



23 August 2013

Elizabeth Harris,
Principal Adviser, Listings (Perth)
Australian Securities Exchange
Exchange Plaza, 2 The Esplanade,
Perth WA 6000

Via email: elizabeth.harris@asx.com.au

Dear Ms Harris,

Macmahon Holdings Limited ("Company" or "Entity") – Response to query

We refer to your letter dated 22 August 2013 and respond as follows. We have used the same defined terms as you used in your letter.

1. **Does the Entity consider the change in the Company's annual net loss from that forecast in the Earnings Guidance to the Annual Loss ("Increased Loss") to be information that a reasonable person would expect to have a material effect on the price or value of its securities?**

Yes.

2. **If the answer to question 1 is "no", please advise the basis for that view.**

Not applicable.

3. **If the answer to question 1 is "yes", when did the Entity first become aware of the Increased Loss.**

The Company became aware of the Increased Loss after the close of the market on Monday, 19 August 2013. The Increased Loss was then announced by the Company as part of the Company's full year results announcement before the open of the market on Tuesday, 20 August 2013.

For the purpose of addressing ASX's query, and in order to provide background on the circumstances that led to the Increased Loss, the Company provides the following information:

- (a) The Increased Loss, which formed part of the actual reported net loss after tax of the Company for its financial year ended 30 June 2013 ("**FY 2013**"), was determined by the Board at a scheduled meeting to finalise the FY 2013 results after the close of market on Monday 19 August 2013 ("**Approval Board Meeting**").
- (b) As noted in the Company's announcement to ASX titled "Macmahon announces full year results, with strong mining performance" released at 9.11 an (EST) on

Tuesday, 20 August 2013, the Increased Loss was outside of the Company's previous guidance due to the take-up of non-cash provisions for doubtful debts and asset impairment ("**Relevant Non-Cash Provisions**").

- (c) At the Approval Board Meeting, the Board was presented with an update regarding the status of discussions and negotiations in which the Company was seeking to agree the quantum and terms of payment of certain outstanding claims. These discussions and negotiations were ongoing at the time of the Approval Board Meeting and are continuing as at the date of this letter ("**Relevant Negotiations**"). The fact that the Relevant Negotiations had not concluded at the time of the Approval Board Meeting, and that sufficient payment had not been received toward the outstanding claims, led management to recommend to the Board, and the Board to decide, that it was appropriate that the Relevant Non-Cash Provisions be recognised in the FY 2013 results. The recognition of these provisions reflected management's and the Board's conservative view of the current economic uncertainty affecting the sector.
 - (d) At all times up to the close of market on Monday, 19 August 2013, the Company considered, on reasonable grounds, that there was a realistic possibility that the Relevant Negotiations would reach a successful conclusion prior to the approval of the FY 2013 results, or that a sufficient payment would be received toward the outstanding claims, so that the recognition of the Relevant Non-Cash Provisions in the FY 2013 results would not be necessary.
 - (e) Had the Relevant Non-Cash Provisions not been recognised in the FY 2013 Results, the Company considers that its net loss after tax for FY 2013 would not have been materially outside the Company's previous earnings guidance having regard to ASX's guidance as to what constitutes a material difference to earnings guidance set out in ASX Guidance Note 8.
4. **If the answer to question 1 is "yes" and the Entity first became aware of the Increased Loss before Tuesday 20 August 2013, did the Entity make any announcement prior to the relevant date which disclosed the information? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe the entity was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps the Entity took to ensure that the information was released promptly and without delay.**

See response to question 3 above.

The need and the decision to recognise the Relevant Non-Cash Provisions in the FY 2013 results occurred after the close of market on Monday 19 August 2013. It cannot be said that the Company was aware of the Increased Loss prior to the close of the market on Monday 19 August 2013.

