

SUPREME COURT OF QUEENSLAND

CITATION: *Redpath Contract Services Pty Ltd v Anglo Coal (Grosvenor Management) Pty Ltd* [2017] QSC 149

PARTIES: **REDPATH CONTRACT SERVICES PTY LTD (ABN 96 133 126 904)**
(plaintiff)
v
ANGLO COAL (GROSVENOR MANAGEMENT) PTY LTD (ABN 16 153 794 122)
(defendant)

FILE NO/S: BS4875/16

DIVISION: Trial Division

PROCEEDING: Commercial review

DELIVERED ON: 7 July 2017

DELIVERED AT: Brisbane

HEARING DATE: 27 June 2017

JUDGE: Jackson J

ORDER: **The order of the court is that:**

- 1. The plaintiff make disclosure to the extent set out in the document plan attached as Annexure A but taking into account the additional keyword matters raised in par 7 of the defendant's written outline of argument.**
- 2. On or before 28 July 2017 the defendant provide to the plaintiff for agreement a disclosure management plan for the defendant's disclosure in compliance with paragraph 10 of the order of 13 April 2017.**
- 3. Until further order the parties are not to be required to comply with paragraphs 12 and 13 of the order of 13 April 2017.**
- 4. On or before 4 September 2017 the plaintiff respond to paragraphs 7(a), 7(b)(i), 7(c) and 7(d) of the defendant's request for particulars dated 28 April 2017.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – DISCOVERY AND INTERROGATORIES – DISCOVERY AND INSPECTION OF DOCUMENTS – PRODUCTION AND INSPECTION OF DOCUMENTS – GENERAL PRINCIPLES – OF WHAT

PARTICULAR DOCUMENTS – where an order was made for the plaintiff and defendant to agree on a disclosure management plan in order to facilitate efficient and proportionate disclosure in the proceeding – where the plaintiff and defendant could not agree on a disclosure management plan – where the plaintiff proposed a plan which was intended to limit the documents to be examined through date filtering, domain name and email address inclusion and exclusion and keyword filtering – where the defendant proposed to limit the documents to be examined by reference to categories of documents that were directly relevant to allegations in issue in the pleadings – whether the parties should be ordered to comply with the plaintiff’s disclosure management plan or with the defendant’s disclosure management plan

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – PARTICULARS – FURTHER AND BETTER – where the defendant sought further particulars of a claim in the plaintiff’s amended statement of claim – where the amended statement of claim stated that the particulars were set out in a claim letter sent to the respondents and that further particulars would be provided after the completion of expert evidence – whether the plaintiff should be ordered to respond to the defendant’s request for further particulars

COUNSEL: G Thomson QC and M Hindman for the plaintiff.
S Doyle QC and S Webster for the defendant.

SOLICITORS: Allens Linklaters for the plaintiff.
Minter Ellison for the defendant.

[1] **Jackson J:**

Disclosure Management Plan

[2] On 13 April 2017 I ordered, inter alia, that:

- “8. The parties are to adopt a proportionate and efficient approach to the management of both paper and electronic documents in the proceeding.
9. Subject to an order to the contrary, a party is not required to give disclosure under rules 214 or 216 of the Uniform Civil Procedure Rules (1999) (Qld).
10. By 4pm on Friday 26 May 2017, the Plaintiff and the Defendant are to confer and seek to agree a disclosure management plan (the Disclosure Management Plan) for the purpose of giving disclosure of documents to facilitate efficient and proportionate disclosure in the proceeding. The Disclosure Management Plan must include the following:

- (a) agreement as to the techniques that the parties may use to limit the review of documents for disclosure and agreement regarding the parameters to be adopted for these techniques, including:
 - (i) date filtering for relevance;
 - (ii) limitation of email searches to agreed lists of individuals/email addresses;
 - (iii) domain/custodian analysis;
 - (iv) keyword searching;
 - (v) data analytics;
 - (vi) bulk coding of documents for irrelevance or relevance by agreed categories or document types;
- (b) agreement as to document processing strategies and the exchange of documents for discovery, including:
 - (i) protocols for the use of an electronic database for the exchange of documents, such as Ringtail;
 - (ii) the format of documents for electronic exchange and the document fields to be provided with discovery;
 - (iii) technical de-duplication of documents and email threading;
- (c) an agreed dispute resolution process for the resolution of disagreements relating to discovery.”

