 708AA(9) of the Corporations Act that is required to be set out in this notice under section 708AA(7)(d) of the Corporations Act [...]*

Relevantly, s 708AA(8) of the Corporations Act defined ‘excluded information’ as information:

*(a) that has been excluded from a continuous disclosure notice in accordance with the listing rules of the relevant market operator to whom that notice is required to be given; and*

*(b) that investors and their professional advisers would reasonably require for the purpose of making an informed assessment of:*

*(i) the assets and liabilities, financial position and performance, profits and losses and prospects of the body; or*

*(ii) the rights and liabilities attaching to the relevant securities.*

Insofar as it was implied, it was implied by:

- (i) the making of the express representation referred to in paragraph 52.2 above;
- (ii) the fact that the FNP Cleansing Notices did not contain any disclosures about any of the matters comprising the True Position (defined in paragraph 96 below) as they applied at the time of each FNP Cleansing Notice; and
- (iii) the fact that each of the FNP Cleansing Notices was signed by Mr Macleod as Managing Director.

53. The FNP Equity Raising Representations were each continuing representations from the dates on which they were first made to the end of the Claim Period.

#### **F RELEVANT 2020 MARKET DISCLOSURES BY FNP**

54. On 29 May 2020, FNP released a statement to the ASX entitled “COVID 19 Trading Update” (**29 May 2020 Trading Update**), by which FNP stated:

- 54.1. it had “historically experienced low levels of provisioning for doubtful debts”, but expected to require a provision of approximately \$4m in the second half of FY2020 “in respect of an export account”;
- 54.2. however, FNP did not foresee “any other material doubtful debts in its export markets”;
- 54.3. the “consolidation of external warehousing activities” and “a detailed review of product offerings and formats” would result in a “one-off non-cash write down of the carrying value of inventory” in FY2020, estimated to be in the amount of approximately \$25m;
- 54.4. additional amortisation of “new product development charges may be required”;
- 54.5. FNP anticipated that “the full year earnings result will be materially impacted by COVID 19 issues and one-off charges” as referred to in the 29 May 2020 Trading Update;
- 54.6. the company was “accelerating the final stages of its capital investment program”, and expected total capital expenditure to be in the range of \$120m to \$130m, with “a materially reduced capital expenditure program in FY2021”; and

- 54.7. the company had decided to cancel the dividend that had been deferred in the first half of FY2020, and did not anticipate paying a full year dividend.
55. On 23 June 2020 at approximately 5.46pm, FNP released a statement to the ASX entitled “Chief Financial Officer and Company Secretary” (**23 June 2020 CFO Announcement**). By the 23 June 2020 CFO Announcement, FNP stated that Mr Nicholas, CFO and Company Secretary of FNP, had resigned on 23 June 2020.
56. On 24 June 2020 at approximately 9.40am, FNP released a statement to the ASX entitled “Management announcement” (**24 June 2020 CEO Announcement**). By the 24 June 2020 CEO Announcement, FNP stated that its CEO and Managing Director, Mr Macleod, was “on leave pending a further announcement that is expected to be made early next week”.
57. Later that day, at approximately 2.42pm, an ASX Market Release was published, stating that the trading in FNP Shares would be “temporarily paused pending a further announcement”.

#### **Particulars**

ASX Market Release dated 24 June 2020 entitled “Pause in Trading”.

58. Later that day, at approximately 2.58pm, an ASX Market Announcement was published, stating that FNP Shares would be “placed in a trading halt at the request of FNP, pending it releasing an announcement” (or until the commencement of normal trading on 26 June 2020, whichever was the earlier).

#### **Particulars**

ASX Market Announcement dated 24 June 2020 entitled “FNP Foods Group Limited (ASX: FNP) – Trading Halt”.

59. On 25 June 2020 at approximately 5.08pm, FNP released a statement to the ASX entitled “Corporate Update” (**25 June 2020 Update**). By the 25 June 2020 Update, FNP stated:
- 59.1. (**CEO**) that it was not in a position to make any further comment regarding “the employment position of Rory Macleod”, but would make a further announcement early the following week;

59.2. **(Inventory)** in respect of its inventory and corresponding write downs:

- (a) that it continued to review “its inventory levels and the carrying value of inventory”;
- (b) that the company’s estimate of the “one-off non-cash write-down of the carrying value of inventory in FY20” foreshadowed in the 29 May 2020 Trading Update as being approximately \$25m had increased to approximately \$60m, to reflect “provisioning for obsolete stock, out of date stock and product withdrawals”;
- (c) that the obsolete and out-of-date stock dated “from the current year back to 2017”;  
and
- (d) that the initial estimate of \$25m in respect of inventory write downs (1) assumed that some amounts would “be recovered from re-processing inventory”, but FNP had since concluded that “the re-processing risks, time commitments and costs are not likely to be realised”, and (2) did not include inventory write-offs related to “FY2020 product withdrawals and deletions and accounting matters relating to costs of goods carried forward as a capital item that should have been included as cost of sales” (which required further investigation);

59.3. **(Revenue recognition and doubtful debts)** in respect of its revenue recognition and doubtful debts, that:

- (a) following a “detailed review” of FNP’s “revenue recognition and doubtful debt provisioning more generally”, “further bad debt provisioning and reversal of prior period revenue recognition will be required in FY20”;
- (b) accordingly, the provision of approximately \$4m in respect of “an export account” foreshadowed in the 29 May 2020 Trading Update had increased to approximately \$10m; and



- (c) it may also be necessary to include adjustments to the timing of recognition of revenue that was reported “in prior periods” and debtor balances in the balance sheet;

59.4. **(Employee share plan)** in respect of the FNP employee share option plan:

- (a) following a review of “administration and disclosure matters under [the FNP] employee share option plans and the issue of shares to employees”, 1.385m and 0.16m shares were issued on 27 March and 27 April 2020, respectively, in relation to employee options issues that were not completed;
- (b) no further issues of shares in relation to the review were planned; and
- (c) a charge of \$5.9m “will need to be brought to account, either wholly in FY2020 or spread across FY2020 and prior periods”.

60. On 25 June 2020, FNP held a teleconference briefing for investors (**25 June 2020 Teleconference**). During the 25 June 2020 Teleconference, Mr Gunner, Chairman, stated:

- 60.1. **(CEO)** FNP was not in a position to make any further comment in respect of the employment position of Mr Macleod, but that a further announcement would be made during the following week;
- 60.2. **(Inventory)** FNP was continuing to review its inventory levels, which review suggested that the value of the “one-off non-cash write-down of the carrying value” of FNP’s inventory would be larger than the approximately \$25m foreshadowed in May 2020. Specifically, “further write-downs will be required to reflect the provisioning for obsolete stock, out-of-date stock, and product withdrawals”, bringing the aggregate inventory write-down for FY2020 to approximately \$60m;
- 60.3. the provision of approximately \$60m would include “disposal costs” for stock for which it “was not practical nor profitable to rework”;

- 60.4. contributing to the inventory write-down was “cancelled export orders”, “contracts that were in place that were not fully utilised by the other party” and “out of date” or “expired” stock;
- 60.5. **(Revenue recognition)** reversal of prior year revenue recognition was required due to “invoicing errors”, being “invoices that were raised that should have been credited, and weren’t”; and
- 60.6. **(Employee share plan)** one issue identified in respect of the employee share plan was “options not being properly recorded, and therefore nor properly valued at the time”, such that the charge that is created whenever options are created “was not properly identified, and included in the accounts”.
61. On 30 June 2020, FNP released a statement to the ASX entitled “**Management Update**” (**30 June 2020 Management Update**). In the 30 June 2020 Management Update, FNP stated that on 29 June 2020, it had accepted the resignation of Mr Macleod as Managing Director and CEO of FNP.
62. On 8 July 2020, FNP released a statement to the ASX entitled “Update on suspension from quotation” (**8 July 2020 Update**). In the 8 July 2020 Update, FNP stated that it would be extending its voluntary suspension of FNP Shares from trade until close of trading on 30 October 2020.
63. On 20 October 2020, FNP released a statement to the ASX entitled “Voluntary Suspension Extension and AGM” (**20 October 2020 Announcement**). In the 20 October 2020 Announcement, FNP stated that the voluntary suspension of FNP Shares from trading would be extended to 30 November 2020.
64. On 30 October 2020, FNP released a statement to the ASX entitled “Extension of date for Lodgement of Financial Statements” (**30 October 2020 Announcement**). In the 30 October 2020 Announcement, FNP stated that ASIC had granted it an extension of the date by which it was required to lodge its FY2020 reports under Division 1 of Part 2M.3 of the Corporations Act to 30 November 2020.

65. On 30 November 2020, FNP released a statement to the ASX entitled “2020 Full-Year Financial Results Release” (**30 November 2020 Announcement**). In the 30 November 2020 Announcement, FNP stated that:
- 65.1. the total impact of adjustments and write-downs for FY2020 and “prior periods” was approximately \$590m, including:
    - (a) \$372.8m from a reduction in asset values reflecting changes to accounting policies and practices related to the capitalisation of capital works costs;
    - (b) \$75.9m in write-downs of goodwill and brands;
    - (c) \$60.1m in write-downs of out of date, unsaleable and obsolete inventory; and
    - (d) \$38.9m from a reduction in value of capitalised new product costs reflecting changes to accounting policies and practices;
  - 65.2. these results “reflect the significant costs of past accounting and operational matters” at FNP;
  - 65.3. FNP had implemented “a clear focus on operational accountability, improved cashflow reporting, reduced outstanding payables and improved customer and supplier terms”, and “improved many of the governance frameworks and policies” and “undertaken a culture review”;
  - 65.4. a “FY20 audit by Deloitte and a forensic accounting investigation by PricewaterhouseCoopers (**PwC**) identified a range of accounting matters going back a number of years”;
  - 65.5. these reviews had determined that “most of the costs capitalised during the commissioning phase of the Group’s capital investment program should be more appropriately treated as expenses”, and that these accounting treatments had “contributed to decisions on new products and expansions that were based on unrealistic assessments of market opportunities and margin assumptions that were not realised”, such that “too many Group products were sold at prices that did not fully recover their costs”;

- 65.6. it was necessarily to materially restate the “FY19, FY18 and prior period accounts” and make “material write-downs and adjustments”; and
- 65.7. FNP’s shares would remain in voluntary suspension until after its proposed recapitalisation was announced.
66. Also on 30 November 2020, FNP released to the public its Full-Year Financial Report for FY2020 (**FY2020 Full-Year Financial Report**), in which FNP stated that:
- 66.1. (**FY2020 Earnings and Profit**) in FY2020:
- (a) FNP’s revenue was \$580.191m; and
  - (b) FNP’s net loss after tax was \$174.508m;
- 66.2. (**FY2020 Assets**) FNP as at 30 June 2020 had:
- (a) total assets of \$681.902m; and
  - (b) net assets of \$60.999m;
- 66.3. (**FY2020 CWIP**) FNP as at 30 June 2020 had a capital work in progress balance of \$30.086m (with provision for an impairment of \$4.800m);
- 66.4. (**FY2020 Other Assets, Liabilities and Expenditure**) FNP as at 30 June 2020 had:
- (a) in respect of current assets:
    - (i) trade and other receivables of \$64.253m; and
    - (ii) inventories of \$59.808m;
  - (b) in respect of non-current tangible assets, property, plant and equipment of \$298.375m;
  - (c) in respect of non-current intangible assets:

