



Form 59  
Rule 29.02(1)

## Affidavit

No. 527 of 2024

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**FORTESCUE LIMITED ACN 002 594 872** and others  
Applicants

**ELEMENT ZERO PTY LIMITED ACN 664 342 081** and others  
Respondents

Affidavit of: **Michael John Williams**  
Address: Level 35, International Tower Two, 200 Barangaroo Avenue  
Barangaroo NSW 2000  
Occupation: Solicitor  
Date: 22 November 2024

### Contents

Document number	Details	Paragraph	Page
1	Fifth Affidavit of <b>Michael John Williams</b> sworn 22 November 2024	1 – 96	2 - 14
2	<b>Exhibit MJW-4</b> , being a bundle of documents	4	2

Filed on behalf of (name & role of party) The First, Second and Fourth Respondents  
Prepared by (name of person/lawyer) Michael John Williams, Partner  
Law firm (if applicable) Gilbert + Tobin  
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I **Michael John Williams** of Level 35, International Tower Two, 200 Barangaroo Avenue Barangaroo NSW 2000, Solicitor, say on oath:

### Introduction

1. I am the solicitor for the First, Second and Fourth Respondents (the **Element Zero Respondents**).
2. This is my fifth affidavit. To the extent that I refer to my experience below I am intending to rely on the experience set out in my Third Affidavit dated 25 June 2024.
3. I make this affidavit in support of the Element Zero Respondents' Interlocutory Application dated 20 November 2024 seeking discovery from the Applicants pursuant to rules 20.13 and 20.15 of the *Federal Court Rules 2011* (**Discovery Application**).
4. Exhibited to me at the time of making this affidavit is a paginated bundle of documents marked "**Exhibit MJW-4**" to which I refer below. A reference to a page number of **Exhibit MJW-4** is a reference to a document which appears on that page of the exhibit.
5. By referring in this affidavit to any information or instructions I received or obtained, I do not waive or intend to waive – nor am I authorised to waive – any privilege attaching to those instructions or any work I performed as a result of those instructions, other than where expressly referred to in this affidavit.

### Correspondence in relation to Discovery categories

6. In accordance with the orders made 23 October 2024, between 6 November 2024 and 21 November 2024, the parties exchanged correspondence with proposed categories of discovery and notified each other any categories of discovery which are consented to.
7. On 6 November 2024, there was the following exchange of emails between the solicitors for the Applicants and those of the Respondents:
  - (a) Davies Collison Cave sent an email to Gilbert + Tobin and MinterEllison attaching draft categories of discovery, which the Applicants propose to seek from the Respondents. A copy of this email is reproduced at pages 2 to 9 of **Exhibit MJW-4 (Applicants' Proposed Categories)**.
  - (b) Gilbert + Tobin sent an email to Davies Collison Cave attaching draft categories of discovery, which the Element Zero Respondents propose to seek from the Applicants. A copy of this email is reproduced at pages 10 to 13 of **Exhibit MJW-4 (Element Zero Respondents' Proposed Categories)**.
  - (c) MinterEllison sent an email to Davies Collison Cave attaching draft categories of discovery, which the Third Respondent proposes to seek from the Applicants. A



copy of this email is reproduced at pages 14 to 16 of **Exhibit MJW-4 (Third Respondent's Proposed Categories)**.

8. On 13 November 2024, Gilbert + Tobin sent a letter to Davies Collison Cave confirming that the Element Zero Respondents consent to production of documents under the Applicants' Proposed Categories 6, 12 and 14 (to the extent it refers to category 1 as amended and category 6 only). The Element Zero Respondents also proposed amendments to the Applicants' Proposed Categories 1, 8 and 13, and provided a basis in each case on which those amendments should be made. Objections were raised to other categories that were sought by the Applicants with an explanation. A copy of this correspondence is reproduced at pages 17 to 21 of **Exhibit MJW-4**.
9. Shortly after that, MinterEllison sent a letter to Davies Collison Cave confirming that the Third Respondent takes the same position in respect of the Applicants' Proposed Categories as the Element Zero Respondents. A copy of this correspondence is reproduced at pages 22 to 24 of **Exhibit MJW-4**.
10. Also on 13 November 2024, Davies Collison Cave sent an email to Gilbert + Tobin and MinterEllison notifying the Respondents that the Applicants do not consent to any of the Element Zero Respondent's Proposed Categories or the Third Respondent's Proposed Categories. The Applicants also proposed amendments to the Element Zero Respondents' Proposed Categories 2 and 5 and Third Respondent's Proposed Category 3, without any explanation as to the basis for such amendments (which primarily involved the deletion of the words "relating to"). A copy of this correspondence is reproduced at pages 25 to 28 of **Exhibit MJW-4**.
11. On 20 November 2024, Gilbert + Tobin sent a letter to Davies Collison Cave in relation to the Applicants' position on the Element Zero Respondents' Proposed Categories, inviting reconsideration by Fortescue of its complete refusal to agree to any discovery in response to the Element Zero Respondents' Proposed Categories. A copy of this correspondence is reproduced at pages 29 to 32 of **Exhibit MJW-4**.
12. At approximately 3.46pm on 21 November 2024, Davies Collison Cave sent a letter to Gilbert + Tobin indicating it intended to maintain all objections to all of the Element Zero Respondents' Proposed Categories in their current form and refusing to provide any further explanation of that position. A copy of this correspondence is reproduced at pages 33 to 36 of **Exhibit MJW-4**.
13. At approximately 3.46pm on 21 November 2024, Davies Collison Cave sent a letter to MinterEllison indicating it intended to maintain all objections to all of the Third Respondent's Proposed Categories. A copy of this correspondence is reproduced at pages 37 to 40 of **Exhibit MJW-4**.



14. The Applicants did not respond to the Element Zero Respondents' proposed amendments to the Applicants' Proposed Categories 1, 8 and 13 in correspondence prior to the filing of the Applicants' Interlocutory Application on 20 November 2024.

#### **Summary of parties' position on Discovery**

15. The only categories of discovery that are not in dispute are the Applicants' Proposed Categories 6, 12 and 14 (to the extent it refers to category 1 as amended and category 6 only), which were agreed by the Element Zero Respondents on 13 November 2024.
16. The Applicants have not agreed to any of the Element Zero Respondents' Proposed Categories or any of the Third Respondent's Proposed Categories.
17. The Applicants have not agreed to any of the amendments proposed to its categories by the Element Zero Respondents, being Proposed Categories 1, 8 and 13.
18. The Applicants have refused to engage with the Element Zero Respondents' attempt to narrow the scope of the dispute raised by the Applicants about the Element Zero Respondents' Proposed Categories, claiming it is not obliged to do so. This is not consistent with my experience of the expectations of the parties in this Court under sections 37M and 37N of the *Federal Court of Australia Act 1976* and will, in my view, likely increase the costs of the discovery dispute.

#### **Discovery Application**

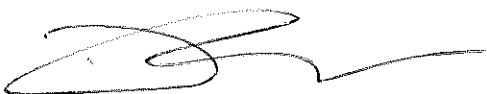
19. The Element Zero Respondents' Categories are annexed to the Discovery Application.
20. For the reasons set out below, I consider that documents sought within the Element Zero Respondents' Categories are highly relevant to the issues in dispute, and that discovery of them will assist in the efficient resolution of those issues as explained below.
21. In my view, based on my experience, by the Applicants failing to give discovery of the documents sought by the Element Zero Respondents, the Element Zero Respondents would be seriously prejudiced in defending the case brought against them as they would be denied documents on which they intend to rely in their defence.
22. Of particular relevance to the prejudice to the Second Respondent (and I expect the Third Respondent) is that they are facing cases which are said to depend on acts they were said to have engaged in while employed by the Third Applicant, the records relevant to which (to the extent they exist) are solely held within the possession of the Applicants. Those records will also be relevant to the analysis that will be undertaken by any expert to be called by the Second Respondent (and potentially the Third Respondent) who will respond to the evidence already filed by the Applicants concerning the work undertaken by the Second and Third Respondents (eg. from Dr Bhatt).



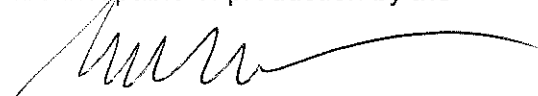
23. The Applicants' attempts to deny the Second Respondent and the Third Respondent access to those records relating to their actions while they were employed creates an unfair forensic advantage for the Applicants over the Second Respondent and the Third Respondent which could not be remedied without that production being given. I am very concerned, including from the correspondence from the Applicants' legal representatives referred to above, that the Applicants are intending to secure that forensic advantage.
24. In my experience, I cannot recall a single case in which I have been involved in almost 30 years of practice in this field where an applicant that has brought allegations against former employees concerning the work undertaken during their employment was entitled to deny that employee access to records which would evidence that work. It is fundamental, in my experience, that a respondent having to defend allegations of this kind has access to documents which may be adverse to the applicants' case or positive for the respondents' case and that an applicant not use the legal process to deny this.

*Category 1*

25. Category 1 seeks documents recording or referring to all research and development work undertaken by the Second Respondent, the Third Respondent and/or Fortescue during the period from 25 March 2019 to 12 November 2021 on Direct Electrochemical Reduction processes.
26. The Applicants allege that the Second Respondent and the Third Respondent undertook, and caused other employees to undertake, confidential research and development into one or more Direct Electrochemical Reduction processes defined as Ionic Liquid R&D (FASOC [12]). This is an allegation that rests on the actions taken by the Second Respondent and the Third Respondent while they were employees.
27. The Element Zero Respondents admit that from around January 2021 and November 2021, Dr Kolodziejczyk undertook, and caused other Fortescue employees to undertake, research and development work into a Direct Electrochemical Reduction process, defined as LTE Process (Element Zero Respondents' **Defence** [10] – [12]), but deny that Dr Kolodziejczyk undertook work in relation to Ionic Liquid R&D (Defence [12]).
28. Based on the pleaded allegations, there is a fundamental dispute between the parties about the work undertaken by the Second Respondent and the Third Respondent at Fortescue. The Applicants bear the onus of establishing what work the Second Respondent and the Third Respondent were undertaking as employees. As at the date of this affidavit, the Applicants have produced a limited number of documents only (in the course of evidence relied on in relation to the Search Order and Set Aside Application) in this category.



