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

No. S ECI 2022 03433

B E T W E E N

GERALD FULLER

Plaintiff

-and-

FLETCHER BUILDING LIMITED (ARBN 096 046 936)

Defendant

AMENDED STATEMENT OF CLAIM

Filed pursuant to order 1 of the orders made by the Honourable Justice Nichols on 1 August 2023

Date of Document:	24 August 2023	Solicitors Code:	37478
Filed on behalf of:	The Plaintiff	DX:	
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A PARTIES

A.1 The Plaintiff and Group Members

1 The Plaintiff commences this proceeding as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) on his own behalf and on behalf of all persons who or which acquired an interest in fully paid ordinary shares in the Defendant (**Fletcher**) on the Australian Securities Exchange (**ASX**) or the New Zealand Main Board (**NZSX**) between 17 August 2016 and 23 October 2017 inclusive (**Relevant Period**), such persons being **Group Members**.

2 The Plaintiff acquired Fletcher Shares during the Relevant Period.

PARTICULARS

The Plaintiff acquired 100 Fletcher Shares for AUD 10.21 a share on the ASX on 30 November 2016 and paid AUD 9.90 in brokerage fees including GST.

3 As at the date of the commencement of this proceeding, there are seven or more persons who have claims against Fletcher in respect of the matters set out in this Amended Statement of Claim.

A.2 Fletcher Building Limited

4 At all material times, Fletcher:

(a) was and is a company registered in New Zealand under the *Companies Act 1993* (NZ);

(b) was and is registered as a foreign company in Australia under Part 5B.2 of the *Corporations Act 2001* (Cth) (**Corporations Act**);

(c) was and is carrying on a business within Australia and engaged in conduct outside Australia, namely New Zealand, within the meaning of s 5(1)(g) of the *Competition and Consumer Act 2010* (Cth) (**Competition Consumer Act**);

(d) a company listed on the ASX and NZSX under the ticker symbol FBU;

(e) is, and was at all material times, a person within the meaning of:

(i) s 1041H of the Corporations Act;

(ii) s 12DA of the *Australian Securities and Investments Act 2001* (Cth) (**ASIC Act**); and/or

(iii) s 18 of the Australian Consumer Law set out in Schedule 2 of the Competition Consumer Act, as applicable pursuant to:

(A) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);

(B) s 28 of the *Fair Trading Act 1987* (NSW);

(C) s 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);

(D) s 16 of the *Fair Trading Act 1989* (Qld);

(E) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);

(F) s 19 of the *Fair Trading Act 2010* (WA);

(G) s 14 of the *Fair Trading Act 1987* (SA); and/or

(H) s 27 of the *Consumer Affairs and Fair Trading Act 1990* (NT),

(individually, or together, the **ACL**),

(iv) s 19 of the *Financial Markets Conduct Act 2013* (NZ) (**FMC Act NZ**); and

(v) s 9 of the *Fair Trading Act 1986* (NZ) (**Fair Trading Act NZ**).

B FLETCHER'S OBLIGATIONS

5 At all material times, Fletcher was:

(a) prohibited pursuant to s 1041H of the Corporations Act, from engaging in conduct in relation to Fletcher Shares (being financial products within the meaning of the Corporations Act) that is misleading or deceptive or is likely to mislead or deceive;

(b) prohibited pursuant to s 12DA of the ASIC Act, from engaging in conduct in relation to Fletcher Shares (being financial services within the meaning of the ASIC Act) that is misleading or deceptive or is likely to mislead or deceive;

(c) prohibited pursuant to s 19 of the FMC Act NZ from engaging in conduct that is misleading or deceptive or likely to mislead or deceive in relation to any dealing in Fletcher Shares (being financial products and quoted financial products within the meaning of the FMC Act NZ);

(d) prohibited pursuant to s 18 of the ACL, from engaging in trade or commerce in conduct that is misleading or deceptive or is likely to mislead or deceive;

(e) prohibited pursuant to s 9 of the Fair Trading Act NZ, from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive;

(f) prohibited, pursuant to s 1041E of the Corporations Act from making a statement, or disseminating information if:

(i) the statement or information is false in a material particular or is materially misleading;

(ii) the statement or information is likely to:

(A) induce persons in Australia to apply for, dispose of or acquire Fletcher Shares (being financial products within the meaning of the Corporations Act); or

(B) to have the effect of increasing, reducing, maintaining or stabilising the price for trading on Fletcher Shares on the ASX; and

(iii) Fletcher knew or ought reasonably have known that the statement is false in a material particular or is materially misleading.

6 On 6 May 2016, Fletcher changed its admission category on the ASX to ASX Foreign Exempt Listing effective from that date, with the effect that it was required to comply with the Main Board/Debt Market Listing Rules of the NZSX, and was subject to other requirements of the ASX Listing Rules as were applicable to Fletcher as an ASX Foreign Exempt Listing, including lodgement with ASX of all information provided to NZSX that is, or is to be made public.

C FLETCHER'S OFFICERS

7 During all or part of the Relevant Period, the following persons were directors or officers of Fletcher, and what those persons knew or ought to have known is to be attributed to Fletcher from the time that those persons were directors or officers of Fletcher:

(a) Sir Ralph Norris - Independent Non-executive Director, 1 April 2014 to 1 September 2018; Chairman, 21 October 2014 to 1 September 2018;

(b) Mark Adamson - Chief Executive Officer and Managing Director, 1 October 2012 to 20 July 2017;

(c) Bruce Hassall - Independent Non-executive Director, 1 March 2017 to present; Chairman 1 September 2018 to present;

(d) Antony Carter - Independent Non-executive Director, 1 September 2010 to 28 November 2019;

(e) Alan Jackson - Independent Non-executive Director, 1 September 2009 to 20 November 2018;

(f) John Judge - Independent Non-executive Director, 9 June 2008 to 25 October 2017;

(g) Kathryn Spargo - Independent Non-executive Director, 1 March 2012 to 20 September 2017;

(h) Cecilia Tarrant - Independent Non-executive Director, 10 October 2011 to 1 September 2018;

(i) Steven Vamos - Independent Non-executive Director, 6 July 2015 to 30 March 2020;

(j) John Bell - Chief Information Officer, November 2015 to June 2019;

(k) Gerry Bollman - Chief Financial Officer, 30 October 2014 to November 2016;

(l) Charles Bolt - General Counsel and Company Secretary, 16 October 2013 to October 2019;

(m) Matt Crockett - Chief Executive, Building Products, July 2015 to 17 November 2017;

(n) Kate Daly - Chief People & Communication Officer, Human Resources, June 2011 to November 2017;

(o) Steve Evans - Chief Operating Officer for Housing, Construction, 2013 to 2015 and Chief Executive, Residential and Land Development, 2015 to present;

(p) Lee Finney - Chief Transformation Officer, 2 February 2016 to 28 February 2018;

(q) Dean Fradgley - Chief Executive, New Zealand, October 2013 to 2 February 2016; Chief Executive, Trans-Tasman Distribution, 2 February 2016 to 1 July 2018 and Chief Executive, Australia, 1 July 2018 to present;

(r) Francisco Irazusta - Chief Executive, Light Products, March 2015 to January 2016; Chief Executive, International Business, 2 February 2016 to 20 July 2017; Interim Chief Executive Officer, 24 July 2017 to 22 November 2017;

(s) Bevan McKenzie - Chief Financial Officer, November 2016 to present;

(t) Graham Darlow - Chief Executive, Construction, 7 November 2011 to 23 March 2017; and

(u) Michele Kernahan - Chief Operating Officer, Construction, February 2017 to 23 March 2017; Chief Executive, Construction, 23 March 2017 to October 2018.

D RELEVANT PROJECTS UNDERTAKEN BY BUILDINGS + INTERIORS

D.1 Fletcher business units

8 At all material times, Fletcher carried on a building products and construction business organised into five business units or divisions, being:

(a) Building Products;

(b) International;

(c) Distribution;

(d) Residential and Land Development; and

(e) Construction.

9 At all material times, within its Construction division, Fletcher, by its subsidiary, The Fletcher Construction Company Limited (**FCL**), carried on a business called “Building + Interiors”, primarily as a contractor on vertical construction projects (**Building + Interiors**).

10 At all material times during the Relevant Period, one or more members of Fletcher’s senior management acted as directors of FCL.

PARTICULARS

During the period 17 August 2016 to his resignation on 23 March 2017, Graham Darlow (paragraph 7(t) above) was Fletcher's Chief Executive – Construction and a director of FCL.

During the period 23 March 2017 to 23 October 2017, Michele Kernahan (paragraph 7(u) above) was Fletcher's Chief Executive – Construction and a director of FCL.

During the period 17 August 2016 to about November 2016, Gerry Bollman (paragraph 7(k) above) was Fletcher's Chief Financial Officer and a director of FCL.

During the period from about November 2016 to 23 October 2017, Bevan McKenzie (paragraph 7(s) above) was Fletcher's Chief Financial Officer and a director of FCL.

During the period 17 August 2016 to 23 October 2017, Charles Bolt (paragraph 7(l) above) was Fletcher's Group General Counsel and Company Secretary and a director of FCL.

D.2 The CJESP Project

11 In about 2014, the New Zealand Ministry of Justice (**NZ MOJ**) commissioned a project to develop the Christchurch Justice and Emergency Services Precinct (**CJESP Project**).

12 On about 1 August 2014, the NZ MOJ entered into a building contract with FCL for the construction of the CJESP Project (**CJESP Building Contract**).

13 The CJESP Building Contract was an overall guaranteed maximum price contract of NZD 240M with a practical completion date of 15 December 2016.

PARTICULARS

Electrix Limited v The Fletcher Construction Company Ltd [2020] NZHC 918 (**Electrix Judgment**) at [4] (Palmer J).

D.3 The NZICC Project

14 In about 2015, SkyCity Entertainment Group Limited (**SkyCity**) announced a project to develop an international convention centre to be known as the New Zealand International Convention Centre with a 300-room hotel on Hobson Street in the city of Auckland, New Zealand (**NZICC Project**).

15 On about 27 October 2015, FCL was announced by SkyCity to be the main contractor for the NZICC Project.

16 On about 11 November 2015, SkyCity and FCL entered into a contract or contracts for the construction of the NZICC Project (**NZICC Building Contract**).

17 The NZICC Building Contract included:

(a) a contract price of NZD 477M, of which amount approximately 90% was subject to fixed or capped cost provisions; and

(b) a practical completion date in Q1 2019.

PARTICULARS

SKYCITY – 2015 AGM "Key Highlights of 30 June 2015 Results", 13 November 2015, slide 14.

18 In December 2015, demolition and preparation works commenced on the NZICC Project.

PARTICULARS

SKYCITY – 2016 Interim Financial Report, 21 March 2016, p 7.

E FLETCHER'S CONDUCT

E.1 Announcement of FY17 Guidance

19 On 17 August 2016, Fletcher lodged with the ASX (at 7:30 am AEST) and NZSX (at 8:44 am NZST) and publicly released its Annual Report for the financial year ended 30 June 2016 and associated commentary (**Annual Report FY16**).

20 In the Annual Report FY16, Fletcher stated that it expected its operating earnings (earnings before interest and tax and significant items) (**EBIT**) for FY17 to be in the range of NZD 720M to 760M (**FY17 Guidance**).

PARTICULARS

Annual Report FY16 Management Commentary dated 17 August 2016, p 14; Fletcher Building Annual Results Presentation, slide 44.

21 Also on 17 August 2016, Fletcher held an earnings call and presentation concerning its FY16 results simultaneously in New Zealand and Australia at 2:30 pm NZST, in which it repeated the FY17 Guidance (**August 201~~7~~6 Earnings Call**).