- (i) goodwill of \$68.755m (for which a provision for impairment of \$60.436m was made);
  - (ii) brand names of \$37.720m (for which a provision for impairment of \$15.440m was made);
  - (iii) capitalised new product development of \$0; and
  - (iv) software acquisition and development of \$8.378m (for which a provision for impairment of \$2.224m was made);
- (d) in respect of current liabilities:
- (i) trade and other payables of \$123.407m; and
  - (ii) provisions of \$6.557m; and
- (e) a share-based payments expense of \$417,000;

66.5. **(Adjustments)** FNP made a number of adjustments which impacted both the opening position in its financial statements as at 1 July 2018, the performance and position reported at 30 June 2019 and the FY2020 results, as follows:

- (a) **(Adjustments: overview)** the adjustments made by FNP in respect of FY2020, FY2019 (restated) and FY2018 (restated) included:
- (i) \$372.812m decrease for property, plant and equipment;
  - (ii) \$75.876m decrease for goodwill and brand names;
  - (iii) \$60.103m decrease for inventories;
  - (iv) \$38.856m decrease for capitalised new product development;
  - (v) \$22.786m decrease for trade and other payables;
  - (vi) \$22.102m decrease for trade and other receivables;

- (vii) \$4.379m increase in provisions and “other”; and
  - (viii) \$5.547m increase in “Share Based payments”;
- (b) **(Property, plant and equipment)** the value of property, plant and equipment was reduced in respect of costs previously capitalised during the commissioning phase of FNP’s capital investment program, as FNP determined that a proportion of these costs were “more appropriately treated as expenses or have not been sufficiently able to be identified as directly attributable costs of bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management”. Accordingly:
- (i) revenues generated from products produced during the commissioning phase were deducted from the cost of property, plant and equipment;
  - (ii) changes were made to the expected useful lives of property, plant and equipment at the time of their transfer from capitalised work in progress to depreciable plant and equipment;
  - (iii) previously unrecognised land and building revaluations was recognised in the Claim Periods; and
  - (iv) associated adjustments to capitalised interest and depreciation were also recognised, as well as current year impairment of unused assets;
- (c) **(Impairment)** intangible assets (good will) and property plant and equipment were impaired to reflect the loss-making performance of various parts of the business;
- (d) **(Inventory)** inventory write-downs and write-offs related to “out of date, obsolete, unsaleable, unable to be located and overvalued stock relative to net realisable value, much of which was produced during the commissioning phase of new equipment”;

- (e) **(Capitalised new product development costs)** there was a reduction in the value of capitalised new product development costs as a result of a review of the nature of the costs capitalised and associated changes to amortisation;
- (f) **(Revenue)** there was a reduction in revenues and receivables for items which were not deemed to have met the revenue recognition criteria in prior periods (arising from a review of year end cut off deadlines);
- (g) **(Aged receivables)** there was a write-off of “various aged receivable or other assets balances which were not recoverable”;
- (h) **(Trade marketing)** there was an increase in prior period accruals for trade marketing and trade promotional expenditure not previously recognised; and
- (i) **(Employee share plan)** there was “an increase in prior periods’ share based payments expense arising from written invitations made to employees in September 2014 accepted by those employees which were not authorised by the Board. AASB 2 requires the Group to account for the obligation and expectations created by the correspondence as if the issue had been authorised by the Board. This requires calculation of share based payments expense in respect of the September 2014 invitations for the period from September 2014 until the expiry of the invitation in September 2019”;

66.6. **(FY2019 Comparative Restatements)** FNP made the following specific restatements in respect of its financial position and performance in FY2019:

- (a) **(FY2019 Restated Earnings and Profit)** in FY2019:
  - (i) FNP’s revenue was \$461.768m (cf \$476.214m unadjusted); and
  - (ii) FNP’s net loss after tax was \$145.827m (cf net profit after tax of \$11.577m, unadjusted);
- (b) **(FY2019 Restated Assets)** as at 30 June 2019, FNP had:

- (i) total assets of \$555.507m (cf \$984.894m unadjusted); and
  - (ii) net assets of \$234.657m (cf \$670.857m unadjusted);
- (c) **(FY2019 Restated CWIP)** FNP as at 30 June 2019 had a capital work in progress balance of \$34.608m (cf \$339.983m unadjusted);
- (d) **(FY2019 Restated Other Assets, Liabilities and Expenditure)** FNP as at 30 June 2019 had:
- (i) in respect of current assets:
    - (A) trade and other receivables of \$69.905m (cf \$87.745m, for which a provision for impairment of \$695,000 was made, unadjusted); and
    - (B) inventories of \$79.472m (cf \$120.211m, for which a provision for impairment of \$435,000 was made, unadjusted);
  - (ii) in respect of non-current tangible assets, property, plant and equipment of \$270.745m (cf \$548.400m unadjusted);
  - (iii) in respect of non-current intangible assets:
    - (A) goodwill of \$68.755m (for which a provision for impairment of \$54.590m was made) (cf \$68.755m unadjusted);
    - (B) brand names of \$37.720m (for which a provision for impairment of \$4.891m was made) (cf \$37.720m unadjusted);
    - (C) software acquisition and development of \$7.154m (for which a provision for impairment of \$1.128m was made) (cf \$579,000 unadjusted); and
    - (D) capitalised development of \$0 (cf \$54.940m unadjusted).
  - (iv) in respect of current liabilities:



- (A) trade and other payables of \$129.446m (cf \$111.881m unadjusted); and
- (B) provisions of \$6.712m (cf \$9.248m unadjusted); and
- (v) a share-based payments expense of \$6.2m (cf \$5.779m unadjusted);

66.7. **(FY2018 Comparative Restatements)** FNP made the following specific restatements in respect of its financial position and performance in FY2018:

- (a) **(FY2018 Restated Assets)** as at 30 June 2018, FNP had:
  - (i) total assets of \$505.905m (cf \$765.850m unadjusted); and
  - (ii) net assets of \$250.269m (cf \$529.900m unadjusted);
- (b) **(FY2018 Restated Other Assets, Liabilities and Expenditure)** FNP as at 30 June 2018 had:
  - (i) in respect of current assets:
    - (A) trade and other receivables of \$52.229m (cf \$62.849m, for which a provision for impairment of \$1.228m was made, unadjusted); and
    - (B) inventories of \$66.725m (cf \$81.101m, for which a provision for impairment of \$5.102m was made, unadjusted);
  - (ii) in respect of non-current tangible assets, property, plant and equipment of \$220.440m (cf \$388.883m, for which a provision for impairment of \$67,000 was made, unadjusted);
  - (iii) non-current intangible assets of \$47.164m (cf \$119.06m, comprising the total sum of \$59.204m goodwill, \$31.837m brand names, \$27.5m capitalised new product development and \$519,000 software acquisition and development) unadjusted); and
  - (iv) in respect of current liabilities:

- (A) trade and other payables of \$103.353m (cf \$88.069m unadjusted);  
and
- (B) provisions of \$4.811m (cf \$6.543m unadjusted).

### **Particulars**

FY2020 Full-Year Financial Report at pp 7, 9, 10, 46, 47, 49, 61, 77 and 80.

- 67. FNP's FY2020 Full-Year Financial Report included an Independent Auditor's Report prepared by Deloitte in respect of FNP's FY2020 Full-Year Financial Report (**FY2020 Deloitte Full-Year Audit Report**).
- 68. By the FY2020 Deloitte Full-Year Audit Report, Deloitte:
  - 68.1. stated that it had qualified its opinion on the basis that it had been unable to obtain sufficient appropriate audit evidence to determine the appropriateness of the restatements made to:
    - (a) FNP's statement of financial position as at 30 June 2018; and
    - (b) FNP's statement of profit or loss and other comprehensive income, its statement of changes of equity and its statement of cash flows for the year ended 30 June 2019 (and related notes);
  - 68.2. stated that in its opinion, with the exception of its qualifications outlined at paragraph 68.1 above, FNP's FY2020 Full-Year Financial Report:
    - (a) was in accordance with the Corporations Act;
    - (b) gave a true and fair view of the financial position of FNP as at 30 June 2020 and of the financial performance of FNP for FY2020; and
    - (c) complied with the Australian Accounting Standards and the Corporations Regulations;
  - 68.3. stated that a material uncertainty existed that may cast significant doubt on FNP's ability to continue as a going concern; and

68.4. in respect of a number of ‘key audit matters’, stated that:

- (a) **(Significant Accounting Errors)** a number of significant accounting errors had been identified, which had resulted in a reduction of the FNP Group’s previously reported net assets as at 30 June 2019 of \$436.2m;
- (b) **(Property, Plant and Equipment including CWIP)** in respect of property, plant and equipment (including CWIP), material amounts of costs capitalised were identified which did not meet the recognition criteria of *AASB 116 Property, Plant and Equipment*, resulting in write-offs of costs capitalised in prior periods and corrections to depreciation expensed on the amounts capitalised;
- (c) **(Inventory)** in respect of inventory, issues “impacted both the current year and prior periods and related to whether inventory was excess, out-of-date, unsaleable, obsolete or unable to be located, and the determination of the cost of inventory”. As a result, material adjustments were made to the quantities, cost, and net realisable value of inventory;
- (d) **(Capitalisation of New Product Development Costs)** in respect of new development costs, material amounts of internal salary costs and external marketing, research and sales costs had been capitalised which did not meet the recognition criteria of *AASB 138 Intangible Assets*, resulting in the write-off of such costs that had been recognised as at 30 June 2019;
- (e) **(Employee share plan)** in respect of FNP’s “Equity Incentive Plan”, the Board had identified matters regarding its operation and administration, including the granting of previously undisclosed employee share options and/or extension of the expiry date of share options by management between September 2014 and September 2019 (certain of which grants of options and/or extensions were not authorised by the Board). This required restatement of prior years to reflect “the financial effect of the unauthorised employee share options”;

- (f) **(Other material errors)** there were other material errors identified, aside from those outlined in subparagraphs 68.4(a) to 68.4(e) above, which resulted in “the restatements of prior periods”;
- (g) **(Impairments)** in respect of impairment of goodwill, tangible and intangible assets, Deloitte identified impairments of tangible and intangible assets in the Cereal & Snacks, Specialty Seafood, and Dairy & Nutritionals Cash Generating Units, which impaired the carrying value of those assets. FNP has determined that certain goodwill, intangible and tangible assets should have been impaired in prior financial periods; and
- (h) **(Management Override Risk)** as a result of the significant control deficiencies identified, there was an increased risk of management override of controls.

#### **Particulars**

The statements referred to in this paragraph were stated expressly in the FY2020 Deloitte Full-Year Audit Report, in the FY2020 Full-Year Financial Report at pp 116, 117, 118, 119, 120, 121 and 122.