29. In my view, and based on my experience, the Second Respondent and the Third Respondent are entitled to respond to the allegations by having access to the documents which record the work that they were undertaking at the time, including because such documents would have the capacity to undermine the allegations against them and tend to exonerate them. I cannot identify any legitimate basis (other than to obtain a forensic advantage in the case) why the former employer would resist all attempts by the former employees to access to the records of their work at the time.
30. In my view, and based on my experience, it would also be highly relevant for the Court to have before it records of the work that was undertaken at that time in order to consider the allegations brought by the Applicants and the denials of the Second and Third Respondent. This is particularly the case where the case against the Second and Third Respondents is largely based on inferences (and in some cases inference based on inferences) said to be drawn from a limited set of documents and other circumstances that existed at the time. The Court could only make this assessment if the documents evidencing that work were produced by the Applicants by way of discovery.
31. Further, in my view, discovery of documents falling within Category 1 is necessary for the determination of the issues in dispute because these documents would reveal the features of Direct Electrochemical Reduction processes alleged to have been researched and developed by Fortescue and whether they consist of Ionic Liquid R&D, on which the Applicants' allegations (eg. FASOC [23] and [13]) depend.
32. There is a clear issue between the parties as to the nature of the Direct Electrochemical Reduction processes that were taking place at Fortescue at the time and whether they included the particular form of processes defined by Fortescue as the Ionic Liquid R&D. Without access to the records within the possession of the Applicants, a comparison could not take place between the work on Direct Electrochemical Reduction processes and whether such work involves Ionic Liquid R&D. The Element Zero Respondents and their technical expert require access to all of the documents in order to carry out that comparison. Such a comparison would necessarily also need to be carried out by the Applicants' lay and expert witnesses based on such documents (and to an extent has already occurred by Dr Bhatt based on his review of (often unidentified) documents held in the files of the Applicants, but not produced to the Second and Third Respondent).
33. Documents falling within Category 1 is solely within the Applicants' knowledge and possession, and are necessary to be produced at this stage of the proceeding because the Second Respondent does not have access to his Fortescue emails or documentation which records the work he undertook at Fortescue. I have not identified any suggestion in the correspondence from Davies Collison Cave that the documents sought by the Element Zero Respondents in these categories are incapable of production by the



Applicants. There is already evidence before the Court about an investigation undertaken by Deloitte in addition to the investigations undertaken by employees of Fortescue and Mr McKemmish.

34. Based on my experience, I believe that the Second Respondent would be unable to properly respond to evidence about the research and development he undertook at Fortescue during his employment without access to the documents falling in these categories because, without access to the documents, he would be relying on memory alone, and would be denied a fair opportunity to defend himself in the case.
35. In my view, based on my experience, Category 1 is properly narrow and confined to the issues in dispute, so as not to be oppressive. Category 1 is limited to the period of the Second and Third Respondents' employment with Fortescue and exclude documents already in evidence. I am also aware that prior to the commencement of the proceedings the Applicants conducted a review of the:
- (a) Second Respondent's email account "to find emails relevant to an electrochemical reduction process that utilises an ionic liquid electrolyte and is operated at low temperature" (see paragraph 50 of the affidavit of Susanne Monica Hantos sworn 1 May 2024);
  - (b) Third Respondent's email account (see paragraph 119 – 121 of the affidavit of Anand Indravadan Bhatt sworn 1 May 2024); and
  - (c) SharePoint folder for the Green Iron Project (see paragraph 113 of the affidavit of Anand Indravadan Bhatt sworn 1 May 2024).
36. In the circumstances, I understand that many of the documents falling within this category will have already been collated and reviewed by the Applicants, and most likely Davies Collison Cave, so that production under Category 1 would not give rise to an unreasonable or disproportionate burden on the Applicants to produce.

*Category 2*

37. Category 2 seeks documents recording or referring to the Ionic Liquid R&D Information and any research or development work undertaken in relation to Ionic Liquid R&D by the Second Respondent, the Third Respondent and/or Fortescue during the period from 25 March 2019 to 12 November 2021.
38. The Applicants will only agree to produce documents in response to this category if it excludes documents "referring to" the subject matter of the category. No explanation has been provided by the Applicants for this objection to the language of "referring to".




39. In my experience, the language of “referring to” is standard language used in discovery categories in this Court and which has been frequently included in categories where discovery has been ordered. I consider the same holds in this case.
40. The Applicants use the words “referring to” in two of its own categories (6 and 7).
41. The Applicants have identified no difficulty producing documents if the category includes the language of “referring to” and I would not expect that it would be unduly burdensome for discovery to be given by the Applicants based on those words.

*Category 3*

42. Category 3 seeks documents recording or referring to the end of Dr Kolodziejczyk’s employment with Fortescue, particularly documents concerning:
- (a) his resignation and terms on which his employment ended, including the preparation of a Deed of Separation;
  - (b) any instructions given to him in respect of the period following him giving notice of his resignation; and
  - (c) communications and records of any meetings between Dr Kolodziejczyk and Fortescue employees between 22 October 2021 and 5 November 2021.
43. The Applicants allege that in the final months of his employment with Fortescue, the Second Respondent obtained Fortescue’s confidential information without authorisation (FASOC [19], [21]). That is a central allegation in the case against him.
44. This allegation is denied by the Element Zero Respondents (Defence [21]).
45. Documents falling within Category 3 are directly relevant to any authorisation given to the Second Respondent to access Fortescue’s confidential information following his resignation from Fortescue. Such documents are critical to the Second Respondent prosecuting his defence in the proceedings and without access to them he would be denied a fair opportunity to defend himself against the allegations.
46. In my view, Category 3 is appropriately limited to a short period of time.
47. I am unable to identify in the correspondence with Davies Collison Cave any suggestion that documents in this category would be overly burdensome to produce.





*Category 4*

48. Category 4 seeks documents recording or referring to Fortescue information relating to the design, engineering, construction, operation and/or feasibility of a Green Iron pilot plant, being the type of plant referred to in FASOC [19].
49. The Applicants allege that during the final months of his employment with Fortescue, the Second Respondent obtained Fortescue information relating to the design, engineering, construction, operation and/or feasibility of a Green Iron pilot plant (at FASOC [19]).
50. In my view, documents falling within Category 4 are directly relevant to that pleaded allegation, as they relate to the identification of the Green Iron pilot plant, and any work undertaken in relation to that subject matter which is relied on by the Applicants.
51. In order to make the allegation contained in FASOC [19], I consider that the Applicants must have been able to identify documents containing such information and must have identified such documents in order to certify a pleading with that allegation.
52. I am not aware of any reason why these documents could not be produced. I do not consider that it would be oppressive for them to be produced.
53. It would be highly prejudicial to the Element Zero Respondents (and I expect to the Third Respondent) if the Applicants were entitled to conduct its case based on the allegation in FASOC [19] without producing by way of discovery the documents in question.

*Category 5*

54. Category 5 seeks a native copy of the documents identified at particular (i)1.-4 to paragraph 19 of the FASOC and any documents recording or referring to the documents identified at particular (i)1.-4 to in FASOC [19]. This corresponds to 5 individual documents particularised in FASOC [19] and documents referring to them.
55. The documents identified at particular (i)1-4 of paragraph 19 are central to the claim against the Second Respondent, and form part of the "Fortescue Plant CI" and "Fortescue CI" as defined in FASOC [26] and [27].
56. In Defence [19], the Element Zero Respondents say that the Second Respondent had access to the documents for the purpose of completing his work, but otherwise deny the allegations. Whether those documents are confidential is directly in issue.
57. The Applicants have agreed to provide a native copy of the documents identified at particular (i)1-4 of FASOC [19], but not documents "recording or referring to" those documents. The basis for this is not disclosed in the inter partes correspondence.
58. Some of the relevant documents appear to be excerpts from, or contain excerpts from, other documents which have not been produced or particularised and others appear to




be incomplete. The source or origin of the documents is not identified. The objected to words in Category 5 are intended to capture documents that would provide that context for an understanding of these documents, together with any commentary on the documents. This is relevant to whether the documents have the necessary quality of confidence to be considered confidential information owned by Fortescue.

59. I am not aware of any reason why these documents could not be produced and I do not consider that it would be oppressive for them to be produced by the Applicants.

*Category 6*

60. Category 6 seeks documents recording or referring to obligations said to be imposed upon Dr Kolodziejczyk in respect of intellectual property and confidential information during his employment with Fortescue, including but not limited to agreements signed by Dr Kolodziejczyk, written directions by Fortescue employees to Dr Kolodziejczyk, and Fortescue internal policies in effect at any time during Dr Kolodziejczyk's employment.
61. The Applicants allege that the Second Respondent obtained confidential information without Fortescue's authority (FASOC [19] and [21]).
62. The Element Zero Respondents deny that any access to Fortescue information was done without Fortescue's authority (Defence [21]).
63. Documents falling within Category 6 of the Element Zero Respondents' Proposed Categories are directly relevant to identify the scope and content of the obligations of the Second Respondent's engagement with Fortescue concerning intellectual property and confidential information during his employment.
64. I am not aware of any reason why these documents could not be produced, and I do not consider that it would be oppressive for them to be produced by the Applicant.

*Category 7*

65. Category 7 seeks documents recording or referring to the creation and ownership of the Works as defined in paragraph 65 of the FASOC, including the date of creation, the author(s) and any drafts or versions of the Works.
66. The Applicants allege that the Respondents have infringed the Applicants' copyright in the Works (FASOC [71]-[74]).
67. The Element Zero Respondents have denied subsistence and ownership of copyright in the Works (Defence [65], [69]) and infringement of copyright (Defence [71]-[74]).
68. In my experience, the identification of copyright works and proof of their creation, and the other pre-conditions before copyright subsists (such as identification of the authors) is a fundamental element in any claim for copyright infringement in this Court.




69. Discovery of documents recording or referring to the creation and ownership of the pleaded copyright works is a highly orthodox requirement in cases where copyright is not admitted, as is the case here. In my experience a respondent would ordinarily be entitled to production of such documents when requested in discovery. Based on my experience of copyright cases I have run over the last nearly 30 years I cannot recall any case in which a respondent has been denied production of such documents, if requested.
70. Here, the Applicants have provided little information about these matters in the FASOC; there are no particulars of the date of creation, authors, their capacity at the time of creation (ie. whether employees or not) and ownership of the documents by Fortescue.
71. The process by which the Works were created is integral to establishing whether they are original literary works in which copyright subsists and whether the Applicants' own any copyright in them.
72. Production of such documents is necessary at this stage of the proceeding for the Respondents to understand, assess and respond to the copyright infringement claim.