PARTICULARS

The August 2016 Earnings Call was attended by Mark Adamson and Gerry Bolman, on behalf of Fletcher. Mr Adamson repeated the FY17 Guidance as follows: "Operating earnings are expected to be in the range of NZD720 million to NZD760 million" (Fletcher Building Annual Results Presentation, slide 44).

22 By the Annual Report FY16 and August 201~~7~~6 Earnings Call, Fletcher represented to the market of actual and potential investors in Fletcher Shares that it:

(a) expected its EBIT for FY17 to be in the range of NZD 720M to 760M; and

(b) had reasonable grounds to expect its EBIT for FY17 to be in the range of NZD 720M to 760M,

(together, **FY17 Guidance Representations**).

PARTICULARS

Paragraph 22(a) of the FY17 Guidance Representations was express.

Paragraph 22(b) of the FY17 Guidance Representations was implied from:

(A) the natural and ordinary meaning of the Annual Report FY16 and August 201~~7~~6 Earnings Call;

(B) the absence of any statement by Fletcher correcting the express statement of the FY17 Guidance; and

(C) the fact that the Annual Report FY16 and August 201~~7~~6 Earnings Call were published to the NZSX and ASX in circumstances where the audience would reasonably expect that it contained information that a reasonable person would expect to have a material ~~price~~ effect on the price or value of Fletcher Shares, such that Fletcher had a reasonable basis for its express guidance.

23 The FY17 Guidance Representations:

(a) were representations as to future matters; and

(b) continued to be disseminated in the period between 17 August 2016 and 17 March 2017.

PARTICULARS

The continuing nature of the FY17 Guidance Representations arises from:

(A) the omission by Fletcher to modify, qualify or contradict any of that information prior to 17 March 2017; and

(B) the fact that the Annual Report FY16 and August 201~~7~~6 Earnings Call were published to the NZSX and ASX and/or were available to the public in circumstances where the audience would reasonably expect that information concerning the future financial performance of Fletcher would have continued currency until modified, qualified or contradicted.

E.2 Half Year Report FY17

24 On about 22 February 2017, Fletcher lodged with the ASX (at 7:43 am AEDT) and NZSX (at 8:30 am NZDT and publicly released its financial results for the six months ending 31 December 2016 and associated commentary (**Half Year Report FY17**).

25 In the Half Year Report FY17, Fletcher:

(a) reported that the Construction division half year result was NZD 24M, down from NZD 36M for 1H16 due to a range of factors, including losses incurred on a major construction project; and

(b) reiterated the FY17 Guidance.

PARTICULARS

Fletcher News Release dated 22 February 2017: "Consistent with guidance provided at the Annual Shareholders' Meeting in October 2016, operating earnings (earnings before interest, tax and significant items) for the 2017 financial year are expected to be in the range of $720 million to $760 million".

Half Year Report FY17, <u>Half Year Review December 2016</u>, p 3: "Construction earnings reduced due to a range of factors, notably … losses incurred on a major construction project"; also Half Year Report FY17, pp 3 and 9.

Half Year Report FY17, <u>Half Year Review December 2016,</u> p 4: "Momentum in the Fletcher Building businesses gives us reason to reiterate guidance for operating earnings (earnings before interest, tax and significant items) of $720 million to $760 million for the 2017 financial year ….".

Half Year Report FY17, <u>Half Year Review December 2016,</u> p 9: "The Construction division reported operating earnings of $24 million compared with $36 million in the prior corresponding period … The reduction in operating earnings is due to a range of factors, notably … losses incurred on a major construction project".

26 By the Half Year Report FY17, Fletcher repeated the FY17 Guidance Representations.

PARTICULARS

Paragraph 22(a) of the FY17 Guidance Representations was expressly repeated.

Paragraph 22(b) of the FY17 Guidance Representations was implied from:

(A) the natural and ordinary meaning of the Half Year Report FY17;

(B) the absence of any statement by Fletcher correcting the express statement of the FY17 Guidance; and

(C) the fact that the Half Year Report FY17 was published to the NZSX and ASX in circumstances where the audience would reasonably expect that it contained information that a reasonable person would expect to have a material ~~price~~ <u>effect</u> on the price or value of Fletcher Shares, such that Fletcher had a reasonable basis for its express guidance.

E.3 March 2017 Trading Update

27 On about 17 March 2017, Fletcher applied for and was granted by the ASX and NZSX, a halt to trading in Fletcher Shares pending the outcome of an internal review into its Construction division, including the Building + Interiors business unit (**2016 ~~B+I~~ Building + Interior Review**) and its impact on earnings guidance previously provided to the market.

PARTICULARS

Joint ASX and NZSX announcement dated 17 March 2017 "Request for trading halt: Fletcher Building Limited ASX Code (FBU) NZX Code (FBU) … Reasons for trading halt: The Company is reviewing the financial performance of the Construction division and its impact on earnings guidance previously provided to the market. As that review is ongoing, the Company is not currently in a position to make an announcement to the market of the results of the review."

28 On about 20 March 2017, Fletcher:

(a) lodged with the ASX (at 8:45 am AEDT) and NZSX (at 8:36 am NZDT) and publicly released the announcement "Updated FY2017 Earnings Guidance" with an accompanying annexure of "Questions and Answers" (**March 2017 Trading Update**); and

(b) sought to lift the trading halt which allowed trading of Fletcher Shares to resume.

29 In the March 2017 Trading Update, Fletcher stated that:

(a) it now expected an EBIT result for FY17 in the range of NZD 610M to 650M (**Revised FY17 Guidance**);

PARTICULARS

"The company now expects operating earnings before interest, tax and significant items ('EBIT') to be between $610 million to $650 million for the year ending 30 June 2017. This compares with the previous EBIT guidance range of $720 million to $760 million".

(b) the Revised FY17 Guidance was due to the identification of additional estimated losses and downside risk in the Buildings + Interiors business unit of its Construction division, including:

(i) an increase in the estimated loss on the unnamed major construction project referenced in the Half Year Report FY17; and

(ii) downside risk on other Building + Interiors projects with the majority being a provision for expected losses on one other major project.

PARTICULARS

"The revised guidance is due to the identification of additional estimated losses and downside risk in the Buildings and Interiors ('B+I') business unit of the Construction division. A thorough review of the B+I business and projects began in late calendar year 2016 and led to new management and governance processes. A significant loss was recorded for B+I in the half-year results based on the best estimate available at the time. However, management has now identified an increase in the estimated loss on the major construction project which was referenced at the time of the announcement of the H1 17 results, and the identification of downside risk on other B+I projects, with the majority being a provision for expected losses on one other major project".

(c) ~~confirmed that~~ the 2016 ~~B+I~~ Building + Interior Review had identified additional estimate losses and downside risk;

(d) ~~stated that~~ the losses and risk identified were a product of factors such as:

(i) the complexity of those projects;

(ii) the extension of project timelines; and

(iii) an increase in projected resource requirements and costs relative to the original budgets;

PARTICULARS

"The major projects involved are large and highly complex. Project reports and reviews received since the half-year results announcement have indicated significantly higher costs to complete the projects, and have also enabled improved quantification of remaining risks … The most significant issues relate to complexity in design, subcontractor management and building program delivery on key projects. This has led to an extension of project timelines and increase in project resource requirements and costs, relative to original budgets. The extent of this has become more apparent since the half year announcement as new management and processes have bedded in".

(e) ~~stated that~~ it had adopted new management and governance processes to prevent further losses in its Construction division.

PARTICULARS

"… as the new governance processes have been further bedded in, management has found that the expected losses are greater than previously estimated … We have made, and are continuing to make, changes to Construction governance processes and personnel which is enabling us to clearly identify and address project performance issues. We have appointed a Chief Operating Officer for the Construction division, a new head of Risk and Governance in the Construction division, and a new General Manager of the B&I business unit will start shortly. We have new finance leadership and processes along with the recent implementation of a new financial management reporting system (JDE). The criteria for bidding major construction projects have been made more stringent, and internal review processes for proposed and existing projects have been strengthened …"

30 Following the release of the March 2017 Trading Update, Fletcher held an earnings call at about 11:00 am NZDT (9:00 am AEDT) and answered questions from institutional investors, fund managers and analysts (**March 2017 Earnings Call**).

PARTICULARS

The March 2017 Earnings Call was attended by Bevan McKenzie, Mark Adamson and Rodney Deacon on behalf of Fletcher.

31 In the March 2017 Earnings Call, Fletcher repeated the substance of the March 2017 Trading Update, including the matters pleaded in paragraphs 29(a) to 29(e) above.

PARTICULARS

In the March 2017 Earnings Call, Mr Adamson repeated the substance of the March 2017 Trading Update as follows:

> *"we now expect EBIT before significant items for the FY '17 to be between $610 million and $650 million compared to the previous range of $720 million to $760 million."*

Mr Adamson continued:

> *"This is due to issues associated with the Building and Interiors business within the Construction division."*
>
> *"With respect to B&I, a thorough review of the business unit and projects began in late calendar year '16 and led to new management and governance processes. A significant loss was recorded to B&I in the half year results based on the best estimates available at that time. However, management has now identified an increase in the estimated loss on the major construction projects, which was referenced at the time of the announcement of the half year results, and the identification of downside risk on other B&I projects, with majority being a provision for expected loss on one other major project."*

> *"Among these factors, the most significant relate to 2 large and complex projects, and in particular, complexity in design, subcontractor management and building program delivery. We are finding the costs associated with the extension of project timelines and increases in project resources are far greater than previously expected. The extent of this has become more apparent as our review has progressed since the half year announcement."*
>
> *"We have made and are continuing to make changes to the construction governance processes and personnel, which is enabling us to clearly identify and address project performance issues. We have appointed a Chief Operating Officer for the Construction division, a new Head of Risk and Governance in the Construction division and a new General Manager of the B&I business unit who will start shortly. We have new finance leadership and processes along with the recent implementation of a new financial management reporting system, JD Edwards."*

Mr McKenzie repeated the substance of the March 2017 Trading Update and made reference to the March 2017 Trading Update as follows:

> *"The announcement we made today [a reference to the March 2017 Trading Update] is that earnings in FY '17 are expected to be in the range of $610 million to $650 million compared to the previous range of $720 million to $760 million.".*

32 On and from 20 March 2017, Fletcher's share price declined substantially, including sustaining losses of:

(a) AUD 0.83; and

(b) NZD 0.94.

PARTICULARS

Stock exchange	Opening price on 20 March 2017	Closing price on 20 March 2017	Price difference
ASX	AUD 8.34	AUD 7.51	AUD (0.83)
NZSX	NZD 9.22	NZD 8.28	NZD (0.94)

The allegation "on and from 20 March 2017" and the open and close prices in the preceding table refer to ASX open at 10:00am (AEDT) and NZSX open at 10:00am (NZDT) to ASX close at 4:00pm (AEDT) and NZSX close at 4:45pm (NZDT) on 20 March 2017.

33 By the March 2017 Trading Update and March 2017 Earnings Call, Fletcher represented to the market of actual and potential investors in Fletcher Shares that it:

(a) expected its EBIT for FY17 to be in the range of NZD 610M to 650M; and

(b) had reasonable grounds to expect its EBIT for FY17 to be in the range of NZD 610M to 650M,

(together, **Revised FY17 Guidance Representations**).

PARTICULARS

Paragraph 33(a) of the Revised FY17 Guidance Representations was express.

Paragraph 33(b) of the Revised FY17 Guidance Representations was implied from:

(A) the natural and ordinary meaning of the March 2017 Trading Update and March 2017 Earnings Call;

(B) the absence of any statement by Fletcher correcting the express statement of the Revised FY17 Guidance; and

(C) the fact that the March 2017 Trading Update and March 2017 Earnings Call were published to the NZSX and ASX and/or were available to the public in circumstances where the audience would reasonably expect that it contained information that a reasonable person would expect to have a material ~~price~~ effect on the price or value of Fletcher Shares, such that Fletcher had a reasonable basis for its express guidance.