- [3] The parties have not agreed a Disclosure Management Plan. The plaintiff seeks an order as to disclosure that would conform to the substance of the 13 April order as to disclosure but operate as a compulsory order in the absence of any agreement. The defendant proposes an order for a different plan.
- [4] The plaintiff proposes a 53 page disclosure management plan made up of a document plan and document management protocol. It is too lengthy to set out in full, but the document plan is attached as an annexure to these reasons and the relevant parts of the document management protocol may be described. The document management protocol deals with numerous matters appropriate to the organised electronic management of the documents to be disclosed and contains the search parameters that will limit the number of documents to be reviewed or considered as to relevance. The limits proposed on the search for documents emerge from the terms of cls 3 and 4 of the document plan attached to these reasons and schedules 1, 2 and 3 of the document management protocol.
- [5] Schedule 1 part A comprises a list of domain names to be searched and included. Schedule 1 part B comprises a list of email addresses to be searched and included. Schedule 2 part A comprises a list of domain names to be searched and excluded. Schedule 2 part B comprises a list of email addresses to be searched and excluded. Schedule 3 contains a list of search terms and search strings to be searched and included.
- [6] The context is that the plaintiff’s claim in the proceeding is for approximately \$16 million under a construction contract described as a Cost Reimbursible Target Incentive Contract for Major Works dated 6 February 2013. The contract was for the plaintiff to construct two underground tunnels at the defendant’s mine being a conveyor drift and a transport drift for underground mining operations.

- [7] The plaintiff's claim is for components or separable subjects described as:
- (a) precast concrete segment supplies;
 - (b) extension of time claims numbered 1 and 2;
 - (c) calculation of the profit for Separable Portion 1A;
 - (d) claims for Other Contract Deliverables payments; and
 - (e) claims for payments for the Cost Performance Component of the Risk Reward Regime.
- [8] The defendant counterclaims under the contract for approximately \$4.5 million for:
- (a) precast concrete segments supply (including for reinforcing steel);
 - (b) employee termination payments; and
 - (c) overpayment for performance on Other Contract Deliverables.
- [9] On 21 March 2017, I dismissed an application for the determination of separate questions upon the plaintiff's extension of time claims.
- [10] The pleadings are now closed.
- [11] The plaintiff has approximately 215,000 documents uploaded into a Ringtail e-discovery platform. There are a further 500,000 email files that may or may not be relevant. The document plan and document management protocol are intended to limit the potential documents to be examined for disclosure by date filtering, domain name and email address inclusion and exclusion and keyword searching of what remains. The target is to reduce the documents that may have to be actually reviewed for disclosure to 50,000.
- [12] If no such approach were taken, the plaintiff would potentially be required to actually review the more than 700,000 documents for disclosure. The estimate of cost to do so is in excess of \$2 million. The time would be many months. That would not be a proportionate approach to the management of paper and electronic documents for the proceeding.
- [13] The defendant opposes the plaintiff's proposed document plan and document management protocol. Instead, it proposes disclosure in accordance with another proposed disclosure management plan. The hinge of the defendant's proposal is that the parties will use best endeavours to reach agreement as to "categories" of documents for disclosure and that searches will be conducted of hard copy and electronic files to identify documents within the agreed categories that are directly relevant to an allegation in issue in the pleadings. There is no information in the defendant's proposal or evidence as to how that process would work electronically.
- [14] The defendant proposes 2 items as the "categories" that should be thereby disclosed, namely:
- Tunnel Lining Segments claim and counterclaim:
- (a) documents relevant to the alleged Amendment Agreement;
 - (b) documents relevant to the alleged Variation 1;
 - (c) documents relevant to the calculation of the TCE;
 - (d) TLS specifications including in respect of reinforcing steel for the TLS;

- (e) tender for the supply of the PCS/TLS including relevant correspondence with each tenderer;
- (f) documents relevant to quantum of the TLS claim and counterclaim;

Extension Of Time claim

- (g) documents relevant to the alleged waiver/estoppel;
- (h) documents relevant to the Delay Events pleaded in paragraph 85A (of the statement of claim);
- (i) documents relevant to quantum;

Other Contract Deliverables claim and counterclaim:

- (j) documents relevant to the calculation or determination of the Other Contract Deliverables performance scores;
- (k) documents relevant to quantum;

Redundancy counterclaim

- (l) documents relevant to the negotiation and agreement of the Deed of Amendment and Settlement dated 13 October 2014.

