



**IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMERCIAL COURT  
GROUP PROCEEDINGS LIST**

Case: S ECI 2021 04440

S ECI 2021 04440 2023 03:12 PM

BETWEEN

**EDWARD JOHN NELSON**

First Plaintiff

and

**GAIL CHRISTINE NELSON**

Second Plaintiff

and

**BEACH ENERGY LIMITED (ACN 007 617 969)**

Defendant

**DEFENCE**

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Date of document: 30 June 2023  
Filed on behalf of the Defendant  
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Unless otherwise stated, a defined term in this Defence has the same meaning as assigned to it in the plaintiffs' Amended Statement of Claim dated 12 August 2022 (**ASOC**). Headings and sub-headings utilised in the ASOC have been replicated in this Defence. The defendant (**Beach**) does not make any admissions by the use of these headings.

In answer to the ASOC, Beach says as follows:

**A. THE PLAINTIFFS AND GROUP MEMBERS**

1. It admits the allegations in paragraph 1.
2. As to paragraph 2, it:
  - (a) admits that the plaintiffs have defined the persons on whose behalf they have purported to commence this proceeding;
  - (b) denies that any person has suffered loss or damage as alleged in the second paragraph (a);

(c) otherwise does not know and therefore cannot admit the allegations in paragraph 2.

3. As to paragraph 3, it:

(a) repeats paragraphs 1 and 2 above; and

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 3.

## **B. BEACH**

### **B.1 The defendant**

4. It admits the allegations in paragraph 4.

5. It admits the allegations in paragraph 5.

5A. It does not know and therefore cannot admit the allegations in paragraph 5A.

### **B.2 Beach's Continuous Disclosure Obligations**

6. As to paragraph 6, it:

(a) admits that, at all times during the Relevant Period, ASX Listing Rule 3.1 provided:

*“Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information”;*

(b) otherwise denies the allegations in paragraph 6; and

(c) says further that at all times during the Relevant Period:

(i) ASX Listing Rule 3.1A provided:

*“Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:*

*3.1A.1 One or more of the following 5 situations applies:*

- *It would be a breach of a law to disclose the information;*

- *The information concerns an incomplete proposal or negotiation;*
- *The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
- *The information is generated for internal management purposes of the entity; or*
- *The information is a trade secret; and*

3.1A.2 *The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*

3.1A.3 *A reasonable person would not expect the information to be disclosed.”*

- (ii) Beach is, and was, an “oil and gas producing entity”, and an “oil and gas entity” (within the meaning of the ASX Listing Rule 19.12), and subject to the requirements of Chapter 5 of the ASX Listing Rules (“Additional reporting on mining and oil and gas production and exploration activities”);
- (iii) ASX Listing Rule 5.2 provided that an oil and gas producing entity must complete a report for each quarter of its financial year and give it to the ASX for release to the market, which report must include *inter alia* details of its oil and gas production and development activities for the quarter and a summary of the expenditure incurred on those activities, and a summary of its oil and gas exploration activities for the quarter and a summary of the expenditure incurred on those activities;
- (iv) ASX Listing Rule 5.25 provided that an entity publicly reporting petroleum reserves, including estimates of petroleum reserves, must ensure *inter alia* that petroleum resources are classified in accordance with the Petroleum Resources Management System sponsored by the Society of Petroleum Engineers (SPE), the American Association of Petroleum Geologists, the World Petroleum Council and the Society of Petroleum Evaluation Engineers (the **SPE-PRMS**) and reported in the most specific resource class in which petroleum resources can be classified under the SPE-PRMS (ASX Listing Rule 5.25.2) noting that:

*“Additional guidance on petroleum resource classification is provided in the Guidelines for Application of the Petroleum Resources Management System (November 2011)”*;

- (v) ASX Listing Rule 5.31 provided that the first time an entity publicly reports estimates of petroleum reserves in relation to a material oil and gas project, the entity must include, *inter alia*, the following information in a market announcement and give it to ASX for release to the market:
  - (A) all material economic assumptions used to calculate the estimates of petroleum reserves (ASX Listing Rule 5.31.1);
  - (B) a brief description of: the basis for confirming commercial producibility and booking petroleum reserves; the analytical procedures used to estimate the petroleum reserves; the proposed extraction method; and if applicable, any specialised processing required following extraction (ASX Listing Rule 5.31.4); and
  - (C) the estimated quantities (in aggregate) to be recovered: from existing wells and facilities (developed petroleum reserves); and through future investments (undeveloped petroleum reserves) (ASX Listing Rule 5.31.5);
  
- (vi) ASX Listing Rule 5.32 provided that the first time an entity publicly reports estimates of petroleum reserves in relation to a material oil and gas project that have materially changed from when those estimates were previously reported, the entity must include all the following information in a market announcement and give it to ASX for release to the market:
  - (A) an explanation of the new data and information (ASX Listing Rule 5.32.1);
  - (B) an explanation of how the new data and information has affected the estimates of petroleum reserves (ASX Listing Rule 5.32.2); and
  - (C) any changes or additions to the information provided under ASX Listing Rule 5.31 (ASX Listing Rule 5.32.3).

- (vii) ASX Listing Rule 5.39 provided that an oil and gas entity must include a reserves statement in its annual report (**Reserves Statement**);
- (viii) ASX Listing Rule 5.41 provided that an entity publicly reporting on estimates of petroleum reserves, contingent resources and prospective resources must ensure that those estimates are prepared by, or under the supervision of, a qualified petroleum reserves and resources evaluator or evaluators (**QPRREs**);
- (ix) ASX Listing Rules Guidance Note 8 provided (at section 4.5):
- “ASX recognises that how quickly an entity can give an announcement of particular information to ASX will be dictated by the circumstances confronting it at the time. Relevant factors may include:*
- *where and when the information originated;*
  - *the forewarning (if any) the entity had of the information;*
  - *the amount and complexity of the information concerned;*
  - *the need in some case to verify the accuracy or bona fides of the information;*
  - *the need for an announcement to be carefully drawn so that it is accurate, complete and not misleading;*
  - *the need in some cases for an announcement to comply with specific legal or Listing Rule requirements, such as requirements for an announcement that relates to mining or oil and gas activities to comply with Chapter 5 of the List Rules; and*
  - *the need in some cases for an announcement to be approved by the entity’s board or disclosure committee.”*
- (x) ASX Listing Rules Guidance Note 32 provided (at section 8):
- *“ASX recognises that the speed with which an entity can disclose information under Listing Rule 3.1 will vary, depending on factors such as where and when the information originated, the forewarning (if any) the entity had of the information, the amount and complexity of the information concerned, the need in some cases to verify the*

*accuracy or bona fides of the information, and (importantly in this context):*

“the need in some cases to comply with specific legal and Listing Rule requirements, such as the requirement for an announcement that relates to mining or oil and gas activities to comply with Chapter 5 of the Listing Rules.”

[...]

*All other things being equal, ASX considers that the requirement for an entity to disclose market sensitive information about an oil and gas activity under Listing Rule 3.1, which is also subject to the reporting requirements in Chapter 5, will generally only be triggered when the entity is in possession of all of the information that it is required to include in a market announcement about that activity under Chapter 5. Prior to it having all of that information, ASX considers that whatever market sensitive information it may have about the activity will generally be insufficiently definite to warrant disclosure. Therefore, provided the market sensitive information is and remains confidential, ASX has not formed the view that it has ceased to be confidential, and a reasonable person would not otherwise expect it to be disclosed, it will generally fall within the carve-out to immediate disclosure in Listing Rule 3.1A.”*

7. As to paragraph 7, it:
- (a) admits that, at all times from the commencement of the Relevant Period until 22 March 2021, if:
    - (i) the provisions of the ASX Listing Rules required it to notify the market operator of information about specified events or matters as they arise for the purpose of the operator making that information available to participants in the market;
    - (ii) it had information that those provisions required it to notify to the market operator;
    - (iii) that information was not generally available;

- (iv) it knew or 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 Beach Shares; and
  - (v) a reasonable person would expect the information, if it were generally available, to have a material effect on the price or value of Beach Shares;
- it was required to notify the market operator of that information in accordance with those provisions;
- (b) otherwise denies the allegations in paragraph 7.
8. As to paragraph 8, it:
- (a) admits that, at all times from 23 March 2021 to the end of the Relevant Period, if:
    - (i) the provisions of the ASX Listing Rules required it to notify the market operator of information about specified events or matters as they arise for the purpose of the operator making that information available to participants in the market;
    - (ii) it had information that those provisions required it to notify to the market operator;
    - (iii) the information was not generally available; and
    - (iv) a reasonable person would expect the information, if it were generally available, to have a material effect on the price or value of Beach Shares;

it was required to notify the market operator of that information in accordance with those provisions;
  - (b) otherwise denies the allegations in paragraph 8 and says further that, during the Relevant Period, it had in place policies and procedures directed at ensuring compliance with its continuous disclosure obligations under the ASX Listing Rules and s 674 of the *Corporations Act 2001* (Cth).