5. **Please confirm that the Entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.**

The Company confirms that it is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

Yours sincerely

[sent electronically without signature]

Greg Gettingby
Company Secretary
Macmahon Holdings Limited



ASX Compliance Pty Limited
ABN 26 087 780 489
Level 8 Exchange Plaza
2 The Esplanade
PERTH WA 6000

GPO Box D187
Perth WA 6840

Telephone 61 8 9224 0000
Facsimile 61 8 9221 2020
www.asx.com.au

22 August 2013

Mr Greg Gettingby
Company Secretary
MacMahon Holdings Limited
Level 3, 27 -31 Troode Street
WEST PERTH WA 6005

Dear Greg

MacMahon Holdings Limited (the “Entity”) ASX aware query

ASX Limited (“ASX”) refers to the following:

1. The Entity’s announcement entitled “MacMahon announces half year results confirming strategy for mining future” lodged with ASX Market Announcements Platform and released at 9:38 am (EST) on Wednesday 27 February 2013 (the “Half Year Results Announcement”), in which the Entity revised its Full Year Earnings Guidance for 2013 to a net loss after tax in the range of \$10 to \$20 million (“Earnings Guidance”).
2. The Entity’s announcement entitled “ Full Year Results 2013” lodged with ASX Market Announcements Platform and released at 9:19 am (EST) on Tuesday 20 August 2013 (the “Full Year Results Announcement”), disclosing a consolidated net loss of \$29.5 million for the full year ending 30 June 2013 (“Annual Loss”).
3. A change in the Entity’s share price from a closing price of 17.5 cents on Monday 19 August 2013 to an intra-day low of 13.5 cents on Tuesday 20 August 2013. There was also an increased volume of trades on Tuesday 20 August 2013.
4. Listing Rule 3.1, which requires a listed entity to give ASX immediately any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity’s securities.
5. The definition of “aware” in Chapter 19 of the Listing Rules. This definition states that:

“an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.”

Additionally, you should refer to (1) section 4.4 in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B “When does an entity become aware of information”* and (2) Section 7.3 in Guidance Note 8 entitled *“Earnings Surprises”*.

6. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied.

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

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

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

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

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

5. ASX’s policy position on the concept of “confidentiality” which is detailed in section 5.8 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* “Listing Rule 3.1A.2 – the requirement for information to be confidential”. In particular, the Guidance Note states that:

“Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule.”

Having regard to the above, we ask that you answer the following questions in a format suitable for release to the market in accordance with Listing Rule 18.7A:

1. Does the Entity consider the change in the Company’s annual net loss from that forecast in the Earnings Guidance to the Annual Loss (“Increased Loss”) to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
2. If the answer to question 1 is “no”, please advise the basis for that view.
3. If the answer to question 1 is “yes”, when did the Entity first become aware of the Increased Loss.
4. If the answer to question 1 is “yes” and the Entity first became aware of the Increased Loss before Tuesday 20 August 2013, did the Entity make any announcement prior to the relevant date which disclosed the information? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe the entity was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps the Entity took to ensure that the information was released promptly and without delay.
5. Please confirm that the Entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.

When and where to send your response

This request is made under, and in accordance with, Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by not later than half an hour before the start of trading (ie before 7.30 am WST) on Monday 26 August 2013. If we do not have your response by then, ASX will have no choice but to consider suspending trading in the Entity’s securities under Listing Rule 17.3.

You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, the Entity’s obligation is to disclose the information “immediately”. This may require the information to be disclosed before the deadline set out in the previous paragraph.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at Elizabeth.Harris@ASX.com.au or by facsimile to 08 9221 2020. It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

Listing Rule 3.1

Listing Rule 3.1 requires a listed entity to give ASX immediately any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities. Exceptions to this requirement are set out in Listing Rule 3.1A.

The obligation of the Entity to disclose information under Listing Rules 3.1 and 3.1A is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

In responding to this letter, you should have regard to the Entity's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

Trading halt

If you are unable to respond to this letter by the time specified above, you should discuss with us whether it is appropriate to request a trading halt in the Entity's securities under Listing Rule 17.1.

If you wish a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;
- that you are not aware of any reason why the trading halt should not be granted; and
- any other information necessary to inform the market about the trading halt, or that we ask for.

We may require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted.

You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

[Sent electronically without signature]

Elizabeth Harris
Principal Adviser, Listings Compliance (Perth)