#### *Category 8*

73. Category 8 seeks documents recording or referring to Dr Kolodziejczyk or Dr Winther-Jensen obtaining the Fortescue information as alleged in FASOC [19] and [20].
74. The Applicants allege that Dr Kolodziejczyk and Dr Winther-Jensen either "obtained Fortescue information" or "obtained Fortescue documents" (respectively). These paragraphs contain the core allegations of misconduct against the Second and Third Respondents, which is carried through to the remaining claims against all parties.
75. The particulars to FASOC [19] and [20] are largely inferential, for example particulars (ii) and (iii) to both paragraphs described documents that would have been useful to the Respondents to have access to during their work for Element Zero, not documents that Fortescue alleges were actually accessed by the Second and Third Respondents.
76. Documents falling within category 8 of the Element Zero Respondents' Proposed Categories are directly relevant to the core allegations made against the Second and Third Respondents, being documents that are able to be produced by the Applicants, and are necessary to understand and respond to the allegations.

#### *Category 9*

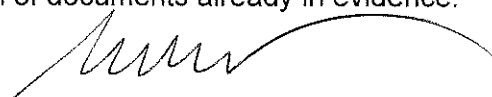
77. Category 9 seeks documents recording or referring to the article titled "*Ex-Fortescue duo's green-iron play*" by Peter Ker, published in the Australian Financial Review (**AFR**) on about 17 January 2024.



78. The Applicants rely on the AFR article as the basis for allegations of misleading and deceptive conduct in trade or commerce in breach of the Australian Consumer Law (**ACL**) (see FASOC [75]).
79. Documents falling within category 9 of the Element Zero Respondents' Proposed Categories are directly relevant to whether the alleged representations were made, whether they were made in trade or commerce (a matter put in issue by FASOC [77] and corresponding paragraph of the Defence), whether (if the representations were made) they were false and caused damage (a matter put in issue by FASOC [78] and corresponding paragraph of the Defence).
80. I am not aware of any reason why these documents could not be produced, and I do not consider that it would be oppressive for them to be produced by the Applicants.

*Category 10*

81. Category 10 seeks documents recording or referring to any investigations into the conduct of the Respondents up to the commencement of the Proceedings, including:
- (a) any searches or investigations by Fortescue or any third party on Fortescue's behalf (including Deloitte and Mr McKemmish), including any instructions, assumptions and documents to which they had access (including emails) in the course of their analysis, and any conclusions or findings that they reached and any consideration of them;
  - (b) the analysis undertaken by Dr Bhatt, Ms Hantos and Mr McFaull into the activities of Dr Kolodziejczyk, Dr Winther-Jensen and Element Zero, including any instructions, assumptions and documents to which they had access (including emails) in the course of their analysis, and any conclusions or findings that they reached and any consideration of them;
  - (c) any consideration by Fortescue of the investigations or the results or findings of the investigations into the Respondents' conduct up to the commencement of the Proceedings.
82. The Applicants rely on investigations into the conduct of the Respondents in their pleaded case, including forensic analysis of the Dr Kolodziejczyk's laptop (FASOC [14] and investigations into the Respondents' email addresses (FASOC [12] particulars) in support of the allegations made against the Respondents.
83. In my view, documents falling within Category 10 are directly relevant to the core allegations made against the Respondents, which depend on evidence that has already been served in the case (and continues to be relied on by the Applicant, eg. Dr Bhatt).
84. The category is targeted and excludes production of documents already in evidence.



85. I am not aware of any reason why these documents could not be produced, and I do not consider that it would be oppressive for them to be produced by the Applicants.

*Category 11*

86. Category 11 seeks documents recording or referring to the Green Iron technology developed by Element Zero and including consideration by Fortescue of any features or elements of that technology.
87. The Applicants allege that the Respondents have commercialised a Green Iron process using the same features as Ionic Liquid R&D (being the Green Iron technology alleged to have been created by the Second and Third Respondents at Fortescue) (FASOC [29]).
88. The Respondents deny this allegation (Defence [29]).
89. Documents falling in this category are directly relevant to the Applicants' allegation that there are features of Element Zero's technology which has been copied from Fortescue's confidential information, including what the Applicant itself considers are the similarities and the basis of such similarities. The Applicants have already filed evidence (eg. from Dr Bhatt) which makes claims about the degree of similarity in the processes.
90. I am not aware of any reason why these documents could not be produced, and I do not consider that it would be oppressive for them to be produced by the Applicants.

*Category 12*

91. Category 12 seeks documents recording or referring to communications and meetings between Element Zero and Fortescue between April 2023 and January 2024, including consideration by Fortescue of any information disclosed about the technology developed by Element Zero.
92. Documents sought in this category have not been produced to date by the Applicants.
93. This is relevant for the same reasons as indicated above in relation to Category 11. Documents falling in this category are directly relevant to the Applicants' allegation that there are features of Element Zero's technology which has been copied from Fortescue's confidential information, including what the Applicants considered are the similarities and the basis of such similarities following the communications and meetings.
94. I am not aware of any reason why these documents could not be produced, and I do not consider that it would be oppressive for them to be produced by the Applicants.

*Category 13*

95. Category 13 seeks documents recording or relating to Fortescue's alleged loss and damage referred to at paragraph 82 of the FASOC. This is a standard category of discovery which should not be contested by Fortescue.



**Orders sought by the First Second and Fourth Respondents**

96. In the circumstances described above, the Element Zero Respondents respectfully seek the orders in the Discovery Application.

Sworn by the Deponent  
at Barangaroo  
in New South Wales  
on 22 November 2024  
Before me:

)  
)  
)  
)  
)



Signature of deponent



Signature of witness

Daisy Edrei Cullen  
Level 35, International Tower Two  
200 Barangaroo Avenue  
Barangaroo NSW 2000

No. NSD527 of 2024

Federal Court of Australia  
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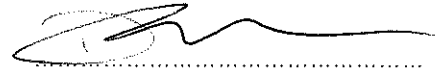
Applicants

**ELEMENT ZERO PTY LIMITED ACN 664 342 081** and others

Respondents

### Exhibit MJW-4

This is a bundle of documents marked "**Exhibit MJW-4**" to the Affidavit of **Michael John Williams** sworn before me on 22 November 2024.



Signature of witness

Name: Daisy Edrei Cullen

Level 35 Tower Two  
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 Solicitor

Filed on behalf of (name & role of party)	<i>The First, Second and Fourth Respondents</i>
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## Daisy Cullen

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**From:** Rohit Dighe <RDighe@dcc.com>  
**Sent:** Wednesday, 6 November 2024 4:03 PM  
**To:** Michael Williams; Rebecca Dunn; Caitlin Meade; Daisy Cullen; Mike Hales; Daniella Lambert; Lachlan McLean; Edward Fearis  
**Cc:** Paul Dewar; Ashley Cameron; Kevin Huang  
**Subject:** NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]  
**Attachments:** Fortescue's Proposed Discovery Categories (6 November 2024).docx  
**Categories:** Filed to ND

External email >

Dear Colleagues

We refer to order 5 of the orders of Justice Markovic made on 23 October 2024.

We **attach** the Applicants' proposed categories of documents for which they will seek an order for discovery pursuant to r 20.15 of the *Federal Court Rules 2011* (Cth).

Yours sincerely

**Rohit Dighe**      **Paul Dewar**  
 Associate          Principal Lawyer



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*We extend our respect to all Aboriginal and Torres Strait Islander peoples throughout Australia and acknowledge the Traditional Owners and Custodians of the lands on which we work. We recognise their ongoing connection to land, sea and community.*

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**APPLICANTS' DRAFT DISCOVERY CATEGORIES**

**Definitions**

- a. **“directly relevant”** means a document that falls within any of the criteria in rule 20.14(2) of the *Federal Court Rules 2011* (Cth).
- b. **“document”** has the meaning given to that term in Schedule 1 of the *Federal Court Rules*.
- c. **“First Specified Documents”** means the documents referred to in the particulars of paragraphs 19 and 20 of the FASOC including:

No.	Name	Ref
1	Green Iron Update (02.08.2021).pdf	see FASOC [19(i)(1)]
2	35557986AU- Specification as filed (35557986).pdf	see FASOC [19(i)(2)], see FASOC [20(i)(4)]
3	35557986AU - Drawings as filed (35557986).pdf	see FASOC [19(i)(2)], see FASOC [20(i)(4)]
4	Document titled "Basis of Design – Chameleon Pilot Plant" having document number or file name FFI0302-10000-00-EG-BOD-0001	see FASOC [19(i)(3)]
5	Bumblebee PID markups 26_10_21.pdf	see FASOC [19(i)(4)]
6	The SharePoint documents identified in paragraphs 112 to 118 of the affidavit of Dr Anand Indravadan Bhatt affirmed on 1 May 2024 and Annexure AIB-29	see FASOC [19(ii)], see FASOC [20(iv)]
7	The internal Fortescue procedures and specifications listed in paragraph 103 of the affidavit of Mr Wayne McFaull affirmed on 1 May 2024	see FASOC [19(iii)], see FASOC [20(v)]
8	211029_Iron ore leaching_Report_ASH.R1.docx	see FASOC [20(i)(1)]
9	211014_FFI Green Steel_Ore Leach_ASH_XRF results.csv	see FASOC [20(i)(2)]
10	211014_FFI Green Steel_Ore Leach_ASH_ICP results.csv	see FASOC [20(i)(3)]
11	Technical Evaluation.xlsx	see FASOC [20(i)(5)]

No.	Name	Ref
12	Email from David White sent on 4 November 2024 with Subject "Technical Evaluation of Green Iron process"	see FASOC [20(i)(5)]
13	Green Iron Update (01.11.2021).pdf	see FASOC [20(i)(6)]

- d. "**Fortescue**" has the meaning given to that term in paragraph 4 of the Further Amended Statement of Claim filed 24 October 2024 (**FASOC**).
- e. "**Ionic Liquid**" means any salt or mixture of salts that is capable of acting as an electrolyte in electrowinning and/or electroplating of metals and/or ores when in its liquid form (irrespective of the temperature range at which the salt or mixture is in its liquid form) including, without limitation, electrolytes that may be described as ionic liquids, molten salts, eutectics, molten hydroxide-based electrolytes, molten carbonate-based electrolytes, "hydroxide alkali melt or eutectic melt" (referred to in paragraph 29(a)(i) of the EZ Parties defence) and/or "molten hydroxide eutectic" (referred to in paragraph 29(c) of Dr Winther-Jensen's defence).
- f. "**Search Orders**" means the orders made by Justice Perry on 14 May 2024 providing for the conduct of a search pursuant to Division 7.5 of the *Federal Court Rules*.
- g. "**Second Specified Documents**" means any:
- i. modified forms of First Specified Documents, including previous or subsequent drafts;
  - ii. documents created directly or indirectly using the First Specified Documents.