- [15] The defendant's document plan deletes the substance of cl 4 of the plaintiff's document plan and all of the proposed inclusions and exclusions in Schedules 1, 2 and 3 of the document management protocol. The only other limit on the extent of the searches proposed by the defendant's plan is that the parties agree that the parties "will limit their review of documents to search parameters that are identified and explained in the Disclosure Statement served with the parties' list of documents."
- [16] In other words, the defendant's proposal is that disclosure be carried out without any agreed protocol as to the search parameters for any electronic processes that will limit the extent to which any party actually reviews the documents for disclosure as required under par 10 of the 13 April order.
- [17] The plaintiff submits that the defendant's proposed disclosure management plan will not limit disclosure. The plaintiff submits that the only issue of substance in the proceeding that the defendant's proposed "categories" omit are the documents relevant to the plaintiff's calculation of Profit for Separable Portion A. The defendant says that its "categories" will also omit the Anglo tender, the memorandum of understanding, the limited letter of award, the revised limited letter of award and formation of the contract generally.
- [18] It is notable that the defendant's "categories" are defined in all but one instance as documents "relevant to" an issue or issues. Generally speaking, these are not categories of documents that serve to limit the extent of the obligation to make disclosure of directly relevant documents.
- [19] The point may be illustrated by referring to the Supervised Case List Practice Direction 11 of 2012. Paragraphs 12.1 and 12.2 of the Annexure distinguish between what in this context is disclosure by ascertaining what is directly relevant and disclosure of what is a category, as follows:

"12.1 Requiring parties to exchange or to disclose formally all the documents that are "directly relevant" to an allegation in issue in the

pleadings (UCPR 211(1)) may not be appropriate in the circumstances of a particular case.

12.2 In some cases it may be appropriate to order limitations on the documents to be exchanged or disclosed by reference to categories of documents. This may be by reference to the categories of documents that are to be exchanged or disclosed, or by providing that certain categories of documents are not to be exchanged or disclosed.”

- [20] The defendant’s approach treats documents relevant to an issue or group of issues as a separate category. In my view, that approach does nothing of substance to limit the scope of the obligation to disclose documents except to the extent that particular issues may be omitted. It is not submitted by the defendant that it has omitted many significant issues in its proposal, so that the task confronting the plaintiff (or the defendant) will be more manageable in accordance with the 13 April order.
- [21] It can be seen, therefore, that the defendant’s proposed plan does not make any attempt to comply with par 10(a) of the 13 April order. The defendant instead makes an attack on the plaintiff’s proposed disclosure management plan.
- [22] First, it submits that the steps for exclusion of the Schedule 2 domains and addresses may exclude from the documents to be considered those already included as potentially relevant under Schedule 1. Surprisingly, although the hearing of this application initially came before me weeks before the final hearing date and although the 13 April order required the parties to attempt to agree the plan and protocol comprising the Disclosure Management Plan, these objections were not notified until the defendant’s outline of argument was provided not long before the hearing. There was no satisfactory explanation for doing so.
- [23] Second, the defendant submits that neither it nor the court can be satisfied that the 500 domain names and 1000 email addresses in Schedule 2 should be pre-emptively excluded. This was put as a bald proposition. The defendant put on no evidence and made no submission that it could demonstrate that domain names or email addresses that it knows to be relevant or has a reasonable belief would be relevant have been excluded in Schedule 2. It did not, for example, say or submit that it had made any request of the plaintiff as to the basis of the exclusions or otherwise attempted to test or satisfy itself as to the reasonableness of the plaintiff’s proposal.
- [24] Third, the defendant challenges the plaintiff’s proposed list of key words. The defendant submits that “the key words proposed are in need of refinement” without saying why or how except for a small number of specific points set out in par 7 of the defendant’s outline of argument, again apparently made for the first time in the outline of argument delivered not long before the hearing. Those quibbles may be met by taking them into account in the list of key words in Schedule 3. However, the defendant submits that the better approach is to permit the parties to use key words which can be iteratively refined as searches are conducted, meaning no list of keywords should be identified in the disclosure management plan ordered by the court. The defendant did not even acknowledge that its submission in this respect showed a direct and apparently deliberate non-compliance with par 10(a)(iv) of the 13 April order.