69. Also on 30 November 2020, FNP held a teleconference briefing for investors (**30 November 2020 Teleconference**). During the 30 November 2020 Teleconference:

69.1. Mr Gunner, Chairman, stated that:

- (a) since 25 June 2020, FNP had:
  - (i) undertaken product range and operational reviews;
  - (ii) tried to simplify its business;
  - (iii) rebuilt its management team and its culture;
  - (iv) rebuilt the financial reporting and cash flow monitoring and improved its financial reporting tools;
  - (v) updated costing standards and accounting policies and practices;

- (vi) improved internal management processes, such as inventory control and delegation of authority, with a clearer focus on operational KPIs and reporting; and
- (vii) reviewed and improved governance and risk frameworks and policies; and
- (b) “The first indication we had was in March, and that was in relation to share-based payments, and as you can see, that’s a very small component of the issue, the matters. Then in May, we became aware of inventory issues, of revenue issues, of debtor issues. And at that point, as you would well know, our CEO and CFO departed the business and that allowed us to dig deeper and discover what we have discovered”; and

69.2. Mr M. Perich, Interim CEO, stated that “improvement in controls and reporting across the entire business” was “extremely important to drive profitability and transparency back into this business”.

70. Also on 30 November 2020, FNP released an investor presentation entitled “FY20 Financial Results FNP Foods Group Limited” (**30 November 2020 Investor Presentation**). The 30 November 2020 Investor Presentation relevantly stated, at p 9, that the adjustments required to be made to FNP’s accounts were broken down as follows:

	<b>Accounting policy / practice</b>	<b>Impact \$m</b>
CWIP / fixed assets	Capitalisation practices have been reviewed and amended with costs reclassified. Only directly attributable expenses to be capitalised. Assets start to be depreciated when regularly producing saleable product	\$372.8m
Inventory	Inventory stock take and write-off policies and practices have been reviewed and amended. Write-downs recognised	\$60.1m
New product development	Capitalisation practices have been reviewed and amended with costs reclassified. Directly attributable development	\$38.9m

	costs to be capitalised e.g. design, production trials, direct NPD salaries on an asset specific basis. Impairment recognised for underperforming products	
Revenue	Revenue cut-off and other practices reviewed. Revenue recognised when performance obligations are met	\$22.1m
Receivables	Review of long-dated receivables unlikely to be collected with provisions recognised. Policies regarding provisioning and expected credit losses formalised. Expected impact of COVID-19 taken up	
Trade promotion / trade marketing spend	Accrual recognition practices have been reviewed. Trade spend will be accrued when inventory is sold to the customer	\$11.9m
Share based payments	Expense adjustment required to recognise commitments made to senior employees	\$5.5m
Other	Various other restatement matters as outlined in Note 3 to the Financial accounts	\$4.3m
<b>Sub-total</b>		<b>\$515.6m</b>
Goodwill / brands	Impact of changes shown above on assessment of carrying values	\$75.9m
<b>Total</b>		<b>\$591.5m</b>

71. On 19 March 2021, FNP released a statement to the ASX entitled “**Market Announcement**” (**19 March 2021 Market Announcement**). In the 19 March 2021 Market Announcement, FNP stated that “the securities of Freedom Foods Group Limited (‘FNP’) will be reinstated to Official Quotation as from the commencement of trading on Monday, 22 March 2021.”

72. On 18 October 2021, FNP released to the public its Full-Year Financial Report for FY2021 (**FY2021 Full-Year Financial Report**), in which FNP stated that:
- 72.1. (**FY2021 Earnings and Profit**) in FY2021:
- (a) FNP's revenue was \$559.068m; and
  - (b) FNP's net loss after tax was \$38.775m;
- 72.2. (**FY2021 Assets**) FNP as at 30 June 2021 had:
- (a) total assets of \$538.669m; and
  - (b) net assets of \$1.493m;
- 72.3. (**FY2021 CWIP**) FNP as at 30 June 2021 had a capital work in progress balance of \$1.700m (with provision for an impairment of \$1.470m);
- 72.4. (**FY2021 Other Assets, Liabilities and Expenditure**) FNP as at 30 June 2021 had:
- (a) in respect of current assets:
    - (i) trade and other receivables of \$50.141m; and
    - (ii) inventories of \$48.358m;
  - (b) in respect of non-current tangible assets, property, plant and equipment of \$253.575m;
  - (c) in respect of non-current intangible assets:
    - (i) goodwill of \$45.795m (for which a provision for impairment of \$37.476m was made);
    - (ii) brand names of \$31.994m (for which a provision for impairment of \$10.549m was made);
    - (iii) product development expenses of \$1.831m; and

- (iv) software acquisition and development of \$0;
- (d) in respect of current liabilities:
  - (i) trade and other payables of \$67,464m; and
  - (ii) provisions of \$328,000;

72.5. **(Restatements)** FNP restated a number of its FY2020 results, as follows:

- (a) **(FY2020 Restated Earnings and Profit)** in FY2020:
  - (i) FNP's revenue was \$516.651m (cf \$580.191m as previously reported in the FY2020 Full-Year Financial Report); and
  - (ii) FNP's net loss after tax was \$136.361m (cf \$174.508m as previously reported in the FY2020 Full-Year Financial Report);
- (b) **(FY2020 Restated Assets)** as at 30 June 2020, FNP had:
  - (i) total assets of \$662.829m (cf \$681.902m as previously reported in the FY2020 Full-Year Financial Report); and
  - (ii) net assets of \$54.077m (cf \$60.999m as previously reported in the FY2020 Full-Year Financial Report);
- (c) **(FY2020 Restated Other Assets, Liabilities and Expenditure)** FNP as at 30 June 2020 had:
  - (i) in respect of current assets:
    - (A) trade and other receivables of \$52.101m (cf \$64.253m as previously reported in the FY2020 Full-Year Financial Report); and
    - (B) inventories of \$63.674m (cf \$59.808m as previously reported in the FY2020 Full-Year Financial Report);



- (ii) in respect of non-current tangible assets, property, plant and equipment of \$293.742m (cf \$298.375m as previously reported in the FY2020 Full-Year Financial Report);
  - (iii) in respect of non-current intangible assets:
    - (A) software acquisition and development of \$0 (cf \$8.378m for which a provision for impairment of \$2.224m was made in the FY2020 Full-Year Financial Report); and
  - (iv) in respect of current liabilities:
    - (A) trade and other payables of \$111.011m (cf \$123.407m as previously reported in the FY2020 Full-Year Financial Report).
- 73. FNP's FY2021 Full-Year Financial Report included an Independent Auditor's Report prepared by Deloitte in respect of FNP's FY2021 Full-Year Financial Report (**FY2021 Deloitte Full-Year Audit Report**).
- 74. By the FY2021 Deloitte Full-Year Audit Report, Deloitte:
  - 74.1. stated that in its opinion, the FNP FY2021 Full-Year Financial Report:
    - (a) was in accordance with the Corporations Act, including giving a true and fair view of the Group's financial position as at 30 June 2021 and of its financial performance for the year then ended;
    - (b) complied with the Australian Accounting Standards and the Corporations Regulations 2001; and
  - 74.2. stated that a material uncertainty existed that may cast significant doubt on FNP's ability to continue as a going concern.

### **Particulars**

The statements referred to in this paragraph were stated expressly in the FY2021 Deloitte Full-Year Audit Report, in the FY2021 Full-Year Financial Report at pp 160 to 161.

## **G FNP'S MISLEADING OR DECEPTIVE CONDUCT**

### **G.1 FNP Accounts Representations**

75. Each of:

75.1. the 1H2015 Half-Year Financial Report;

75.2. the 1H2016 Half-Year Financial Report;

75.3. the 1H2017 Half-Year Financial Report;

75.4. the 1H2018 Half-Year Financial Report;

75.5. the 1H2019 Half-Year Financial Report; and

75.6. the 1H2020 Half-Year Financial Report;

comprised a Half-Year Financial Report for the purpose of paragraphs 33 and 35 above.

#### **Particulars**

These reports are defined in Schedule 2.

76. Each of:

76.1. the FY2014 Full-Year Financial Report;

76.2. the FY2015 Full-Year Financial Report;

76.3. the FY2016 Full-Year Financial Report;

76.4. the FY2017 Full-Year Financial Report;

76.5. the FY2018 Full-Year Financial Report; and

76.6. the FY2019 Full-Year Financial Report;

comprised a Full-Year Financial Report for the purpose of paragraphs 32 and 34 above.

## Particulars

These reports are defined in Schedule 2.

77. In the circumstances, the making of each of the FNP Accounts Representations as defined in paragraph 46 and particularised in Schedule 2 (or any of them) comprised conduct engaged in by FNP:

77.1. in trade or commerce, within the meaning of s 18 of the ACL;

77.2. in trade or commerce, and in relation to financial services (being FNP Shares, FNP ADRs and FNP Equity Swaps), within the meaning of s 12DA of the ASIC Act; and/or

77.3. in relation to a financial product or financial service (being FNP Shares, FNP ADRs and FNP Equity Swaps), within the meaning of s 1041H of the Corporations Act.

78. Other than to the extent set out in paragraph 54 above in respect of the 29 May 2020 Trading Update, at no time during the Claim Period did FNP:

78.1. withdraw; or

78.2. qualify;

the FNP Accounts Representations (or any of them), such that they were each continuing representations throughout the Claim Period from the time at which they were each made.

79. At all material times during the Claim Period, or, alternatively, during one of the Alternative Claim Periods as defined in Schedule 1 to this Consolidated Statement of Claim:

79.1. **(Earnings and Profit):**

(a) FNP's revenue was, to a material extent, over-stated in the FNP Half-Year Financial Reports and Full-Year Financial Reports;

(b) contrary to the FNP revenue policy in effect at material times during the Claim Period (as referred to in paragraphs 40.4, 41.4, 42.4, 43.4, 44.4 and 45.4 above):

- (i) revenue was not properly measured at the fair value of consideration received or receivable (reduced for terms, rebates and similar allowances);
- (ii) further or alternatively, revenue from sale of goods was not recognised only after satisfaction of the following conditions:
  - (A) either (per the FNP revenue policy in effect as at FY2014):
    - (i) FNP had transferred to the buyer the significant risks and rewards of ownership of the goods;
    - (ii) FNP retained neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;
    - (iii) the amount of revenue could be measured reliably;
    - (iv) it was probable that the economic benefits associated with the transaction would flow to the entity; and the costs incurred or to be incurred in respect of the transaction could be measured reliably; and
    - (v) the costs incurred or to be incurred in respect of the transaction could be measured reliably;
  - (B) or (per the FNP revenue policy in effect as at FY2015, FY2016, FY2017 and FY2018):
    - (i) the significant risks and rewards of ownership of the goods have been transferred;
    - (ii) the amount of revenue can be measured reliably;
    - (iii) it is probable the revenue will be received; and

- (iv) the costs incurred or to be incurred in respect of the transaction can be measured reliably;
  - (C) or (per the FNP revenue policy in effect as at FY2019):
    - (i) identification of contract;
    - (ii) identification of the performance obligations in the contract;
    - (iii) determination of the transaction price;
    - (iv) allocation of the transaction price to the performance obligations in the contract; and
    - (v) recognition of revenue when performance obligations were satisfied; and
- (c) net profit was, to a material extent, over-stated in the FNP Half-Year Financial Reports and Full-Year Financial Reports.