### Reasonable Search

For the avoidance of doubt, a "reasonable search" for the purposes of r 20.14 of the *Federal Court Rules* includes a reasonable search over the copies of materials seized or imaged pursuant to the Search Orders.

### Categories

#### ***Ionic Liquid documents***

1. All documents recording or evidencing work undertaken by the Second Respondent, the Third Respondent and/or Fortescue at any time during the period from 25 March 2019 to 12 November 2021 in relation to an electrochemical reduction process involving Ionic Liquid.

2. To the extent not covered by category 1, all documents recording or evidencing work undertaken by the Second Respondent, the Third Respondent and/or Fortescue at any time during the period from 25 March 2019 to 12 November 2021 in relation to:
- (a) “low temperature oxide (predominantly iron ore) reduction technology” work, being the work referred to in Annexure AIB-5 to the affidavit of Anand Bhatt affirmed 1 May 2024 (**Bhatt**);
  - (b) “low-temperature metal oxide reduction from mixed electrolytes” work, being the work referred to in Bhatt AIB-5 p 25, or AIB-6 p 61;
  - (c) the “preliminary work that we have done in ionic liquids and low temperature iron ore reduction”, being the work referred to in Bhatt AIB-7;
  - (d) work relating to “our internal endeavours, where Fortescue develops a new type of electrolyser”, being the work referred to in Bhatt AIB-8;
  - (e) “low-temperature processing from ionic liquids” work, being the work referred to in Bhatt AIB-9 p 81;
  - (f) work for “getting our manufacturing and R&D facilities set up”, being the work referred to in Bhatt AIB-10 p 85;
  - (g) “low temperature [electrochemical reduction] using ionic liquids as iron ore solvents” work, being the work referred to in Bhatt AIB-10 p 86;
  - (h) the “low-temperature electrochemical ores reduction in ionic liquid electrolytes” work, being the work referred to in Bhatt AIB-12 p 93;
  - (i) the “work over Christmas to establish our Perth manufacturing in early 2021”, being the work referred to in Bhatt AIB-12 p 94;
  - (j) “electrolysers and low-temperature electrochemical iron ore processing plants” work, being the further work referred to in Bhatt AIB-12 p 94;
  - (k) “low temperature electrochemical ores reduction” work, being the work referred to in the Patent Assessment Form and email dated 22 December 2020 in Bhatt AIB-13 pp 96 – 100;
  - (l) drafts of the “intended patent application” referred to in the email dated 22 December 2020 in Bhatt AIB-13 p 96;
  - (m) “the use of ionic solvents and electrochemical devices for the low-temperature reduction of ores and oxides” work, being the work referred to in the Patent Assessment Form in Bhatt AIB-13 p 97;

- (n) the “ionic liquid or mixture of ionic liquids” work, being the work referred to in the Patent Assessment Form in Bhatt AIB-13 p 97;
- (o) the “selection of ionic liquid or mixture of ionic liquids”, “application of ionic liquids in metal oxide reduction”, and “the selection of electrode materials and cell design” work, being further work referred to in the Patent Assessment Form in Bhatt AIB-13 p 97;
- (p) the “develop[ment]” and “test[ing]” work as referred to Bhatt AIB-13 pp 96, 97;
- (q) the work intended to be “scaled up”, as referred to Bhatt AIB-13 pp 96, 97;
- (r) the “low-temperature electrochemical ore reduction in ionic liquids” work, including the “R&D roadmaps”, “write-ups” and proposed “patent applications”, being the work referred to in Bhatt AIB-14 p 104;
- (s) the “R&D roadmap” and development “using solvents capable of dissolving iron ore at low temperatures <300 deg C and/or using molten carbonate electrolyte” work, being the work referred to in Bhatt AIB-15 p 106;
- (t) the work concerning “alternative processes that would utilise lower temperatures and direct electrochemical reduction of iron ore into iron and further steel. The electrochemical reduction is done in a liquid phase, hence iron ore has to be dissolved in the electrolyte prior to being electrolysed”, being the work referred to in Bhatt AIB-16;
- (u) the work concerning “enabling technologies for iron ore processing to produce green commodities”, “apply[ing] this green electricity to electrochemically reduce Fortescue’s iron ore dissolved in a unique electrolyte”, and/or “selection of electrolyte, electrode material and other materials used in the process”, including the proposed “patents covering this development”, being the work referred to in Bhatt AIB-17;
- (v) the work concerning “water, ionic liquids, and molten carbonate”, being the work referred to in Bhatt AIB-19 p 120;
- (w) the work concerning “[m]olten salts”, “[m]olten carbonates” and “[i]onic liquids”, being the work referred to in Bhatt AIB-20 pp 132-133; and
- (x) the work concerning “initial evaluation of various suitable electrolytes”, “laboratory desktop studies”, “R&D roadmap” and “internal electrochemical developments” being work referred to in Annexure SMH-3 to the affidavit of Susanne Monica Hantos affirmed on 1 May 2024, pp 82, 83.

3. All documents recording or evidencing the location and storage of any of the documents referred to in category 1 and 2 above during:
  - (a) the period 25 March 2019 to 12 November 2021;
  - (b) after 12 November 2021.
4. All documents recording or evidencing any conduct or attempt by the Second Respondent and/or the Third Respondent to make any of the documents referred to in category 1 and 2 above unavailable to Fortescue.
5. All documents recording or evidencing any of the Respondents' consideration of the confidentiality of any of the documents referred to in category 1 and 2 above.

#### ***Specified Documents***

6. All documents constituting or referring to the First Specified Documents.
7. All documents constituting or referring to the Second Specified Documents.
8. All documents recording or evidencing any use or disclosure of any one or more of the First and/or Second Specified Documents by any one or more of the Respondents or their agents.
9. All documents directly relevant to any of the matters pleaded or particularised in paragraph 31, 33 and/or 78 of the FASOC.

#### ***Element Zero-related documents***

10. All documents recording or evidencing consideration by any one or more of the Second, Third and/or Fourth Respondents at any time during the period 25 March 2019 to 31 July 2022 as to their present or future involvement in an enterprise (other than Fortescue) for electrochemical reduction of iron.
11. All versions, including drafts, of the following documents (howsoever described):
  - (a) basis of design documents for the First Respondent's pilot or trial plant/s, including the "**Element Zero Trial Plant**" (referred to in paragraph 30 of the EZ Parties' defence);
  - (b) piping and instrumentation documents for the First Respondent's pilot or trial plant/s, including the Element Zero Trial Plant;
  - (c) laboratory books (either in hard or soft copy) recording work done with respect to the development of each of beneficiation and leaching of ores and electroplating and/or electrowinning and/or electrolyte development during the period from January 2022 to February 2024;

- (d) any documents provided by or on behalf of the Respondents or any of them to Playground Ventures containing any information in relation to chemical processes, plant design, the green iron/green steel industry and/or industry participants;
- (e) documents recording or evidencing the “retirement ‘project’”, the “work[ ] with nickel [and] iron”, and the “work that eventually led to the creation of Element Zero”, referred to in paragraph 40 of the affidavit of Bjorn Winther-Jensen affirmed on 8 July 2024;
- (f) documents recording the research and development of:
  - i. the “Element Zero Process” referred to in paragraph 29 of the EZ Parties’ defence; or
  - ii. the “Element Zero process” referred to in paragraphs 29(b)-(c) of Dr Winther-Jensen’s defence,during the period from January 2022 to February 2024.

12. One or more documents recording or evidencing the amount of expenditure on designing, engineering and constructing the First Respondent’s pilot or trial plant/s, including the Element Zero Trial Plant.

***Documents showing use / patent docs***

13. Copies of all patents and patent applications (or divisional or related patents and patent applications) filed by any of the Respondents, or in which the Second, Third, and/or Fourth Respondents are named as an inventor concerning any aspect of an electrochemical reduction process involving Ionic Liquid, leaching and/or any aspect of a pilot or trial plant for the electrochemical reduction of ore (including the Element Zero Trial Plant), including drafts thereof, and including but not limited to:
- (a) no. 2022903090 entitled “Method of ore processing”;
  - (b) no. 2023902103 entitled “Ore Processing Method for Metal Recovery”;
  - (c) no. 2023903979 entitled “Electrowinning from Molten Salt” (979 Application);
  - (d) no. PCT/AU2023/051041 entitled “Method of ore processing”;
  - (e) any patent application for an electrochemical reduction process involving Ionic Liquid;
  - (f) any patent application concerning leaching;
  - (g) any patent application that relates to the features of a pilot or trial plant (including the Element Zero Trial Plant) in respect of electrochemical reduction of ore;

- (h) the patents or patent applications that “cover the overall process and its unique chemistry” as referred to on the Element Zero website as shown at Bhatt AIB-22 p 141;
  - (i) the patents or patent applications that cover “the complete circuit design for mineral processing incorporating a unique electrolyte” as referred to on the Element Zero website, as shown at Bhatt AIB-22 p 141.
14. All documents evidencing or recording the use of any of the documents in categories 1, 2, 6 and/or 7 above for or in preparing or inventing any of the patents or patent applications referred to in category 13 above.

**Daisy Cullen**

---

**From:** Caitlin Meade  
**Sent:** Wednesday, 6 November 2024 6:10 PM  
**To:** Paul Dewar; Ashley Cameron; Rohit Dighe; Kevin Huang; Mike Hales; Lachlan McLean; Daniella Lambert  
**Cc:** Michael Williams; Rebecca Dunn; Daisy Cullen  
**Subject:** Element Zero Pty Ltd & Ors ats Fortescue Ltd & Ors - Federal Court proceedings NSD527/2024  
**Attachments:** Element Zero Respondents proposed discovery categories 6.11.2024.docx

Dear Colleagues

We refer to order 5 of the orders 23 October 2024.

Please find attached the First, Second and Fourth Respondents' proposed discovery categories.

Regards  
Rebecca Dunn / Caitlin Meade

**CAITLIN MEADE** (She/Her)  
**LAWYER | GILBERT + TOBIN**

---

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**Element Zero Pty Ltd & Ors vs Fortescue Ltd & Ors**

NSD 527 of 2024

**First, Second and Fourth Respondents' proposed discovery categories****Definitions**

Capitalised terms are defined in the Further Amended Statement of Claim dated 23 October 2024 (**FASOC**).