#### **Particulars**

Beach refers to its Continuous Disclosure Policy, which was in writing and dated 1 April 2016.

9. As to paragraph 9, it:
- (a) admits that, during the Relevant Period, ASX Listing Rule 19.12 gave the expression “aware” the following meaning:  
*“an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity”*; and
  - (b) otherwise denies the allegations in paragraph 9.

### **B.3 Officers of Beach**

10. As to paragraph 10, it:
- (a) says that the term “all material times” is unparticularised and therefore vague and embarrassing;
  - (b) admits the allegations in paragraph 10 insofar as the Relevant Period is concerned; and
  - (c) under cover of the objection in sub-paragraph 10(a) above, otherwise denies the allegations in paragraph 10.
11. As to paragraph 11, it:
- (a) admits that, during the Relevant Period, each of the Directors was an officer of Beach within the meaning of s 9 of the *Corporations Act 2001* (Cth) (and consequently, also for the purposes of the ASX Listing Rules, pursuant to Rule 19.3(a)); and
  - (b) otherwise denies the allegations in paragraph 11.
12. As to paragraph 12, it:
- (a) admits that, pursuant to Rule 3.1 of the ASX Listing Rules, it became aware of information if, and as soon as, any of the Directors had, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as Directors of Beach; and



- (b) otherwise denies the allegations in paragraph 12.

## **C. FACTUAL CIRCUMSTANCES**

### **C.1 Overview of Beach's Operations**

13. As to paragraph 13, it:

- (a) admits sub-paragraph 13(a);
- (b) in relation to sub-paragraph 13(b):
  - (i) says that during the Relevant Period, in addition to its producing assets, Beach had a suite of exploration permits across the onshore Cooper and Perth basins, onshore and offshore Otway Basin and offshore Bonaparte and Carnarvon basins in Australia and the offshore Canterbury and Great South basins in New Zealand; and
  - (ii) otherwise admits sub-paragraph 13(b);
- (c) in relation to sub-paragraph 13(c):
  - (i) says that it had oil and gas assets and operations in an area known as the Western Flank on the western side of the Cooper basin and on the eastern side of the Eromanga basin;
  - (ii) says that the Western Flank contained a number of oil fields, of which Beach considered the Bauer Field to be the largest; and
  - (iii) otherwise does not know and therefore cannot admit sub-paragraph 13(c);
- (d) in relation to sub-paragraph 13(d):
  - (i) says that it estimated its oil and gas reserves and contingent resources in accordance with its Reserves Policy (as defined and set out in paragraph

29(a)(iii) below) and the SPE-PRMS and relies on those documents for their full terms and effect; and

(ii) otherwise denies sub-paragraph 13(d).

14. As to paragraph 14, it:

(a) says that it stated in its 2020 Annual Report that:

(i) its *'appraisal strategy is designed to optimise ultimate recovery from our fields in the most cost-effective way, achieved via delineation of field size as early as possible in the field life and then formation of an efficient field development plan for the life of each field...'*;

(ii) its *'exploration strategy is designed to find new pools of hydrocarbons, either within tie-back distance to existing surface processing facilities, or large enough to justify new infrastructure investment...'*;

(iii) in relation to *'Development'* that in *'FY20 [it] made good progress under [its] multi-year investment program which is designed to unlock the reserves within our existing oil and gas fields...'*;

(b) relies on the full terms and effect of the 2020 Annual Report; and

(c) otherwise denies the allegations in paragraph 14.

15. As to paragraph 15, it:

(a) admits that the geology of the Western Flank is unusual, including because the oil fields within it are wide and flat;

(b) admits that there is, and was, uncertainty in estimating reserves at the Western Flank, including because of its geology and as set out in paragraphs 28(e) and 28(e)(ii) below; and

(c) otherwise denies the allegations in paragraph 15.

16. As to paragraph 16, it:
- (a) says that the allegation that “in or around 2016, Beach was concerned” is vague and embarrassing;
  - (b) says that the paragraph does not allege a material fact relevant to any cause of action alleged by the plaintiffs and therefore is liable to be struck out; and
  - (c) under cover of the above objections, denies the allegations in paragraph 16.
17. As to paragraph 17, it:
- (a) says that on 2 August 2017, Beach announced that:
    - (i) prior to 2017, Beach was aware that the McKinlay Member contained a shallow oil column overlying the Namur Sandstone;
    - (ii) in July 2017, Beach drilled its first McKinlay horizontal well (Bauer-26) as a development concept; and
  - (b) otherwise admits the allegations in paragraph 17.

### **Particulars**

Beach refers to its July 2017 Monthly Drilling Report released to the ASX on 2 August 2017.

18. Save that it says that it will rely at trial on the full text and effect of the oil and gas production information set out in its 2018 Annual Report, it admits the allegations in paragraph 18.
19. Save that it says that it will rely at trial on the full text and effect of the oil and gas production information set out in its 2019 Annual Report, it admits the allegations in paragraph 19.
20. Save that it says that it will rely at trial on the full text and effect of the oil and gas production information set out in its 2020 Annual Report, it admits the allegations in paragraph 20.

### **C.2 The Bauer Model**

21. As to paragraph 21, it:

- (a) says that during the Relevant Period, Beach maintained, and updated from time to time in light of drilling results or other available information in relation to existing wells, inter alia:
  - (i) geological mapping data in relation to the Western Flank;
  - (ii) well data and seismic mapping data in relation to the Western Flank; and
  - (iii) static and dynamic models of estimated oil and gas reserves in respect of its fields within the Western Flank;
- (b) says that:
  - (i) in around 2018, Beach undertook a campaign of appraisal drilling around the limits of the Bauer Field, for the purpose of obtaining information about the field limit (**Bauer Field Limit Appraisal**); and
  - (ii) the data obtained from the Bauer Field Limit Appraisal provided Beach with updated information about the size of the Bauer Field; and
- (c) otherwise denies the allegations in paragraph 21.

22. As to paragraph 22:

- (a) in relation to sub-paragraph 22(a), it:
  - (i) refers to and repeats paragraph 21(c) above;
  - (ii) says that the Bauer Field Limit Appraisal was undertaken by Beach because it considered that its previous approach of estimating reserves solely on a decline curve analysis methodology may have underestimated the true size of the Bauer Field;
  - (iii) otherwise denies the allegations;
- (b) in relation to sub-paragraph 22(b), it:
  - (i) refers to and repeats paragraph 21 above; and
  - (ii) otherwise denies the allegations;
- (c) in relation to sub-paragraph 22(c), it:
  - (i) admits that the data obtained from the Bauer Field Limit Appraisal provided Beach with updated information about the size of the Bauer Field;

- (ii) says that after October 2018, and with the benefit of the data obtained from the Bauer Field Limit Appraisal, Beach's estimate of the size of the Bauer Field was larger than its prior estimates; and
  - (iii) otherwise denies the allegations; and
  - (d) denies the allegations in sub-paragraph 22(d).
- 23. It denies the allegations in paragraph 23 and refers to and repeats paragraphs 21 and 22 above.
- 24. As to paragraph 24, it:
  - (a) refers to and repeats paragraphs 21 and 22 above; and
  - (b) otherwise denies the allegations in paragraph 24.
- 25. As to paragraph 25, it:
  - (a) refers to and repeats paragraphs 21 and 22 above; and
  - (b) otherwise denies the allegations in paragraph 25.