34 The Revised FY17 Guidance Representations:

(a) were representations as to future matters; and

(b) continued to be disseminated in the period between 17 March 2017 and 20 July 2017.

PARTICULARS

The continuing nature of the FY17 Guidance Representations arises from:

(A) the omission by Fletcher to modify, qualify or contradict any of that information prior to 20 July 2017; and

(B) the fact that the March 2017 Trading Update and March 2017 Earnings Call were published to the NZSX and ASX and/or were available to the public in circumstances where the audience would reasonably expect that information concerning the future financial performance of Fletcher would have continued currency until modified, qualified or contradicted.

E.4 July 2017 Trading Update

35 On about 20 July 2017, Fletcher lodged with the ASX and NZSX, and publicly released the announcement “FY17 Trading Update and Departure of CEO Mark Adamson” (**July 2017 Trading Update**).

36 In the July 2017 Trading Update, Fletcher stated that:

(a) it now expected an EBIT result for FY17 in the range of NZD 525M (**Second Revised FY17 Guidance**);

PARTICULARS

"Fletcher Building has today announced it expects operating earnings before interest, tax and significant items ('EBIT') to be approximately $525 million for the year ended 30 June 2017".

(b) the Second Revised FY17 Guidance was due to it becoming apparent that losses in the Buildings + Interiors business unit would exceed previous estimates, including because of:

(i) an unnamed major project, subject to previous write-downs, required an increase~~d~~ in project resourcing and therefore cost, as it neared completion; and

(ii) a second unnamed major project had its construction timelines and likely completion date extended.

PARTICULARS

"… as work on major projects in the Buildings + Interiors ('B+I') business unit has progressed, it has become apparent that losses in B+I will exceed those previously estimated.

The deterioration is due to: (a) a major project subject to previous write-downs, which has required an increase in project resourcing and therefore cost as it nears completion; (b) a second major project where construction timelines and the likely completion date have been extended; [and] reduced profit expectations on a number of smaller projects in the remainder of the B+I portfolio".

(c) ~~stated that~~ the two major construction projects referred to in the March 2017 Trading Update:

(i) were the same projects as that referred to in its July 2017 Trading Update; and

(ii) continued to suffer from:

(A) complexities in their design; and

(B) subcontractor management and building program delivery issues,

which led to extensions in project timelines and increases in project resource requirements and costs, relative to original budgets;

PARTICULARS

"The most significant issues remain complexity in design, subcontractor management and building program delivery, which has led to an extension of project timelines and increase in project resource requirements and costs, relative to original budgets."

(d) ~~stated that~~ it was confident that all potential future losses had been captured because:

(i) one of its major projects was close to completion which provided greater certainty over its ultimate costs; and

(ii) a review of its remaining projects had been completed which required an extension of a construction timeline and extension of the likely completion date for a second major project.

PARTICULARS

"One of the major projects is close to completion, which provides greater certainty over the ultimate cost. A review of remaining projects has been completed, and the construction timelines and the likely completion date extended on a second major project."

(e) ~~stated that~~ the Construction division was benefiting from improved management expertise by way of the appointment of:

(i) Chief Executive of its Construction division, being Michele Kernahan; and

(ii) Building + Interiors' General Manager, being David Kennedy.

PARTICULARS

"In addition to the initiatives outlined in our March update, the Construction Division is benefiting from the leadership and robust management expertise of Chief Executive Michele Kernahan and B+I has a newly appointed General Manager, David Kennedy, who brings with him 30 years' experience in the construction industry across multiple markets".

37 Following the July 2017 Trading Update, on 20 July 2017 at 11:00 am NZST (being 9:00 am AEST), Fletcher held an earnings call and answered questions from investors and analysts (**July 2017 Earnings Call**).

<u>PARTICULARS</u>

<u>The July 2017 Earnings Call was attended by Bevan McKenzie, Philip King and Ralph James Norris on behalf of Fletcher.</u>

38 In the July 2017 Earnings Call, Fletcher repeated the substance of the July 2017 Trading Update, including the matters pleaded in paragraphs 36(a) to 36(e) above.

PARTICULARS

In the March 2017 Earnings Call, Fletcher repeated the substance of the July 2017 Trading Update as follows:

Mr Norris stated:

> *"as work on major projects in the Building and Interiors business units has progressed, it has become apparent that the losses in B&I will exceed those previously estimated, such that we now expect earnings before interest and tax, excluding significant items, to be approximately $525 million."*

Mr McKenzie stated:

> *"The additional B&I losses that are now incorporated into our expected earnings essentially reflects 3 factors.*
>
> *Firstly, we have a better view on the final costs to complete one major contract, given that the project has been further progressed and is now near completion. This project has incurred higher cost due to the need to put additional resource on-site to finish the job. The impact of the deterioration on this project represents approximately half of the total change in expected FY '17 earnings announced today.*
>
> *Secondly, there is an updated view on the likely losses associated with another major project, which is due to be completed by the end of FY '19. This is principally due to a change in the program which influences the likely completion date and the associated cost of that extended program. Increased estimated losses on this project account for about 1/4 of the earnings reduction that we have announced today.*
>
> *And finally, there has been a reduction in the profitability forecast across a number of other projects in the B&I portfolio, which are likely to be finished within the next 6 to 9 months and which make up the remainder of the earnings deterioration."*

Mr McKenzie continued:

> *"I think the reality is, as you noted, that project still has the better part of 18 months to go. We are further advanced and we believe that the operating processes and the new leadership that we have in place have now given us improved visibility of that. There will obviously remain some uncertainty as we work through that period. But we are confident that we have much better visibility now."*
>
> *…*
>
> *"What we said in March, that the key issues we have had and the key cause associated with that has largely been around our program overruns and design management, and that continues to be the case.*

> *So it's certainly in the case of the first 2 major projects causing us more to complete those, that is due to program overruns and having more subcontractor resource on-site during that time, much more so than an inflation of rates in that environment. There is of course some of that, but it is not the principal factor. So really consistent on that front with the update we provided in March."*
>
> *…*
>
> *"The current backlog of B&I is $1.3 billion. Approximately slightly half of it relates to the 2 major projects, which is again reasonably consistent with the position that we were at in March."*
>
> *"…just to be very clear, when I talk about the 2 major projects that comes through half of the backlog, they are what we have referred to as the second and third project. Obviously, the first one, which is nearing completion, has a very, very small part of that backlog because it's almost done."*

Mr King stated:

> *"I think in the B&I business, the most critical thing was the appointment and arrival of David Kennedy in early May. He has 30 years' experience in construction from the U.K. He's already having a good impact on that business in terms of leadership. So it's a fruitful experience. He met with all of our key customers. One further change we've made is we greatly simplified the B&I business that had a number of sub-business units and a [collected structure]. And in terms of what we bid and how we bid and that preparedness to bid, that's now completely centralized under David. And so we have I think much improved visibility about what work we pursue. And if we -- even -- and if we pursue work, how we resource it. Because clearly, having the right resource and through the project management and QA's experience is critical to deliver jobs well as we know. So it's a simple structure. David is providing great leadership. And at the divisional level and at group level too, we've got much better oversight and visibility in every project we make. And so we've drastically improved the governance around bidding and project management, yes."*

39 On and from 20 July 2017, Fletcher's share price declined substantially, including that it:

(a) opened at AUD 7.48 and closed at AUD 7.05 on the ASX; and

(b) opened at NZD 8.09 and closed at NZD 7.59 on the NZSX.

PARTICULARS

Stock exchange	**Opening price on 20 July 2017**	**Closing price on 20 July 2017**	**Price difference**
ASX	AUD 7.48	AUD 7.05	AUD (0.43)
NZSX	NZD 8.09	NZD 7.59	NZD (0.50)

The allegation "on and from 20 July 2017" and the open and close prices in the preceding table refer to ASX open at 10:00am (AEST) and NZSX open at 10:00am (NZST) to ASX close at 4:00pm (AEST) and NZSX close at 4:45pm (NZST) on 20 July 2017.

E.5 Annual Report 2017

40 On 16 August 2017, Fletcher lodged with the ASX (at 7:30 am AEST) and NZSX (at 8:30 am NZST) and publicly released its Annual Report for the financial year ended 30 June 2017 and associated commentary (**Annual Report FY17**).

41 In the Annual Report FY17, Fletcher:

(a) announced a FY17 EBIT result of NZD 525M;

PARTICULARS

Annual Report FY17, Management Commentary, p 1: "Operating earnings before significant items were $525 million, 23% lower than the prior year, primarily due to losses recognised in the B+I business"~~; pp 44 and 46.~~

Annual Report FY17, News release dated 16 August 2017 entitled "Fletcher Building announces 2017 annual results": "Fletcher Building today announced underlying operating earnings of $525 million for the 12 months ended 30 June 2017, down 23 per cent from FY16".

(b) reported an EBIT loss of NZD 204M in its Construction division;

PARTICULARS

Annual Report FY17, Management Commentary, p 10.

(c) reported that its Building + Interiors business unit within its Construction division had sustained losses of NZD 292M;

PARTICULARS

Annual Report FY17, p 51.

Annual Report FY17, Chairman's report, p 10: "… total company performance was materially impacted by losses of $292 million reported in our Building + Interiors business, part of the Construction division".

(d) stated that there was an "*acute focus*" on addressing the losses within its Building + Interiors business unit;

PARTICULARS

Annual Report FY17, Chairman's report, p 10: "… there is now an acute focus on ensuring the issues that led to these losses are addressed through improved project governance, on-site project management, process and bid strategy … in executing the strategy over the past year we have been particularly focused on … reviewing and improving the management and governance of the Construction division …"

(e) stated that the losses in its Construction division were due to complex design issues, substandard project management and stretched resourcing in two large and commercial contracts within the Buildings + Interiors business unit;

PARTICULARS

Annual Report FY17, Chairman's report, p 11: "… operating loss of $204 million in our Construction division. This loss is the result of the performance of the B+I business unit. B+I losses of $292 million have been primarily driven by underperformance in the management of two key contracts: one in Christchurch and one in Auckland. In both cases the issues we experienced included complex design issues, substandard project management and stretched resourcing in a capacity-constrained New Zealand construction market".

(f) stated that the "*project in Christchurch*" was "*very close*" to completion and that the losses from that project were unlikely to be extended into FY18;

PARTICULARS

Annual Report FY17, Chairman's report, p 11: "The project in Christchurch is now very close to being finished, meaning the losses included in the 2017 results are unlikely to be extended into FY18. In March 2017, a provision was taken on the Auckland project to cover losses that were expected over the lifetime of the contract. In July 2017 it was announced that this provision was to be extended as further review of the project pointed to the need to extend the construction period bringing with it additional cost."

(g) stated that its FY18 earnings would benefit from the significantly improved performance of its Construction division, reflecting the turnaround of the Buildings + Interiors business unit.

PARTICULARS

Annual Report FY17, Management Commentary, p 14:

"Construction – operating earnings will benefit from a turnaround of the B+I business, but will be slightly below the long run mid-cycle earnings due to the South Pacific backlog taking some time to replenish and two large infrastructure projects not yet sufficiently advanced for earnings to be recognised under the group's policy."