**Document** has the same meaning as in the *Evidence Act 1995* (Cth) and includes any documents, drafts, notes, financial records, emails, email attachments, text messages, or other internet based communications (such as through WhatsApp, WeChat, Facebook Messenger, Skype, Microsoft Teams, Instagram, iMessage, Signal, Viber, Line, Getcontact, and Telegram, including any 'reactions' or read receipts, whether deleted or not) including group messages with more than one recipient, electronic files, database references, incoming and outgoing call and message logs, and voice messages, and documents which were deleted, but which are recoverable from any electronic device, Cloud based storage service, or image created of an electronic device and not including any Excluded Documents.

**Excluded Documents** means documents already produced by the Applicants in the Proceedings.

**Proceedings** means the claim commenced by Fortescue in the Federal Court of Australia numbered NSD527/2024.

**Notes:**

- All documents are to be produced in native form.
  - Each Document must be identified in relation to a discovery category.
- 1 Documents recording or referring to all research and development work undertaken by the Second Respondent, the Third Respondent and/or Fortescue during the period from 25 March 2019 to 12 November 2021 on Direct Electrochemical Reduction processes, including approvals of research, research instructions, work undertaken, target timescales for that work, funding approvals and budgets and invoices for equipment and products used in such processes.

***FASOC [12]***

- 2 Documents recording or referring to the Ionic Liquid R&D Information and any research or development work undertaken in relation to Ionic Liquid R&D by the Second Respondent, the Third Respondent and/or Fortescue during the period from 25 March 2019 to 12 November 2021, including approvals of research, research instructions, work undertaken, target timescales for that work, funding approvals and budgets and invoices for equipment and products used in such processes.

***FASOC [13]***

- 3 Documents recording or referring to the end of Dr Kolodziejczyk's employment with Fortescue, including documents concerning:
  - (a) his resignation and terms on which his employment ended, including the preparation of a Deed of Separation;
  - (b) any instructions given to him in respect of the period following him giving notice of his resignation; and

- (c) communications and records of any meetings between Dr Kolodziejczyk and Fortescue employees between 22 October 2021 and 5 November 2021.

*FASOC [15], [59]*

- 4 Documents recording or referring to Fortescue information relating to the design, engineering, construction, operation and/or feasibility of a Green Iron pilot plant as referred to in FASOC [19].

*FASOC [19]*

- 5 A native copy of the documents identified at particular (i)1.-4 to paragraph 19 of the FASOC and any documents recording or referring to the documents identified at particular (i)1.-4 to paragraph 19 of the FASOC.

*FASOC [19]*

- 6 All documents recording or referring to obligations said to be imposed upon Dr Kolodziejczyk in respect of intellectual property and confidential information during his employment with Fortescue, including but not limited to agreements signed by Dr Kolodziejczyk, directions by Fortescue employees to Dr Kolodziejczyk, and Fortescue internal policies in effect at any time during Dr Kolodziejczyk's employment.

*FASOC [23, 28 and 53]*

- 7 Documents recording or referring to the creation and ownership of the Works as defined in paragraph 65 of the FASOC, including the date of creation, the author(s) and any drafts or versions of the Works.

*FASOC [65]*

- 8 Documents recording or referring to Dr Kolodziejczyk or Dr Winther-Jensen obtaining the Fortescue information as referred to in paragraphs 19 and 20 of the FASOC.

*FASOC [19], [20]*

- 9 Documents recording or referring to the article titled "*Ex-Fortescue duo's green-iron play*" by Peter Ker, published in the Australian Financial Review (AFR) on about 17 January 2024.

*FASOC [75]*

- 10 Documents recording or referring to any investigations into the conduct of any of the Respondents up to the commencement of the Proceedings, including:

- (a) any searches or investigations by Fortescue or any third party on Fortescue's behalf (including Deloitte and Mr McKemmish), including any instructions, assumptions and documents to which they had access (including emails) in the course of their analysis, and any conclusions or findings that they reached and any consideration of them.

*FASOC [14]*

- (b) the analysis undertaken by Dr Bhatt, Ms Hantos and Mr McFaull into the activities of Dr Kolodziejczyk, Dr Winther-Jensen and Element Zero, including any instructions, assumptions and documents to which they had access (including emails) in the course of their analysis, and any conclusions or findings that they reached and any consideration of them.

*FASOC [12] particulars*

- (c) any consideration by Fortescue of the investigations or the results or findings of the investigations into the Respondents' conduct up to the commencement of the Proceedings.

11 Documents recording or referring to the Green Iron technology developed by Element Zero and including consideration by Fortescue of any features or elements of that technology.

*FASOC [29]*

12 Documents recording or referring to communications and meetings between Element Zero and Fortescue between April 2023 and January 2024, including consideration by Fortescue of any information disclosed about the technology developed by Element Zero.

*FASOC [29]*

13 All documents recording or relating to Fortescue's alleged loss and damage referred to at paragraph 82 of the FASOC.

*FASOC [82]*

**Daisy Cullen**

---

**From:** Lachlan McLean <Lachlan.McLean@minterellison.com>  
**Sent:** Wednesday, 6 November 2024 6:40 PM  
**To:** Caitlin Meade; Paul Dewar; Ashley Cameron; Rohit Dighe; Kevin Huang; Mike Hales; Daniella Lambert  
**Cc:** Michael Williams; Rebecca Dunn; Daisy Cullen  
**Subject:** RE: Element Zero Pty Ltd & Ors ats Fortescue Ltd & Ors - Federal Court proceedings NSD527/2024 [ME-ME.FID8480918]  
**Attachments:** 2024.11.06 - Third Respondent's Proposed Discovery Categories.docx  
**Categories:** Filed to ND  
**FilingIndicator:** -1

 External email >

Dear Colleagues,

Please see **attached**, by way of service, a copy of the Third Respondent's proposed discovery categories.

Kind regards,

**Lachlan McLean**  
 Associate  
 T +61 8 6189 7559  
 lachlan.mclean@minterellison.com  
**MinterEllison** One The Esplanade Perth WA 6000  
 minterellison.com [Follow us on LinkedIn](#)

**MinterEllison.**

---

**From:** Caitlin Meade <CMeade@gtlaw.com.au>  
**Sent:** Wednesday, November 6, 2024 3:10 PM  
**To:** Paul Dewar <PDewar@dcc.com>; Ashley Cameron <ACameron@dcc.com>; Rohit Dighe <RDighe@dcc.com>; Kevin Huang <KHuang@dcc.com>; Mike Hales <Mike.Hales@minterellison.com>; Lachlan McLean <Lachlan.McLean@minterellison.com>; Daniella Lambert <daniella.lambert@minterellison.com>  
**Cc:** Michael Williams <MWilliams@gtlaw.com.au>; Rebecca Dunn <RDunn@gtlaw.com.au>; Daisy Cullen <DCullen@gtlaw.com.au>  
**Subject:** Element Zero Pty Ltd & Ors ats Fortescue Ltd & Ors - Federal Court proceedings NSD527/2024

Dear Colleagues

We refer to order 5 of the orders 23 October 2024.

Please find attached the First, Second and Fourth Respondents' proposed discovery categories.

Regards  
 Rebecca Dunn / Caitlin Meade

**CAITLIN MEADE** (She/Her)  
 LAWYER | GILBERT + TOBIN

---

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**ACKNOWLEDGEMENT OF COUNTRY**

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---



**Third Respondents' proposed discovery categories****Definitions**

Capitalised terms are defined in the Further Amended Statement of Claim dated 23 October 2024 (FASOC).

**Document** has the same meaning as in the *Evidence Act 1995* (Cth) and includes any documents, drafts, notes, financial records, emails, email attachments, text messages, or other internet based communications (such as through WhatsApp, WeChat, Facebook Messenger, Skype, Microsoft Teams, Instagram, iMessage, Signal, Viber, Line, Getcontact, and Telegram, including any 'reactions' or read receipts, whether deleted or not) including group messages with more than one recipient, electronic files, database references, incoming and outgoing call and message logs, and voice messages, and documents which were deleted, but which are recoverable from any electronic device, Cloud based storage service, or image created of an electronic device and not including any Excluded Documents.

**Excluded Documents** means documents already produced by the Applicants in the Proceedings.

**Proceedings** means the claim commenced by Fortescue in the Federal Court of Australia numbered NSD527/2024.

**Notes:**

- All documents are to be produced in native form.
  - Each Document must be identified in relation to a discovery category.
- 1 Copies of all documents produced to the First, Second and Fourth Respondents by way of discovery.
  - 2 Documents recording or referring to the end of Dr Winther-Jensen's employment with Fortescue, including documents concerning:
    - (a) his resignation and terms on which his employment ended, including the preparation of a Deed of Separation;
    - (b) any instructions given to him in respect of the period following him giving notice of his resignation;
    - (c) communications and records of any meetings between Dr Winther-Jensen and Fortescue employees between 3 November 2021 and 12 November 2021.
  - 3 A native copy of the documents identified at particular (i)1-7 to paragraph 20 of the FASOC and any documents recording or referring to the documents identified at particular (i)1-7 to paragraph 20 of the FASOC.  
*FASOC [20]*
  - 4 Documents recording or referring to Dr Winther-Jensen obtaining the information referred to in paragraph 20 of the FASOC, or accessing or using the Works.  
*FASOC [20], [72], [73]*

**Daisy Cullen**

---

**From:** Caitlin Meade <CMeade@gtlaw.com.au>  
**Sent:** Wednesday, 13 November 2024 5:45 PM  
**To:** Rohit Dighe; Michael Williams; Rebecca Dunn; Daisy Cullen; Mike Hales; Daniella Lambert; Lachlan McLean; Edward Fearis  
**Cc:** Paul Dewar; Ashley Cameron; Kevin Huang  
**Subject:** RE: NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]  
**Attachments:** Letter to DCC 13 November 2024 re Fortescue's proposed categories.pdf

Dear Colleagues

Please see attached.

Regards  
 Rebecca Dunn / Caitlin Meade

**CAITLIN MEADE** (She/Her)  
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**From:** Rohit Dighe <RDighe@dcc.com>  
**Sent:** Wednesday, 6 November 2024 4:03 PM  
**To:** Michael Williams <MWilliams@gtlaw.com.au>; Rebecca Dunn <RDunn@gtlaw.com.au>; Caitlin Meade <CMeade@gtlaw.com.au>; Daisy Cullen <DCullen@gtlaw.com.au>; Mike Hales <Mike.Hales@minterellison.com>; Daniella Lambert <daniella.lambert@minterellison.com>; Lachlan McLean <Lachlan.McLean@minterellison.com>; Edward Fearis <Edward.Fearis@minterellison.com>  
**Cc:** Paul Dewar <PDewar@dcc.com>; Ashley Cameron <ACameron@dcc.com>; Kevin Huang <KHuang@dcc.com>  
**Subject:** NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]

Dear Colleagues

We refer to order 5 of the orders of Justice Markovic made on 23 October 2024.

