



**In the matter of Aztec Resources Limited
[2006] ATP 28**

Catchwords:

Association – content of bidder’s statement – forecasts – application declined – undertaking to the Panel

Corporations Act 2001 (Cth) sections 633, 636

Aztec Resources Limited, Mount Gibson Iron Limited, Gindalbie Metals Limited

These are the Panel’s reasons for declining the application by Aztec Resources Limited to make a declaration of unacceptable circumstances in relation to the affairs of Aztec Resources Limited and final orders. The Panel decided not to make a declaration of unacceptable circumstances or final orders having received undertakings from Mount Gibson Iron Limited to make some additional disclosure.

SUMMARY

1. These reasons relate to an application (the **Application**) to the Panel from Aztec Resources Limited (**Aztec**) on 21 August 2006 in relation to an off-market, scrip takeover bid by Mount Gibson Iron Limited (**Mount Gibson**) for all of the shares in Aztec.
2. Aztec submitted that there were deficiencies in the disclosure made in the Mount Gibson bidder’s statement (**Bidder’s Statement**). Aztec submitted that these related to issues including:
 - (a) a merger of Mount Gibson (after the takeover bid for Aztec) with Gindalbie Metals Limited (**Gindalbie**) (the “**3 Way Merger**”) which had been discussed between the parties prior to the Mount Gibson offer, but which Mount Gibson submitted had been abandoned; and
 - (b) production and financial information relating to Mount Gibson.
3. Aztec also submitted that Mount Gibson and Gindalbie were associates in relation to the affairs of Aztec and the 3 Way Merger.
4. The Panel did not consider, on the material presented to it, that Mount Gibson and Gindalbie were associates. The Panel did not consider it necessary to make a decision regarding whether an association had previously existed between Mount Gibson and Gindalbie at the time of the 3 Way Merger discussions because the evidence provided to the Panel indicated that any such association, if it had existed at any stage previously, had been terminated by the time of these proceedings.
5. In relation to Aztec’s submissions regarding disclosure, the Panel noted the supplementary bidder’s statement released by Mount Gibson on 6 September 2006 (and despatched to Aztec shareholders) which contained disclosure concerning, among other things, the 3 Way Merger discussions. Except in relation to a forecast as to Mount Gibson’s financial performance, the Panel did not consider that additional disclosure, beyond the 6 September supplementary bidder’s statement, was required by Mount Gibson.

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6. In relation to forecasts, the Panel considered that in the particular circumstances of this case it would be reasonable for Aztec shareholders and their professional advisers to expect to find a forecast of Mount Gibson's financial performance to 31 December 2006, in the Bidder's Statement relating to Mount Gibson's scrip offer. The Panel advised Mount Gibson that it was minded to make a declaration of unacceptable circumstances in relation to the absence of such a forecast. However, the Panel accepted undertakings offered by Mount Gibson in relation to the provision of forecast financial information in a supplementary bidder's statement which it considered remedied the possible unacceptable circumstances. Accordingly, the Panel did not make a declaration of unacceptable circumstances.

THE PANEL & PROCESS

7. The President of the Panel appointed Peter Mason AM, Alice McCleary (sitting President) and John O'Sullivan (sitting Deputy President) as the sitting Panel (the **Panel**) for the proceedings (the **Proceedings**) arising from the Application.
8. The Panel adopted the Panel's published procedural rules for the purposes of the Proceedings.
9. The Panel consented to the parties being legally represented by their commercial lawyers in the Proceedings.

APPLICATION

Background

Aztec

10. Aztec is an iron ore company developing the Koolan Island Iron Ore Project located in the Buccaneer Archipelago of Yampi Sound in Western Australia. Aztec's issued securities consist of ordinary shares listed on the Australian Stock Exchange (**ASX**) and unlisted options to subscribe for ordinary shares.

Mount Gibson

11. Mount Gibson is an Australian iron ore company with operating and exploration projects in the mid-west region of Western Australia. Mount Gibson's issued securities consist of ordinary shares listed on the ASX, listed options to subscribe for ordinary shares and unlisted options to subscribe for ordinary shares.