**Particulars (79.1(a)-79.1(c))**

The Plaintiffs refer to and repeat:

- (i) paragraphs 54 (regarding the 29 May 2020 Trading Update), 59 (regarding the 25 June 2020 Update), 60 (regarding the 25 June 2020 Teleconference), 65 (regarding the 30 November 2020 Announcement), 66 (regarding the FY2020 Full-Year Financial Report), and 67 and 68 (regarding the FY2020 Deloitte Full-Year Audit Report) above; and
- (ii) particulars (vii) of paragraph 80.

Further particulars will be provided in the form of expert evidence, prior to trial.

- 79.2. **(Assets):** FNP's total assets and net assets were, to a material extent, over-valued and/or overstated in the FNP Half-Year Financial Reports and Full-Year Financial Reports;

**Particulars (79.2)**

The Plaintiffs refer to and repeat:

- (i) paragraphs 54 (regarding the 29 May 2020 Trading Update), 59 (regarding the 25 June 2020 Update), 60 (regarding the 25 June 2020 Teleconference), 65 (regarding the 30 November 2020 Announcement), 66 (regarding the FY2020 Full-Year Financial Report), and 67 and 68 (regarding the FY2020 Deloitte Full-Year Audit Report) above; and
- (ii) particulars (vii) of paragraph 81.

Further particulars will be provided in the form of expert evidence, prior to trial.

- 79.3. **(CWIP):** CWIP was not calculated and/or recorded in a manner consistent with the FNP CWIP policy in effect at all material times during the Claim Period (as to which see paragraphs 40.3, 41.3, 42.3, 43.3, 44.3 and 45.3 above).

### **Particulars (79.3)**

The Plaintiffs refer to and repeat:

- (i) paragraphs 65 (regarding the 30 November 2020 Announcement), 66 (regarding the FY2020 Full-Year Financial Report), and 67 and 68 (regarding the FY2020 Deloitte Full-Year Audit Report) above; and
- (ii) particulars (vii) of paragraph 81.

Further, the Plaintiffs refer to the article published by the *Australian Financial Review* on 5 November 2020, entitled “Whistleblower raised FNP Foods red flags with ASIC in 2019”. That article states, inter alia, that a whistleblower contacted ASIC “after becoming concerned about the very aggressive use of the capitalisation of items such as labour costs, gas, electricity, excess waste, cleaning costs and protective gear worn by staff”, as “virtually every P&L line was being capitalised”.

Further particulars will be provided in the form of expert evidence, prior to trial.

- 79.4. **(Other Assets, Liabilities and Expenditure):**

(a) **(Trade and other receivables):**

- (i) trade receivables were, to a material extent, over-valued and/or over-stated in the FNP Half-Year Financial Reports and Full-Year Financial Reports; and

- (ii) further or alternatively, FNP failed to make adequate provisions in respect of its trade receivables to properly reflect or account for debts that were doubtful or unlikely to be recovered;

**Particulars (79.4(a))**

The Plaintiffs refer to and repeat:

- (i) paragraphs 54 (regarding the 29 May 2020 Trading Update), 59 (regarding the 25 June 2020 Update), 60 (regarding the 25 June 2020 Teleconference), 65 (regarding the 30 November 2020 Announcement), 66 (regarding the FY2020 Full-Year Financial Report), and 67 and 68 (regarding the FY2020 Deloitte Full-Year Audit Report) above; and
- (ii) particulars (vii) of paragraph 80.

Further particulars will be provided in the form of expert evidence, prior to trial.

(b) **(Inventories):**

- (i) inventories were not calculated and/or recorded in a manner consistent with the FNP inventory policy in effect at material times during the Claim Period (as to which see paragraphs 40.1, 41.1, 42.1, 43.1, 44.1 and 45.1;
- (ii) further or alternatively, inventories recorded by FNP included a material quantity of stock that:
  - (A) was obsolete, out of date, expired, unable to be located, overvalued and/or the result of “product withdrawals”, “deletions”, “cancelled export orders”, “contracts that were in place that were not fully utilised by the other party” and/or production “during the commissioning phase of new equipment”;
  - (B) was unsaleable; and
  - (C) could not practically and/or profitably be re-processed, and/or would incur disposal costs; and

- (iii) further or alternatively, FNP failed to make adequate provisions in respect of and/or failed to adequately impair its inventories to properly account for the matters set out in paragraph 79.4(b)(ii) above;

**Particulars (79.4(b))**

The Plaintiffs refer to and repeat:

- (i) paragraphs 54 (regarding the 29 May 2020 Trading Update), 59 (regarding the 25 June 2020 Update), 60 (regarding the 25 June 2020 Teleconference), 65 (regarding the 30 November 2020 Announcement), 66 (regarding the FY2020 Full-Year Financial Report), and 67 and 68 (regarding the FY2020 Deloitte Full-Year Audit Report) above; and
- (ii) particulars (vii) of paragraph 80.

Further particulars will be provided in the form of expert evidence, prior to trial.

- (c) **(Property, Plant and Equipment)** contrary to the FNP tangible asset policy in effect at material times during the Claim Period (as to which, see paragraphs 40.2, 41.2, 42.2, 43.2, 44.2 and 45.2), property, plant and equipment was not recorded at cost less depreciation and impairment;

**Particulars (79.4(c))**

The Plaintiffs refer to and repeat paragraphs 65 (regarding the 30 November 2020 Announcement), 66 (regarding the FY2020 Full-Year Financial Report), and 67 and 68 (regarding the FY2020 Deloitte Full-Year Audit Report) above.

Further particulars will be provided in the form of expert evidence, prior to trial.

- (d) **(Non-current intangible assets):**
  - (i) **(Goodwill, brand names and software):** FNP's intangible assets (comprising goodwill, brand names and software) were, to a material extent, over-valued and/or over-stated in the FNP Half-Year Financial Reports and Full-Year Financial Reports;



- (ii) further or alternatively, FNP's intangible assets (comprising goodwill, brand names and software) were, to a material extent, negatively impacted by FNP's failure to impair them in accordance with its intangible asset impairment policy in effect at material times during the Claim Period (as to which, see paragraphs 40.5, 41.5, 42.5, 43.6, 44.6 and 45.6);
- (iii) **(Capitalised development)**: FNP's capitalised development was, to a material extent, over-valued and/or over-stated in the FNP Half-Year Financial Reports and Full-Year Financial Reports; and
- (iv) further or alternatively, FNP's capitalised development costs were, to a material extent, negatively impacted by FNP's failure to measure, impair and/or record them in accordance with the FNP capitalised development policy in effect at all material times during the Claim Period from FY2017 onwards (as to which, see paragraphs 43.5, 44.5 and 45.5);

**Particulars (79.4(d))**

The Plaintiffs refer to and repeat paragraphs 54 (regarding the 29 May 2020 Trading Update), 65 (regarding the 30 November 2020 Announcement), 66 (regarding the FY2020 Full-Year Financial Report), and 67 and 68 (regarding the FY2020 Deloitte Full-Year Audit Report) above.

Further particulars will be provided in the form of expert evidence, prior to trial.

- (e) **(Current liabilities)**:
  - (i) FNP's trade and other payables were, to a material extent, under-valued and/or under-stated in the FNP Half-Year Financial Reports and Full-Year Financial Reports; and
  - (ii) further or alternatively trade payables were, to a material extent, negatively impacted by FNP's failure to make adequate provisions in respect of its

trade payables to properly reflect or account for the actual liabilities accrued by FNP; and

**Particulars (79.4(e))**

The Plaintiffs refer to and repeat paragraphs 66 (regarding the FY2020 Full-Year Financial Report), and 67 and 68 (regarding the FY2020 Deloitte Full-Year Audit Report) above.

Further particulars will be provided in the form of expert evidence, prior to trial.

(f) **(Employee share plan):**

- (i) share options were granted and/or the expiry date of options was extended by management without the authorisation of the Board;
- (ii) further or alternatively, the financial effect of those unauthorised share options was not recorded in FNP's financial accounts, statements and/or in the FNP Half-Year Financial Reports and Full-Year Financial Reports at the relevant time; and
- (iii) as a result of the matters pleaded in subparagraphs 79.4(f)(i) and 79.4(f)(ii) above, at any given time during the Claim Period, FNP's liabilities in respect of its employee share plan were under-valued and/or under-stated in the FNP Half-Year Financial Reports and Full-Year Financial Reports by the amount of the unauthorised share options;

**Particulars (79.4(f))**

The Plaintiffs refer to and repeat paragraphs 59 (regarding the 25 June 2020 Update), 60 (regarding the 25 June 2020 Teleconference), 65 (regarding the 30 November 2020 Announcement), 66 (regarding the FY2020 Full-Year Financial Report), and 67 and 68 (regarding the FY2020 Deloitte Full-Year Audit Report) above.

Further particulars will be provided in the form of expert evidence, prior to trial.

80. By reason of the matters referred to in paragraph 79 above (either alone, or any in combination), at all material times during the Claim Period, or alternatively, at all material times during one of the Alternative Claim Periods:

80.1. FNP's Half-Year Financial Reports and Full-Year Financial Reports (or any of them) that were prepared and published during the period in question did not:

- (a) comply with the Australian Accounting Standards, in contravention of ss 296 and/or 304 of the Corporations Act and ASX Listing Rule 4.3A; and/or
- (b) contain a true or fair view of the financial position and performance of FNP, in contravention of ss 297 and/or 305 of the Corporations Act;

### **Particulars**

In relation to the whole of the Claim Period, the Plaintiffs refer to and repeat the matters pleaded and particularised in paragraph 79 above.

In relation to the Alternative Claim Periods commencing on and after 27 February 2018 (identified in (g)-(k) in Schedule 1) it may be inferred that FNP's Half-Year Financial Reports and Full-Year Financial Reports from no later than FY2018 were, to a material extent, misstated from the fact that in FY2020, FNP saw fit to restate its financial accounts for both FY2018 and FY2019.

Further particulars will be provided in the form of expert evidence, prior to trial.