"Group operating earnings before significant items in FY18 will benefit from a significantly improved performance of the Construction division, reflecting the turnaround of the Buildings + Interiors (B+I) business … Operating cash flows will improve in FY18 despite being adversely impacted by negative cash flows on major B+I projects …"

Fletcher Building Annual Results Presentation, "Full Year Results to 30 June 2017" slide deck presentation dated 16 August 2017, at p 41: "Earnings before interest and tax and significant items:

- *Benefit from turnaround of B+I business*
- *Modest growth across remaining operating divisions*
- *Corporate costs return to more normal levels".*

42 Further, on 16 August 2017, Fletcher held an earnings call and presentation on its FY17 results simultaneously in New Zealand and Australia at 3:00 pm NZST (**August 2017 Earnings Call**).

43 During the August 2017 Earnings Call, Fletcher stated:

(a) "*In terms of results for B+I in FY18 clearly will be much improved on this year and certainly far closer to breakeven*"; and

(b) "*$292 million is the correct number* [of loss attributed to Building + Interiors for FY17] *And I think the important point for us now is that we certainly feel like we've underscored that loss, and we are moving forward to make sure that it's -- it is contained within the FY17 period*".

PARTICULARS

August 2017 Earnings Call transcript, p ~~9~~10: "In terms of results for B+ I in FY '18 clearly will be much improved on this year and certainly far closer to breakeven. I wouldn't guide specifically on that number at the moment, Keith, but we would certainly expect B+ I to be back in profitability in FY '19. I think the one factor to take into account in next year is obviously we have a large volume of work that we are still are progressing through as you know with a couple of big projects still to complete which we are in loss position. There's a lot of work being undertaken which obviously will help to lift the margin next year. Once we're through that in FY '19, I would say that's certainly, we would expect positive results in the business."

August 2017 Earnings Call transcript, p 18:

"Andrew Ian Johnston – CLSA Limited, Research Division – Senior Investment Analyst: Okay. Just moving on to the construction losses in B+ I, and I'm having -- look, it may -- please tell me if it's -- if I haven't been -- haven't reconciling things correctly. But total B+ I losses of $292 million, was that correct?...

Bevan McKenzie – Fletcher Building Limited – CFO: … $292 million is the correct number. And I think the important point for us now is that we certainly feel like we've underscored that loss, and we are moving forward to make sure that it's -- it is contained within the FY '17 period."

44 By the Annual Report FY17 and August 2017 Earnings Call, Fletcher represented to the market of actual and potential investors in Fletcher Shares that:

(a) Fletcher's FY18 earnings would benefit from the significantly improved performance of its Construction division, reflecting the turnaround of the Building~~s~~ + Interiors business unit;

(b) the results for Building~~s~~ + Interiors in FY18 would be much improved on FY17 year and certainly far closer to breakeven;

(c) the losses for the two major Building~~s~~ + Interiors projects in Christchurch and Auckland reported in FY17 would be contained in that financial year;

(d) it had reasonable grounds for each of the representations pleaded at paragraphs 44(a), 44(b) and 44(c) above,~~.~~

(together, **August 2017 Building + Interior Guidance Representations**).

PARTICULARS

Paragraphs 44(a) and 44(b) of the August 2017 Building + Interior Guidance Representations were express.

Paragraph 44(c) of the August 2017 Building + Interior Guidance Representations was partly express and partly implied by the statement pleaded at 41(f) above.

Paragraph 44(d) of the August 2017 Building + Interior Guidance Representations was implied from:

(A) the natural and ordinary meaning of the Annual Report FY17 and August 2017 Earnings Call;

(B) the absence of any statement by Fletcher correcting the express statement of the Annual Report FY17 and August 2017 Earnings Call; and

(C) the fact that the Annual Report FY17 and August 2017 Earnings Call were published to the NZSX and ASX and/or were available to the public in circumstances where the audience would reasonably expect that it contained information that a reasonable person would expect to have a material ~~price~~ effect on the price or value of Fletcher Shares, such that Fletcher had a reasonable basis for its express guidance.

45 The August 2017 Building + Interior Guidance Representations:

(a) were representations as to future matters; and

(b) continued to be disseminated in the period between 16 August 2017 and 24 October 2017.

PARTICULARS

The continuing nature of the August 2017 Building + Interior Guidance Representations arises from:

(A) the omission by Fletcher to modify, qualify or contradict any of that information prior to 24 October 2017; and

(B) the fact that the Annual Report FY17 and August 2017 Earnings Call were published to the NZSX and ASX and/or were available to the public in circumstances where the audience would reasonably expect that information concerning the future financial performance of Fletcher would have continued currency until modified, qualified or contradicted.

E.6 October 2017 Trading Update

46 On about 24 October 2017, Fletcher applied for and was granted by the ASX and NZSX, a halt to trading in Fletcher Shares pending the review of ~~B+I's~~ Building + Interiors' financial performance and its impact on Fletcher's FY18 guidance.

PARTICULARS

Joint release to ASX and NZSX dated 24 October 2017 entitled "Fletcher Building Trading Halt": "The Company is reviewing the financial performance of its Buildings + Interiors (B+I) business unit, which is being informed by the independent KPMG review of the two largest B+I projects, and the impact of that financial performance on earnings guidance for the 2018 financial year".

47 On about 25 October 2017, Fletcher:

(a) held its Annual Shareholders' Meeting, in which stated that the Building~~s~~ + Interiors projects specifically identified in the March 2017 Trading Update and the July 2017 Trading Update were the:

(i) CJESP Project; and

(ii) NZICC Project.~~;~~

PARTICULARS

25 October 2017 AGM slide pack presentation, p 9; 2017 AGM – Chairman Speech, p 8.

(b) lodged with the ASX and NZSX and publicly released the announcement "Fletcher Building announces FY18 earnings guidance" (**October 2017 Trading Update**); and

(c) sought to lift the trading halt which allowed trading of Fletcher Shares to resume.

PARTICULARS

~~Joint release to ASX and NZSX dated 27 October 2017 entitled: "Fletcher Building announces FY18 earnings guidance".~~ October 2017 Trading Update.

48 In the October 2017 Trading Update, Fletcher stated:

(a) EBIT for FY18, excluding the Building~~s~~ + Interiors business unit, to be in the range of NZD 680M to 720M;

(b) EBIT loss for FY18 from the Building~~s~~ + Interiors business unit to be NZD 160M;

(c) Group EBIT for FY18 was in the range of NZD 520M to NZD 560M;

(d) that it would report separate guidance from its Building~~s~~ + Interiors business unit from the remainder of ~~their~~ its earnings moving forward.

PARTICULARS

2017 AGM slide pack presentation, p 33; Chairman Speech, pp 6, and 18.

October 2017 Trading Update:

"Given the uncertainty in estimating the final outcomes of the major Buildings + Interiors (B+I) projects, and the resulting impact on in-year earnings, Fletcher Building has separated guidance of the B+I business from the remainder of the Group's earnings.

FY18 Earnings before interest and tax excluding significant items (EBIT): Fletcher Building excluding B+I: $680M to $720M; B+I: estimated loss of $160M".

(e) the earnings guidance for its Building~~s~~ + Interiors project for FY18 was expected to be an estimated loss of NZD 160M due to losses now expected on the CJESP and NZICC Projects.

PARTICULARS

October 2017 Trading Update: "Earnings guidance for the B+I business reflects an~~d~~ updated management review of the portfolio of B+I projects. The estimated loss of $160 million in FY18 comprises additional provisions of approximately $125 million for expected B+I project losses and approximately $35 million of expected B+I overhead costs in the current year …

The provision for additional B+I project losses has been informed, in part, by a report by KPMG … which covered two B+I projects [including] New Zealand International Convention Centre …. The key issues identified relate to the NZICC project, which has already been identified as a major contributor to the Company's losses in FY17.

The expected additional losses on NZICC, plus further costs being incurred in the close out of the Justice Precinct project, represent approximately 80% of the $125 million provision announced today."

49 Following the October 2017 Trading Update, Fletcher held an earnings call on 25 October 2017 at ~~3:30 pm NZT~~ 10:30 am NZDT (**October 2017 Earnings Call**) in which it:

(a) identified both the CJESP Project and the NZICC Project as the cause of the majority of the losses in the Building~~s~~ + Interiors business unit of ~~their~~ its Construction division;

(b) stated that the losses from the CJESP Project and the NZICC Project represented:

(i) approximately two-thirds of the NZD 292M EBIT loss recorded for Building~~s~~ + Interiors in FY17; and

(ii) approximately 80% of the additional NZD 125M provisional losses announced in the October 2017 Trading Update.

PARTICULARS

October 2017 Earnings Call Q&A: "The two major projects on which we have incurred the majority of our losses are the Justice Precinct in Christchurch and New Zealand International Convention Centre (NZICC) in Auckland. We have not named them previously because we have strict confidentiality clauses in our contracts … however in the face of these extenuating circumstances and shareholder demand, we have been able to gain agreement from our clients to make an exception in this instance … Losses on NZICC and the Justice Precinct represented approximately two-thirds of the $292m EBIT loss recorded by B+I in FY17. Additional expected losses on these projects comprise approximately 80% of the additional $125m provision announced today".

50 On 25 October 2017, Fletcher's share price declined substantially, including that it:~~.~~

(a) opened at AUD 7.22, and closed at AUD 6.84 on the ASX; and

(b) opened at NZD 7.96 and closed at NZD 7.67 on the NZSX.

PARTICULARS

Stock exchange	Opening price on 25 October 2017	Closing price on 25 October 2017	Price difference
ASX	AUD 7.22	AUD 6.84	AUD (0.38)
NZSX	NZD 7.96	NZD 7.67	NZD (0.29)

F PROBLEMS AFFECTING THE CJESP AND NZICC PROJECTS

F.1 ~~Events from 17 August 2016 until 20 March 2017~~ Events up to 17 August 2016

51 From early 2014, the CJESP Project was suffering from serious difficulties, including:

(a) poor coordination and project management;

(b) the complexity of the design of the CJESP;

(c) works being undertaken:

(i) in close proximity without proper sequencing or coordination;

(ii) without due care;

(iii) which required significant amounts of re-work because of poor completion;

(iv) in a highly pressured and chaotic environment; and

(v) under intense deadline pressures imposed by the CJESP Building Contract.

PARTICULARS

Electrix Judgment ~~at [14], [16], [17](b); [17](c); [17](g), [19], and [120].~~:

(A) Progress on the CJESP Project was affected "because a number of contractors did not understand the building" and because of design issues ([14], [120]);

(B) Works on the CJESP Project were "undertaken in close proximity, without proper sequencing or coordination and sometimes without due care" resulting in a "'massive' amount of rework" ([16], [17](c));

(C) There were three main problems with the CJESP Project, being "the lack of a final detailed design for electrical services; Fletcher Construction's mismanagement of the project; and Mr Wilson turning off the layers for electrical containment in the Building Information Model software" ([17](b), [120]);

(D) Working on the CJESP Project was "an extremely, highly pressurised, chaotic environment" ([17](g)); and

(E) Fletcher was under constant time pressure significantly driven by the deadlines to which it had agreed with the Ministry of Justice, and was not effectively managing the CJESP Project ([19], [120]).

52 By 10 February 2016, the CJESP Project was:

(a) ~~falling to meet the targets in the CJESP Building Contract~~ approximately 8 months behind FCL's schedule;

(b) sufficiently behind schedule that FCL was at risk of a substantial claim from ~~liable to~~ subcontractors ~~for payment for work on the CJESP Project~~;

(c) continuing to suffer from poor project management; and

(d) progressing ~~slowly~~ on a week-to-week basis without a cohesive or systematic approach.

PARTICULARS

Electrix Judgment at [19]-[20]

"In an internal email on 10 February 2016, Mr Wilson expressed serious concerns about how the project was tracking, saying "20 months work in 12 months is a massive impact" and indicating they were at risk for a massive claim by many subcontractors … Mr Wilson said everyone would have accepted from early 2016 that this was a 'troubled project' … As Mr Harris said, 'there was very little forward planning on the Project' which was 'really just progressing on a week-to-week basis'. He also said 'there was no cohesive or systematic approach to completion. We were being directed to complete works in a random way'".