Discussions

12. During May and June of 2006 negotiations were held between representatives of Mount Gibson and Aztec concerning a possible friendly acquisition by Mount Gibson of Aztec. Later in June 2006, discussions occurred between Mount Gibson, Gindalbie and Aztec which resulted in the consideration of the 3 Way Merger proposal.
13. There were a number of meetings with a range of management and directors from the three companies and their advisers. Some of those meetings which were relevant to the Panel's decision are described below.
14. On 13 June, Mr Luke Tonkin, the Managing Director of Mount Gibson, met with Mr George Jones, Gindalbie's Executive Chairman, at the request of Mr Jones. During

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the course of the meeting Mr Tonkin and Mr Jones discussed whether Mount Gibson would be prepared to consider a merger with Gindalbie. Mr Tonkin explained to Mr Jones that, at that stage, Mount Gibson was only interested in pursuing a merger with Aztec and was therefore unlikely to consider a merger with Gindalbie unless it also included Aztec. The reason why Mr Tonkin considered Mount Gibson was unlikely to pursue a merger with Gindalbie alone was because:

- (a) Mount Gibson had just agreed to sell its interest in the Extension Hill Magnetite Project; and
 - (b) a merger with Gindalbie, which is predominantly focused on developing a magnetite project, was inconsistent with Mount Gibson's hematite focused strategy.
15. On 24 June, the possibility of the 3 Way Merger between Mount Gibson, Gindalbie and Aztec was raised with Dr Ian Burston (Aztec's Chairman) by Mr Jones. At this meeting Dr Burston informed Mr Jones that Aztec was currently busy with its Koolan Island Project.
 16. On 29 June, Mr Tonkin and Mr Alan Rule (Mount Gibson's finance director) met with Mr Peter Bacchus (Citigroup, Mount Gibson's financial adviser), Mr John Byrne (Managing director, Cambrian Mining Plc (**Cambrian**)) and Mr Jones to consider the possibility of a 3 Way Merger. The discussion related primarily to Cambrian's reaction and intentions regarding the possibility of a 3 Way Merger.
 17. On 7 July, Mr Tonkin received a report on Gindalbie's assets that was prepared by its technical consultants. The report produced various conclusions which Mount Gibson took into account in considering its position with respect to the 3 Way Merger.
 18. On 18 July, Mr Tonkin spoke to Mr Hanson and Mr Chris Knoblanche from Citigroup who informed Mr Tonkin that they had "*serious concerns about the [3] Way Merger Proposal.*"
 19. On 19 July Mr Tonkin had an informal meeting with the other members of the board, excluding Mr Brian Johnson (Mount Gibson's Deputy Chairman). Mr Alan Rule attended by telephone hook up. The board members discussed Citigroup's advice (noted at paragraph 18 above). The board members also discussed the merits of pursuing a merger with Aztec only. Mr Tonkin's witness statement provides "*the consensus from these discussions was that the risks associated with pursuing an Aztec only merger were significantly reduced and my impression was that all of the directors at the meeting were of the belief that this was the best option to pursue.*"
 20. After the meeting discussed in paragraph 19, Mr Tonkin telephoned Mr Jones to inform him that Mount Gibson management would not be presenting the 3 Way Merger proposal to the board based on advice received from Citigroup.
 21. Also on 19 July, according to the witness statement of Mr Geoff Clifford (a non-executive director of Aztec), Mr Peter Bilbe (Aztec's Managing Director) telephoned Mr Jones and advised him that Aztec did not wish to proceed with the 3 Way Merger at that time.