We **attach** the Applicants' proposed categories of documents for which they will seek an order for discovery pursuant to r 20.15 of the *Federal Court Rules 2011* (Cth).

Yours sincerely

**Rohit Dighe**      **Paul Dewar**  
 Associate          Principal Lawyer



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*We extend our respect to all Aboriginal and Torres Strait Islander peoples throughout Australia and acknowledge the Traditional Owners and Custodians of the lands on which we work.  
We recognise their ongoing connection to land, sea and community.*

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would be appropriate for our purposes in conducting our due diligence work with respect to (and including) the documents identified.

We are further requesting that you provide us with copies of the documents identified above which is consistent with the Applicants' pleaded case.

All documents recording or evidencing work undertaken by the Second Respondent, the Third Respondent and/or Fortescue at any time during the period from 25 March 2019 to 12 November 2021 in relation Ionic Liquid R&D as defined in paragraph 12 of the FASOC, to an electrochemical reduction process involving Ionic Liquid.

\_\_\_\_\_

Our clients' primary concern is that the documents identified above are not "indirectly created" from another document. In the Requested Documents, we have provided an evaluative assessment of whether a document was "indirectly created" from another document or otherwise would be considered a derivative work.

The documents identified above are not derivative works of the documents identified above. In the Requested Documents, we have provided an evaluative assessment of whether a document was "indirectly created" from another document or otherwise would be considered a derivative work.

We are further requesting that you provide us with copies of the documents identified above which are not "indirectly created" from another document (and avoids the aforementioned issues with the definition of "Second Specified Documents").

\_\_\_\_\_

We are further requesting that you provide us with copies of the documents identified above which are not "indirectly created" from another document (and avoids the aforementioned issues with the definition of "Second Specified Documents").

Copies of all patents and patent applications (or divisional or related patents and patent applications) filed by any of the Respondents, or in which the Second, Third, and/or Fourth Respondents are named as an inventor concerning any aspect of an electrochemical reduction process involving Ionic Liquid, leaching and/or any aspect of a pilot or trial plant for the electrochemical reduction of ore (including the Element Zero Trial Plant), ~~including drafts thereof~~, and including but not limited to:

- (a) no. 2022903090 entitled "Method of ore processing";
- (b) no. 2023902103 entitled "Ore Processing Method for Metal Recovery";
- (c) no. 2023903979 entitled "Electrowinning from Molten Salt" (979 Application);
- (d) no. PCT/AU2023/051041 entitled "Method of ore processing";
- (e) any patent application for an electrochemical reduction process involving Ionic Liquid;
- (f) any patent application concerning leaching;
- (g) any patent application that relates to the features of a pilot or trial plant (including the Element Zero Trial Plant) in respect of electrochemical reduction of ore;



- (h) the patents or patent applications that “cover the overall process and its unique chemistry” as referred to on the Element Zero website as shown at Bhatt AIB-22 p 141;
- (i) the patents or patent applications that cover “the complete circuit design for mineral processing incorporating a unique electrolyte” as referred to on the Element Zero website, as shown at Bhatt AIB-22 p 141.

For the purposes of the proposed amendments, the term “circuits” encompasses both the hardware and software components of a system. The proposed amendments are intended to ensure that the scope of the claims is not unduly limited by the distinction between hardware and software. The proposed amendments are intended to ensure that the scope of the claims is not unduly limited by the distinction between hardware and software.

**Reasonable searches**

The First, Second and Fourth Respondents do not consent to the Applicants’ definition of ‘reasonable searches’ as set out in the proposed amendments. The Respondents submit that the proposed definition is too broad and would encompass searches that are not reasonable. The Respondents submit that the proposed definition is too broad and would encompass searches that are not reasonable. The Respondents submit that the proposed definition is too broad and would encompass searches that are not reasonable.

For the purposes of the proposed amendments, the term “circuits” encompasses both the hardware and software components of a system.

*Gilbert + Tobin*

**Microsoft**  
 Applicant  
 1000  
 1000  
 1000

**Respondent D**  
 Applicant  
 1000  
 1000

**Daisy Cullen**

---

**From:** Lachlan McLean <Lachlan.McLean@minterellison.com>  
**Sent:** Wednesday, 13 November 2024 7:02 PM  
**To:** Rohit Dighe; Michael Williams; Rebecca Dunn; Caitlin Meade; Daisy Cullen; Mike Hales; Daniella Lambert  
**Cc:** Paul Dewar; Ashley Cameron; Kevin Huang  
**Subject:** RE: NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345] [ME-ME.FID8480918]  
**Attachments:** 2024.11.13 - Letter ME to DCC (Discovery).pdf

 External email >

Dear Colleagues,

Please see the **attached** letter.

Kind regards,

—  
**Lachlan McLean**  
Associate  
T +61 8 6189 7559  
lachlan.mclean@minterellison.com  
**MinterEllison** One The Esplanade 1 The Esplanade Perth WA 6000  
minterellison.com [Follow us on LinkedIn](#)

**MinterEllison.**

---

**From:** Rohit Dighe <RDighe@dcc.com>  
**Sent:** Wednesday, November 13, 2024 3:29 PM  
**To:** Michael Williams <MWilliams@gtlaw.com.au>; Rebecca Dunn <RDunn@gtlaw.com.au>; Caitlin Meade <CMeade@gtlaw.com.au>; Daisy Cullen <DCullen@gtlaw.com.au>; Mike Hales <Mike.Hales@minterellison.com>; Edward Fearis <Edward.Fearis@minterellison.com>; Daniella Lambert <daniella.lambert@minterellison.com>; Lachlan McLean <Lachlan.McLean@minterellison.com>  
**Cc:** Paul Dewar <PDewar@dcc.com>; Ashley Cameron <ACameron@dcc.com>; Kevin Huang <KHuang@dcc.com>  
**Subject:** NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]

Dear Colleagues

We refer to order 6 of the orders of Justice Markovic made on 23 October 2024.

Please see **attached** correspondence.

Yours sincerely

**Rohit Dighe**      **Paul Dewar**  
Associate          Principal Lawyer



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## **ACKNOWLEDGEMENT OF COUNTRY**

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

---



**Daisy Cullen**

---

**From:** Rohit Dighe <RDighe@dcc.com>  
**Sent:** Wednesday, 13 November 2024 6:29 PM  
**To:** Michael Williams; Rebecca Dunn; Caitlin Meade; Daisy Cullen; Mike Hales; Edward Fearis; Daniella Lambert; Lachlan McLean  
**Cc:** Paul Dewar; Ashley Cameron; Kevin Huang  
**Subject:** NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]  
**Attachments:** 2024-11-13 - Letter to G+T and ME.pdf

 External email >

Dear Colleagues

We refer to order 6 of the orders of Justice Markovic made on 23 October 2024.

Please see **attached** correspondence.

Yours sincerely

**Rohit Dighe**     **Paul Dewar**  
Associate         Principal Lawyer



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**BY EMAIL:**

[MWilliams@gtlaw.com.au](mailto:MWilliams@gtlaw.com.au);  
[RDunn@gtlaw.com.au](mailto:RDunn@gtlaw.com.au)  
[Mike.Hales@minterellison.com](mailto:Mike.Hales@minterellison.com);  
[Edward.Fearis@minterellison.com](mailto:Edward.Fearis@minterellison.com)

**Our Ref:** PXD:2023413  
**Your Refs:** MJW:RXD:1058625  
1496352

13 November 2024

Mr Michael Williams / Ms Rebecca Dunn  
Gilbert + Tobin  
L35, Tower Two, International Towers Sydney  
200 Barangaroo Avenue  
Barangaroo NSW 2000

and

Mr Mike Hales / Mr Edward Fearis  
MinterEllison  
One The Esplanade, Level 9  
1 The Esplanade  
Perth WA 6000

Dear Colleagues

**Fortescue Limited & Ors v Element Zero Pty Limited & Ors,  
Federal Court Proceeding No. NSD527 of 2024**

1. We refer to the proposed discovery categories of the First, Second and Fourth Respondents (**EZ Categories**), and those of the Third Respondent (**3R's Categories**), provided to us on 6 November 2024 (collectively, **Categories**).

**Definitions and Notes**

2. The EZ Categories and 3R's Categories contain identical "Definitions" and "Notes".
3. Fortescue objects to the expanded definition of "Document", which does not reflect the definition in the *Federal Court Rules 2011* (Cth). Fortescue will consent to the following definition: "**Document** has the same meaning as in the *Evidence Act 1995* (Cth) but does not include any Excluded Documents."
4. In respect of the "Notes", Fortescue's position is:
  - (a) "*All documents are to be produced in native form*" — Fortescue does not object to this note, subject to Fortescue's also receiving discovery from the Respondents in native form.
  - (b) "*Each Document must be identified in relation to a discovery category*" — for clarity, this note should be amended (shown in mark-up) to "*Each Document must be identified in relation to ~~a~~ **at least one** discovery*"



*category*". This is to avoid categorising each document to every possible category in which it might fall and thereby reduce the burden of categorisation in the discovery process. Further, Fortescue's non-objection is conditional on Fortescue's also receiving discovery from the Respondents in the same way, i.e., where each Document is identified in relation to at least one discovery category.

### **The Categories**

5. Fortescue does not consent to any of the Categories as presently drafted.
6. Fortescue opposes the following Categories in full:
  - (a) EZ Categories: 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13.
  - (b) 3R's Categories: 2, 4.
7. Fortescue opposes the following Categories in part:
  - (a) EZ Categories: 2, 5.
  - (b) 3R's Categories: 3.
8. In relation to category 1 of the 3R's Categories, Fortescue reserves its position until the EZ Categories are settled.