- [25] The defendant made a submission that the plaintiff's proposal would require it not to disclose relevant documents it may wish to rely on at trial. Where the defendant's evidence did not show it had made any serious attempt to consider its own domains, addresses, keyword searching or data analytics, or indeed made any effort to propose a plan that would actually address the need for a proportionate approach to disclosure, I reject that submission.
- [26] In par 13 of the defendant's outline of argument it submits that it proposes to limit disclosure but with the filters being selected having regard to relevance. Nowhere did the defendant identify what the filters were or how they would be ascertained simply because the defendant has identified the "categories" as set out above. I am not persuaded that the defendant has made any real effort to show what the "filters" would be, or should be, or how they are brought into better focus by the identification of the "categories".
- [27] The plaintiff submits that the defendant's approach has the effect that the plaintiff will have to review all of the potentially relevant documents. The defendant says that concern is misplaced. It submits that all that must be agreed now are the "categories"; then agreement can be sought as to date filters, removal of duplicates and keyword searches. But all that is to be in the future. It is not clear whether in those submissions the defendants deliberately omit any reference to identifying domains or addresses that might be excluded or included.
- [28] In my view, the court should not countenance the defendant's disregard of the 13 April order on the grounds that have been advanced. The suggestion that the defendant's proposed "categories" as stated will, in some way, solve or assist to reduce the problem of reducing the number of documents is not supported by evidence, or any of the published documents as to electronic disclosure of which the court is apprised, or by any logical process of reasoning. There must be a suspicion that it is little more than an explanation for the defendant's failure to seriously analyse the task of managing the documents and to provide input or relevant feedback upon the plaintiff's proposal in a timely way.
- [29] However that may be, in the state of affairs revealed by the evidence, in my view, the plaintiff's submission that the defendant's proposal is not one that would avoid the plaintiff having to review all the potentially relevant documents in the absence of significant further agreements of the kind that were required by the 13 April should be accepted.
- [30] Notwithstanding the defendant's individual criticisms of the plaintiff's proposed disclosure management plan, I will order that the plaintiff give disclosure in accordance with the disclosure management plan attached in Annexure A to the plaintiff's draft order, but taking into account the matters raised in par 7 of the defendant's written outline of argument. I will further order that the defendant provide to the plaintiff for agreement a disclosure management plan for the defendant's disclosure in compliance with par 10 of the 13 April order on or before 27 July 2017.

EOT management

- [31] The parties agree that the time for compliance with paras 12 and 13 of the 13 April order should be extended. However, the appropriate time frame is not yet clear because of a dispute as to the state of the particulars of the extension of time claims.

- [32] Accordingly, it is appropriate to order that the parties not be required to comply with paras 12 and 13 of the 13 April order until further order.

Particulars of the EOT claim

- [33] Paragraph 85A of the current statement of claim alleges, in part:

“85A. Further to paragraph 85 herein, Redpath was delayed as a consequence of delays and/or disruption caused by Anglo and/or the Company Representative and/or employees agents or contractors of either of them, as follows:

- (a) in respect to Redpath's claims for EOT001- TBM Assembly Delay:
 - (i) the EPBM was Company Supplied Equipment pursuant to Appendix H of the Contract and was not part of Redpath's Scope of Work under the Contract. The works for the design, manufacture, supervision of onsite assembly and commissioning of the EPBM was subcontracted directly by Anglo to its contractor the Robbins Company;
 - (ii) Redpath was unable to commence excavation activities for the conveyor drift and the transport drift until such time as the EPBM was delivered and mobilised on Site;
 - (iii) pursuant to the 14 February Contract Program the EPBM was to be supplied by Anglo completely assembled, commissioned and at the face of the conveyor drift in readiness to commence excavation by 30 September 2013;
 - (iv) the assembly, commissioning and mobilisation of the EPBM by the Robbins Company to the face of the Conveyor Drift did not occur until 19 December 2013;
 - (v) Redpath was delayed in commencing excavation works for the Conveyor Drift by 81 days as a consequence of the following Delay Events which were on the critical path:
 - (A) delay in the supply of componentry necessary to build and assemble the EPBM by the Robbins Company and/or Anglo;
 - (B) incorrect and non-compliant supply of componentry by the Robbins Company and/or Anglo necessary to assemble the EPBM;
 - (C) additional works and/or modifications directed by Anglo and/or Robbins Company during the build of the EPBM;
 - (D) out of sequence delivery of components necessary to build and assemble the EPBM by the Robbins Company and/or Anglo,

- resulting in inefficient scheduling of labour
and loss of productivity;
- (vi) in the premises, Redpath is entitled to 81 days extension of time and a TCE Adjustment in the amount of \$12,221,935.42.

Particulars of (a)

Particulars of Redpath's claim are set out in its claim letter dated 21 March 2014 (ref: 710637) to Glenn Tonkin of Anglo for EOT-001 – TBM Assembly Delay, which includes details of the effect of the Delay Event on the 14 February Contract Program and the additional time required to achieve Practical Completion. Redpath will provide further particulars after the completion of expert evidence.”

- [34] On 28 April 2017, the defendant sought further particulars of the claim in para 85A(a) (“the request”). The plaintiff rejected the request and stated that the information sought would be provide in its expert evidence.
- [35] The defendant seeks an order that the report or reports be provided so that it has the particulars requested and foreshadowed. The plaintiff resists on the ground that the experts’ reports should follow the other interlocutory steps including lay witness statements. This is an unusual response to a request for particulars. The plaintiff did not identify how the defendant would be able to prepare its case in defence including the preparation of its own witness statements if it did not know what the delay case to be presented at trial was with particularity.
- [36] The dispute then moved to whether the particulars provided already were adequate, by reference to the letter identified in the particulars subjoined to paras 85A(a). A copy of the letter was provided to me. However, I am concerned only with the request and para 85A(a) of the statement of claim. The letter referred to in the particulars, from the defendant to plaintiff dated 21 March 2014, is in 5 pages supported by 28 further pages of information (“the letter”).
- [37] Paragraph 7.1 of the letter stated that the EPBM commenced excavation of the Conveyor Drift (Separable Portion 1a) on 20 December 2013, some 81 days after the revised date in the plaintiff’s letter referenced by number 710087. Paragraph 7.4 claimed an extension of time of 81 days being the time period by which the assembly and commissioning of the EPBM would be late from the Robbins program referred to in item 16.
- [38] Paragraph 8 of the letter set out the claim for an increase in the amount of \$9,743,474 broken up into two components said to have been calculated on recurring costs incurred during the period 21 September to 20 December 2013 to arrive at a rate per day applied to the period of 81 days.
- [39] Paragraph 9 of the letter made a further claim for \$2,478,461.42 under cl 33.11 of the general conditions calculated by deducting the direct cost allowance in the TCE of \$3,198,463.43 from the total incurred costs of \$5,676,924.84 on the footing that the total costs were incurred to comply with the numerous directions.