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22. On 20 July, Mr Jones telephoned Mr Clifford expressing concern regarding the lack of response from Aztec directors, given that Mount Gibson and Gindalbie representatives were due to meet that day to discuss the 3 Way Merger. Mr Clifford's witness statement notes that "*our main reason for not endorsing the 3 Way Merger at this time were that we would need to conduct full and proper due diligence first and that it was bad timing for us, as we were focussing on our funding efforts to develop the Koolan Island iron ore project.*"
23. On 21 July, Mr Tonkin advised the Mount Gibson board that he would not be presenting a proposal regarding the 3 Way Merger because of advice received from Citigroup. He also noted that he would be submitting a proposal in relation to an off-market takeover of Aztec, over the coming weekend.
24. On 23 July, the Mount Gibson board met to consider and approve the Aztec bid proposal and the entry into a Call Option Agreement with Cambrian (Aztec's largest shareholder) to acquire from Cambrian 159,031,922 fully paid ordinary shares in Aztec, which at the time of that agreement represented a 19.9% shareholding in Aztec.¹
25. On 24 July, Mount Gibson announced its scrip takeover bid for Aztec. The bid offered 1 Mount Gibson share for 3 Aztec shares (**Offer**).
26. On 27 July, Gindalbie (through its wholly-owned subsidiary DSO Ventures Pty Ltd) purchased options to subscribe for fully paid ordinary shares in Aztec held by Cambrian. Gindalbie's subsidiary, DSO Ventures Pty Ltd, exercised those options and accordingly, held 2.69% of the issued share capital of Aztec.
27. On 11 August, Mount Gibson lodged with ASIC a bidder's statement in respect of its Offer (**Bidder's Statement**). It sent the Bidder's Statement to Aztec on the same date.
28. The first date upon which the Bidder's Statement was able to be dispatched by Mount Gibson to Aztec shareholders, under section 633, was 25 August 2006.
29. Between 16 August and 21 August, there was various correspondence between the solicitors of Aztec and Mount Gibson in relation to, what Aztec submitted were, defects in the Bidder's Statement. Attempts to resolve the contentious issues between the parties were unsuccessful and accordingly, Aztec made the Application to the Panel.

Declaration and orders sought in the Application

30. Aztec sought a declaration of unacceptable circumstances in relation to, what it submitted were, deficiencies in the Bidder's Statement relating to, among other things:
 - (a) the 3 Way Merger; and
 - (b) production and financial information relating to Mount Gibson.

¹ At the date of the Application, that number of shares was equivalent to 15.27% of the issued capital of Aztec (the percentage interest having been diluted as a result of the exercise on or before 31 July of a large number of options to subscribe for fully paid ordinary shares in Aztec).

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31. Aztec sought final orders that Mount Gibson be required to lodge a replacement Bidder's Statement.
32. Furthermore, Aztec sought a declaration of unacceptable circumstances, on the basis of an association which it submitted existed between Mount Gibson and Gindalbie in relation to Aztec. Aztec submitted that because Mount Gibson and Gindalbie were associates, they were required to provide the substantial shareholding information required under Part 6C.1. Aztec submitted that the failure by Mount Gibson and Gindalbie to give such substantial holding notices constituted unacceptable circumstances.
33. Aztec sought final orders that DSO Venture Pty Ltd (Gindalbie's subsidiary) be required to dispose of its shares in Aztec. Alternatively, Aztec sought orders that Gindalbie and Mount Gibson be required to disclose their association in substantial holder notices and in the Bidder's Statement.

DISCUSSION

Termination of the 3 Way Merger

34. The Panel requested, and was provided with, sworn statements as to the reasons why Aztec declined to participate in, and Mount Gibson terminated, the 3 Way Merger discussions. The Panel noted that Mount Gibson asserted that some of the material relating to this issue should be withheld from the other parties on the basis that the information and documents were confidential and commercially sensitive especially as between bidder and target during a takeover bid. The parties failed to reach agreement on how to deal with the confidential information in the documents. Given that failure, the Panel declined to consider any material that was not provided to all parties as the Panel considered that it could reach a decision on the basis of the parties' submissions with the information which was commercially sensitive between them blacked-out. If the Panel had read the confidential material and based its decision on that material, without all parties having access to the material (or waiving their rights to receive that material) it may have given rise to issues of procedural fairness.
35. Notwithstanding this, it was clear to the Panel, on the basis of the redacted submissions and witness statements that:
 - (a) on or about 18 July 2006, Mount Gibson had received advice from Citigroup that it no longer recommended proceeding with the 3 Way Merger in its current form; and
 - (b) Mount Gibson also relied on the conclusions of its financial advisers and its technical advisers (who had prepared a report for Mount Gibson dated 7 July 2006) (see paragraph 17).
36. The Panel discussed the extent to which it should inquire into the technical and commercial validity of the reasons adopted by Mount Gibson's management team² for not recommending the 3 Way Merger to the Mount Gibson board. The Panel did not consider it necessary to examine, in detail, the technical and commercial validity

² Although the Panel notes that many directors were involved in these discussions. Note also paragraph 42.

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of the reasons why Mount Gibson management abandoned the 3 Way Merger discussions. Boards and management teams are regularly faced with decisions about whether to proceed with, or abandon, projects or proposals. Particularly in an industry faced with the uncertainties and risk factors that the mining industry faces, the Panel could not see any reason to “second guess” the judgement exercised by Mount Gibson’s management team in deciding not to proceed with the 3 Way Merger.