### **C.3 August 2020 Representations**

- 26. As to paragraph 26, it:
  - (a) admits that, in September 2018, it made statements that:
    - (i) it had a target to grow production to an FY23 production target of 34-40 MMboe and five-year cumulative free cash flow to \$2.3 billion (**2018 Outlook**); and
    - (ii) the assumptions included estimated cumulative 5-year contributions of Western Flank oil of:
      - (A) between 15-20% for production; and
      - (B) between 35-40% for free cash flow;
  - (b) says that, on 5 October 2018, it announced a change to its 2018 Outlook by reducing its FY23 production target from 34-40 MMboe to 30-36 MMboe; and
  - (c) otherwise denies the allegations in paragraphs 26(a) and 26(b); and
  - (d) says further that:

- (i) its statements in connection with the 2018 Outlook were subject to the matters set out in paragraphs 28(e) and 28(e)(ii) below, and an express statement by Beach that the 2018 Outlook was “*not guidance*”;

#### **Particulars**

Beach refers to the 2018 Investor Presentation, p 2 and Beach ASX release ‘FY19 guidance and outlook revision following Victorian Otway Sale’ dated 5 October 2018, p 3.

- (ii) Beach identified to participants in the market for Beach Shares that:
- (A) it had received feedback from analysts that the “*Western Flank oil business is a bit of an enigma to model*”; and
  - (B) uncertainties and variables in respect of Western Flank oil, included:
    - (I) the ultimate size of the Bauer Field;
    - (II) horizontal well performance; and
    - (III) future exploration/appraisal success in delineating reserves.

#### **Particulars**

Beach refers to 2018 Investor Presentation, p 73 and the transcript of the 2018 Investor Briefing, pp 18-19.

27. Save that it says that the 2019 Outlook was subject to the matters set out in paragraphs 28(e) and 28(f) below, it otherwise admits the allegations in paragraph 27.
28. As to paragraph 28, it admits that, on 17 August 2020, it released its financial results for FY20 and its 2020 Annual Report and:
- (a) in relation to sub-paragraph 28(a), admits that it provided, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) below, guidance for FY21 (the **FY21 Guidance**) as follows:

|                             |                                 |
|-----------------------------|---------------------------------|
| <i>“Production</i>          | <i>26.0 - 28.5 MMboe”</i>       |
| <i>“Capital Expenditure</i> | <i>\$650 - 750 million”</i>     |
| <i>“Underlying EBITDA</i>   | <i>\$900 - 1,000 million”</i> ; |

- (b) in relation to sub-paragraph 28(b), admits that it stated that, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) below, it had a target to deliver in FY25:
  - (i) annual production of 37 to 43 MMboe; and
  - (ii) cumulative free cashflow of \$2.1 billion;
- (c) subject to the matters set out in paragraphs 28(e) and 28(e)(ii) below, admits the allegations in sub-paragraph 28(c);
- (d) in relation to sub-paragraph 28(d):
  - (i) admits, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) below, the allegations in sub-paragraph 28(d)(i);
  - (ii) admits that, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) below, it made the following statements in relation to Western Flank Oil:
    - (A) that “*strategic considerations*” included “*[h]igh returning asset with significant exploration, appraisal and development potential*”;
    - (B) that “*proposed FY21 activities*” included “*target maintaining gross average output above 20,000 BOPD in FY21*”;
    - (C) as alleged in sub-paragraph 28(d)(ii)(C);
    - (D) “*159% 2P reserves replacement ration in Western Flank Oil*”;
    - (E) “*Outstanding drilling results in FY20*” and “*Drilling success added 11.5 MMboe in 2P reserves, a 159% 2P reserves replacement ratio*”;
    - (F) as alleged in sub-paragraph 28(d)(ii)(F);
    - (G) “*Appraisal drilling of the Bauer Field continues to exceed expectations, with year-on-year conversion of 3P reserves to 2P reserves resulting in new oil production wells being added and field extensions identified in both the northern and southern parts of the field*”;
    - (H) as alleged in sub-paragraph 28(d)(ii)(H);

- (iii) admits that, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) below, it made the statements “*Low risk delivery of 37 MMboe by FY25, with upside*” and that “*Key assumptions*” included “*33% exploration/appraisal Western Flank success rate*” and “*Western Flank gas expansion*”;
  - (iv) admits, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) below, the allegations in sub-paragraph 28(d)(iv);
  - (v) admits, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) below, the allegations in sub-paragraph 28(d)(v); and
- (e) otherwise denies the allegations in paragraph 28 and says further that:
- (i) its statements as to its FY21 Guidance, its estimated reserves, and its targets for FY25:
    - (A) were made by it, and received by the market, in the context of the industry in which Beach operated, and the presentations and reports in which they were contained, and it will rely, at trial, on the full terms and effect of those presentations and reports, including the August 2020 ASX Release, the August 2020 Presentation, the 2020 Annual Report and the transcript of the August 2020 Earnings Call;
    - (B) were point-in-time assessments made, and expressed, only at the date of issue, in light of the then prevailing conditions, facts and matters known to Beach;
    - (C) were uncertain and subject to change;
    - (D) were liable to be affected by a variety of risks and variables (including as set out in paragraph 26(d)(ii)(B) above) and changes in underlying assumptions including as to drilling and production results and reserve estimates (which estimates were expressions of judgement at a point in time, which could alter significantly or become uncertain having regard to further information);



- (E) were subject to future operational, technical and strategic decisions made by Beach having regard to the information available to it, and conditions affecting it, from time to time; and
- (F) were consequently, and as was apparent:
- (G) difficult matters of judgment on which reasonable minds might differ;
- (H) all the more difficult and uncertain the longer the temporal range under consideration;
- (I) inherently susceptible to revision as circumstances changed and new or different information emerged which had the potential to affect Beach's expectations; and
- (J) particularly uncertain and susceptible to revision in the case of Beach's estimated reserves.

### **Particulars**

Beach refers to the SPE's "Standards Pertaining to the Estimating and Auditing of Oil and Gas Reserves Information" (revised June 2019) which states (at section 1.3):

#### *The Inherently Imprecise Nature of Reserves Information*

*"The reliability of Reserves information is considerably affected by several factors. Initially, it should be noted that Reserves information is imprecise as a result of the inherent uncertainties in, and the limited nature of, the accumulation and interpretation of data upon which the estimating and auditing of Reserves information is predicated. Moreover, the methods and data used in estimating Reserves information are often necessarily indirect or analogical in character rather than direct or deductive. Furthermore, the persons estimating and auditing Reserves information are required, in applying generally accepted petroleum engineering and evaluation principles, to make numerous unbiased judgments on the basis of their educational background, professional training, and professional experience. The extent and significance of the judgments to be made are, in themselves, sufficient to render Reserves information inherently imprecise."*

Further particulars may be provided prior to trial.

- (ii) the uncertainty, variability and risk (as referred to in the preceding subparagraph) attending to its FY21 Guidance, its estimated reserves and its targets for FY25 (and to any assessments made by Beach with respect to the same):
  - (A) were expressly made clear to participants in the market for Beach Shares by Beach by way of disclaimers and assumptions published in its presentations and reports (collectively, the **Disclaimers**); and
  - (B) alternatively, were, or ought to have been, well understood by participants in the market for Beach Shares.

### **Particulars**

Beach routinely and expressly made disclaimers with respect to the uncertainty, risk and variability affecting forward looking statements, including in its presentations, reports, outlooks and other announcements, in the following form or in terms to similar effect:

***“Disclaimer***

*This [release/presentation] contains forward looking statements that are subject to risk factors associated with oil, gas and related businesses. It is believed that the expectations reflected in these statements are reasonable but they may be affected by a variety of variables and changes in underlying assumptions which could cause actual results or trends to differ materially, including, but not limited to: COVID-19 risks, price fluctuations, actual demand, currency fluctuations, drilling and production results, reserve estimates, loss of market, industry competition, environmental risks, physical risks, legislative, fiscal and regulatory developments, economic and financial market conditions in various countries and regions, political risks, project delays or advancements, approvals and cost estimates”*

(August 2020 ASX Release, p 4; August 2020 Presentation, p2)

***“Assumptions***

*The five year outlook set out in this [release/presentation] is not guidance. The outlook is uncertain and subject to change. The outlook has been estimated on the basis of the following assumptions... 3. various other economic and corporate assumptions; 4. assumptions regarding drilling results; and 5. expected future development, appraisal and exploration projects being delivered in accordance with their current expected project schedules.”*

*“FY21 guidance is uncertain and subject to change. FY21 guidance has been estimated on the basis of the following assumptions... 3. various other economic and corporate assumptions; 4. assumptions regarding drilling results; and 5. expected future development, appraisal and exploration projects being delivered in accordance with their current expected project schedules.”*

(August 2020 ASX Release, p 4; August 2020 Presentation, p 2)