80.2. FNP lacked adequate systems and controls so as to:

- (a) provide management and/or the Board with reasonably accurate and reliable information to be used in the preparation of its Half-Year Financial Reports and Full-Year Financial Reports (or any of them); and/or
- (b) ensure appropriate monitoring and management of, and compliance with, all relevant regulatory and legal requirements applicable to the preparation of its Half-Year Financial Reports and Full-Year Financial Reports (or any of them) (as set out in paragraphs 31 to 35 above);

### **Particulars**

The lack of adequate systems and controls is to be inferred from:

- (i) the matters pleaded and particularised at paragraph 68.4(h) above;
- (ii) the fact (pleaded at 68 above) that Deloitte, in its FY2020 Deloitte Full-Year Audit Report, identified “the significant control deficiencies” as causing or contributing to past accounting irregularities that were the subject of the write-downs, adjustments and restatements announced by FNP in 2020 as pertaining to FY2020, FY2019, FY2018 and “prior” years or periods;
- (iii) the magnitude and scope of the write-downs, adjustments and restatements announced by FNP in 2020 as pertaining to FY2020, FY2019, FY2018 and “prior” years or periods, and the conclusions expressed to this effect in the FY2020 Deloitte Full-Year Audit Report (as to which, the Plaintiffs refer to and repeat paragraphs 67 and 68 above); and
- (iv) the following exchange that occurred during the 25 June 2020 Teleconference, between Mr Gunner and a conference call participant (transcript pp 10-11):

*QUESTION: Well, I don't understand how when you had so many expert directors on the panel that it got to this state, like how did all of this occur? If this has been going on since back to 2017 we're talking about nearly three years. I don't understand how this hasn't been picked up beforehand I'm sorry to say it sounds like you've been asleep at the wheel.*

*Perry Gunner: Expert directors can only act on the information they're provided with. We were only provided with the information of the additional \$35 million today. We were provided obviously with the information about \$25 million at our last Board meeting in May after which we gave an update.*

*QUESTION: You believe what the employees told you, is that what you're saying? They just told you certain things and then you believed it.*

*Perry Gunner: I don't think Boards go out and do stocktakes, particularly when there are a number of warehouses. I mean to do a stocktake of our stock would take days; I don't think that's the role of the Board.*

*QUESTION: Perhaps it might have been, it might have been rather than getting into this situation.*

*Perry Gunner: Well that's hindsight, that's hindsight' I'm not aware of any Board that goes and does stocktakes.*

*QUESTION: You trusted what they said and they told you the wrong thing.*

*Perry Gunner: We trusted what they said that was an audited figure.*

Further particulars will be provided in the form of expert evidence, prior to trial.

- 80.3. FNP's current and prior year financial accounts, records and/or statements for FY2015, FY2016, FY2017, FY2018 and/or FY2019 would need to be restated in order to correct those matters, and to accurately reflect FNP's actual financial position and performance during the Claim Period.

### **Particulars**

The Plaintiffs refer to and repeat the matters pleaded and particularised in paragraphs 79 to 81 above.

The need for restatement at all material times during the Claim Period is evidenced by the fact of the write-downs, adjustments and restatements announced by FNP in 2020 as pertaining to FY2020, FY2019, FY2018 and "prior" years or periods, and the scope of those write-downs, adjustments and restatements.

Further particulars will be provided in the form of expert evidence prior to trial.

81. By reason of the matters referred to in paragraphs 79 and 80 above, at all material times during the Claim Period, or alternatively, at all material times during one of the Alternative Claim Periods, each of the FNP Accounts Representations was misleading and/or deceptive (or likely to mislead or deceive), in contravention of:

81.1. section 1041H of the Corporations Act;

81.2. section 12DA of the ASIC Act; and

81.3. section 18 of the ACL,

**(FNP Misleading Conduct Contravention).**

### **Particulars**

The falsity or lack of truth of the FNP Accounts Representations is evidenced by or to be inferred from the matters set out in paragraphs 79 and 80.1 to 80.3 above and the particulars thereto.

The fact that the FNP Accounts Representations were false and/or untrue at all material times during the entirety of the Claim Period, alternatively, during one of the Alternative Claim Periods, is evidenced by or to be inferred from matters including the matters set out in paragraph 79 and 80 above and following:

- (i) In each of the financial years 2014 to 2019, FNP engaged in and implemented a capital expenditure program. That capital expenditure program involved, *inter alia*, the acquisition, construction and/or upgrade of warehousing, distribution and manufacturing facilities by FNP, including in Ingleburn, Leeton, Shepparton and Dandenong.
- (ii) In and between FY2015 and FY2019 in particular, as a result of this capital expenditure program, FNP recorded significant increases in its (a) Capital Work in Progress (CWIP) balance, (b) capital expenditure and (c) total asset balance, relative to prior years, as follows:

<b>FY</b>	<b>CWIP \$ (Balance)</b>	<b>Capex (approx.)</b>	<b>Total assets \$</b>
<b>2014</b>	\$16.584m	\$19.9m	\$151.229m
<b>2015</b>	\$50.154m	\$49.6m	\$271.005m
<b>2016</b>	\$114.212m	\$63.1m	\$464.138m
<b>2017</b>	\$235.471m	\$134.7m	\$588.927m
<b>2018</b>	\$243.274m	\$129.4m	\$765.850m

<b>2019</b>	\$339.983m	\$171m	\$984.894m
<b>2020</b>	\$30.086m		\$681.902m
<b>Total</b>	--	\$567.70m	--

- (iii) In its FY2020 Full-Year Financial Report, FNP recorded CWIP of \$30.086m (with an impairment of \$4.800m) and total assets of \$681.902m (per paragraphs 66.2 and 66.3 above). CWIP comprised the largest component of the write-downs and adjustments announced by FNP in 2020 (being \$372.8m out of a total write-down of \$591.5m: per paragraph 70 above). It may be inferred from (1) the scope and magnitude of these write-downs and adjustments, and (2) the fact that total capex for FY2018-FY2019 was only \$300.4m), that they affect numerous financial periods prior to FY2018. This was admitted by FNP in its 25 June 2020 Update (as to which, the Plaintiffs refer to and repeat paragraph 59 above) and 30 November 2020 Announcement (as to which, the Plaintiffs refer to and repeat paragraph 65 above). In the latter, FNP stated that the write-downs and adjustments announced reflected “the significant costs of past accounting and operational matters” at FNP (per paragraph 65.2 above).
- (iv) Further, FNP admitted in its 25 June 2020 Update that obsolete and out of date stock in its inventories dated back to 2017 (per paragraph 59.2 above).
- (v) Further, FNP admitted in its 30 November 2020 Announcement that:
- (A) the total impact of adjustments and write-downs for FY2020 and “prior periods” was approximately \$590m, including \$372.8m from a reduction in asset values reflecting changes to accounting policies and practices related to the capitalisation of capital works costs;
- (B) in respect of its CWIP reported in (unidentified) prior periods, FNP had determined that “most of the costs capitalised during the commissioning phase of the Group’s capital investment program should be more appropriately treated as expenses”; and

- (C) the discovery of these accounting errors had “resulted in a material restatement of the Group’s FY19, FY18 and prior period accounts and material write-downs and adjustments”.
- (vi) Further, FNP admitted in its FY2020 Full-Year Financial Report that:
  - (A) the issues relating to its employee share plan dated back to 2014 (per paragraph 66.5(i) above); and
  - (B) “the Group has made [...] adjustments which impact the opening position in its financial statements as at 1 July 2018, the performance and position reported at 30 June 2019 and the current year [FY2020] results.”
- (vii) Further restatements of the FY2020 accounts were reported in the FY2021 Full-Year Financial Report (per paragraph 71 above).
- (viii) Further, it may be inferred from the following that material accounting irregularities were occurring as early as FY2014:
  - (A) the fact that significant capex was incurred in FY2014, when a number of projects were in their early stages.
  - (B) the fact that FNP admitted in the 30 November 2020 Announcement that most of the costs incurred in the commissioning stages of its projects were inappropriately capitalised;
  - (C) the fact that irregularities concerning the employee share plan dated back to 2014; and
  - (D) FNP’s lack of specificity as to the “prior periods” (before the commencement of FY2018) affected by accounting irregularities and/or which were the subject of restatements.

Further particulars will be provided prior to trial.

## **G.2 FNP Equity Raising Representations**

82. The making of each of the FNP Equity Raising Representations (or any of them) comprised conduct engaged in by FNP:

82.1. in trade or commerce, within the meaning of s 18 of the ACL;



- 82.2. in trade or commerce, and in relation to financial services (being FNP Shares, FNP ADRs and FNP Equity Swaps), within the meaning of s 12DA of the ASIC Act; and/or
- 82.3. in relation to a financial product or financial service (being FNP Shares, FNP ADRs and FNP Equity Swaps), within the meaning of s 1041H of the Corporations Act.
83. At no time during the Claim Period did FNP:
- 83.1. withdraw; or
- 83.2. qualify;
- the FNP Equity Raising Representations (or any of them), such that they were each continuing representations throughout the Claim Period from the time at which they were made.
84. None of the FNP Equity Raising Representations disclosed any of the matters comprising the True Position (as defined in paragraph 96 below) as they applied at the time that those representations (or any of them) were made.
85. At the time of making the FNP Equity Raising Representations, FNP:
- 85.1. was in breach of its Continuous Disclosure Obligations, and specifically, in breach of s 674 of the Corporations Act; and/or
- 85.2. further or alternatively, was in possession of, but had not publicly disclosed, the information comprising the True Position (as defined in paragraph 96 below) or any of it, as it applied at the time that the FNP Equity Raising Representations (or any of them) were made.

### **Particulars**

The Plaintiffs refer to and repeat paragraphs 96 to 100 below.

86. By reason of the matters referred to in paragraphs 83 to 85 above, each of the FNP Cleansing Notices was defective within the meaning of s 708AA (11) of the Corporations Act, as those notices (or any of them);

- 86.1. were false or misleading in a material particular; and/or
- 86.2. further or alternatively, omitted one or more matters or things, the omission of which rendered the notices (or any of them) misleading in a material respect.

### **Particulars**

The 21 October 2015 FNP Cleansing Notice, the 7 December 2016 FNP Cleansing Notice, the 16 March 2018 FNP Cleansing Notice and the 23 May 2019 FNP Cleansing Notice (or any of them) omitted reference to any of the matters comprising the True Position (as defined in paragraph 96 below) or any of it, as it applied at the time that those representations were made. Further, at the time that the FNP Equity Raising Representations (or any of them) were made, FNP was in breach of its Continuous Disclosure Obligations (as to which, see further paragraphs 96 to 100 below).