#### *Acceptable form of categories 2 and 5 of the EZ Categories*

9. Below, we set out for your consideration an amended form of categories 2 and 5 of the EZ Categories (in mark-up) to which Fortescue would be prepared to consent (subject to our comments above in "Definitions and Notes").
  - 2 Documents recording ~~or referring to~~ the Ionic Liquid R&D Information and any research or development work undertaken in relation to Ionic Liquid R&D by the Second Respondent, the Third Respondent and/or Fortescue during the period from 25 March 2019 to 12 November 2021, including approvals of research, research instructions, work undertaken, target timescales for that work, funding approvals and budgets and invoices for equipment and products used in such processes.
  - 5 A native copy of the documents identified at particular (i)1.-4 to paragraph 19 of the FASOC ~~and any documents recording or referring to the documents identified at particular (i)1.-4 to paragraph 19 of the FASOC.~~

#### *Acceptable form of category 3 of the 3R's Categories*

10. Below, we set out for your consideration an amended form of category 3 of the 3R's Categories (in mark-up) to which Fortescue would be prepared to consent (again subject to our comments above in "Definitions and Notes").
  - 3 A native copy of the documents identified at particular (i)1-7 to paragraph 20 of the FASOC ~~and any documents recording or referring to the documents identified at particular (i)1-7 to paragraph 20 of the FASOC.~~

**Grounds of objection**

11. Our grounds of objection to the Categories include, but are not limited to:
  - (a) Lack of clarity;
  - (b) Lack of relevance to the pleaded facts in dispute;
  - (c) Fishing or improper purpose; and
  - (d) The proposed category involves a request for the evidence that Fortescue intends to adduce.
  
12. Given the above fundamental issues, we have not, at the moment, considered any issues relating to oppression. We reserve the right to raise this and any other grounds if your clients seek to press the Categories.

Yours faithfully



**Paul Dewar**  
Principal Lawyer  
**DAVIES COLLISON CAVE LAW**  
[PDewar@dcc.com](mailto:PDewar@dcc.com)

**Daisy Cullen**

---

**From:** Daisy Cullen  
**Sent:** Wednesday, 20 November 2024 4:23 PM  
**To:** Rohit Dighe; Paul Dewar; Ashley Cameron; Kevin Huang  
**Cc:** Michael Williams; Rebecca Dunn; Caitlin Meade; Mike Hales; Edward Fearis; Daniella Lambert; Lachlan McLean  
**Subject:** RE: NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]  
**Attachments:** Letter to DCC (discovery) - 20 November 2024.pdf

Dear Colleagues

Please find **attached** correspondence.

Regards  
 Michael Williams / Daisy Cullen

---

**From:** Rohit Dighe <RDighe@dcc.com>  
**Sent:** Wednesday, 13 November 2024 6:29 PM  
**To:** Michael Williams <MWilliams@gtlaw.com.au>; Rebecca Dunn <RDunn@gtlaw.com.au>; Caitlin Meade <CMeade@gtlaw.com.au>; Daisy Cullen <DCullen@gtlaw.com.au>; Mike Hales <Mike.Hales@minterellison.com>; Edward Fearis <Edward.Fearis@minterellison.com>; Daniella Lambert <daniella.lambert@minterellison.com>; Lachlan McLean <Lachlan.McLean@minterellison.com>  
**Cc:** Paul Dewar <PDewar@dcc.com>; Ashley Cameron <ACameron@dcc.com>; Kevin Huang <KHuang@dcc.com>  
**Subject:** NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]

 External email >

Dear Colleagues

We refer to order 6 of the orders of Justice Markovic made on 23 October 2024.

Please see **attached** correspondence.

Yours sincerely

**Rohit Dighe**      **Paul Dewar**  
 Associate          Principal Lawyer



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Partner Michael Williams  
 Contact Rebecca Dunn  
 T +61 2 9263 4625  
 rdunn@gtlaw.com.au  
 Our ref MJW:RXD:1058625



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 200 Barangaroo Avenue  
 Barangaroo NSW 2000 AUS  
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**20 November 2024**

By email: [pdewar@dcc.com](mailto:pdewar@dcc.com)

Mr Paul Dewar  
 Partner  
 Davies Collison Cave  
 Level 4, 7 Macquarie Place  
 SYDNEY NSW 2000

Dear Colleagues

**Fortescue Limited & Ors v Element Zero Pty Ltd & Ors - Proceedings in the Federal Court of Australia (NSD527/2024)**

We refer to your letter dated 13 November 2024 in respect of the discovery categories of the First, Second and Fourth Respondents (**EZ Categories**).

Before the parties finalise their application in relation to discovery, we make the following additional observations.

**Definitions and Notes**

Based on your comments, there appears to be no dispute over the Definitions and Notes, save for the definition of "Document". It is not clear to us why there is an objection to the additional inclusionary language in the definition of "Document" we proposed, which has been adopted in many other cases before this Court.

As for your proposed definition of **Document**, the definition in the Federal Court Rules is *inclusive*, as follows:

**"Document"** includes:

(a) any record of information mentioned in the definition of **document** in Part 1 of the Dictionary to the *Evidence Act 1995*; and

(b) any other material, data or information stored or recorded by mechanical or electronic means.

To avoid a further debate about the issue, the EZ Respondents are prepared to agree to a definition in terms of the definition in the Federal Court Rules.

**Blanket objection to EZ Categories**

The response from Fortescue to the EZ Categories is highly unsatisfactory.

There is opposition to *every* category.

That approach is highly obstructive and non-responsive to the categories which were carefully drawn by reference to the identified paragraphs of the Further Amended Statement of Claim. No specific response is addressed to this.

The extreme inconsistency between the approach to categories of discovery served by Fortescue (which are wider than the categories presented to the Court when seeking to defend the Search Orders from being set aside) and the objections raised by Fortescue to the EZ Categories robs the latter of any justification.

The overall impression of Fortescue's approach is that it considers discovery to be a one-way process, designed to fish for documents from the EZ Respondents to prop up its unparticularised and inferential case. These are matters that will be relied on when addressing Fortescue's categories.

### **Categories 2 and 5**

The proposed amendments to EZ Categories 2 and 5 are not agreed.

They would have the effect of confining those categories to the documents already in the EZ Respondents' possession. That would be an absurd result and defeat the purpose of discovery.

No explanation has been given in your letter for the removal of the word "referring" in Categories 2 and 5. The word "referring" is a standard reference in discovery categories, which has been approved in numerous decisions of the Court. There is no reason why this word should not be included in Categories 2 and 5 to elicit the production of relevant documents by Fortescue.

As for the references to documents in particular (i)1-4, there is no explanation given for the omission of that reference. Given the generality of those documents referred to in the particular (many of which are not identified), the proposed additional words are entirely appropriate, and their exclusion would deprive the EZ Respondents and the Court of relevant documents.

We invite Fortescue to revisit its position on our clients' categories with a more sensible response **by 4:00pm tomorrow, 21 November 2024**, following which, we will file the EZ Respondents' discovery application. We trust that this will facilitate a narrowing of the issues currently in dispute.

Should Fortescue maintain its objections unchanged from your letter, our clients will rely on this correspondence in respect of the determination of the objections and costs.

All the EZ Respondents' rights are reserved.

Yours faithfully  
**Gilbert + Tobin**



**Michael Williams**  
Partner  
+61 2 9263 4271  
mwilliams@gtlaw.com.au

**Rebecca Dunn**  
Partner  
+61 2 9263 4625  
rdunn@gtlaw.com.au

**Daisy Cullen**

---

**From:** Rohit Dighe <RDighe@dcc.com>  
**Sent:** Thursday, 21 November 2024 3:46 PM  
**To:** Daisy Cullen; Paul Dewar; Ashley Cameron; Kevin Huang  
**Cc:** Michael Williams; Rebecca Dunn; Caitlin Meade; Mike Hales; Edward Fearis; Daniella Lambert; Lachlan McLean  
**Subject:** RE: NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]  
**Attachments:** 2024-11-21 - Letter to Gilbert + Tobin.pdf

 External email >

Dear Colleagues

Please see **attached** correspondence.

Yours sincerely

**Rohit Dighe**     **Paul Dewar**  
Associate         Principal



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**From:** Daisy Cullen <DCullen@gtlaw.com.au>  
**Sent:** Wednesday, 20 November 2024 4:23 PM  
**To:** Rohit Dighe <RDighe@dcc.com>; Paul Dewar <PDewar@dcc.com>; Ashley Cameron <ACameron@dcc.com>; Kevin Huang <KHuang@dcc.com>  
**Cc:** Michael Williams <MWilliams@gtlaw.com.au>; Rebecca Dunn <RDunn@gtlaw.com.au>; Caitlin Meade <CMeade@gtlaw.com.au>; Mike Hales <Mike.Hales@minterellison.com>; Edward Fearis <Edward.Fearis@minterellison.com>; Daniella Lambert <daniella.lambert@minterellison.com>; Lachlan McLean <Lachlan.McLean@minterellison.com>  
**Subject:** RE: NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]

Dear Colleagues

Please find **attached** correspondence.

Regards  
Michael Williams / Daisy Cullen

**Daisy Cullen** (She/Her)  
Lawyer | Gilbert + Tobin

---

+61 427 879 636 | +61 2 9263 4753  
 DCullen@gtlaw.com.au

**Level 35, Tower Two, International Towers Sydney  
 200 Barangaroo Avenue, Barangaroo NSW 2000**

Gilbert + Tobin acknowledges Australia's First Nations peoples as the Traditional Custodians of this land. We pay our respects to Elders, both past and present, and extend that respect to all First Nations peoples across these lands.

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**From:** Rohit Dighe <[RDighe@dcc.com](mailto:RDighe@dcc.com)>  
**Sent:** Wednesday, 13 November 2024 6:29 PM  
**To:** Michael Williams <[MWilliams@gtlaw.com.au](mailto:MWilliams@gtlaw.com.au)>; Rebecca Dunn <[RDunn@gtlaw.com.au](mailto:RDunn@gtlaw.com.au)>; Caitlin Meade <[CMeade@gtlaw.com.au](mailto:CMeade@gtlaw.com.au)>; Daisy Cullen <[DCullen@gtlaw.com.au](mailto:DCullen@gtlaw.com.au)>; Mike Hales <[Mike.Hales@minterellison.com](mailto:Mike.Hales@minterellison.com)>; Edward Fearis <[Edward.Fearis@minterellison.com](mailto:Edward.Fearis@minterellison.com)>; Daniella Lambert <[daniella.lambert@minterellison.com](mailto:daniella.lambert@minterellison.com)>; Lachlan McLean <[Lachlan.McLean@minterellison.com](mailto:Lachlan.McLean@minterellison.com)>  
**Cc:** Paul Dewar <[PDewar@dcc.com](mailto:PDewar@dcc.com)>; Ashley Cameron <[ACameron@dcc.com](mailto:ACameron@dcc.com)>; Kevin Huang <[KHuang@dcc.com](mailto:KHuang@dcc.com)>  
**Subject:** NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]

Dear Colleagues

We refer to order 6 of the orders of Justice Markovic made on 23 October 2024.