***“Material change to reserves and resources***

*Underground oil and gas reserves and resources estimates are expressions of judgement based on knowledge, experience and industry practice. Estimates which are valid at a certain point in time may alter significantly or become uncertain when new oil and gas reservoir information becomes available through additional drilling, or reservoir engineering over the life of the field. As reserves and resources estimates change, development and production plans may be altered in a way that may adversely affect Beach’s operations and financial results.*

*Beach prepares its petroleum reserves and contingent resources estimates in accordance with the Petroleum Resources Management System (PRMS 2018) published by the Society of Petroleum Engineers and are subject to periodic external review or audit.*

***Exploration and development***

*Success in oil and gas production is key and in the normal course of business Beach depends on the following factors: successful exploration, establishment of commercial oil and gas reserves, finding commercial solutions for exploitation of reserves, ability to design and construct*

*efficient production, gathering and processing facilities, efficient transportation and marketing of hydrocarbons and sound management of operations. Oil and gas exploration is a speculative endeavour and the nature of the business carries a degree of risk associated with failure to find hydrocarbons in commercial quantities or at all.”*

(2020 Annual Report, p 45)

***“Production risks***

*Any oil or gas project, including off-shore activity, may be exposed to production decrease or stoppage, which may be the result of facility shut-downs, mechanical or technical failure, climatic events, and other unforeseeable events. A significant failure to maintain production could result in Beach lowering production forecasts, loss of revenue and additional operational costs to bring production back online.”*

(2020 Annual Report, p 46)

***“Forward Looking Statements***

*This report contains forward-looking statements, including statements of current intention, opinion and predictions regarding the Company’s present and future operations, possible future events and future financial prospects. While these statements reflect expectations at the date of this report, they are, by their nature, not certain and are susceptible to change. Beach makes no representation, assurance or guarantee as to the accuracy or likelihood of fulfilling of such forward looking statements (whether expressed or implied), and except as required by applicable law or the ASX Listing Rules, disclaims any obligation or undertaking to publicly update such forward-looking statements.”*

(2020 Annual Report, p 47)

29. As to paragraph 29:

- (a) in relation to sub-paragraph 29(a), it:
  - (i) admits that, on or around 17 August 2020, it stated that, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) above, it held the opinion that its estimated 2P Reserves (as at 30 June 2020) were 353 MMboe (**2P Reserves Estimate**),
  - (ii) otherwise denies sub-paragraph 29(a);

- (iii) says further that Beach had in place a reserves policy (**Reserves Policy**) the objectives of which included setting out the governance standards, roles and responsibilities by which estimates of reserves and resources are prepared and reported, and to ensure compliance with the ASX Listing Rules;

### Particulars

The Reserves Policy was in writing and dated 8 December 2018.

The Reserves Policy provided that:

*“Beach will:*

- *Prepare and maintain its Reserve and Resource estimates in accordance with the definitions, standards and guidelines contained within the Petroleum Resources Management System (PRMS), Australian Securities Exchange (ASX) Listing Rules and other relevant regulatory requirements.*
- *Implement processes, controls and documentation to provide reliable Reserve and Resource estimates in line with good oilfield practice, the PRMS, Beach standards and relevant regulatory requirements:*
  - *These controls will include the preparation and maintenance of a set of Beach Hydrocarbon Resource Estimation and Reporting Guidelines which incorporate the principles of the PRMS, ASX Listing Rules, Beach standards and relevant regulatory requirements;*
  - *Beach will ensure staff involved in the management, preparation and reporting of Reserve and Resource estimates are trained and qualified in the PRMS and reporting compliant with ASX listing rules and other relevant regulatory standards; and*
  - *The Beach Board will appoint an Independent Reserves Auditor and carry out an independent audit of at least 50% of all material 2P reserves projects each year. The Independent Reserves Auditor is to be a recognised, professional, reserves consulting firm which is independent of Beach. The Independent Reserves Auditor reports to the Chair of the Beach Board Risk, Corporate*

*Governance & Sustainability Committee (RCGSC) is to be managed by Beach staff as directed by the RCGSC.*

- *Publicly report Beach’s estimates of Reserves and Resources in an Annual Reserves and Resource Statement or as otherwise specified by material change provisions under the listing rules of the ASX in compliance with Beach’s Continuous Disclosure Policy:*
    - *For reserves, the guideline for a material change is one which results in a 5% or greater variation to Beach’s Proved Reserves...”*
- (iv) says further that in accordance with its Reserves Policy, Beach had processes in place for the preparation of a robust annual Reserves Statement and it produced the 2P Reserves Estimate as part of the process of preparing its annual Reserves Statement for the period ending 30 June 2020.

### **Particulars**

Beach’s annual Reserves Statement for the period ending 30 June 2020 (as comprised in its 2020 Annual Report, p 28) was prepared in accordance with the SPE-PRMS between about January and August 2020 and its preparation included the following:

- A. Seismic mapping of Beach’s assets which involved the preparation of maps for its 1P, 2P and 3P reserves by Beach’s subsurface teams of reservoir engineers, geophysicists and geologists;
- B. Peer reviews of the mapping data in relation to each asset by Beach’s reservoir engineers and geophysicists including at least one QPRRE;
- C. Preparation of Beach’s reserve estimates from its mapping data using deterministic and probabilistic distribution methods;
- D. Management and executive reviews of reserves estimates, including by Beach’s QPRREs (all of whom were members of the SPE with at least five years’ experience in petroleum engineering or petroleum production geology, at least three years’ experience in the estimation and evaluation of reserves and resources, as well as relevant professional or tertiary

qualifications). In particular, the reserves estimates were prepared under the supervision of Beach's QPRREs and the reserves statement as a whole was approved by Mr David Capon (General Manager – Offshore Victoria and New Zealand). Mr Capon was a full-time employee of Beach and a member of the SPE; he has a Bachelor of Science (Honours) from the University of Adelaide and, at the relevant time, had in excess of 25 years of relevant experience;

- E. Review and consideration of the reserves estimates by Beach's Reserves Committee;
  - F. Review and consideration of the reserves estimates by Beach's Risk, Corporate Governance & Sustainability Committee;
  - G. An independent audit of Beach's reserves as at 30 June 2020 was conducted by an external auditor, RISC Advisory Pty Ltd (**RISC**). The audit report stated "[i]t is RISC's opinion that, in aggregate, [Beach's reserves estimates] are reasonable and have been prepared in accordance with the definitions and guidelines contained within the Petroleum Resources Management System (PRMS) and generally accepted petroleum engineering and evaluation principles." The audit covered 75% of the 2P Reserves in line with the Beach Reserves Policy which requires at least 50% of 2P Reserves to be audited. The audit included 91% of developed reserves and 60% of undeveloped reserves.; and
  - H. Review, consideration, and approval of the reserves booking by Beach's Board of Directors.
- (b) it denies the allegations in sub-paragraph 29(b);
  - (c) in relation to sub-paragraph 29(c), it:
    - (i) admits that, on or around 17 August 2020, it stated that, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) above, it had a target to deliver production of 37 to 43 MMboe in FY25 (the **5-Year Outlook**);
    - (ii) otherwise denies the allegations in sub-paragraph 29(c); and
    - (iii) says further that the 5-Year Outlook was subject to the Disclaimers, the matters set out in paragraphs 28(e) and 28(e)(ii) above, and an express statement by Beach that the 5-Year Outlook was "*not guidance*";

### Particulars

Beach refers to the Disclaimers in the August 2020 ASX Release, p 4, and the August 2020 Presentation, p 2.

- (iv) says further that it had processes in place for the preparation of a robust and detailed 5-year plan, and consequent upon that plan, the 5-Year Outlook and it undertook those processes between about December 2019 and August 2020.

### Particulars

The 5-Year Outlook processes included:

- (A) a Life of Asset review process in respect of Beach's assets (**LoA Process**);
  - (B) the LoA Process involved:
    - (i) development of life of asset scenarios at an asset level by cross-functional asset teams;
    - (ii) executive review of life of asset scenarios; and
    - (iii) consolidation of life of asset scenarios and results across Beach's assets; and
    - (iv) the development of a 5-Year Plan for Beach's assets;
  - (C) Members of Beach's Executive Committee then reviewed and considered the results of the LoA Process and the 5-Year Plan;
  - (D) the Board of Directors considered the results of the LoA Process and the 5-Year Plan on 26 March 2020 and on 14 August 2020;
  - (E) the 5-Year Outlook was developed on the basis of the 5-Year Plan and the results of the LoA Process; and
  - (F) the Board of Directors approved the 5-Year Outlook on 14 August 2020.
- (d) it denies the allegations in sub-paragraph 29(d);
  - (e) it denies the allegations in sub-paragraph 29(e);
  - (f) in relation to sub-paragraph 29(f), it:
    - (i) admits that it provided, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) above, the FY21 Guidance;



- (ii) otherwise denies the allegations in sub-paragraph 29(f); and
- (iii) says further that it had processes in place for the preparation of a robust and detailed annual budget for FY21, and, consequent upon that budget, the FY21 Guidance and that it undertook those processes between about March and August 2020.