- 87. By reason of the matters referred to in 82 to 86 above, at all material times during the Claim Period, each of the FNP Equity Raising Representations was misleading and/or deceptive (or likely to mislead or deceive), in contravention of:

- 87.1. section 1041H of the Corporations Act;

- 87.2. section 12DA of the ASIC Act; and

- 87.3. section 18 of the ACL,

**(FNP Equity Raising Misleading Conduct Contravention).**

## **H DELOITTE'S FALSE, MISLEADING OR DECEPTIVE CONDUCT**

### **H.1 Misleading or deceptive conduct**

- 88. In the circumstances, the making of each of the Deloitte Half-Year Review Representations and the Deloitte Full-Year Audit Representations (collectively, the **Deloitte Representations**) (or any of them) comprised conduct engaged in by Deloitte:

- 88.1. in trade or commerce, within the meaning of s 18 of the ACL; and/or

- 88.2. in trade or commerce, and in relation to financial services (being FNP Shares, FNP ADRs and FNP Equity Swaps), within the meaning of s 12DA of the ASIC Act; and/or
- 88.3. in relation to a financial product or financial service (being FNP Shares, FNP ADRs and FNP Equity Swaps), within the meaning of s 1041H of the Corporations Act.
89. At no time during the Claim Period did Deloitte:
- 89.1. withdraw; or
- 89.2. qualify;
- the Deloitte Representations (or any of them), such that they were each continuing representations throughout the Claim Period from the time at which they were made.
90. By reason of the matters referred to in paragraphs 79 to 81 and 89, at all material times during the Claim Period, or alternatively, during one of the Alternative Claim Periods:
- 90.1. the FNP Financial Reports were not in accordance with the Corporations Act, including because they did not:
- (a) give a true and fair view of FNP's financial position and its financial performance in respect of the relevant financial period; and/or
- (b) comply with the Australian Accounting Standards and/or the Corporations Regulations;
- 90.2. Deloitte did not plan or perform its audits or reviews with sufficient skill and care to enable it to obtain reasonable assurance about whether the relevant Full-Year Financial Reports or Half-Year Financial Reports were free from material misstatements;
- 90.3. Deloitte did not obtain sufficient and appropriate evidence to provide a basis for its audit opinions for the purpose of the relevant Full-Year Financial Reports, and/or to provide a basis for its review opinions for the purpose of the relevant Half-Year Financial Reports;

- 90.4. Deloitte did not exercise the reasonable skill and care to be expected of a competent professional company auditor in the conduct of its audits of FNP's Full-Year Financial Reports, and/or in the conduct of its reviews of FNP's Half-Year Financial Reports; and
- 90.5. in respect of FNP's Full-Year Financial Reports, Deloitte failed to do (or failed properly to do) one of more of the following:
- (a) obtain an understanding of FNP and its environment, including its internal control and relevant controls that relate to the risks, to enable Deloitte to identify and assess risks of material misstatement;
  - (b) obtain an understanding of FNP's internal control relevant to the audit and control environment, including whether FNP's management, with oversight of those charged with governance, had created and maintained a culture of honesty and ethical behaviour;
  - (c) obtain an understanding of FNP's objectives and strategies, and those related business risks that may result in risks of material misstatement;
  - (d) obtain an understanding of the measurement and review of FNP's financial performance;
  - (e) obtain an understanding of FNP's processes for:
    - (i) identifying business risks relevant to financial reporting objectives;
    - (ii) estimating the significance of the risks;
    - (iii) assessing the likelihood of their occurrence; and
    - (iv) deciding about actions to address those risks;
  - (f) determine whether any risks identified by Deloitte in respect of FNP's CWIP policy (see paragraphs 40.3, 41.3, 42.3, 43.3, 44.3 and 45.3 above), capitalised development policy (see paragraphs 43.5, 44.5 and 45.5 above) and/or revenue

policy (see paragraphs 40.4, 41.4, 42.4, 43.4, 44.4 and 45.4 above) were, in its judgment, significant risks;

- (g) exercise professional judgment properly and maintain professional scepticism throughout the planning and performance of the audit, and/or recognise circumstances that caused FNP's Full-Year Financial Reports (separately or any in combination) to be materially misstated;
- (h) obtain sufficient and appropriate audit evidence, including about whether material misstatements exist (through designing and implementing appropriate responses to the assessed risk of material misstatement), to reduce audit risk to an acceptably low level, and thereby enable Deloitte to draw reasonable conclusions on which to base its opinion; and
- (i) express either a qualified opinion or an adverse opinion in respect of any material financial assertion in any of the full-year audit reports issued by Deloitte in respect of FNP for FY2015 to FY2019 inclusive.

90.6. By reason of the matters referred to in paragraph 90.5 above, Deloitte did not conduct its audits of the FNP Full-Year Financial Reports in accordance with:

- (a) the Auditing Standards Audit Obligations; and/or
- (b) the Deloitte's Statutory Audit Obligations;

90.7. In respect of the Half-Year Financial Reports, Deloitte failed to do (or failed properly to do) one or more of the following:

- (a) plan and perform the review by exercising professional judgment and with an attitude of professional scepticism;
- (b) obtain an understanding of FNP and its environment, including its internal control, as it relates to the preparation of both the annual and interim or other financial reports, sufficient to plan and conduct the engagement so as to be able to:

- (i) identify the types of potential material misstatements and consider the likelihood of their occurrence; and
  - (ii) select the enquiries, analytical and other review procedures that would provide Deloitte with a basis for reporting whether anything had come to its attention that caused it to believe that the financial report was not prepared, in all material respects, in accordance with the applicable financial reporting framework;
  - (c) express either a qualified opinion or an adverse opinion in respect of any material financial assertion in any of its Deloitte Half-Year Review Reports.
- 90.8. by reason of the matters referred to in paragraph 90.7 above, Deloitte did not conduct its reviews of the FNP Half-Year Financial Reports in accordance with:
- (a) the Auditing Standards Review Obligations; and/or
  - (b) Deloitte's Statutory Review Obligations;
- 90.9. in respect of the Deloitte Full-Year Audit Reports, Deloitte did not ensure that it had reasonable grounds for any opinions expressed, and that it had exercised due care and skill in forming any such opinion; and
- 90.10. by reason of the matters referred to in paragraphs 90.1 to 90.9 above (separately or in any combination), the Deloitte Representations were (separately or any in combination) false and/or untrue.

#### **Particulars (90.1 to 90.10)**

As to the source of the obligations referred to in paragraphs 90.5 and 90.7 above, the Plaintiffs refer to and repeat the matters pleaded and particularised in paragraphs 38 and 39 above.

The Plaintiffs refer to and repeat the matters pleaded and particularised in paragraphs 65, 79 and 80 above; and says that it may be inferred from the following that, in relation to the Claim Period or an Alternative Claim Period that: (a) some or all of the allegations set out

in paragraphs 90.1 to 90.8 are true; and (b) accordingly, the Deloitte Representations, separately or any in combination, were not true:

- (i) the magnitude and scope of the write-downs, adjustments and restatements announced by FNP in 2020 as pertaining to FY2020, FY2019, FY2018 and “prior” years or periods;
- (ii) the fact that such write-downs, adjustments and restatements were recognised in the FY2020 Deloitte Full-Year Audit Report, but were only discovered (and quantified) following a review by external advisors (independent of Deloitte) in 2020; and/or
- (iii) the further restatements of the FY2020 accounts in the FY2021 Full-Year Financial Report.

Further, as to the allegations in 90.1, 90.2, 90.3, 90.4, in each of the Deloitte Full-Year Audit Reports issued in FY2017 to FY2019 inclusive, Deloitte expressly noted the capitalisation of construction costs as a key audit matter and that these matters had been tested by it. From this it may be inferred that:

- (i) Deloitte failed to identify the capitalisation of construction costs as a key audit matter in FY2014 to FY2016, despite the fact that significant capital works were carried out in those years as particularised in point (ii) of the particulars to paragraph 80 above; and
- (ii) had testing been carried out to an appropriate standard in and after FY2017, as Deloitte asserted had occurred, Deloitte ought to have identified, at a minimum, the matters relating to CWIP (or any of them) referred to in paragraph 79 above.

Further and in the alternative, as to the position after 14 November 2017, the Plaintiffs refer to and repeat the matters pleaded and particularised in paragraph 96 below.

Further particulars will be provided in the form of expert evidence, prior to trial.

91. By reason of the matters referred to in paragraphs 79 to 81 and 88 to 90 above, at all material times, each of the Deloitte Representations (or any of them) was misleading and/or deceptive (or likely to mislead or deceive), in contravention of:

91.1. section 1041H of the Corporations Act;

91.2. section 12DA of the ASIC Act; and

91.3. section 18 of the ACL,

**(Deloitte Misleading Conduct Contravention).**

## **H.2 False or misleading statements**

92. Each of the Deloitte Representations was a statement or information that, when made or disseminated, was likely to induce one or more persons to:

92.1. apply for financial products (being FNP Shares, FNP ADRs and/or FNP Equity Swaps);  
and/or

92.2. acquire financial products (being FNP Shares, FNP ADRs and/or FNP Equity Swaps).

93. At all material times, each of the Deloitte Representations was false in a material particular or materially misleading.

### **Particulars**

In respect of the falsity and/or materially misleading nature of the Deloitte Representations, the Plaintiffs refer to and repeat paragraphs 90 to 91 above.

94. At all material times, Deloitte knew or ought reasonably to have known that each of the Deloitte Representations was false in a material particular or materially misleading.

### **Particulars**

Deloitte's actual or constructive knowledge may be inferred from at least the following matters:

- (i) at all relevant times, Deloitte was carrying on business in Australia as, and held itself out to be, professional accountants, auditors and advisors;
- (ii) the Deloitte Representations pleaded in this paragraph concern Deloitte's own conduct in carrying out audits and reviews for FNP during the Claim Period (including but not limited to the planning for and performance of such audits and reviews), which matters are within the actual knowledge of Deloitte;



- (iii) the falsity of the Deloitte Representations pleaded in this paragraph would have been detected by professional accountants, auditors and advisors exercising reasonable skill and care in the conduct of the audits and reviews of the FNP Full-Year Financial Reports and Half-Year Financial Reports during the Claim Period, such that it may be inferred, from Deloitte's statements in the Deloitte Half-Year Review Reports;
- (iv) to the effect that it had exercised the reasonable skill and care to be expected of a competent professional company auditor in the conduct of its audits, that it reasonably ought to have known of the falsity of the Deloitte Representations pleaded in this paragraph; and
- (v) the True Position (as defined in paragraph 96 below) was discovered by or with the assistance of another accounting firm, PwC, after a forensic accounting investigation.

Further particulars will be provided following discovery and/or in the form of expert evidence, prior to trial.

95. By reason of the matters pleaded in paragraphs 92 to 94 above, by making the Deloitte Representations (or any of them), Deloitte contravened s 1041E of the Corporations Act.

## **I FNP'S BREACHES OF CONTINUOUS DISCLOSURE OBLIGATIONS**

96. At all material times during the Claim Period, FNP was 'aware', within the meaning of Rules 3.1 and/or 19.12 of the ASX Listing Rules, of information comprising the matters referred to in paragraphs 79 to 80 above (the **True Position**).

### **Particulars**

The fact that one or more of the FNP Officers had, or reasonably ought to have had, in their possession information comprising the True Position (or any part thereof) during the Claim Period is evidenced by or to be inferred from matters including the following:

- (i) The magnitude and scope of the write-downs, adjustments and restatements announced by FNP in 2020 as pertaining to FY2020, FY2019, FY2018 and "prior" years or periods (the precise number of which is, as yet, unconfirmed by FNP: see paragraphs 59 (regarding the 25 June 2020 Update), 60 (regarding the 25 June 2020 Teleconference), 65 (regarding

the 30 November 2020 Announcement) and 66 (regarding the FY2020 Full-Year Financial Report) above);

- (ii) At all material times during the Claim Period, FNP's policies relating to inventory, tangible assets, CWIP, revenue, capitalised development and intangible asset impairment (or any of them) required assessment and/or estimation of asset values, liabilities, expenses and/or costs.

In this context, in order to prepare and finalise the FNP Half-Year Financial Reports and Full-Year Financial Reports, some form of assessment of FNP's assets, liabilities and expenditure must have been undertaken throughout the Claim Period, by or under the supervision of one or more FNP Officers, which ought to have been sufficient to reveal the matters referred to in paragraphs 79 and 80 above.