- [40] The supporting material set out in Appendix A of the letter included a schedule of variances between the planned duration and planned start and finish dates for the equipment supply for the EPBM by Robbins and attached the relevant schedules. Appendix B set out another schedule of similar dates for comparison. Appendix C set out a table of non-conformances with the planned assembly by subject matter rather than period of delay. Appendix D contained the extension of time costing supported by 9 pages of line items included in the calculation of the amounts of the claimed recurring indirect and Separable Portion 1a costs.
- [41] Whilst a substantial amount of information is provided in the letter as summarised it does not respond to the requested particulars.
- [42] Paragraph 85A(a)(v) of the statement of claim alleges contractual delay events on the critical path as set out in subparagraphs (A) to (D). Appendix C of the letter does not correspond to those allegations.
- [43] Paragraph 7(a) of the request is directed to par 85A(a) of the statement of claim. It seeks particulars of the contractual delay events and that the delay events be correlated to the critical path on the contract program. In my view, this request should be responded to. Paragraph 7(b)(i) of the request seeks particulars of the componentry referred to in paras 85A(a)(v)(A) and (B) that was delayed, incorrectly supplied or was non-compliant. It not unreasonable that the plaintiff identify the componentry the subject of paras 85A(a)(v)(A) and (B).
- [44] On the other hand, the plaintiff should not be required to answer par 7(b)(ii) of the request. It is a request for evidence.
- [45] Paragraph 7(c) of the request seeks particulars of the additional works or modifications directed by the defendant or Robbins in par 85A(a)(v)(D). The letter does not provide that information. In my view, the request should be responded to.
- [46] Paragraph 7(d) of the request seeks particulars of the componentry delivered out of sequence, the dates and order in which it should have been delivered, the inefficient scheduling of labour and the loss of productivity alleged to have resulted. The letter does not provide that information or does not organise it in those ways. In my view the request should be responded to.

Document Plan – Annexure A

Supreme Court of Queensland 4875/16

Redpath Contract Services Pty Ltd (ABN 96 133 126 904)

and

Anglo Coal (Grosvenor Management) Pty Ltd (ABN 18 153 794 122)

1 Background

- 1.1 Proceedings were issued by Redpath Contract Services Pty Ltd (**Redpath**) against Anglo Coal (Grosvenor Management) Pty Ltd (**Anglo**) on 16 May 2016 (the **Proceeding**). Anglo also has a number of counterclaims against Redpath in the Proceeding.
- 1.2 Redpath and Anglo have agreed to implement this disclosure and document management plan (**Document Plan**) to facilitate efficient and proportionate disclosure in accordance with Order 10 of the Orders of Jackson J dated 13 April 2017.

2 Exchange of documents

- 2.1 The parties will use all reasonable endeavours to ensure a list of documents will be exchanged in the Proceeding on or before 18 August 2017 (the **list of documents**). The party providing the list of documents will deliver copies of any documents specified within that list (except for documents in relation to which privilege from disclosure is claimed), to the other party in the form described in Attachment A to this Document Management Plan at the same time the list of documents is exchanged.
- 2.2 However, the parties acknowledge that disclosure is a duty that continues until the Proceeding is decided.
- 2.3 To the extent that search terms are employed by either party to retrieve documents stored electronically, including email correspondence and attachments to email correspondence, the parties agree that at the same time those documents are disclosed, they will provide a Disclosure Statement that sets out the searches that have been undertaken to locate those documents.
- 2.4 The Disclosure Statement is to be signed and will:
 - (a) set out the extent of the searches that were undertaken to locate the disclosed documents;
 - (b) draw attention to any particular limitations on the extent of the search that may have been adopted, for proportionality reasons or otherwise, and give reasons for such limitation; and
 - (c) certify that relevant documents that have been located and are considered to be adverse to a party's case have been included in the disclosed documents.