#### **Particulars**

The budget processes for FY21 included:

- (A) budgeting for production at an asset level by reference to production choke models;
  - (B) management and executive review of choke models;
  - (C) consolidation of the results of the choke models into consolidated budgets for FY21;
  - (D) review of the FY21 budgets by members of Beach's Executive Committee;
  - (E) on 15 May 2020, approval by the Board of Directors of the FY21 work program and the capital expenditure component of the FY21 budget;
  - (F) on 18 June 2020, approval by the Board of Directors of a refreshed FY21 work program and the remaining components of the FY21 budget, which had been revised in light of further cost-out activities, revised economic assumptions (including Brent prices), and revised cash flow outcomes since 15 May 2020; and
  - (G) on 14 August 2020, approval by the Board of Directors of a further revised and final reset FY21 budget, updated to reflect the final FY20 statutory results and revised depreciation, depletion and amortization as a result of the completion of the FY20 reserves review and the FY21 Guidance consequent upon that budget.
- (g) it denies the allegations in sub-paragraph 29(g); and
  - (h) it says further that it had processes in place to monitor its business and financial performance from time to time, including in FY21;

#### **Particulars**

Beach had processes in place to monitor its business and financial performance which included:

- (A) regular monitoring of Beach's operations which involved:
    - (i) monitoring the production of operated assets on a daily basis;
    - (ii) comparing daily production data against forecasts;
    - (iii) review of production data by executives at fortnightly and monthly production planning meetings.
  - (B) the consolidation of daily and fortnightly production data by management into monthly Operational and Financial Overview Reports that were provided to the Board of Directors and considered at Board meetings on a monthly basis; and
  - (C) the preparation, and updating, of forecasts on a quarterly basis, which were then reviewed by management, the Executive Committee and the Board of Directors.
30. It denies the allegations in paragraph 30 and says further that if the representations, as alleged in paragraphs 29(c), (e) and (f) of the ASOC were made (which is denied), they were representations of existing fact or opinion.
31. It denies the allegations in paragraph 31 and refers to and repeats paragraphs 28 and 29 above and paragraphs 39, 46 and 52 below.
32. It denies the allegations in paragraph 32.
33. As to paragraph 33:
- (a) it denies the allegations in sub-paragraph 33(a);
  - (b) in relation to sub-paragraph 33(b), it:
    - (i) says that, in FY20, Beach participated in appraisal and exploration drilling in the Western Flank, including in 1H20, 28 exploration and appraisal wells and in 2H20, 14 exploration and appraisal wells;
    - (ii) refers to and repeats paragraphs 21(a) and 21(b) above and says that the data obtained from appraisal and exploration drilling in FY20 provided Beach with updated information in respect of the geology of the Western Flank;
    - (iii) otherwise denies the allegations in sub-paragraph 33(b); and

- (iv) says further that Beach routinely provided information as to its drilling activities and results to participants in the market for Beach Shares including during FY20;

### **Particulars**

In accordance with the requirements set out in paragraph 6(c)(iii) above, Beach issued Quarterly Activities Reports that contained information as to its drilling activities and results, including its FY20 First Quarter Activities Report dated 28 October 2019, its FY20 Second Quarter Activities Report dated 29 January 2020, its FY20 Third Quarter Activities Report dated 22 April 2020 and its FY20 Fourth Quarter Activities Report dated 22 July 2020.

- (c) in relation to sub-paragraph 33(c), it:
    - (i) says that, absent further particularisation of the term "materially declining", the allegations in sub-paragraph 33(c) are vague and embarrassing; and
    - (ii) under the cover of that objection, it denies the allegations in sub-paragraph 33(c);
  - (d) save that it admits that its 2P Reserves Estimate, 5-Year Outlook and FY21 Guidance had regard to estimates of its oil reserves in the Western Flank, it otherwise denies the allegations in sub-paragraph 33(d);
  - (e) save that it admits that, during the August 2020 Earnings Call, it stated in respect of the Western Flank that "*given the commodity price environment, FY21 capital expenditure will be reduced by 50% to \$110 million and we're going into a partial harvest mode*", it otherwise denies the allegations in sub-paragraph 33(e).
34. Save that it admits that the likely future performance of Beach's oil wells in the Western Flank was uncertain as set out in paragraphs 28(e) and 28(e)(ii) above, it otherwise denies the allegations in paragraph 34.

### **C.4 November 2020 Representations**

- 35. It admits paragraph 35.
- 36. As to paragraph 36, it:
  - (a) admits that, on 23 October 2020, it released its 1Q21 Activities Report in which it:

- (i) made statements to the effect set out in paragraph 35 of the ASOC;
  - (ii) made statements to the effect that the status of its “Prior FY21 Guidance” was “Unchanged”;
  - (iii) did not expressly address the 2P Reserves Estimate or the 5-Year Outlook; and
  - (iv) included Disclaimers and referred to the 2020 Annual Report and the August 2020 Presentation (including the Disclaimers contained therein) for further information in respect of the FY21 Guidance; and
- (b) otherwise denies the allegations in paragraph 36.

#### **Particulars**

The Disclaimers were set out in the 1Q21 Activities Report, at p 12, and the references were set out at p 3, note 1.

37. As to paragraph 37, it:
- (a) says that its announcement on 3 November 2020 stated that “[s]ettlement is expected to occur in the March 2021 quarter (or earlier)”, and otherwise admits the allegations in sub-paragraph 37(a);
  - (b) admits the allegations in sub-paragraph 37(b);
  - (c) admits the allegations in sub-paragraph 37(c).
38. As to paragraph 38, it admits that, on 25 November 2020, Beach held its Annual General Meeting (**2020 AGM**), at which it:
- (a) did not expressly address the FY21 Guidance (but included Disclaimers to the effect that its FY21 Guidance was uncertain and subject to change);

#### **Particulars**

The Disclaimers were set out in the November 2020 AGM Address, at p 2 of the presentation.

- (b) made a statement that “*production remains on track to deliver between 37-43 MMboe in FY25*” and included Disclaimers (including that the 5-Year Outlook was uncertain, subject to change, and was not guidance);

### Particulars

The Disclaimers were set out in the November 2020 AGM Address, at p 2 of the presentation.

- (c) made, subject to Disclaimers, the statements:
- (i) alleged in sub-paragraph 38(c)(i);
  - (ii) that the Senex Asset Acquisition “*adds over 6 million barrels of 2P reserves*”;
  - (iii) alleged in sub-paragraph 38(c)(iii);
  - (iv) that “[*p*]ositive progress over past 4 years” included “[*d*]rilling success added 11.5 MMboe in 2P reserves”;
  - (v) that for Western Flank oil:
    - “*Looking ahead*”
      - *High margin asset with plenty of running room remaining*
      - *Temporary slowing down activity to integrate all data to date*
      - *Target maintaining gross average output above 20,000 BOPD in FY21*”; and

### Particulars

The Disclaimers were set out in the November 2020 AGM Address, at p 2 of the presentation.

- (d) otherwise, denies the allegations in paragraph 38.
39. As to paragraph 39, it:
- (a) denies the allegations in sub-paragraph 39(a);
  - (b) in relation to sub-paragraph 39(b):
    - (i) admits that, on 25 November 2020, it stated to the Beach Shares market that, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) above, the Senex Asset Acquisition “*adds over 6 million barrels of 2P reserves*”; and
    - (ii) otherwise denies the allegations in sub-paragraph 39(b); and
  - (c) denies the allegations in sub-paragraph 39(c).