53 On or about 23 May 2016, Fletcher (as guarantor) and FCL entered into a variation of the CJESP Building Contract with NZ MOJ (**CJESP Variation Contract**).

54 The CJESP Variation Contract, *inter alia*:

(a) converted the contract price of the CJESP Building Contract into a fixed price lump sum amount;

(b) fixed the CJESP Building Contract price at NZD 261,144,921 ~~inclusive of~~ plus GST;

PARTICULARS

Clause 3.1(a) of the CJESP Variation Contract provided that the CJESP Building Contract price was fixed at NZD 261,144,921 ~~inclusive~~ plus GST.

(c) provided for limited bases which would permit any future adjustment of the contract price of the CJESP Building Contract from 23 May 2016 onwards;

PARTICULARS

Clause 3.3 of the CJESP Variation Contract.

(d) provided that Fletcher and FCL would waive their rights and entitlements to any claim against the NZ MOJ which arose on or before 23 May 2016;

PARTICULARS

Clause 5 of the CJESP Variation Contract.

(e) extended the completion date of the CJESP to January 2017;

(f) provided for significant daily liquidated damages for late completion from 2 February 2017 onwards;

PARTICULARS

Electrix Judgment at [26]:

"Fletcher Construction was clearly concerned about both the price and the timetable of the Precinct project from the start. So was the Ministry. On 23 May 2016, they both executed a variation converting the contract price into a fixed-price lump-sum amount creating new completion dates in January 2017 and providing for liquidated damages for late completion from 2 February 2017. From 3 February 2017, under its head contract with the Ministry, Fletcher Construction was paying liquidated damages for late completion of the project, at a significant daily rate."

55 As the CJESP Project was after 23 May 2016 a guaranteed maximum price contract, Fletcher was to bear cost overruns subject to any claim for variations to the CJESP Variation Contract (**CJESP Overrun**).

56 Between 31 October 2014 and August 2016, the cumulative CJESP Overrun increased to a substantial amount.

PARTICULARS

By Date	**Approximate Price Overrun (NZD)**	**Payment Schedule Claim**
31 October 2014	133,082.33	Claims #1, #2, #3, and #4
18 December 2014	336,842.47	Claims #5 and #6
11 February 2015	535,847.88	Claim #7
10 April 2015	1,190,695.80	Claims #8 and #9
11 May 2015	1,300,487.04	Claim #10
30 August 2015	1,474,251.40	Claims #11, #12 and #13
9 September 2015	4,831,996.59	Claim #14
13 October 2015	7,997,187.44	Claim #15
10 November 2015	12,675,093.03	Claim #16~~5~~
9 December 2015	23,594,054.00	Claim #17
13 January 2016	35,354,392.28	Claim #18
10 February 2016	40,994,831.85	Claim #19

30 March 2016	44,934,442.70	Claim #20
14 April 2016	52,923,332.69	Claim #21
10 August 2016	63,526,921.65	Claims #22, #23, #24 and #25

The approximate price overrun in the preceding table is calculated as the cumulative sum of the difference between the amount claimed by Fletcher and the amount certified for each of the relevant payment claims for the CJESP Project specified in the corresponding column.

No overrun is assumed where a claim contained insufficient information, was missing, or could not be extrapolated from earlier and/or later information. Further particulars may be provided following discovery and expert evidence.

Copies of each Payment Schedule Claim are available for inspection on request to the solicitors for the Plaintiff.

57 As at 17 August 2016:

(a) the cumulative CJESP Overrun was about NZD 63,526,921.65;

(b) a significant proportion of the earnings of Fletcher's Construction division were dependent on the performance of the Building~~s~~ + Interiors business unit;

(c) all but one of the major projects on which the Building~~s~~ + Interiors business unit was committed were fixed price lump sum or guaranteed maximum price contracts;

PARTICULARS

The Building~~s~~ + Interiors business unit within Fletcher's Construction division represented approximately 55.5% of Fletcher's construction book.

March 2017 ~~Earnings Call Q&A~~ Trading Update: "Our current construction backlog is approximately $2.7bn. Of this, approximately $1.5bn is in the B&I business. All but one of our major projects underway in B&I is either a 'fixed price lump sum' or 'guaranteed maximum price' contract … We do not believe that issues we have uncovered relate to contract type, but rather challenges related to program and design complexity in key projects".

Further and better particulars of the "major projects underway" identified by Fletcher may be provided following discovery and evidence.

(d) Building~~s~~ + Interiors had deficient processes in place for tenders and project management;~~.~~

PARTICULARS

2017 AGM slide pack presentation, pp 13 and 14: “Building + Interiors:

- *Need to implement standardised approach to tender process, project management, control environment, design management, and risk and opportunity management across B+I;*
- *Increased use of ‘design & build’ contracts and design novation underscores importance of tendering and design management expertise;*
- *Deficiencies in processes and project controls have been key contributors to NZICC issues – new team addressing issues, but will take time to embed;*
- *Opportunities to better integrate JDE into project management”.*

Further and better particulars of the “deficient processes” identified by Fletcher may be provided following discovery and evidence.

(e) Fletcher’s tender for the CJESP Project and the NZICC Project had failed to include appropriate risk premiums inbuilt into its margins;

PARTICULARS

Annual Report FY~~20~~17, News Release: “… B+I will be a more focused business, targeting key sectors and clients and incorporating appropriate risk premiums into margins”.

Annual Report FY17, News Release: ~~News release dated 16 August 2017 entitled “Fletcher Building announces 2017 annual results”:~~ “… Following a complete review of the B+I portfolio a significant amount of change has already been implemented – including improved project governance and processes for current and future projects and enhanced bidding rigour”;

Fletcher Building Annual Results Presentation, “Full Year Results to 30 June 2017” slide deck presentation dated 16 August 2017, at p 6:

FY17 – “Large projects with complex design issues not managed effectively; compounded by constrained capacity in construction market, short supply of labour; negative impacts on two major B+I projects in Christchurch and Auckland; reduced profit expectations on a number of smaller B+I projects”

Remedial Action – “New management in place – Construction CE Michele Kernahan, B+I GM David Kennedy; complete review of every project in B+I to rebase profitability assumptions; improved project governance for current and future projects; enhanced rigour around bidding for new work”.

FY18 and beyond: ‘Major Christchurch project will complete soon and B+I backlog reducing; B+I will be a more focused business – targeting key sectors and clients and incorporating appropriate risk premium into margins …”

Further and better particulars of the “appropriate risk premiums” identified by Fletcher may be provided following discovery and evidence.

(f) Fletcher experienced a large growth in project pipeline within its Building~~s~~ + Interiors business unit in a short space of time which led to significant personnel resourcing difficulties and labour shortages; and

PARTICULARS

2017 AGM slide pack presentation, p 9:

"Local and global industry challenges:

- *Skill and labour scarcity;*
- *Thin profit margins, providing little room for error;*
- *Poor productivity*

Fletcher construction challenges:

- *Large growth in project pipeline in short space of time;*
- *Core capability failings in B+I;*
- *Inconsistent approach to risk management and pricing in bid phase;*
- *Project management resource stretched with growth in projects;*
- *Increased complexity of project design and engineering not managed effectively"*.

2017 AGM – Chairman Speech, pp 9-10: "… KPMG has highlighted that:… High staff turnover throughout the first two years of the project has had a major adverse impact on performance, knowledge retention in the project, and the ability to accurately estimate the final outcome".

(g) the nature of fixed price lump sum or guaranteed maximum price contracts for large-scale vertical construction meant that Fletcher was unlikely to be able to take remedial action on the CJESP Project or NZICC Project sufficient to alter the likelihood of those projects being loss making.

PARTICULARS

October 2017 Trading Update: "A considerable amount of remedial action has taken place in the past year by the Board … to address the issues we have experienced in our B+I business. We have improved business and project governance; improved systems and processes; improved the construction and commercial capability of the Division; and introduced more commercial rigour around the bidding process … these actions will address the issues we have experienced over the long term by ensuring our approach to bidding for, contracting and managing future projects is greatly enhanced. However, these measures will only go so far in altering the trajectory of our legacy projects that commenced some time ago".

F.2 Events between 17 August 2016 and 20 March 2017

58 Pursuant to the CJESP Variation Contract, by 3 February 2017, Fletcher was paying the NZ MOJ significant liquidated damages per day for the delays in completing the CJESP Project.

PARTICULARS

Electrix Judgment at [21]

"From 3 February 2017, Fletcher Construction was very aware it was paying the Ministry significant liquidated damages per day, as evident in Mr Fahey's email to Ms Ferris of Electrix on 24 February 2017:

> *'Fletcher's position is currently dire we are being charged* [significant daily liquidated damages] *since 3rd February this project is impacting on the share price and balance sheet and boy its getting some serious attention. It needs drastic measures and it needs them now …'".*

59 By September 2016, FCL internally accounted the best-case scenario for the CJESP Project as a NZD 20M loss, a worse case loss of NZD 31M, with a cash position of negative NZD 80M.

PARTICULARS

Jenny Ruth for National Business Review, "Picking through the wreckage - how the Fletcher Building disaster unfolded" dated 18 August 2017

60 In about November 2016, Fletcher commenced a thorough review of the expected performance of the Building + Interior ~~B+I~~ business and projects.

PARTICULARS

March 2017 Trading Update: "The revised guidance is due to the identification of additional estimated losses and downside risk in the Buildings and Interiors ('B+I') business unit of the Construction division. A thorough review of the B+I business and projects began in late calendar year 2016 and led to new management and governance processes.

61 By March 2017, the managerial and systemic issues affecting the CJESP and NZICC Projects pleaded at paragraphs 51 to 60 above had led to extensions of construction timelines for:

(a) the CJESP Project, ~~which had suffered increased estimated losses of NZD 55M~~; and

(b) the NZICC Project, which ~~had suffered an estimated loss in the vicinity of NZD 55M when it~~ was previously expected to contribute approximately NZD 10M to FY18 earnings,

which together had suffered increased estimated losses in the vicinity of NZD 110M.

PARTICULARS

March 2017 Trading Update:

"What have been the main issues in the construction projects concerned?

The most significant issues relate to complexity in design, subcontractor management and building program delivery on key projects. ***This has led to an extension of project timelines*** *and increase in project resource requirements and costs, relative to original budgets. The extent of this has become more apparent since the half year announcement as new management and processes have bedded in…*

The FY17 EBIT guidance range has been reduced by approximately $110m compared to the previous range – what are the key drivers of this reduction?

The reduction in EBIT guidance relates to the Building and Interiors business unit ('B+I'). The reduction has two components:

> *(1) There has been an increase in the estimated loss on the major construction project which we referenced at the time of the half-year results announcement. This additional estimated loss represents approximately half of the reduction in guidance announced today*
>
> *(2) The remaining portion of the reduction is due to the identification of downside risk on other B+I projects; with the majority being a provision for losses on one other major project, and a smaller amount due to increased costs elsewhere in the B+I business unit…*

The one commercial construction project that is expected to be finished in FY19 and on which we have now taken a provision for estimated losses, was previously expected to make an EBIT contribution of approximately $10 million to FY18 earnings."

Further and better particulars of the proportions of the announced reduction of approximately NZD 110m identified by Fletcher as relating primarily to the CJESP and NZICC, and the respective contributions, may be provided following discovery and evidence.

62 Fletcher in fact failed to accurately forecast increased costs and labour for the CJESP Project and NZICC Project as a result of the extended timelines referred to in paragraph 61.