Association

37. The Panel did not consider, based on the material presented to it, that Mount Gibson and Gindalbie were associates. It appeared to the Panel that Mount Gibson and Gindalbie had considered a 3 Way merger, and had discussed the proposal with Aztec. However, there was no evidence presented to the Panel that Mount Gibson and Gindalbie had had any further agreement or understanding in relation to Aztec after Mount Gibson had decided not to proceed with the 3 Way Merger.
38. The material before the Panel did not provide direct evidence, or even a reasonable inference, of an association either:
 - (a) in existence at the time those discussions took place; or
 - (b) after, as Mount Gibson and Gindalbie submitted, those discussions were abandoned.
39. The Panel noted that for it to find an association between Mount Gibson and Gindalbie, the Panel would need to disregard the sworn evidence provided by representatives of Mount Gibson and Gindalbie, in favour of adopting inferences based on Aztec’s interpretation of an historical chronology of events. The Panel considered that Aztec’s inferences and preferred interpretation were not supported by firm evidence, or the nature and terms of the commercial transactions. The Panel also considered that Mount Gibson had provided a reasonable commercial explanation of the chronology of events.
40. The Panel did not consider that it could reasonably draw such conclusions and accordingly, found that it did not have a reasonable basis to consider or infer that Mount Gibson and Gindalbie were associates at the time of the Offer.
41. The Panel did not consider it necessary to make a decision regarding whether an association had previously existed between Mount Gibson and Gindalbie at the time of the 3 Way Merger discussions because the evidence suggested that any such association, if it existed, had been terminated.

Disclosure of 3 Way Merger discussions

42. The Panel was not persuaded by submissions from Mount Gibson that since there had not been formal board approval of the 3 Way Merger there was no need for its disclosure in the Bidder’s Statement. The background facts set out in these reasons indicate that there were a number of discussions at which almost all of Mount Gibson’s directors were present either together or at different times. It could not be said that simply because the proposal had not been tabled at a formal board meeting, that it was so incomplete as to not be relevant to Aztec shareholders (or the market generally).

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43. Whilst the Panel appreciates the difficulties for boards and management teams in balancing their disclosure obligations against the desirability of maintaining confidential discussions, the Panel considers that, in this case given:
- (a) the course of conduct of the parties;
 - (b) the extent to which the 3 Way Merger proposal had been developed prior to it being abandoned;
 - (c) that the 3 Way Merger discussions took place immediately preceding the launch of a takeover bid by Mount Gibson for Aztec;
 - (d) the disclosure requirement in section 636(1)(m) (which is not limited by the Listing Rule 3.1 exceptions); and
 - (e) that Mount Gibson had made clear statements concerning consolidation of the iron ore industry, both in media statements prior to and during the takeover, and in its Bidder's Statement,

it was reasonable to expect that, at the least, the fact that the 3 Way Merger discussions had occurred should have been disclosed in the Bidder's Statement.

44. As noted above, the Panel accepted that Mount Gibson had commercial reasons for its decision not to pursue the 3 Way Merger discussions (in addition to any reasons it may have had relating to the difficulty of implementation of the 3 Way Merger). The Panel did not consider that, in any disclosure Mount Gibson was required to make regarding the 3 Way Merger discussions that Mount Gibson was obliged to elaborate on those reasons, since that may be likely to fuel speculation and draw unnecessary attention to what, the Panel found, was a dead issue.
45. The Panel noted that on 6 September, Mount Gibson published a supplementary bidder's statement, which was later sent to Aztec shareholders which included, among other things, disclosure in relation to the fact that the 3 Way Merger discussions had occurred.
46. Accordingly, in the light of that further disclosure, the Panel did not consider that Aztec shareholders required any additional disclosure in relation to the reasons for abandoning the 3 Way Merger discussions.