40. Save that it admits that, if the representations alleged in paragraph 39(b) of the ASOC were made (which is denied), they were representations with respect to future matters, it otherwise denies paragraph 40.
41. It denies the allegations in paragraph 41 and refers to and repeats paragraphs 28(e), 28(e)(ii), 37, 38 and 39 above and paragraphs 45, 46, 52 and 53 below.
42. It denies the allegations in paragraph 42.
43. As to paragraph 43:
  - (a) in relation to sub-paragraph 43(a), it:
    - (i) repeats paragraph 33 above;
    - (ii) says further that, on or about 22 October 2020, it had determined to, and did thereafter, undertake a drilling extension campaign at the Western Flank comprised of eleven wells; and
    - (iii) otherwise denies the allegations in sub-paragraph 43(a);
  - (b) in relation to sub-paragraph 43(b), it:
    - (i) says that absent further particularisation of the terms "continued to materially decline", the allegations are vague and embarrassing; and
    - (ii) under the cover of that objection, denies the allegations in sub-paragraph 43(b).
44. Save that it admits that the likely future performance of Beach's oil wells in the Western Flank was uncertain as set out in paragraphs 28(e) and 28(e)(ii) above, it otherwise denies the allegations in paragraph 44.

#### **C.5 January 2021 Representations**

45. As to paragraph 45, it:
  - (a) admits that, on 27 January 2021, it released its 2Q21 Activities Report in which it:
    - (i) stated that "*[p]roduction of 6.2MMboe was down 8% below the prior quarter and 3% below the prior corresponding period, a result impacted by the Otway Gas Plant maintenance shutdown in November*";
    - (ii) made the statements alleged in sub-paragraph 45(b);

- (iii) made the statements alleged in sub-paragraph 45(c);
  - (iv) stated that the Senex Assets Acquisition “*includes 6.8 MMboe of 2P reserves*”;
  - (v) made the statements alleged in sub-paragraphs 45(e)(i) and 45(e)(ii) and stated that the Mitsui Asset Acquisition “*includes approximately 0.77 MMboe (net) of FY21 forecast production, with associated 2P reserve additions to be updated as part of Beach’s FY21 year-end reserves process*”;
  - (vi) stated that it “*plans to update FY21 guidance at the half year result on 15 February 2021, which will include the recent acquisitions of Senex Energy’s Copper Basin and Mitsui’s Bass Basin assets*”;
  - (vii) did not expressly address the 5-Year Outlook; and
- (b) otherwise denies the allegations in paragraph 45; and
  - (c) says further that the statements made in the 2Q21 Activities Report were subject to the Disclaimers.

### **Particulars**

The Disclaimers were set out in the 2Q21 Activities Report, at p 12.

46. As to paragraph 46, it:
- (a) admits that, on or about 27 January 2021, it stated to the Beach Shares Market that, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) above, the 2P Reserves associated with the Mitsui Asset Acquisition would be updated as part of its annual year end reserves process for the period ending 30 June 2021;
  - (b) admits that, on or about 27 January 2021, it stated to the Beach Shares Market that, subject to the matters set out in paragraphs 28(e) and 28(f) above, following completion, the Senex Asset Acquisition would be ‘immediately ... reserves accretive’; and
  - (c) otherwise denies the allegations in paragraph 46.

47. It admits that, if the January 2021 Representation as alleged in paragraph 46 of the ASOC was made (which is denied), it was a representation with respect to future matters.
48. It denies the allegations in paragraph 48 and refers to and repeats paragraphs 28(e), 28(e)(ii), 45 and 46 above and paragraphs 52 and 53 below.
49. It denies the allegations in paragraph 49.
50. As to paragraph 50, it:
  - (a) repeats the matters in paragraphs 33 and 43 above, and otherwise denies the allegations in sub-paragraph 50(a);
  - (b) admits that its oil production in the Western Flank for 2Q21 had decreased 9% compared with the previous quarter, and otherwise denies the allegations in sub-paragraph 50(b);
  - (c) admits that, in the April 2021 Presentation, released on 30 April 2021, it stated that its *“FY21 drilling program had highlighted the difficulty in prognosing depth in low relief Western Flank oil structures due to natural variability”*, and otherwise denies the allegations in sub-paragraph 50(c);
  - (d) says that, absent further particularisation of the alleged larger and more rapid production declines, the allegations in sub-paragraph 50(d) are vague and embarrassing, and, under the cover of that objection, it denies the allegations in sub-paragraph 50(d); and
  - (e) says that, absent further particularisation of the term "materially declining", the allegations in sub-paragraph 50(e) are vague and embarrassing, and, under the cover of that objection, it denies the allegations in sub-paragraph 50(e).
51. Save that it admits that the likely future performance of Beach’s oil wells in the Western Flank was uncertain as set out in paragraphs 28(e) and 28(e)(ii) above, it otherwise denies the allegations in paragraph 51.

#### **C.6 February 2021 Representations**

52. As to paragraph 52, it:



- (a) says that it issued the Revised FY21 Guidance subject to Disclaimers and the matters set out in paragraphs 28(e) and 28(e)(ii) above, and otherwise admits the allegations in sub-paragraph 52(a);
- (b) admits that it made, subject to Disclaimers and the matters set out in paragraphs 28(e) and 28(e)(ii) above, statements:
  - (i) in the 1H21 Results Announcement:
    - (A) that it discovered material liquids-rich gas volumes at the Enterprise field, with net 2P Reserves of 21 MMboe;
    - (B) as alleged in sub-paragraph 52(b)(i)(B);
    - (C) as alleged in sub-paragraph 52(b)(i)(C);
    - (D) that *“Beach most recently released reserves information in its 2020 Annual Report. ... Beach confirms that it is not aware of any other new information or data that materially affects the information included in this report and that all the material assumptions and technical parameters underpinning the estimates in the aforesaid market announcement continue to apply and have not materially changed”*;
  - (ii) in the 1H21 Results Presentation:
    - (A) as alleged in sub-paragraph 52(b)(ii)(A);
    - (B) as alleged in sub-paragraph 52(b)(ii)(B) together with statements as to other *“key assumptions”*;
    - (C) as alleged in sub-paragraph 52(b)(ii)(C);
    - (D) as alleged in sub-paragraph 52(b)(ii)(D);
    - (E) in relation to the Enterprise Discovery:
      - (I) *“High relief, fault-bound structure with net 2P reserves of 21 MMboe”* based on, or as set out in, ASX announcement #004/21 from 15 February 2021 *“Enterprise Exploration Success Delivers Material 2P Reserves Booking”*. Evaluation date of reserves as at 15 February 2021”; and

- (II) approximately 6% increase to Beach’s 2P Reserves based on *“Reserves as at 30 June 2020. H1 FY21 production of 13.0 MMboe”*;
  - (F) as alleged in sub-paragraph 52(b)(ii)(F);
  - (G) that the Senex Asset Acquisition *“includes 6.8 MMboe of 2P Reserves”* based on, or as set out in ASX announcement #037/20 from 3 November 2020 Beach expands Cooper Basin Portfolio”; and
  - (H) under the heading “Key takeaways” the statement *“Five-year outlook remains on track”*, and that it was *“[a]lready delivering on requirements to meet >37 MMboe by FY25, further supported by Waitsia FID and Enterprise exploration success”*, cross-referenced to information on key assumptions on slide 6 of the 1H21 Results Presentation;
- (iii) in the February 2021 Earnings Call:
- (A) as alleged in sub-paragraphs 52(b)(iii)(A) – (J);
  - (B) in relation to sub-paragraph 52(b)(iii)(K):
    - (I) that *“...really, we're talking about Bauer, and we're really talking about some interference between the new wells and the historical producers both at Namur level and McKinlay. At the moment, it doesn't necessarily mean it will have an impact on reserves. There's a lot of data obviously that we're working through right now. There's 30 to 40 kilometres of laterals in the McKinlay. ... there's production from about 150 wells, so there's a lot of data we're working through. It does not necessarily mean that it will have a reserves impact...”*;
    - (II) that the *“reality is that we’re assimilating a lot of information from a number of recently drilled wells. We've currently got about 40 horizontal laterals that have been drilled 25 of those are in Bauer. As I said, we've got*

*another 6 to 8 to go. We've drilled 16 wells this year in the first half, that's the first half"; and*

(III) *that, as was the fact, there was "a lot of information that we need to assimilate before we come out and make a prediction on what the reserves will be."*

(C) in relation to sub-paragraph 52(b)(iii)(L) that, in response to a question as to the timing in which Beach was expecting to conclude its work and be able to announce what the plan for Western Flank production outlook might be:

(I) *"...this work is ongoing";*

(II) *"...it depends partly... on how material the impacts are that we see along the way and how definitive they are... if you look at the Flank now, we've got 150 or thereabouts producing wells, 100 on pump. We've still got some more wells... to drill and connect over the coming months. So there's a lot of data to get through"; and*

(III) *"If we see anything that is material and definitive and we have to disclose, we'll absolutely disclose. Obviously we've got reserve announcements coming up down the track. And then we've obviously got our guidance for next year as well, so there's obviously looming deadlines. The work can't go on forever, clearly";*

(D) in relation to sub-paragraph 52(b)(iii)(M):

*"In relation to Western Flank, obviously not dissimilar to our current production targets. We'd had them starting over [20,000] a day, but we did absolutely have decline coming in over the 5-year period. We haven't released exact numbers on that, but naturally we had decline coming in. Really the dependency on that will be what we work through in the coming months around Western Flank going forward.*

*The bottom line is, for me, this is the whole reason we did that Lattice acquisition, to end up with 6 production hubs, multiple development options so that, if one is having a peak, fantastic, if one is having a down, it can be carried by the others and covered by the others. Don't be too quick to put a line through Western Flank would be my advice. It's still a very, very strong asset; still has great returns. And we've just got to get our heads around the current data that we're seeing which we didn't expect."*

- (c) otherwise denies the allegations in paragraph 52.