- 2.5 The parties agree that they may request each other in writing to disclose particular identified documents or categories of documents, to the extent those documents are directly relevant to an allegation in issue in the Proceeding, including those that may fall outside the scope of disclosure as identified in the Document Plan, at any time after the exchange of the list of documents (**request for additional documents**).
- 2.6 A request for additional documents will include:
- (a) a description of each requested document sufficient to identify it, or a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist;
 - (b) a statement as to how the documents requested are directly relevant to an allegation in issue in the pleadings;
 - (c) a statement that the documents requested are not in the possession or control of the requesting party or a statement of the reasons why it would be unreasonably burdensome for the requesting party to identify or produce such documents; and
 - (d) a statement of the reasons why the requesting party assumes that the documents requested are in the possession or control of the other party.
- 2.7 Subject to clause 2.8, each party will use their best endeavours to comply with such requests and endeavour to make disclosure within 21 days after the date of the request for additional documents being made.
- 2.8 If the party to whom the request for additional documents is issued has an objection to disclosure of some or all of the documents requested, it shall state the objection in writing to the other party within seven (7) days of the receipt of the request. The reasons for such objection may include any of the following reasons:
- (a) the documents requested are not directly relevant to an allegation in issue in the pleadings;
 - (b) the likely time, cost and inconvenience involved in locating, reviewing and disclosing the documents or classes of documents is disproportionate in the circumstances;
 - (c) the relative importance of the question to which the documents or classes of documents relate;
 - (d) the probable effect on the outcome of the Proceeding of disclosing or not disclosing the documents or classes of documents;
 - (e) the loss or destruction of the document, with such loss or destruction to have been shown with reasonable likelihood to have occurred;
 - (f) privilege;
 - (g) the documents are not reasonably necessary to enable the Court to decide the issue to which the documents relate;
 - (h) there is another reasonably simple and inexpensive way of proving the matters to which the documents relate, including an admission by the party making the objection and the terms of the proposed admission; or
 - (i) any other sufficient reason as to why the production of the documents is not required to facilitate the just and expeditious resolution of the real issues in the Proceeding at a minimum of expense.

- 2.9 Upon the receipt of any such objection the parties agree to resolve the dispute in accordance with section 8 below.

3 Scope of disclosure

- 3.1 The parties acknowledge that the extent of the search and review of documents for disclosure depends on the circumstances of the case.
- 3.2 Subject to this Document Plan, the documents to be disclosed in the Proceeding are those the parties have a duty to disclose under UCPR r 211.
- 3.3 The parties acknowledge that:
- (a) subject to a contrary court order, the parties are not required to give disclosure under UCPR r 214 or UCPR r 216 in accordance with Order 9 of the Orders of Jackson J dated 13 April 2017;
 - (b) in that context, the parties are cognisant of their obligation to adopt a proportionate and efficient approach to the management and disclosure of both paper and electronic documents;
 - (c) the parties agree that they may employ any or all of the following techniques to complete disclosure:
 - (i) date filtering;
 - (ii) domain / custodian analysis;
 - (iii) keyword / issue searches;
 - (iv) data analytics; and
 - (v) predictive coding;
 - (d) the parties will confer on an ongoing basis to consider options that may be implemented to give effect to the efficient management of documents, further to the above, including:
 - (i) the exchange of documents by category;
 - (ii) the exchange of relevant emails (and other electronic documents) following the use of search terms intended to narrow the scope of documents requiring review; and/or
 - (iii) any limitations that may be imposed on the duty of disclosure, having regard to the factors specified under UCPR r 224(2).
- 3.4 The parties further agree (without limiting their right to later request these documents) that there is no request on either party, at this stage, to restore deleted emails from backup files or to otherwise search back up files provided that there are no material omissions in the documentary record. In circumstances where there are such omissions the parties are expected to restore those documents from backup files to the extent necessary to address those omissions. For example, if an email inbox that is reasonably expected to contain directly relevant documents does not contain those documents or cannot be accessed or no longer exists in 'live' form for a relevant period of time and the only copies of the emails and attachments exist on back up files, the party will restore the email inbox from backup files to the extent necessary to cover that relevant period of time and to identify any directly relevant documents.
- 3.5 The parties agree that an order be sought from the Supreme Court of Queensland pursuant to UCPR r224 that they be relieved of the duty of disclosure except to the extent set out in this Document Plan.