PARTICULARS

Joint ASX and NZSX Trading Update Presentation Slides on 14 February 2018, ~~p~~ slide 8.

63 Between September 2016 and March 2017, the cumulative CJESP Overrun continued to increase substantially.

PARTICULARS

By Date	Approximate Price Overrun (NZD)	Payment Schedule Claim
September 2016	63~~5~~,526,921.65	Claims #26 and #27 Assumes that Payment Schedule claims #26 and #27 comprised of no overruns (further particulars to be provided)
~~14 April 2016~~	~~52,923,332.69~~	~~Claim #21~~
29 November 2016	63,526,921.65	Claims #26, #27 and #28
14 December 2016	64,403,410.42	Claims #29 and #30
28 February 2017	66,292,760.83	Claim #31
14 March 2017	69,081,994.40	Claim #32

The approximate price overrun in the preceding table is calculated as the cumulative sum of the difference between the amount claimed by Fletcher and the amount certified for each of the relevant payment claims for the CJESP Project specified in the corresponding column.

No overrun is assumed where a claim contained insufficient information, was missing, or could not be determined from earlier and/or later information. Further particulars may be provided following discovery and expert evidence.

Copies of each Payment Schedule Claim are available for inspection on request to the solicitors for the Plaintiff.

F.3 Events between 20 March and 20 July 2017

64 On 24 March 2017, Fletcher was provided with information that indicated that the true extent of its actual loss within its Building~~s~~ + Interiors business unit was NZD 230M.

PARTICULARS

Jenny Ruth for National Business Review, "Picking through the wreckage - how the Fletcher Building disaster unfolded" dated 18 August 2017:

"But on March 24, just four days after the downgrade, [the New Zealand Shareholders' Association] took what it calls "credible information" that the actual loss was more like $230 million directly to Sir Ralph.

Association chief executive Michael Midgley says he didn't go public with that information then because he was waiting for Sir Ralph to respond.

With hindsight, Mr Midgley says the company 'prevaricated' on what the true state of affairs was.

In the event, the Shareholders' Association's information proved remarkably accurate since last month Fletcher announced its profit hole had grown by between another $85 million and $125 million."

Further and better particulars of the "credible information" referred to in the preceded particulars may be provided following discovery and evidence.

65 By May 2017, Fletcher's Construction division anticipated losses of:

(a) NZD 100M on the CJESP Project; and

(b) NZD 60M on the NZICC Project.

PARTICULARS

Jenny Ruth for National Business Review, "Picking through the wreckage - how the Fletcher Building disaster unfolded" dated 18 August 2017

66 By 30 June 2017, Fletcher's Building~~s~~ + Interiors business unit had:

(a) a backlog of NZD 1,272M of projects which were predominantly fixed price or guaranteed maximum price contracts; and

(b) forecasted margins for:

(i) the CJESP Project, which was "largely negative";

(ii) the NZICC Project, which was "negative";

(iii) "Project 3", which was "positive"; and

(iv) all remaining projects (valued to NZD 1,488M), which would breakeven.

PARTICULARS

Fletcher Building Annual Results Presentation, "Full Year Results to 30 June 2017" slide deck presentation dated 16 August 2017, at p 29: "B+I Commercial Building Projects"

Fletcher Building Annual Results Presentation, "Full Year Results to 30 June 2017" slide deck presentation dated 16 August 2017, at p 30.

67 Between 20 March 2017 and July 2017, the cumulative CJESP Overrun continued to increase substantially.

PARTICULARS

By Date	**Approximate Price Overrun (NZD)**	**Payment Schedule Claim**
2 April 2017	72,658,334.78	Claims #33 and #34
2 June 2017	76,009,126.18	Claim #35
13 July 2017	78,840,233.97	Claim #36

The approximate price overrun in the preceding table is calculated as the cumulative sum of the difference between the amount claimed by Fletcher and the amount certified for each of the relevant payment claims for the CJESP Project specified in the corresponding column.

No overrun is assumed where a claim contained insufficient information, was missing, or could not be determined from earlier and/or later information. Further particulars may be provided following discovery and expert evidence.

Copies of each Payment Schedule Claim are available for inspection on request to the solicitors for the Plaintiff.

F.4 Events after 20 July 2017

68 By 16 August 2017, Fletcher was paying SkyCity significant liquidated damages for the delays in completing the NZICC Project.

PARTICULARS

Sally Lindsay for National Business Review, "Fletcher Building on back foot from day one of convention centre contract" dated 17 August 2017: "The convention centre and hotel will not be completed until mid-2019 after originally being scheduled to be finished in the first quarter of next year. Construction has been under way for 18 months and Fletcher Building now has to pay compensation to SkyCity for late delivery."

NZ Herald, "Convention Centre fire: What blaze means for Fletcher Building, SkyCity" dated 22 October 2019: "The convention centre had originally been slated to be completed in the first quarter of this year, but delays by Fletcher meant that the current anticipated date has been delayed to the second half of next year. The casino operator had noted about $40 million in liquidated damages when it announced its annual result, while Fletcher's liability is believed to be capped."

69 On about 25 September 2017, Fletcher appointed KPMG International Ltd to conduct a review of its business units, including Building~~s~~ + Interiors (**KPMG Review**), but not including the CJESP Project.

PARTICULARS

October 2017 Trading Update: "We asked KPMG to review the two largest B+I projects that still have a significant amount of work left to complete, namely NZICC and Commercial Bay. We considered that any recommendations coming out of the KPMG review would be most useful on projects that still had a significant amount of time left to run."

70 Between August 2017 and 24 October 2017, the cumulative CJESP Overrun continued to increase substantially.

PARTICULARS

By Date	Approximate Price Overrun (NZD)	Payment Schedule Claim
17 August 2017	81,387,826.38	Claim #37
1 September 2017	83,590,132.49	Claim #38
16 October 2017	85,610,728.98	Claim #39
25 October 2017	85,610,728.98	Claim #39

The approximate price overrun in the preceding table is calculated as the cumulative sum of the difference between the amount claimed by the Fletcher and the amount certified for each of the relevant payment claims for the CJESP Project specified in the corresponding column.

No overrun is assumed where a claim contained insufficient information, was missing, or could not be extrapolated from earlier and/or later information. Further particulars may be provided following discovery and expert evidence.

Copies of each Payment Schedule Claim are available for inspection on request to the solicitors for the Plaintiff.

G TRUE POSITION

71 By reason of the matters pleaded in paragraphs 51 to 63 above, as at 17 August 2016, or alternatively, after that date but prior to 20 March 2017, it was the case that:

(a) the CJESP Project was affected by time and cost overruns of a magnitude sufficient to cause material financial loss to Fletcher, either alone or in combination with time and cost overruns on the NZICC Project;

(b) the NZICC Project was affected by time and cost overruns of a magnitude sufficient to cause material financial loss to Fletcher, either alone or in combination with time and cost overruns on the CJESP Project;

(c) the causes of the time and cost overruns on the CJESP Project and NZICC Project were not rectified and were due to systemic issues with the management by Fletcher of the Building~~s~~ + Interiors business;

(d) on a reasonable assessment of the current and most likely future progress of the CJESP and/or NZICC Projects, the FY17 financial performance of Fletcher would be materially lower than the FY17 Guidance; and, or alternatively

(e) it was likely, or there was a real risk, that the FY17 financial performance of Fletcher would be materially lower than the FY17 Guidance,

(individually and together, the **FY17 Guidance Information**).

PARTICULARS

As to subparagraph (a), the pleadings and particulars to paragraphs 51 to 60, 61(a), 62 and 63 are repeated.

As to subparagraph (b), the pleadings and particulars to paragraphs 57, 60, 61(b) and 62 are repeated.

As to subparagraph (c), the pleadings and particulars to paragraphs 57, 60 and 61 are repeated.

As to subparagraphs (d) and (e), the pleadings and particulars to paragraphs 51 to 63 are repeated.

"Material" is used in subparagraphs (a), (b), (d) and (e) to mean that by reason of those matters that Fletcher's financial overall performance would:

(a) reflect the Second Revised FY17 Guidance of NZD 525m (paragraph 36(a) above) rather than its FY17 Guidance of NZD 720m-760m (paragraph 20 above);

(b) reflect the Revised FY17 Guidance of NZD 610m-650m (paragraph 29(a) above) rather than its FY17 Guidance of NZD 720m-760m; or, alternatively

(c) be at least 5% less than its FY17 Guidance.

Further particulars may be provided following discovery and evidence.

72 By reason of the matters pleaded in paragraphs ~~at~~ 51 to 67 above, as at 20 March 2017, or alternatively after that date but prior to 20 July 2017, it was the case that:

(a) on a reasonable assessment of the current and most likely future progress of the CJESP and/or NZICC Projects, the FY17 financial performance of Fletcher would be materially lower than the Revised FY17 Guidance; and, or alternatively

(b) it was likely, or there was a real risk, that the FY17 financial performance of Fletcher would be materially lower than the Revised FY17 Guidance,

(individually and together, the **Revised FY17 Guidance Information**).

PARTICULARS

The pleadings and particulars to paragraphs 51 to 67 are repeated.

"Material" is here used to mean that by reason of those matters it was likely that Fletcher's financial overall performance would:

(a) *reflect the Second Revised FY17 Guidance of NZD 525m (paragraph 36(a) above) rather than its Revised FY17 Guidance of NZD 610m-650m (paragraph 29(a)); or, alternatively*

(b) *be at least 5% less than its FY17 Guidance.*

Further particulars may be provided following discovery and evidence.

73 By reason of the matters pleaded in paragraphs ~~at~~ 51 to 70~~57~~ above, as at 16 August 2017, or alternatively after that date but prior to 24 October 2017, it was the case that:

(a) on a reasonable assessment of the current and most likely future progress of the CJESP and/or NZICC Projects, the FY18 financial performance of the Construction division and the Building + Interiors business would be materially worse than the August 2017 Building + Interior Guidance Representations; and, or alternatively

(b) it was likely, or there was a real risk that losses associated with the performance of the Construction division and the Building + Interiors business would not be contained within FY17, and the FY18 financial performance of Building ~~Business~~ + Interiors would be materially worse than the August 2017 Building + Interior Guidance Representations,~~.~~

(individually and together, the **August 2017 Building + Interior Guidance Information**).

PARTICULARS

The pleadings and particulars to paragraphs 51 to 70 are repeated.

"Materially worse" is here used to mean that by reason of those matters it was likely that Fletcher's financial overall performance would reflect the October 2017 Trading Update rather than the August 2017 Building + Interior Guidance Representations, in that:

(a) *Fletcher's FY18 performance would not improve and did not reflect a turnaround of the B+I business unit (paragraph 44(a) above);*

(b) *the results for Buildings + Interiors in FY18 would not be much improved on FY17, would not be far closer to breakeven and in fact, were significantly worse than FY17 results (paragraph 44(b) above); and*

(c) *the losses for the two major Buildings + Interiors projects in Christchurch and Auckland reported in FY17 would not be contained in that financial year and in fact, were significantly worse than FY17 results (paragraph 44(c) above).*

Further particulars may be provided following discovery and evidence.

H FLETCHER'S MISLEADING OR DECEPTIVE CONTRAVENTIONS

H.1 Introduction

74 Fletcher's conduct, as pleaded in paragraphs 19 to 33, 35 to 38 and 40 to 44, including:

(a) publishing and/or lodging with the NZSX and ASX the Annual Report FY16, August 2016~~17~~ Earnings Call and Half Year Report FY17, and making the FY17 Guidance Representations and not subsequently modifying, qualifying or correcting them prior to 20 March 2017;

(b) publishing and/or lodging with the NZSX and ASX the March 2017 Trading Update and March 2017 Earnings Call, and making the Revised FY17 Guidance Representations and not subsequently modifying, qualifying or correcting them prior to 20 July 2017;

(c) publishing and/or lodging with the NZSX and ASX the Annual Report FY17 and August 2017 Earnings Call and making the August 2017 Building + Interior Guidance Representations and not subsequently modifying, qualifying or correcting them prior to 24 October 2017,

was conduct in relation to a financial product (being Fletcher Shares) within the meaning of s 1041H of the Corporations Act and s 19 of the FMC Act NZ, and in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act, and in trade or commerce within the meaning of s 18 of the ACL.