### **Particulars**

The Disclaimers were set out in the 1H21 Results Presentation, at p 2.

53. As to paragraph 53, it:
- (a) denies the allegations in sub-paragraph 53(a);
  - (b) says that, on or about 15 February 2021, Beach stated to the Beach Shares Market that, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) above, it still believed in a strong future for the Western Flank and that it still saw the Western Flank remaining a key and quality asset, and otherwise denies the allegations in sub-paragraph 53(b);
  - (c) says that, on or about 15 February 2021, Beach stated to the Beach Shares Market that, subject to the matters set out in paragraphs 28(e) and 28(e)(ii) above, it was *"...expecting the Western Flank to be running at over 20,000 per day, but what [Beach was] seeing at [the] moment, is, we're now sitting at about 18,000"*, and it considered that to be predominantly the result of interference caused by new wells, and otherwise denies the allegations in sub-paragraph 53(b);
  - (d) denies the allegations in sub-paragraph 53(d);
  - (e) denies the allegations in sub-paragraph 53(e);
  - (f) denies the allegations in sub-paragraph 53(f); and
  - (g) denies the allegations in sub-paragraph 53(g).

54. As to paragraph 54, it says that if the representations, as alleged in sub-paragraphs 53(a) (b), (d), (e) and (f) were made (which is denied):
- (a) it admits that the representations, as alleged in sub-paragraph 53(e) were representations with respect to future matters; and
  - (b) it otherwise denies paragraph 54 and says further that the representations, as alleged in paragraphs 53(a) (b), (d) and (f), were representations of existing fact or opinion.
55. It denies the allegations in paragraph 55 and refers to and repeats paragraphs 28(e)(i)(B), 52 and 53 above.
56. It denies the allegations in paragraph 56.
57. As to paragraph 57, it:
- (a) repeats paragraphs 33, 43 and 50 above, and otherwise denies the allegations in sub-paragraph 57(a);
  - (b) admits that, on or about 15 February 2021, it stated that its oil production in the Western Flank for 2Q21 had declined to “*about 18,000*” barrels of oil per day, and otherwise denies the allegations in sub-paragraph 57(b); and
  - denies the allegations in sub-paragraph 57(c).
58. Save that it admits that the likely future performance of Beach’s oil wells in the Western Flank was uncertain as set out in paragraphs 28(e) and 28(e)(ii) above, it otherwise denies the allegations in paragraph 58.

#### **D. MISLEADING OR DECEPTIVE CONDUCT**

59. As to paragraph 59, it:
- (a) says that it does not know what is meant by the “January 2021 Statements” which is undefined in the ASOC;
  - (b) under cover of that objection, denies that the January 2021 Statements were made;
  - (c) says that it understands the reference to the “January 2021 Representations” in paragraph 59, and at every other paragraph where it is mentioned in the ASOC, to be a reference to the January 2021 Representation; and

- (d) if, or insofar as, the August 2020 Statements and Representations, the November 2020 Statements and Representations, the January 2021 Representation and the February 2021 Statements and Representations as alleged in the ASOC were made (which is denied), admits the allegations in sub-paragraphs 59(a) and 59(b).

#### **D.1 August 2020 Conduct**

60. It denies the allegations in paragraph 60.
61. As to paragraph 61, it:
- (a) refers to and repeats paragraph 33 above, and otherwise denies the allegations sub-paragraph 61(a); and
  - (b) refers to and repeats paragraph 34 above, and otherwise denies the allegations in sub-paragraph 61(b).
62. As to paragraph 62, it:
- (a) denies the allegations in paragraph 62; and
  - (b) says further that, if the August 2020 Representations were made (which is denied), insofar as they were representations with respect to future matters, they were made on reasonable grounds.

#### **Particulars**

The 2P Reserves Estimate had been produced by Beach by the process referred to in paragraph 29(a) above.

The 5-Year Outlook had been produced by Beach by the process referred to in paragraph 29(c) above.

The FY21 Guidance had been produced by Beach by the process referred to in paragraph 29(f) above.

63. It denies the allegations in paragraph 63.

#### **D.2 November 2020 Conduct**

64. It denies the allegations in paragraph 64.
65. As to paragraph 65, it:
- (a) refers to and repeats paragraph 43 above, and otherwise denies sub-paragraph 65(a); and

(b) refers to and repeats paragraph 44 above, and otherwise denies sub-paragraph 65(b).

66. As to paragraph 66, it:

(a) denies the allegations in paragraph 66; and

(b) says further that, if the November 2020 Representations were made (which is denied), insofar as they were representations with respect to future matters, they were made on reasonable grounds.

#### **Particulars**

Beach refers to the particulars subjoined to paragraph 62 above.

67. It denies the allegations in paragraph 67.

#### **D.3 January 2021 Conduct**

68. It denies the allegations in paragraph 68.

69. As to paragraph 69, it:

(a) refers to and repeats paragraph 50 above, and otherwise denies the allegations in sub-paragraph 69(a); and

(b) refers to and repeats paragraph 51 above, and otherwise denies the allegations in sub-paragraph 69(b).

70. As to paragraph 70, it:

(a) denies the allegations in paragraph 70; and

(b) says further that, if the January 2021 Representation was made (which is denied), insofar as it was a representation with respect to future matters, it was made on reasonable grounds.

#### **Particulars**

Beach's due diligence processes confirmed the assets acquired by Beach through the Senex Assets Acquisition and Mitsui Assets Acquisition would include 2P Reserves.

71. It denies the allegations in paragraph 71.

**D.4 February 2021 Conduct**

72. It denies the allegations in paragraph 72.
73. As to paragraph 73, it:
- (a) refers to and repeats paragraph 57 above, and otherwise denies the allegations in sub-paragraph 73(a); and
  - (b) refers to and repeats paragraph 58 above, and otherwise denies the allegations in sub-paragraph 73(b).
74. As to paragraph 74, it:
- (a) denies the allegations in paragraph 74; and
  - (b) says further that, if the February 2021 Representation was made (which is denied), insofar as they were representations with respect to future matters, they were made on reasonable grounds.

**Particulars**

Beach refers to the particulars subjoined to paragraph 62.

The Revised FY21 Guidance was produced by Beach by reference to the process referred to in paragraph 29(h).