4 Reasonable Searches

- 4.1 The parties agree that searches for relevant documents will be conducted by searches in the following locations:
- (a) hard copy and electronic files to the extent these relate to the claims in the Proceedings;
 - (b) files containing reports, memoranda or other records in relation to the Proceedings;
 - (c) servers, computer hard drive and Outlook / Lotus Notes etc. folders for emails and email attachments; and
 - (d) project databases, such as Project Centre or Aconex, kept for the purpose of the project.
- 4.2 In the interests of efficiency and proportionality, and in order to identify only those emails, email attachments and other electronic documents (**Electronic Documents**) that are or may be relevant to the Proceeding, the parties agree that they will limit their review of Electronic Documents to those identified after the following searches have been undertaken, in the order set out below:
- (a) all Electronic Documents stored on servers, computer hard drives, Outlook or Lotus Notes folders during the period 1 September 2011 to 16 May 2016 will be obtained and uploaded to a database (the **Database**);
 - (b) all duplicate Electronic Documents and corrupt files will be removed from the Database;
 - (c) all emails which contain any one of the domain names set out in Part A of Schedule 1 or any one of the email addresses set out in Part B of Schedule 1 in either the 'to', 'from', 'copy' or 'bcc' fields will be included in the Database. All emails which do not contain one of the email addresses or domain names listed in Schedule 1 Part A or Part B will be removed from the Database;
 - (d) In addition to (c) above, all emails which contain any one of the domain names set out in Part A of Schedule 2 or any one of the email addresses set out in Part B of Schedule 2 in either the 'to', 'from', 'copy' or 'bcc' fields will be removed from the Database as these custodians are irrelevant to the Proceeding. To be clear, any emails between custodians listed in Schedule 1 Part A or Part B and custodians listed in Schedule 2 Part A or Part B will be removed from the Database; and
 - (e) only those Electronic Documents which have a hit in response to the search term strings set out in Schedule 3 will remain in the Database. To be clear, Electronic Documents which do not have a hit in response to any of the words appearing in the relevant search strings in Schedule 3 will be removed from the Database.
- 4.3 The parties agree that each party will only be required to review those Electronic Documents which are left in each party's Database after the above searches have been undertaken.

5 Document management protocol

- 5.1 The parties agree to list all documents disclosed using the alternative schedule in UCPR Form 19.
- 5.2 The parties agree that the Protocol for Electronic Exchange of Disclosed Documents which form **Attachment A** to this Document Plan (**Document Management Protocol**) will apply to the exchange of documents in the Proceeding.

6 Preservation of Electronic Documents

- 6.1 The parties agree that Electronic Documents that are potentially discoverable will be preserved in

their original native format.

7 Confidentiality

- 7.1 The parties acknowledge that they each have a duty to disclose documents which are directly relevant to an allegation in issue in the pleadings, subject to the scope of disclosure identified in the Document Plan.
- 7.2 The parties further acknowledge that documents which are discoverable in the Proceeding may contain information which is confidential and commercial in confidence to both Redpath and Anglo (**Confidential Information**).
- 7.3 The parties agree that, prior to disclosure, a party may redact a part or parts of a document provided that:
- (a) the part or parts of the document redacted is both:
 - (i) irrelevant to an allegation in issue in the pleadings; and
 - (ii) contains Confidential Information.
 - (b) the redaction does not unreasonably hinder or prevent the other party from identifying and understanding the part or parts of the document which is directly relevant to an allegation in issue in the pleadings; and
 - (c) the redaction is made obvious.
- 7.4 This is in addition to any redactions the parties may make for part-privileged material contained in discoverable documents.
- 7.5 If a party has an objection to the redaction of one or more documents, it shall state the objection in writing to the other party.
- 7.6 Upon the receipt of any such objection the parties agree to resolve the disputes in accordance with section 8 below.
- 7.7 The parties will confer on an ongoing basis to consider options for the management of Confidential Information in the Proceeding, including the giving of appropriate confidentiality undertakings.

8 Resolution of disagreements

The parties agree that in the event of any disputes in relation to disclosure or the Document Management Protocol, the dispute will, in the first instance, be referred to a meeting of the nominated representatives (of the relevant parties) outlined below or as updated from time to time:

- (a) Geoff Rankin and/or Nikki O'Leary, Allens; and
- (b) Kathryn Finlayson, Minter Ellison.

The nominated representatives will make reasonable endeavours to meet within five (5) business days of the dispute being referred, or any further period agreed in writing. The parties agree that if there is still a dispute between the parties as to the further disclosure of documents, the matter is to be referred to the Court for determination but that the issues for determination are to be limited to the matters identified in the notice referring the matter to the nominated representatives.

The parties agree that a meeting between the nominated representatives may take place by telephone, video conference or another form of electronic communication agreed by the parties.