H.2 Misleading or deceptive conduct: FY17 Guidance

75 By reason of the FY17 Guidance Information, as and from 17 August 2016 and/or 22 February 2017, publishing the Annual Report FY16, August 2016~~17~~ Earnings Call and Half Year Report FY17 and making the FY17 Guidance Representations was misleading or deceptive, or likely to mislead or deceive.

76 Further, or alternatively, by reason of the FY17 Guidance Information:

(a) Fletcher did not have reasonable grounds to believe the FY17 Guidance Information Representation pleaded in paragraph 22; and

(b) publishing the Annual Report FY16, August 2016~~17~~ Earnings Call and Half Year Report FY17 and making and maintaining the FY17 Guidance Representation pleaded in paragraph 22 was misleading and deceptive, or likely to mislead or deceive,

as and from 17 August 2016 and/or 22 February 2017.

77 By reason of the matters pleaded in paragraphs 75 and/or 76, as and from 17 August 2016 and/or 22 February 2017 until 20 March 2017, Fletcher engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, and/or which had the effect or was likely to have the effect of misleading persons investing in or dealing with Fletcher Shares, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act;

(c) s 18 of the ACL;

(d) s 19 of the FMC Act NZ; and/or

(e) s 9 of the Fair Trading Act NZ,

(and thereby engaged in a **Misleading or Deceptive Contravention**).

H.3 Misleading or deceptive conduct: Revised FY17 Guidance

78 By reason of the Revised FY17 Guidance Information, as and from 20 March 2017, publishing the March 2017 Trading Update and March 2017 Earnings Call and making the Revised FY17 Guidance Representations was misleading or deceptive, or likely to mislead or deceive.

79 Further, or alternatively, by reason of the Revised FY17 Guidance Information:

(a) Fletcher did not have reasonable grounds to believe the Revised FY17 Guidance Representation pleaded in paragraph 33; and

(b) publishing the March 2017 Trading Update and March 2017 Earnings Call ~~Annual Report FY16, August 2017 Earnings Call and Half Year Report FY17~~ and making and maintaining the Revised FY17 Guidance Representation pleaded in paragraph 33 was misleading or ~~and~~ deceptive, or likely to mislead or deceive,

as and from 20 March 2017 until 20 July 2017.

80 By reason of the matters pleaded in paragraphs 78 and/or 79, as and from 20 March 2017 until 20 July 2017, Fletcher engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, and/or which had the effect or was likely to have the effect of misleading persons investing in or dealing with Fletcher Shares, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act;

(c) s 18 of the ACL;

(d) s 19 of the FMC Act NZ; and/or

(e) s 9 of the Fair Trading Act NZ,

(and thereby engaged in a further Misleading or Deceptive Contravention).

H.4 Misleading or deceptive conduct: August 2017 Building + Interior Guidance

81 By reason of the August 2017 Building + Interior Guidance Information, as and from 16 August 2017, publishing the Annual Report FY17 and August 2017 Earnings Call and making the August 2017 Building + Interior Guidance Representations was misleading or deceptive, or likely to mislead or deceive.

82 Further, or alternatively, by reason of the August 2017 Building + Interior Guidance Information:

(a) Fletcher did not have reasonable grounds to believe the August 2017 Building + Interior Guidance Representations pleaded in paragraphs 44(a), 44(b) and 44(c); and

(b) publishing the Annual Report FY17 and August 2017 Earnings Call and making the August 2017 Building + Interior Guidance Representations pleaded in paragraphs 44(a), 44(b) and 44(c) was misleading or ~~and~~ deceptive, or likely to mislead or deceive,

as and from 16 August 2017 until 24 October 2017.

83 By reason of the matters pleaded in paragraphs 81 and/or 82, as and from 16 August 2017 until 24 October 2017, Fletcher engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, and/or which had the effect or was likely to have the effect of misleading persons investing in or dealing with Fletcher Shares, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act;

(c) s 18 of the ACL;

(d) s 19 of the FMC Act NZ; and/or

(e) s 9 of the Fair Trading Act NZ,

(and thereby engaged in a further Misleading or Deceptive Contravention).

I FLETCHER'S SECTION 1041E CONTRAVENTIONS

I.1 Section 1041E contravention: FY17 Guidance Representations

84 By making and maintaining the FY17 Guidance Representations on 17 August 2016 and/or 22 February 2017 until 20 March 2017, Fletcher disseminated information to the market of actual or potential investors in Fletcher Shares.

85 By reason of the FY17 Guidance Information, as and from 17 August 2016 and/or 22 February 2017, the FY17 Guidance Representations were false in a material particular or were materially misleading, and paragraphs 75 and 76 are repeated.

PARTICULARS

The FY17 Guidance Representations were false in a material particular or were materially misleading by reason of the existence of the FY17 Guidance Information, in that:

(A) the CJESP Project was affected by time and cost overruns of a magnitude sufficient to cause material financial loss to Fletcher, either alone or in combination with time and cost overruns on the NZICC Project;

(B) the NZICC Project was affected by time and cost overruns of a magnitude sufficient to cause material financial loss to Fletcher, either alone or in combination with time and cost overruns on the CJESP Project;

(C) the causes of the time and cost overruns on the CJESP Project and NZICC Project were not rectified and were due to systemic issues with the management by Fletcher of the Buildings + Interiors business;

(D) on a reasonable assessment of the current and most likely future progress of the CJESP and/or NZICC Projects, the FY17 financial performance of Fletcher would be materially lower than the FY17 Guidance; and, or alternatively

(E) it was likely, or there was a real risk, that the FY17 financial performance of Fletcher would be materially lower than the FY17 Guidance,

and the particulars to paragraph 71 are repeated.

Further particulars may be provided following discovery and evidence.

86 The FY17 Guidance Representations were likely to:

(a) induce, directly or indirectly, persons in Australia (including the Applicant and some Group Members) to acquire Fletcher Shares; and further, or alternatively,

(b) have the effect of increasing or maintaining the price ~~for~~ of Fletcher Shares on the ASX and NZSX until corrected on 20 March 2017.

PARTICULARS

(A) Investors or potential investors were likely to rely upon official ASX announcements (and NZSX announcements for dual listed entities) in deciding whether to invest in Fletcher Shares.

(B) The content of the FY17 Guidance Representations was positive information about the financial performance and financial position of Fletcher.

87 From 17 August 2016, 22 February 2017, or alternatively prior to 20 March 2017, Fletcher ought reasonably to have known (in the meaning of s 1041E(c)(ii) of the Corporations Act) that the FY17 Guidance Representations were false in a material particular or were materially misleading.

PARTICULARS

As at 17 August 2016:

~~*(A) The particulars to paragraph 8 are repeated.*~~

(B) It may be reasonably inferred that Fletcher was aware of the matters affecting the CJESP Project pleaded at paragraphs ~~49~~51 and ~~50~~52 by reason of:

(1) the awareness by the FCL employees referred to in those particulars of the pleaded matters (being Mr Simon Chambers the overall Senior Project Manager until August 2017; Mr Jeff Wilson, FCL's Senior Building Services Manager; Ms Gemma Collins, Mr Wilson's superior at FCL);

(2) correspondence from the NZ MOJ to Mr Darlow dated 7 August 2015 seeking assurance on steps taken in respect of "programme slippage and, of more concern, a persistently troubled design management process";

(3) correspondence from Mr Darlow to the NZ MOJ dated 14 August 2015 stating inter alia "I can assure you that I am well aware of the challenges facing this project both in terms of maintaining the construction programme, and the related management of the design to meet out construction milestones" and "the project is now holding at approximately 9 weeks behind its original completion date".

(C) Fletcher was aware of the fact and terms of the CJESP Variation Contract (which was executed by Mr Darlow and Mr Bollman for Fletcher and FCL) pleaded at paragraphs ~~51~~53 to ~~53~~55 above, and consequentially that the CJESP was after that date a fixed price building contract providing for liquidated damages that exposed Fletcher to financial risks on cost overruns or delayed completion.

(D) It may be reasonably inferred that Fletcher by Mr Darlow, Mr Bollman and/or Mr Bolt was aware of the increasing extent of the CJESP Overrun pleaded at paragraphs ~~54~~56 and ~~55~~57(a) by reason of the preceding particulars (being programme slippages and/or challenges and Fletcher's financial exposure under the CJESP Variation Contract); or, alternatively, Fletcher by Mr Darlow, Mr Bollman and/or Mr Bolt ought reasonably have been aware of the increasing extent of the CJESP Overrun on proper investigation as a consequence of those particulars.

(E) *It may be reasonably inferred that Fletcher* *by Mr Darlow, Mr Bollman and/or Mr Bolt* *was aware of the matters pleaded at paragraphs ~~55~~57(b), ~~55~~57(c), ~~55~~57(f) and ~~55~~57(g) because they were basic matters pertaining to Fletcher and FCL's business operations.*

(F) *Fletcher* *by Mr Darlow, Mr Bollman and/or Mr Bolt* *ought reasonably have been aware of the matters pleaded in paragraphs ~~55~~57(d) and ~~55~~57(e) on proper investigation as a consequence of the preceding particulars.*

Further, from 17 August 2016 until 20 March 2017:

(G) *It may be reasonably inferred that Fletcher by Mr Darlow, Mr Bollman, Mr McKenzie and/or Mr Bolt was aware that it commenced paying liquidated damages with respect to the CJESP Project from 3 February 2017 as pleaded at paragraph ~~56~~58 as a result of the terms of the CJESP Variation Contract.*

(H) *It may be reasonably inferred that Fletcher by Mr Darlow, Mr Bollman, Mr McKenzie and/or Mr Bolt was aware of the matters pleaded at paragraph ~~57~~59 because it was information contained in internal company records.*

(I) *In combination with the preceding particulars, it may be reasonably inferred that Fletcher by Mr Darlow, Mr Bollman, Mr McKenzie and/or Mr Bolt was aware of internal or external concerns relating to the financial performance of the CJESP and/or NZICC Projects so as to require the commencement of a 'thorough' review as pleaded at paragraph ~~58~~60.*

(J) *Fletcher by Mr Darlow, Mr Bollman, Mr McKenzie and/or Mr Bolt ought reasonably have been aware of the matters pleaded in paragraphs ~~59~~61 and ~~60~~62 on proper investigation as a consequence the preceding particulars.*

(K) *It may be reasonably inferred that Fletcher by Mr Darlow, Mr Bollman, Mr McKenzie and/or Mr Bolt was aware of the increasing extent of the CJESP Overrun pleaded at paragraph ~~61~~63 by reason of the preceding particulars; or, alternatively, Fletcher by one or more of its senior management acting as directors of FCL at all material times (particulars to paragraph 10) ought reasonably have been aware of the increasing extent of the CJESP Overrun on proper investigation as a consequence of those particulars.*

By reason of the preceding particulars, Fletcher by Mr Darlow, Mr Bollman, Mr McKenzie and/or Mr Bolt ought reasonably have been aware of some or all of the FY17 Guidance Information by 17 August 2016, or alternatively prior to 20 March 2017 and paragraph 85 is repeated.

Further particulars may be provided following discovery and evidence.