75. It denies the allegations in paragraph 75.

**D.5 Misleading Conduct Contraventions**

76. It denies the allegations in paragraph 76.

**E. CONTINUOUS DISCLOSURE CONTRAVENTIONS**

77. As to paragraph 77, it:
- (a) refers to and repeats paragraphs 33(b) and 33(c) above, and otherwise denies the allegations in sub-paragraph 77(a);
  - (b) refers to and repeats paragraph 51 above, and otherwise denies the allegations in sub-paragraph 77(b);
  - (c) refers to and repeats paragraph 58 above, and otherwise denies the allegations in sub-paragraph 77(c); and
  - (d) says further, that even if the August 2020 Production and Drilling Facts, the Further January 2021 Information and/or the Further February 2021 Information



existed (which is denied) and Beach was aware of it (which is denied), and ASX Listing Rule 3.1 otherwise required its disclosure (which is denied), then each of:

- (i) the August 2020 Production and Drilling Facts;
- (ii) the Further January 2021 Information; and
- (iii) the Further February 2021 Information,

was within the exception to that ASX Listing Rule provided by ASX Listing Rule 3.1A because:

- (i) that information:
  - (A) was a matter of supposition or insufficiently definite to warrant disclosure (including by reason of the matters set out in paragraphs 6(c)(ii), 6(c)(v), 6(c)(vi), 6(c)(ix) and 6(c)(x) above); and/or
  - (B) was generated for internal management purposes;
- (ii) the information was confidential and the ASX had not formed the view that the information had ceased to be confidential; and
- (iii) a reasonable person would not have expected Beach to disclose the information,

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

78. It denies the allegations in paragraph 78 and refers to and repeats paragraph 77 above.

79. It denies the allegations in paragraph 79.

80. It denies the allegations in paragraph 80.

81. As to paragraph 81, it:

- (a) refers to and repeats 33(b), 33(c), 51, 58, and 77 to 80 above; and
- (b) admits that, by reason of the fact that there was no basis or obligation for Beach to do so, it did not inform the ASX of the alleged “August 2020 Production and Drilling Facts”, “Further January 2021 Information” and “Further February 2021 Information” on the dates alleged.

82. It denies the allegations in paragraph 82.

**F. CORRECTIVE DISCLOSURES**

83. As to paragraph 83, it:

- (a) admits the allegations in sub-paragraph 83(a);
- (b) admits the allegations in sub-paragraph 83(b);
- (c) in relation to the allegations in sub-paragraph 83(c), admits that, on 30 April 2021, it stated:
  - (i) *“Since the FY21 Half Year Results, additional production data from Bauer field oil wells drilled throughout the FY21 campaign confirmed the production decline”;*
  - (ii) *“In addition, recent results from oil wells drilled outside of the Bauer oil field, including the Balgowan, Chiton, Hanson and Kalladeina fields, have come in towards the low end of expectations”;*
  - (iii) *“Beach typically commences the annual reserve audit process during March, with completion in August, however given recent drilling results, the Company has undertaken an urgent review of Western Flank oil and gas reserves for FY21”;*
  - (iv) *“Beach has booked a 17.6 MMbbl downgrade to 2P oil reserves and 7.2 MMboe downgrade to 2P gas reserves across Western Flank assets compared to FY20 reserve statement (pre-production impact). This equates to a net downgrade of - 5% of the Company’s 2P oil and gas reserves as at 30 June 2020, before the impact of FY21 production and post-acquisition of Senex Energy’s Cooper Basin assets, effective 1 July 2020. A breakdown of the 2P oil and gas reserves downgrade can be found in the table below.*

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***Breakdown of net changes to 2P reserves (pre-production impact)***

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| <b><i>MMboe</i></b>                                | <b><i>2P reserves impact</i></b> |
|--|----------------------------------|
| <i>Bauer oil field</i>                             | <i>(6.0)</i>                     |
| <i>Four other ex-PEL 91 oil fields<sup>1</sup></i> | <i>(8.2)</i>                     |
| <i>Four ex-PEL 92 oil fields<sup>2</sup></i>       | <i>(2.2)</i>                     |

|  |                      |
|--|----------------------|
| <i>Acquired Senex oil acreage<sup>3</sup></i>        | <i>(1.2)</i>         |
| <b><i>Total 2P oil reserve downgrade</i></b>         | <b><i>(17.6)</i></b> |
| <i>Ex-PEL 106 gas fields</i>                         | <i>(7.2)</i>         |
| <b><i>Total 2P gas reserve downgrade</i></b>         | <b><i>(7.2)</i></b>  |
| <i>Uplift from acquired Senex oil acreage</i>        | <i>4.2</i>           |
| <i>Uplift from acquired Senex gas acreage</i>        | <i>2.2</i>           |
| <b><i>Total 2P oil and gas reserve downgrade</i></b> | <b><i>(18.4)</i></b> |

*Once forecast production of 8.6 MMboe is included, the 2P reserves across Western Flank oil and gas assets at 30 June 2021 are 34.6 MMboe”;*

- (v) “Separately, across the Western Flank gas assets, several wells have shown increased water production, which, combined with recent pressure and production data, has led to a 7.2 MMboe downgrade in 2P gas and associated liquids reserves”;*
- (vi) “Western Flank oil is currently running at about 15,000 barrels per day”;*
- (vii) “Anticipate 4.0-5.0 MMbbl reduction in Western Flank oil production compared to our previous expectations in FY22”;*
- (viii) “Recent drilling results highlighted that some elements of the geological model taken from Bauer, particularly regarding the volumetric estimates, are not entirely applicable to these oil fields, which have shown greater complexity.*

*Drilling of the FY21 wells was completed in March 2021 and they are being progressively connected and completed on pump, with this activity continuing into FY22. Stabilised production trends typically require at least three months, and sometimes up to six months, before predictions of well and field performance can be confirmed...*

*...Previous reserves assessment across the complex Western Flank oil and gas fields have proven to be optimistic following recent drilling results.”*

- (ix) *“At the Half Year Results, not all wells had been drilled and for those that had been drilled, the production had yet to reach stable declines. The long timelines from drilling to getting reliable production trends that you can use to confidently predict reserves is shown with the plot from a typical Western Flank well on the top right.*

*It takes many months before stable declines can be used for reserve estimates. Our assessment of this new drilling and production data clearly indicates that the geological model applied from Bauer over-estimated the reserves and showed seismic was a more reliable approach for these fields outside of Bauer.*

*In summation, the Bauer experience highlighted the limitations of seismic as the field out-performed seismic expectations. We adopted the approach we had taken to Bauer in nine other non-Bauer fields and the FY19 and FY20 vertical drilling campaigns supported this. However, the most recent horizontal drilling data shows Bauer was the exception and not the rule when it comes to the Western Flank.*

*As such, we have reverted to a seismic based model for the non-Bauer fields and the reserves stated today are much more reliant on DCA analysis”;*

- (x) as alleged in sub-paragraph 83(c)(x);
- (xi) that Beach *“also enlisted the support of three independent reserve consultants, including Beach’s external reserves auditor RISC, to confirm our approach”;*
- (xii) *“Beach has withdrawn and will no longer provide a five-year outlook in its current form. The Company is currently reviewing plans regarding its outlook, which will be completed in conjunction with the FY21 Full Year Audited Results.*

*This is due to an acknowledgement of continuing variability to the business, which includes adjustments in work programs that were experienced during COVID-19 pandemic, reductions in the Western Flank Oil and gas production profile and variations to project interests as a result of asset acquisition”;* and

(d) otherwise, denies the allegations in paragraph 83.

84. Save that it admits that the opening, high, low and closing price of Beach Shares on 30 April 2021 was as follows, it otherwise denies the allegations in paragraph 84.

| Open     | High     | Low      | Close    |
|----------|----------|----------|----------|
| \$1.3900 | \$1.4000 | \$1.2700 | \$1.2750 |

84A. As to paragraph 84A:

(a) it says that absent particularisation of the term "*declined substantially*", the allegations are vague and embarrassing; and

(b) under the cover of that objection, it denies the allegations in paragraph 84A.

#### **G. CONTRAVENING CONDUCT CAUSED LOSS OR DAMAGE**

85. Save that it refers to the matters set out in paragraph 6(c) above, it otherwise admits the allegations in paragraph 85.

86. It denies the allegations in paragraph 86.

87. It denies the allegations in paragraph 87.

88. Save that it refers to and repeats the admissions in paragraph 85 above, it otherwise denies the allegations in paragraph 88.

88A. Save that it refers to and repeats the admissions in paragraph 85 above, it does not know and therefore cannot admit the allegations in paragraph 88A.

88B. It denies the allegations in paragraph 88B.

88C. Save that it refers to and repeats the admissions in paragraph 88A above, it otherwise denies the allegations in paragraph 88C.

89. It denies the allegations in paragraph 89.

90. It denies the allegations in paragraph 90.

#### **H. ENTITLEMENT TO RELIEF**

91. It denies the allegations in paragraph 91.

92. It denies the allegations in paragraph 92.

**I. COMMON QUESTIONS OF LAW OR FACT**

93. It does not plead to paragraph 93 as it contains no direct allegation against it and the identification of common questions is properly a matter to be addressed following the close of pleadings and evidence.

R G CRAIG

J A FINDLAY

R ROZENBERG

Dated 30 June 2023

  
\_\_\_\_\_  
**Herbert Smith Freehills**  
Solicitors for the Defendant