- (iii) Further, it may be inferred from the following statements of Mr Gunner, Chairman, that:
  - (A) FNP did not or did not properly evaluate asset values during annual audits; and/or
  - (B) FNP did not have any or any adequate stocktake procedures during the Claim Period.

Relevantly, Mr Gunner stated during the 25 June 2020 Teleconference, that:

- (A) annual asset values were “something that we would normally review as part of the audit process [...] you can be assured that will be properly evaluated as part of the annual audit process”;
  - (B) stocktakes were “a practice we can improve. We do do stocktakes, obviously, but there are a number of things that have come out of the current issues that we're facing that require improvement in our processes and procedures, and stocktakes would certainly be one”.
- (iv) It is to be inferred from the following statement of Mr Gunner during the 30 November 2020 Teleconference that Mr Macleod and Mr Nicholas were involved in, or knew or ought reasonably to have come into possession of information concerning the true state of FNP's inventory, revenue and debtors (at approximately 39:07 of the call recording):

*The first indication we had was in March, and that was in relation to share-based payments, and as you can see, that's a very small component of the issue, the matters. Then in May, we became aware of inventory issues, of revenue issues, of debtor issues. And at that point, as you would well know, our CEO and CFO departed the business and that allowed us to dig deeper and discover what we have discovered.*

- (v) Further, in an interview with the *Australian Financial Review* (published on 2 December 2020 as an article entitled “Lawyers circle FNP Foods as CEO blamed”), Mr Gunner stated that the FNP board’s reliance on management “has failed us”, and that the company had “acted immediately and decisively – we removed the cause in the CEO and CFO”.
- (vi) Each of the Half-Year Financial Reports was signed by Mr Macleod (stated to be Managing Director in the 1H2016 Financial Report, and stated to be both Managing Director and CEO in all other Half-Year Financial Reports).
- (vii) Each of the Full-Year Financial Reports (specifically, the directors’ declaration provided pursuant to s 295 of the Corporations Act) was signed by both Mr Macleod (stated to be Managing Director and CEO) and Mr Gunner (as Chairman).
- (viii) Further, it is to be inferred from the matters alleged by Ms Stanley in proceedings she commenced against FNP on 4 November 2020 (*NSD1206/2020*) that FNP was aware of one or more of the disclosures made on 20 June 2020 by no later than 8 March 2020.

Further particulars will be provided in the form of expert evidence, prior to trial.

97. At all material times during the Claim Period, or alternatively, during one of the Alternative Claim Periods, the True Position comprised information that:

97.1. was not generally available within the meaning of s 674 of the Corporations Act; and

97.2. either:

- (a) from the date of commencement of the Claim Period to 26 May 2020 (inclusive), a reasonable person would expect to have a material effect on the price or value of

FNP Shares within the meaning of s 674 of the Corporations Act and/or Rule 3.1 of the ASX Listing Rules; and

- (b) further or in the alternative to subparagraph 97.2(a), from 26 May 2020 to 24 June 2020 (inclusive), FNP was reckless or negligent with respect to whether that information would, if it were generally available, have a material effect on the price or value of FNP Shares.

### **Particulars**

The materiality of the effect of the True Position information on the price or value of FNP Shares, to be inferred from:

- (i) the magnitude and scope of the write-downs, adjustments and restatements actually announced by FNP in 2020 and 2021 as pertaining to FY2020, FY2019, FY2018 and “prior” years or periods;
- (ii) the fall in the price of FNP Shares experienced after the release of the 29 May 2020 Trading Update, from \$4.36 per share at close of trade on 28 May 2020 to \$3.45 per share at close of trade on 2 June 2020;
- (iii) the fall in the price of FNP Shares experienced after the release of the 23 June 2020 CFO Announcement and the 24 June 2020 CEO Announcement, from \$3.52 at close of trade on 23 June 2020 to \$3.10 at the pause of trading on 24 June 2020; and
- (iv) the fall in the price of FNP Shares experienced after the pause in trading on 24 June 2020 from \$3.10 per share at close of trade on 24 June 2020 to \$0.53 per share at close of trade, on the next full day of trading, on 22 March 2021;
- (v) the matters pleaded at paragraphs 7 and 8 respectively.

Further particulars will be provided in the form of expert evidence, prior to trial.

98. Pursuant to s 674 of the Corporations Act and Rule 3.1 of the ASX Listing Rules, at all material times during the Claim Period, or alternatively, during one of the Alternative Claim Periods, FNP was required immediately to inform the ASX of the information comprising the True Position (or any of it) as soon as one or more of the FNP Officers became ‘aware’ of that information (or any of it).

99. Other than what was disclosed by FNP in the 29 May 2020 Trading Update (in respect of which, see paragraph 54 above), FNP failed to inform the ASX of any of the matters or information comprising or evidencing the True Position during the Claim Period.
100. In the circumstances, the conduct by FNP referred to in paragraph 99 above contravened s 674 of the Corporations Act and Rule 3.1 of the ASX Listing Rules (**Continuous Disclosure Contraventions**).

## **J LOSS AND DAMAGE**

101. The Plaintiffs and each of the Group Members acquired an interest in FNP Shares in a market of investors or potential investors in FNP Shares:
- 101.1. operated by the ASX;
  - 101.2. regulated by, inter alia, s 674 of the Corporations Act and ASX Listing Rule 3.1; and
  - 101.3. where the price or value of FNP Shares, FNP ADRs, and / or FNP Equity Swaps, would reasonably be expected to have been informed or affected by information disclosed in accordance with s 674 of the Corporations Act and/or ASX Listing Rule 3.1.
102. During the Claim Period or one of the Alternative Claim Periods, each of the:
- 102.1. FNP Misleading Conduct Contravention, and/or FNP Equity Raising Misleading Conduct Contravention, and/or Deloitte Misleading Conduct Contravention (individually, and in any combination, the **Misleading Conduct Contraventions**); and/or
  - 102.2. Continuous Disclosure Contraventions,
- (collectively, **Market Contraventions**), alone or any in combination, caused or materially contributed to the market price of FNP Shares, FNP ADRs, and / or FNP Equity Swaps being greater than their true value and/or the market price that would have prevailed but for the Market Contraventions.

### **Particulars**

The Plaintiffs refer to and repeat items (ii), (iii) and (iv) of the particulars to paragraph 97 above.

Further particulars will be provided prior to trial.

103. By reason of the matters pleaded in paragraph 102 above, at all times during the Claim Period when the Plaintiffs and Group Members (or any of them) entered into a contract to acquire an interest in FNP Shares, FNP ADRs, and / or FNP Equity Swaps, the price of the FNP Shares, FNP ADRs and / or FNP Equity Swaps had been inflated by the Market Contraventions (or any of them).
104. Further or alternatively to paragraph 103 above:
- 104.1. the Plaintiffs and some Group Members relied on some or all of the representations the subject of the Market Contraventions (or any one or combination of them) in entering into the transactions pursuant to which they acquired an interest in FNP Shares, FNP ADRs or acquired FNP Equity Swaps; and/or
- 104.2. the Plaintiffs and some Group Members would not have entered into the transaction/s pursuant to which they acquired an interest in FNP Shares or FNP ADRs or acquired FNP Equity Swaps either at all, or at an inflated price, if they had known some or all of the information the subject of the Market Contraventions (or any one or combination of them).

### **Particulars**

The Plaintiffs and some Group Members would not have acquired an interest in FNP Shares or FNP ADRs or acquired FNP Equity Swaps at all had the Market Contraventions not occurred.

Further or alternatively, the Plaintiffs and all Group Members would not have acquired an interest in FNP Shares or FNP ADRs or acquired FNP Equity Swaps at the price and volume they did had the Market Contraventions not occurred.

Further particulars will be provided prior to trial.

105. By reason of the matters pleaded in paragraphs 103 and 104 above:

- 105.1. the Plaintiffs and Group Members have suffered loss and damage by and resulting from the Market Contraventions (or any one or combination of them); and
- 105.2. the Plaintiffs and Group Members are entitled to recover the amount of that loss or damage from the defendants (or either of them) to this proceeding, pursuant to s 1041I of the Corporations Act, s 12GF of the ASIC Act and/or s 236 of the ACL; and
- 105.3. further or alternatively to paragraph 105.2 above, the Plaintiffs and Group Members are entitled to compensation from FNP pursuant to s 1317HA of the Corporations Act in respect of the Market Contraventions.

### **Particulars**

The loss suffered by the Plaintiffs and the group members will be calculated by reference to:

- (i) the difference between the price at which they acquired an interest in FNP Shares or FNP ADRs or acquired FNP Equity Swaps during the Claim Period and the true value of those shares, ADRs or equity swap confirmations; or
- (ii) the difference between the prices at which they acquired an interest in FNP Shares or FNP ADRs or acquired FNP Equity Swaps and the market prices that would have prevailed at each of the times that they acquired those interests in the event that the Market Contraventions (or any of them) had not occurred; or
- (iii) alternatively, on the days during and after the Claim Period where the traded price of FNP Shares, FNP ADRs or FNP Equity Swaps fell as a result of the disclosure of information which had not previously been disclosed because of the Market Contraventions (or any of them), the quantum of that fall.

Further particulars of the Plaintiffs' loss or damage will be provided after service of expert evidence in this proceeding. Particulars of the Group Members' loss or damage will be provided following a trial of the common issues.

## **K COMMON QUESTIONS OF LAW OR FACT**

106. The questions of law or fact common to the claims of the Applicant and Group Members are or include:

### **K.1 FNP**

106.1. At what date did FNP become 'aware', within the meaning of Rule 19.12 of the ASX Listing Rules, of the information or matters comprising the True Position (as defined in paragraph 96 above) (or any of it)?

106.2. Whether the information or matters comprising the True Position (as defined in paragraph 96 above) (or any of it) was, throughout the Claim Period or one of the Alternative Claim Periods, information:

(a) that was not generally available within the meaning of s 676 of the Corporations Act; and

(b) either:

(i) that a reasonable person would expect to have a material effect on the price or value of FNP Shares (and, therefore, FNP ADRs and FNP Equity Swaps) within the meaning of Rule 3.1 of the ASX listing Rules and s 674(2)(c)(ii),

(ii) further or in the alternative, from 26 May 2020 to 24 June 2020 (inclusive), that FNP was reckless or negligent with respect to whether that information would, if it were generally available, have a material effect on the price or value of FNP Shares,

and, if so, throughout which part of the Claim Period or Alternative Claim Period?

106.3. Whether, during the Claim Period or one of the Alternative Claim Periods, one or more of the FNP Officers knew, or ought to have known of the information or matters comprising the True Position (as defined in paragraph 96 above) (or any of it) – and if so:



- (a) which of the FNP Officers; and
- (b) through which part of the Claim Period or Alternative Claim Period?

106.4. Whether FNP, during the Claim Period or one of the Alternative Claim Periods, contravened s 674(2) of the Corporations Act by not immediately telling the ASX of the information or matters comprising the True Position (as defined in paragraph 96 above) (or any of it)?