Forecasts

47. Aztec submitted that there were a number of statements (**Statements**) in the Bidder's Statement which were of a forward-looking nature in relation to Mount Gibson and/or the combined Mount Gibson / Aztec group. Aztec submitted that Mount Gibson did not provide substantiation of those statements in the form of financial forecasts. Examples of the Statements included:
- (a) "financial strength" (Chairman's letter);
 - (b) "strong forecast cash flows" from Tallering Peak (Reason 1);
 - (c) "Merged Group's relative scale, strong balance sheet and cashflow generation" (Reason 1);

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- (d) “strong balance sheet”, “cash generating capability to cover potential cost overruns and remedy potential delays” and “cash generating capability to cover potential lost revenue as a result of project risks” (Reason 5);
 - (e) “larger, more financially secure and growth focused ASX 200 company” with “strong balance sheet with strong cash flow generating assets” (Reason 6).
48. Aztec further submitted that the Statements were inconsistent with Mount Gibson’s historical financial information and ignored the risks disclosed elsewhere in the Bidder's Statement.
49. Aztec also noted that section 8.4(a) of the Bidder's Statement gave reasons for Mount Gibson not disclosing financial forecasts in the Bidder's Statement. However, Aztec submitted that this approach conflicted with Mount Gibson's previous preparedness to make financial forecasts. Specifically, Aztec highlighted that Mount Gibson had provided 3 years of financial projections in an investor presentation released to ASX on 5 May 2005.
50. Aztec also submitted that:
- (a) Mount Gibson had stated that its iron ore prices were fully contracted for the coming year³;
 - (b) Mount Gibson had provided a forecast price series from CRU;
 - (c) Mount Gibson had provided production forecasts in the Bidder's Statement up to 2011 for each of the combined projects (contained in the production chart in Reason 1) as well as the previously released financial forecasts referred to above;
 - (d) Mount Gibson had hedging contracts that covered 50% of foreign exchange rate commitments over the next 12 months; and
 - (e) Mount Gibson had emphasised in its bidder’s statement the strength of its balance sheet and cash flow going forward.
51. Mount Gibson submitted that including a stand-alone forecast for Mount Gibson would be of little use to an Aztec shareholder in making their decision on the bid as Aztec shareholders who accepted the bid would not hold shares in Mount Gibson as a stand-alone entity.
52. Mount Gibson further submitted that the 5 May 2005 investor presentation contained “projections” (as opposed to forecasts) which were not provided in the context of a control transaction (in which the investment decision faced by the potential user of the information is very different). Mount Gibson submitted that it made an announcement on 22 December 2005 which clarified that the projections previously released from FY 05/06 forward should not be relied upon, as they included the magnetite management fee and Longtan Pellets, both of which were irrelevant given the sale of Asia Iron Holdings. Further, Mount Gibson noted that the projection for Tallering Peak was more than 1 year old and was based on an operations model that had been surpassed.

³ Page 5 of the Bidder’s Statement provided that prices were fixed to the prevailing published FOB prices for iron ore sold by Hamersley Iron from its Pilbara ports.

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53. The Panel noted the further reasons provided by Mount Gibson in support of its contention that Mount Gibson had no reasonable basis for providing a stand-alone forecast to 31 December 2006, namely that:
- (a) mining is inherently uncertain and as such, there is no certainty as to the nature and grade of minerals until they are extracted;
 - (b) whilst prices have been contracted, there are various uncertainties which can result in contracts not being fulfilled (such as shipping risks, buyers not paying, deferred or cancelled contracts in response to changes in domestic and global economic conditions) and accordingly, Mount Gibson's view was that it was not reasonable to predict the precise volume of production that would be sold in accordance with contracted prices;
 - (c) potential delays shipping schedules (which may result from weather, availability of ships etc) which affect the recognition of revenue; and
 - (d) provision of a short term forecast would create an additional reporting obligation by effectively requiring Mount Gibson management to provide monthly updated forecasts, which was unreasonable.
54. The Panel considered that the uncertainties that Mount Gibson raised (noted in sub-paragraphs (a), (b) and (c) above) could be dealt with by disclosure of assumptions and qualifications to any forecast.
55. The Panel was not satisfied that, if the forecast was qualified in such a manner, the reasons that Mount Gibson gave to the Panel prevented it from having a reasonable basis for providing a forecast for the period to 31 December 2006.
56. Furthermore, the Panel also considered that the additional reporting burden submitted by Mount Gibson (sub-paragraph 53(d)) (if the forecast would in fact give rise to such an obligation) was not unduly onerous given a forecast period ending 31 December 2006 (that is, a forecast period of less than 4 months).
57. The Panel considered that it would be reasonable for Aztec shareholders and their professional advisers to expect to find a forecast, to 31 December 2006, in the bidder's statement relating to Mount Gibson's scrip offer. The Panel advised Mount Gibson that it was minded to make a declaration of unacceptable circumstances in relation to the absence of such a forecast from the Bidder's Statement. However, the Panel advised that it would be willing to consider accepting undertakings from Mount Gibson to avoid this.
58. The Panel accepted undertakings offered by Mount Gibson in relation to the provision of forecast financial information in a supplementary bidder's statement which it considered remedied the possible unacceptable circumstances in relation to the forecast information.
59. Accordingly, considering the first Mount Gibson supplementary bidder's statement, and the undertakings offered by Mount Gibson in relation to forecast information, the Panel decided it would not be against the public interest for it to decline to make a declaration of unacceptable circumstances. The undertakings are described in Annexure A (**Undertakings**).