88 By reason of the matters pleaded in paragraphs 84 to 87, Fletcher contravened s 1041E of the Corporations Act as and from 17 August 2016 and/or 22 February 2017 until 20 March 2017 (and thereby engaged in a **Section 1041E Contravention**).

I.2 Section 1041E contravention: Revised FY17 Guidance Representations

89 By making and maintaining the Revised FY17 Guidance Representations on 20 March 2017 until 20 July 2017, Fletcher disseminated information to the market of actual or potential investors in Fletcher Shares.

90 By reason of the Revised FY17 Guidance Information, as and from 20 July 2017, the Revised FY17 Guidance Representations were false in a material particular or were materially misleading, and paragraphs 78 and 79 are repeated.

PARTICULARS

The FY17 Guidance Representations were false in a material particular or were materially misleading by reason of the existence of the Revised FY17 Guidance Information, in that:

(A) on a reasonable assessment of the current and most likely future progress of the CJESP and/or NZICC Projects, the FY17 financial performance of Fletcher would be materially lower than the Revised FY17 Guidance; and, or alternatively

(B) it was likely, or there was a real risk, that the FY17 financial performance of Fletcher would be materially lower than the Revised FY17 Guidance,

and the particulars to paragraph 72 are repeated.

Further particulars may be provided following discovery and evidence.

91 The Revised FY17 Guidance Representations were likely to:

(a) induce, directly or indirectly, persons in Australia (including the Applicant and some Group Members) to acquire Fletcher Shares; and further, or alternatively,

(b) have the effect of increasing or maintaining the price ~~for~~ of Fletcher Shares on the ASX and NZSX until corrected on 20 July 2017.

PARTICULARS

(A) Investors or potential investors were likely to rely upon official ASX announcements (and NZSX announcements for dual listed entities) in deciding whether to invest in Fletcher Shares.

(B) The content of the Revised FY17 Guidance Representations was positive information about the financial performance and financial position of Fletcher.

92 From 20 March 2017, or alternatively prior to 20 July 2017, Fletcher ought reasonably to have known (in the meaning of s 1041E(c)(ii) of the Corporations Act) that the Revised FY17 Guidance Representations were false in a material particular or were materially misleading.

PARTICULARS

The particulars to paragraph ~~85~~87 are repeated.

Further, from 20 March 2017 until 20 July 2017:

(A) As pleaded at paragraph ~~62~~64, Fletcher by Mr Darlow, Ms Kernahan, Mr McKenzie and/or Mr Bolt was aware on 24 March 2017 that credible information existed that the actual loss to Building + Interior as a result of the CJESP and/or NZICC Projects was substantially more than that reported on 20 March 2016.

(B) It may be reasonably inferred that Fletcher by Mr Darlow, Ms Kernahan, Mr McKenzie and/or Mr Bolt was aware of the matters pleaded at paragraphs ~~63~~65 and ~~64~~66 because they were information contained in internal company records.

(C) It may be reasonably inferred that Fletcher by Mr Darlow, Ms Kernahan, Mr McKenzie and/or Mr Bolt) was aware of the increasing extent of the CJESP Overrun pleaded at paragraph ~~65~~67 by reason of the preceding particulars; or, alternatively, Fletcher by Mr Darlow, Ms Kernahan, Mr McKenzie and/or Mr Bolt ought reasonably have been aware of the increasing extent of the CJESP Overrun on proper investigation as a consequence of those particulars.

By reason of the preceding particulars, Fletcher by Mr Darlow, Ms Kernahan, Mr McKenzie and/or Mr Bolt ought reasonably have been aware of some or all of the Revised FY17 Guidance Information by 20 March 2017, or alternatively prior to 20 July 2017 and paragraph 90 is repeated.

Further particulars may be provided following discovery and evidence.

93 By reason of the matters pleaded in paragraphs 89 to 92, Fletcher contravened s 1041E of the Corporations Act as and from 20 March 2017 until 20 July 2017 (and thereby engaged in a further Section 1041E Contravention).

I.3 Section 1041E contravention: August 2017 Building + Interior Guidance Representations

94 By making and maintaining the August 2017 Building + Interior Guidance Representations on 16 August 2017 until 24 October 2017, Fletcher disseminated information to the market of actual or potential investors in Fletcher Shares.

95 By reason of the August 2017 Building + Interior Guidance Information, as and from 16 August 2017, the August 2017 Building + Interior Guidance Representations were false in a material particular or were materially misleading, and paragraphs 81 and 82 are repeated.

PARTICULARS

The August 2017 Building + Interior Guidance Representations were false in a material particular or were materially misleading by reason of the existence of the Building + Interior Guidance Information, in that:

(A) *on a reasonable assessment of the current and most likely future progress of the CJESP and/or NZICC Projects, the FY18 financial performance of the Construction division and the Building + Interiors business would be materially worse than the August 2017 Building + Interior Guidance Representations; and, or alternatively*

(B) *it was likely, or there was a real risk that losses associated with the performance of the Construction division and the Building + Interiors business would not be contained within FY17, and the FY18 financial performance of Building Business + Interiors would be materially worse than the August 2017 Building + Interior Guidance Representations,*

and the particulars to paragraph 7273 are repeated.

Further particulars may be provided following discovery and evidence.

96 The August 2017 Building + Interior Guidance Representations were likely to:

(a) induce, directly or indirectly, persons in Australia (including the Applicant and some Group Members) to acquire Fletcher Shares; and further, or alternatively,

(b) have the effect of increasing or maintaining the price ~~for~~ of Fletcher Shares on the ASX and NZSX until corrected on 24 October 2017.

PARTICULARS

(A) *Investors or potential investors were likely to rely upon official ASX announcements (and NZSX announcements for dual listed entities) in deciding whether to invest in Fletcher Shares.*

(B) *The content of the August 2017 Building + Interior Guidance Representations was positive information about the financial performance and financial position of Fletcher.*

97 From 16 August 2017, or alternatively prior to 24 October 2017, Fletcher ought reasonably to have known (in the meaning of s 1041E(c)(ii) of the Corporations Act) that the August 2017 Building + Interior Guidance Representations were false in a material particular or were materially misleading.

PARTICULARS

The particulars to paragraphs ~~85~~87 and ~~90~~92 are repeated.

Further, from 16 August 2017 until 24 October 2017:

(A) *It may be reasonably inferred that Fletcher by Ms Kernahan, Mr McKenzie and/or Mr Bolt was aware ~~of~~ that it commenced paying liquidated damages with respect to the NZICC Project from August 2017 as pleaded at paragraph ~~66~~68 as a result of the terms of the contract relating to the NZICC Project.*

(B) *In combination with the preceding particulars, it may be reasonably inferred that Fletcher by Ms Kernahan, Mr McKenzie and/or Mr Bolt was aware of internal or external concerns relating to the financial performance of the CJESP and/or NZICC Projects so as to require the commencement of the KPMG Review as pleaded at paragraph ~~67~~69.*

(C) *It may be reasonably inferred that Fletcher by Ms Kernahan, Mr McKenzie and/or Mr Bolt was aware of the increasing extent of the CJESP Overrun pleaded at paragraph ~~68~~70 by reason of the preceding particulars; or, alternatively, Fletcher by Ms Kernahan, Mr McKenzie and/or Mr Bolt ought reasonably have been aware of the increasing extent of the CJESP Overrun on proper investigation as a consequence of those particulars.*

By reason of the preceding particulars, Fletcher by Ms Kernahan, Mr McKenzie and/or Mr Bolt ought reasonably have been aware of some or all of the August 2017 Building + Interior Guidance Information by 16 August 2017, or alternatively prior to 24 October 2017 and paragraph 95 is repeated.

Further particulars may be provided following discovery and evidence.

98 By reason of the matters pleaded in paragraphs 94 to 97, Fletcher contravened s 1041E of the Corporations Act as and from 16 August 2017 until 24 October 2017 (and thereby engaged in a further Section 1041E Contravention).

J CONTRAVENING CONDUCT CAUSED LOSS

J.1 Inflated price of Fletcher Shares

99 Fletcher Shares traded on the ASX and NZSX traded in a market:

(a) where the price or value of Fletcher Shares was, and would reasonably be expected to be, informed or affected by information published to the ASX and NZSX, or otherwise made publicly available by Fletcher; and

(b) where there was correlation as between the market price for Fletcher Shares on the ASX and NZSX, and where trading of Fletcher Shares on each of the ASX and NZSX informed the price at which Fletcher Shares traded at or on the other exchange.

100 By reason of the conduct the subject of the Misleading or Deceptive Contraventions and/or Section 1041E Contraventions the market price for the Fletcher Shares on the ASX and NZSX during the Relevant Period was substantially higher than their true value and/or the market price that would have prevailed but for that conduct.

PARTICULARS

The extent to which the Misleading or Deceptive Contraventions and/or Section 1041E Contraventions caused the market price for Fletcher Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed (that is, inflated) during the ~~Claim~~ Relevant Period is a matter for expert evidence.

101 The declines in the price of the Fletcher Shares pleaded above were caused by the market's reaction to the March 2017 Trading Update, July 2017 Trading Update and October 2017 Trading Update, and would, to the extent they removed inflation from the price of the Fletcher Shares, have occurred earlier and/or would have been of a lesser magnitude, if Fletcher had not engaged in the conduct the subject of the Misleading or Deceptive Contraventions and/or Section 1041E Contraventions.

PARTICULARS

The extent to which the declines in the price of the Fletcher Shares pleaded above were caused by the market's reaction to the March 2017 Trading Update, July 2017 Trading Update and October 2017 Trading Update is a matter for expert evidence.

102 The Plaintiff and Group Members acquired Fletcher Shares at an inflated price in the premises set out in paragraphs 99 and 100.

J.2 Reliance

103 Further, or alternatively, in the decision to acquire Fletcher Shares the Plaintiff and some Group Members relied upon Fletcher's conduct in making and maintaining the FY17 Guidance as issued on 17 August 2016 and 22 February 2017, and/or the Revised FY17 Guidance as issued on 20 March 2017 and/or the August 2017 Building + Interior Guidance Information, and would not have acquired Fletcher Shares in the prices or volumes at which they did in fact acquire Fletcher Shares were it not for the Market Contraventions.

PARTICULARS

The identity of all those Group Members which or who relied directly on any or all of the contravening representations and statements are not known within the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant takes detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member~~'~~s' claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

J.3 Loss or damage suffered by the Applicant and Group Members

104 By reason of the matters set out in this Amended Statement of Claim, the Plaintiff and the Group Members suffered loss or damage in acquiring an interest in Fletcher Shares during the Relevant Period at the price at which that interest was acquired.

PARTICULARS

The loss suffered by the Applicant and Group Members will be calculated by reference to:

(A) the difference between the price at which Fletcher Shares were acquired by the Applicant or Group Members during the ~~Claim~~ Relevant Period and the true value of that interest; or

(B) the difference between the price at which the Applicant or Group Members acquired an interest in Fletcher Shares and the amount left in hand; or

(C) alternatively, the days during the ~~Claim~~ Relevant Period where the traded price of Fletcher Shares fell as a result of the disclosure of information which had not previously been disclosed because of the Market Contraventions, and the quantum of that fall.

Particulars in relation to Group Members' losses will be provided following opt out and the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

Dated: 24 August 2023

This Amended Statement of Claim was prepared by Alexander H Edwards of Counsel, and settled by William A D Edwards of Kings Counsel.

Mayweathers

Mayweathers
Solicitors for the Plaintiff

1. Place of trial—

   Melbourne

2. Mode of trial—

   Judge of the Court

3. This writ was filed—

   for the plaintiff by Steve Vrtkovski, solicitor of Mayweathers, The Mezzanine, 12 O'Connell Street, Sydney NSW 2000

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