106.5. Whether, during the Claim Period or one of the Alternative Claim Periods, FNP made the:

- (a) FNP Financial Results Representations (or any of them);
- (b) FNP Compliance with Standards Representations (or any of them);
- (c) FNP True and Fair View Representations (or any of them);
- (d) FNP Systems and Controls Representations (or any of them);
- (e) FNP Equity Raising Representations (or any of them);

and, if so,

- (f) when during the Claim Period or Alternative Claim Period; and
- (g) did FNP to withdraw or qualify that, or those, representation/s at any time?

106.6. Whether, in failing to withdraw or qualify the relevant representation(s) that FNP was found to have made, and failing to withdraw or qualify same, did FNP contravene:

- (a) s 1041H of the Corporations Act; and/or
- (b) s 12DA(1) of the ASIC Act; and/or
- (c) s 18 of the ACL?

## **K.2 Deloitte**

106.7. Whether the Deloitte Representations (or any of them), were made, and, if made, were in contravention of any of:

- (a) section 1041H of the Corporations Act;
- (b) section 1041E of the Corporations Act;
- (c) section 12DA of the ASIC Act;
- (d) section 18 of the ACL?

## **K.3 Causation and relief**

107. Whether the Misleading Conduct Contraventions and the Continuous Disclosure Contraventions (or any of them) had the effect that the price of acquisition for FNP Shares, FNP ADRs or FNP Equity Swaps was, at any time during the Claim Period or an Alternative Claim Period, greater than the true value of the FNP Shares, FNP ADRs or FNP Equity Swaps, and/or the market price that would have prevailed but for the Misleading Conduct Contraventions and the Continuous Disclosure Contraventions, and if so:

107.1. by how much;

107.2. whether, in the circumstances, statutory compensation is recoverable by the Plaintiffs (or either of them) and some or all of the Group Members; and

107.3. the correct measure of the statutory compensation for which FNP and/or Deloitte are liable to the Plaintiffs (or either of them) and some or all of the Group Members?

108. Whether any, and if so what, relief other than monetary relief should be granted in favour of the Plaintiffs (or either of them) and some or all of the Group Members?

**AND THE PLAINTIFFS CLAIM on their own behalf and on behalf of the Group Members:**

**Against the First Defendant (FNP):**

- A. Declarations that the First Defendant contravened ASX Listing Rule 3.1 and s 674(2) of the Corporations Act by not informing the ASX immediately of some or all of the information comprising the True Position upon one or more of the FNP Officers becoming 'aware' of that information (or any of it).
- B. An order pursuant to s 1317HA(1) of the Corporations Act that the First Defendant pay compensation to the Plaintiffs and Group Members for damage caused by its contravention/s of s 674(2) of the Corporations Act.
- C. A declaration that by making and failing to withdraw, correct or qualify the FNP Accounts Representations (or any of them) during the Claim Period (other than to the extent set out in the 29 May 2020 Trading Update), the First Defendant engaged in conduct in contravention of:
  - (a) section 1041H(1) of the Corporations Act;
  - (b) section 12DA(1) of the ASIC Act; and/or
  - (c) section 18 of the ACL.
- D. A declaration that by making and failing to withdraw, correct or qualify the FNP Equity Raising Representations (or any of them) during the Claim Period, the First Defendant engaged in conduct in contravention of:
  - (a) section 1041H(1) of the Corporations Act;
  - (b) section 12DA(1) of the ASIC Act; and/or
  - (c) section 18 of the ACL.
- E. An order pursuant to:

- (a) section 1041I of the Corporations Act that the First Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the First Defendant in contravention of s 1041H of the Corporations Act;
- (b) section 12GF of the ASIC Act that the First Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the First Defendant in contravention of s 12DA(1) of the ASIC Act; and/or
- (c) section 236 of the ACL that the First Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the First Defendant in contravention of s 18 of the ACL.

**Against the Second Defendant (Deloitte):**

F. A declaration that by making and failing to withdraw, correct or qualify the Deloitte Representations (or any of them) during the Claim Period, the Second Defendant engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 1041E(1) of the Corporations Act;
- (c) section 12DA(1) of the ASIC Act; and
- (d) section 18 of the ACL.

G. An order pursuant to:

- (a) section 1041I of the Corporations Act that the Second Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Second Defendant in contravention of s 1041H of the Corporations Act;
- (b) section 1041I of the Corporations Act that the Second Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Second Defendant in contravention of s 1041E of the Corporations Act;

- (c) section 12GF of the ASIC Act that the Second Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Second Defendant in contravention of s 12DA(1) of the ASIC Act; and/or
  - (d) section 236 of the ACL that the Second Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Second Defendant in contravention of s 18 of the ACL.
- H. A declaration that by making and failing to withdraw, correct or qualify the Deloitte Representations (or any of them) during the Claim Period, the Second Defendant engaged in conduct in contravention of s 1041E(1) of the Corporations Act.
- I. An order pursuant to s 1041I of the Corporations Act that the Second Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Second Defendant in contravention of s 1041E of the Corporations Act.

**Against the First Defendant and Second Defendant:**

- J. Interest pursuant to statute.
- K. Costs.
- L. Such further or other order as the Court determines is appropriate.

Dated: 16 December 2021

ALISTAIR POUND  
GUY DONNELLAN  
EUGENIA LEVINE  
KATHERINE BRAZENOR

**Slater and Gordon Lawyers**

Solicitors for the First Plaintiff

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**Phi Finney McDonald Pty Ltd**

Solicitors for the Second Plaintiff

## **SCHEDULE 1**

### **ALTERNATIVE CLAIM PERIODS**

The term 'Alternative Claim Periods' as used in the Consolidated Statement of Claim is defined as being one or more of the following periods of time:

- (a) from the time of publication of the 1H2015 Half-Year Financial Report, being 27 February 2015, to the end of the Claim Period (inclusive);
- (b) alternatively, from the time of publication of the FY2015 Full-Year Financial Report, being 30 September 2015, to the end of the Claim Period (inclusive);
- (c) from the time of publication of the 1H2016 Half-Year Financial Report, being 29 February 2016, to the end of the Claim Period (inclusive);
- (d) alternatively, from the time of publication of the FY2016 Full-Year Financial Report, being 30 September 2016, to the end of the Claim Period (inclusive);
- (e) alternatively, from the time of publication of the 1H2017 Half-Year Financial Report, being 28 February 2017, to the end of the Claim Period (inclusive);
- (f) alternatively, from the time of publication of the FY2017 Full-Year Financial Report, being 29 September 2017, to the end of the Claim Period (inclusive);
- (g) alternatively, from the time of publication of the 1H2018 Half-Year Financial Report, being 27 February 2018, to the end of the Claim Period (inclusive);
- (h) alternatively, from the time of publication of the FY2018 Full-Year Financial Report, 26 October 2018, to the end of the Claim Period (inclusive);
- (i) alternatively, from the time of publication of the 1H2019 Half-Year Financial Report, 28 February 2019, to the end of the Claim Period (inclusive);
- (j) alternatively, from the time of publication of the FY2019 Full-Year Financial Report, 11 October 2019, to the end of the Claim Period (inclusive);

- (k) alternatively, from the time of publication of the 1H2020 Half-Year Financial Report, being 27 February 2020, to the end of the Claim Period (inclusive);
- (l) alternatively, from 8 March 2020 to the end of the Claim Period.



## SCHEDULE 2

### TABLE OF FNP FINANCIAL RESULTS REPRESENTATIONS

All figures in this table are expressed in AUD \$ millions.

	<b>FY2014</b>	<b>1H2015</b>	<b>FY2015</b>	<b>1H2016</b>	<b>FY2016</b>	<b>1H2017</b>	<b>FY2017</b>	<b>1H2018</b>	<b>FY2018</b>	<b>1H2019</b>	<b>FY2019</b>	<b>1H2020</b>
<b>Publication date of Half Year or Full Year Financial Report</b>	26 September 2014	27 February 2015	30 September 2015	29 February 2016	31 August 2016	28 February 2017	31 August 2017	27 February 2018	30 August 2018	28 February 2019	29 August 2019	27 February 2020
<b>Defined term for this report</b>	The FY2014 Full-Year Financial Report	The 1H2015 Half-Year Financial Report	The FY2015 Full-Year Financial Report	The 1H2016 Half-Year Financial Report	The FY2016 Full-Year Financial Report	The 1H2017 Half-Year Financial Report	The FY2017 Full-Year Financial Report	The 1H2018 Half-Year Financial Report	The FY2018 Full-Year Financial Report	The 1H2019 Half-Year Financial Report	The FY2019 Full-Year Financial Report	The 1H2020 Half-Year Financial Report
<b>Earnings</b>												
Revenue		45.349	91.460	54.117	170.444	123.852	262.481	159.563	352.987	209.041	476.214	299.690
Net profit after tax		55.190	56.631	23.422	50.631	4.475	7.539	2.951	12.715	3.729	11.577	4.452
<b>Assets</b>												
Total assets		226.878	271.005	383.294	464.138	543.455	588.927	553.226	765.850	808.641	984.894	1,137.98
Net assets		176.918	185.929	267.328	287.818	352.724	321.436	323.628	529.900	532.28	670.857	674.297
<b>CWIP</b>												
Capital work in progress balance	16.584		50.154		114.212		235.471		243.274		339.983	
<b>Other assets, liabilities and expenditure</b>												

	FY2014	1H2015	FY2015	1H2016	FY2016	1H2017	FY2017	1H2018	FY2018	1H2019	FY2019	1H2020
<b>Current assets</b>												
Trade and other receivables		24.169	25.303	31.696	45.661 (impairment of .069)	48.547	65.920 (impairment of .048)	49.071	62.849 (impairment of 1.228)	68.662	87.745 (impairment of .695)	98.689
Inventories		24.110	24.475	32.895	46.213 (impairment of 0.050)	54.606	63.388 (impairment of 0.050)	68.143	81.101 (impairment of 5.102)	104.244	120.211 (impairment of 0.435)	122.309
<b>Non-current tangible assets</b>												
Property, plant and equipment		68.697	103.430	141.393	224.351	278.508	340.356	307.794	388.883 (impairment of 0.067)	470.300	548.4	602.804
<b>Non-current intangible assets</b>												
Goodwill		5.214	5.214		54.161		59.204		59.204		68.755	
Brand names			16.274		16.274		31.837		31.837		37.720	
Capitalised development							11.106		27.405		54.940	
Software							0.464		0.519		0.579	

	<b>FY2014</b>	<b>1H2015</b>	<b>FY2015</b>	<b>1H2016</b>	<b>FY2016</b>	<b>1H2017</b>	<b>FY2017</b>	<b>1H2018</b>	<b>FY2018</b>	<b>1H2019</b>	<b>FY2019</b>	<b>1H2020</b>
Other intangible assets		16.274										
Intangible assets				38.992		71.2		104.726		126.971		146.032
<b>Current liabilities</b>												
Trade and other payables		15.279	18.779	25.843	49.577	56.805	65.629	71.346	88.069	94.34	111.881	111.728
Provisions		1.675	1.776	2.004	3.148	3.33	4.086	4.759	6.543	7.643	9.248	9.756
Share-based payments expense		0.180	0.360	0.180	0.448	0.225	0.448	0.356	1.029	0.900	5.779	0.653