Remaining disclosure issues

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60. The Panel noted that there were various additional disclosure issues which had been raised by Aztec in its Application. A number of these issues were addressed by Mount Gibson in its supplementary bidder's statement dated 6 September 2006. The Panel commends the parties for resolving the majority of those disclosure issues without the assistance of the Panel.
61. The Panel noted that, in relation to the "remaining" disclosure issues, no further disclosure was required by Mount Gibson. The Panel noted that it was open to Aztec to raise any further concerns it had in relation to these issues in Aztec's target's statement if it considered that desirable.

DECISION

62. In the light of:
 - (a) the Panel's finding that Mount Gibson and Gindalbie were not associates and no additional disclosure was required by Mount Gibson in relation to the 3 Way Merger;
 - (b) the additional disclosures made by Mount Gibson in its first supplementary bidder's statement;
 - (c) the Panel's acceptance of Mount Gibson's undertaking to provide forecast financial information in a supplementary bidder's statement, to be dispatched to Aztec shareholders; and
 - (d) the Panel's finding that the "remaining" disclosure issues could be properly addressed in Aztec's target's statement (if Aztec so desired),the Panel did not make a declaration of unacceptable circumstances, nor an order requiring Mount Gibson to provide a replacement bidder's statement.
63. As the Panel declined to make a declaration of unacceptable circumstances it made no order for costs.

Alice McCleary
President of the Sitting Panel
Decision dated 12 September 2006
Reasons published 1 November 2006

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Annexure A - Undertakings

Pursuant to subsection 201A(1) of the *Australian Securities and Investments Commission Act 2001 (Cth)*, Mount Gibson undertakes to the Takeovers Panel that it will as soon as practicable, prepare a supplementary bidder's statement (**Supplementary Bidder's Statement**) to be lodged with ASIC, released to Australian Stock Exchange Limited and sent to each Aztec shareholder, which will include the following information:

- (a) the directors' forecast consolidated net profit after tax of Mount Gibson and its controlled entities (**Mount Gibson Group**) on a stand alone basis for the six month period ending on 31 December 2006, expressed as a range (**Forecast**);
- (b) the directors' best estimate assumptions, also expressed as a range, for the following operational and financial parameters:
 - (i) waste mined (in bcm);
 - (ii) ore mined (in tonnes);
 - (iii) ore sold (in tonnes);
 - (iv) exchange rate (US\$ to A\$);
 - (v) cost per tonne of ore (in A\$); and
 - (vi) administration and corporate costs (in A\$);
- (c) any other material assumptions, qualifications and risks underlying the Forecast;
- (d) a statement to the effect that:
 - (i) the Forecast is provided under the terms of this undertaking, which resulted from proceedings brought against Mount Gibson in the Takeovers Panel by Aztec;
 - (ii) inclusion of the Forecast should not be taken to amount to a representation that Mount Gibson believes that the Forecast is material to a decision by an Aztec shareholder whether or not to accept the Offer;
 - (iii) the Forecast is for the Mount Gibson Group on a stand alone basis and does not reflect the acquisition of Aztec under the Offer, which may have a material impact on the actual consolidated net profit after tax of the Mount Gibson Group for the six months ended 31 December 2006;
 - (iv) the Forecast has not been externally reviewed or verified; and
 - (v) it is not Mount Gibson's normal policy or future intention to provide profit forecasts in the nature of the Forecast, nor to continuously update the market on changes in the operational and financial parameters listed in paragraph (b) of this undertaking, except to the extent required by applicable law; and
- (e) a cautionary statement, in standard form, with respect to reliance on forward-looking information.