Please see **attached** correspondence.

Yours sincerely

**Rohit Dighe**      **Paul Dewar**  
 Associate          Principal Lawyer



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**BY EMAIL:**

[MWilliams@qtlaw.com.au](mailto:MWilliams@qtlaw.com.au);  
[RDunn@qtlaw.com.au](mailto:RDunn@qtlaw.com.au)

**Our Ref:** PXD:2023413

**Your Ref:** MJW:RXD:1058625

21 November 2024

Mr Michael Williams / Ms Rebecca Dunn  
Gilbert + Tobin  
L35, Tower Two, International Towers Sydney  
200 Barangaroo Avenue  
Barangaroo NSW 2000

Dear Colleagues

**Fortescue Limited & Ors v Element Zero Pty Limited & Ors,  
Federal Court Proceeding No. NSD527/2024**

We refer to your letter dated 20 November 2024 regarding Fortescue's position in respect of your clients' proposed categories for discovery by Fortescue (**EZ Categories**).

We acknowledge that your clients agree to amend their proposed definition of "Document" in accordance with the definition in Schedule 1 of the *Federal Court Rules 2011* (Cth).

We deny your hyperbolic characterisation of Fortescue's position as a "blanket" objection, "highly obstructive", "non-responsive", and "extreme[ly] inconsisten[t]". Fortescue was and is prepared to give discovery in three of the respondents' categories (two of your clients', one of Dr Winther-Jensen's), subject to certain amendments. Nor do we accept that discovery is determined by "overall impression" or some false sense of reciprocity (*cf.* "one-way process"); each EZ Category is either properly objectionable or it is not.

As stated, Fortescue was and is prepared to give discovery in two EZ Categories (2, 5), subject to certain amendments. Your clients do not agree to Fortescue's proposed amendments and (we presume) press those categories in their original form. Therefore, Fortescue maintains its objections to those categories as originally drafted.

Fortescue otherwise maintains its position as set out in our letter of 13 November 2024.

Accordingly, if your clients intend on filing any application for discovery, they should do so immediately without any further delay, noting that the deadline for filing any such application expired yesterday (order 7 made on 23 October 2024).

Yours faithfully



**Paul Dewar**

Principal Lawyer

**DAVIES COLLISON CAVE LAW**

[PDewar@dcc.com](mailto:PDewar@dcc.com)

**Daisy Cullen**

---

**From:** Rohit Dighe <RDighe@dcc.com>  
**Sent:** Thursday, 21 November 2024 3:46 PM  
**To:** Lachlan McLean; Daisy Cullen; Paul Dewar; Ashley Cameron; Kevin Huang  
**Cc:** Michael Williams; Rebecca Dunn; Caitlin Meade; Mike Hales; Daniella Lambert  
**Subject:** RE: NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ME-ME.FID8480918] [ITUSEONLY-LAW.FID86345]  
**Attachments:** 2024-11-21 - Letter to MinterEllison.pdf

 External email >

Dear Colleagues

Please see **attached** correspondence.

Yours sincerely

**Rohit Dighe**      **Paul Dewar**  
 Associate          Principal



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*We extend our respect to all Aboriginal and Torres Strait Islander peoples throughout Australia and acknowledge the Traditional Owners and Custodians of the lands on which we work. We recognise their ongoing connection to land, sea and community.*

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**From:** Lachlan McLean <Lachlan.McLean@minterellison.com>  
**Sent:** Wednesday, 20 November 2024 7:20 PM  
**To:** Daisy Cullen <DCullen@gtlaw.com.au>; Rohit Dighe <RDighe@dcc.com>; Paul Dewar <PDewar@dcc.com>; Ashley Cameron <ACameron@dcc.com>; Kevin Huang <KHuang@dcc.com>  
**Cc:** Michael Williams <MWilliams@gtlaw.com.au>; Rebecca Dunn <RDunn@gtlaw.com.au>; Caitlin Meade <CMeade@gtlaw.com.au>; Mike Hales <Mike.Hales@minterellison.com>; Daniella Lambert <Daniella.Lambert@minterellison.com>  
**Subject:** RE: NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345] [ME-ME.FID8480918]

Dear Colleagues,

Please see the **attached** letter.

Kind regards,

\_\_\_\_\_  
**Lachlan McLean**  
 Associate  
 T +61 8 6189 7559  
 lachlan.mclean@minterellison.com  
**MinterEllison** One The Esplanade 1 The Esplanade Perth WA 6000  
 minterellison.com [Follow us on LinkedIn](#)

---

**From:** Daisy Cullen <[DCullen@gtlaw.com.au](mailto:DCullen@gtlaw.com.au)>  
**Sent:** Wednesday, November 20, 2024 1:23 PM  
**To:** Rohit Dighe <[RDighe@dcc.com](mailto:RDighe@dcc.com)>; Paul Dewar <[PDewar@dcc.com](mailto:PDewar@dcc.com)>; Ashley Cameron <[ACameron@dcc.com](mailto:ACameron@dcc.com)>; Kevin Huang <[KHuang@dcc.com](mailto:KHuang@dcc.com)>  
**Cc:** Michael Williams <[MWilliams@gtlaw.com.au](mailto:MWilliams@gtlaw.com.au)>; Rebecca Dunn <[RDunn@gtlaw.com.au](mailto:RDunn@gtlaw.com.au)>; Caitlin Meade <[CMeade@gtlaw.com.au](mailto:CMeade@gtlaw.com.au)>; Mike Hales <[Mike.Hales@minterellison.com](mailto:Mike.Hales@minterellison.com)>; Edward Fearis <[Edward.Fearis@minterellison.com](mailto:Edward.Fearis@minterellison.com)>; Daniella Lambert <[daniella.lambert@minterellison.com](mailto:daniella.lambert@minterellison.com)>; Lachlan McLean <[Lachlan.McLean@minterellison.com](mailto:Lachlan.McLean@minterellison.com)>  
**Subject:** RE: NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]

Dear Colleagues

Please find **attached** correspondence.

Regards  
 Michael Williams / Daisy Cullen

**Daisy Cullen** (She/Her)  
 Lawyer | Gilbert + Tobin

+61 427 879 636 | +61 2 9263 4753  
[DCullen@gtlaw.com.au](mailto:DCullen@gtlaw.com.au)

**Level 35, Tower Two, International Towers Sydney**  
**200 Barangaroo Avenue, Barangaroo NSW 2000**

Gilbert + Tobin acknowledges Australia's First Nations peoples as the Traditional Custodians of this land. We pay our respects to Elders, both past and present, and extend that respect to all First Nations peoples across these lands.

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**From:** Rohit Dighe <[RDighe@dcc.com](mailto:RDighe@dcc.com)>  
**Sent:** Wednesday, 13 November 2024 6:29 PM  
**To:** Michael Williams <[MWilliams@gtlaw.com.au](mailto:MWilliams@gtlaw.com.au)>; Rebecca Dunn <[RDunn@gtlaw.com.au](mailto:RDunn@gtlaw.com.au)>; Caitlin Meade <[CMeade@gtlaw.com.au](mailto:CMeade@gtlaw.com.au)>; Daisy Cullen <[DCullen@gtlaw.com.au](mailto:DCullen@gtlaw.com.au)>; Mike Hales <[Mike.Hales@minterellison.com](mailto:Mike.Hales@minterellison.com)>; Edward Fearis <[Edward.Fearis@minterellison.com](mailto:Edward.Fearis@minterellison.com)>; Daniella Lambert <[daniella.lambert@minterellison.com](mailto:daniella.lambert@minterellison.com)>; Lachlan McLean <[Lachlan.McLean@minterellison.com](mailto:Lachlan.McLean@minterellison.com)>  
**Cc:** Paul Dewar <[PDewar@dcc.com](mailto:PDewar@dcc.com)>; Ashley Cameron <[ACameron@dcc.com](mailto:ACameron@dcc.com)>; Kevin Huang <[KHuang@dcc.com](mailto:KHuang@dcc.com)>  
**Subject:** NSD527/2024 Fortescue Limited & Ors v Element Zero Pty Limited & Ors [ITUSEONLY-LAW.FID86345]

Dear Colleagues

We refer to order 6 of the orders of Justice Markovic made on 23 October 2024.

Please see **attached** correspondence.

Yours sincerely

**Rohit Dighe**      **Paul Dewar**  
 Associate          Principal Lawyer



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We recognise their ongoing connection to land, sea and community.*

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## ACKNOWLEDGEMENT OF COUNTRY

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

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**Attention:** Mike Hales  
Daniella Lambert

**Contact:** Paul Dewar  
[PDewar@dcc.com](mailto:PDewar@dcc.com)

**BY EMAIL ONLY:**

[Mike.Hales@minterellison.com](mailto:Mike.Hales@minterellison.com);  
[Daniella.Lambert@minterellison.com](mailto:Daniella.Lambert@minterellison.com)

Mr Mike Hales / Ms Daniella Lambert  
MinterEllison  
One The Esplanade, Level 9  
1 The Esplanade  
Perth 6000 Western Australia

21 November 2024

Dear Colleagues

**Fortescue Limited & Ors v Element Zero Pty Ltd. & Ors,  
Federal Court proceeding no. NSD527 of 2024**

We refer to your letter dated 20 November 2024 regarding Fortescue's position in respect of your client's proposed categories for discovery by Fortescue (**3R's Categories**).

Order 6 made on 23 October 2024 did not require Fortescue to set out its objections to 3R's Categories; the order only required Fortescue to notify your client which of those categories were by consent. Thus, the objections and proposed amendments in our 13 November 2024 letter were included only as Fortescue's attempt to narrow the issues, and not intended to comprehensively set out Fortescue's objections.

In respect of 3R's Categories 2 and 4, Fortescue's objections are made on the grounds that the categories as presently drafted request discovery of documents which at least lack sufficient relevance to the pleaded facts in dispute. Further, proposed category 4 as presently drafted amounts to fishing. We therefore disagree with paras 4(b) and 4(c) of your letter. In any event, if these categories were pressed, Fortescue will respond, if necessary, in its evidence in answer and/or submissions.

We acknowledge your proposed amendments to your client's proposed category 3. Your client may include that amended proposed category in his interlocutory application for discovery, and we will respond to that proposed category in our evidence in answer and/or submissions.

Fortescue maintains its position as set out in our letter of 13 November 2024. Accordingly, if your client intends on filing any application for discovery, he should do so immediately without any further delay, noting that the deadline for filing any such application expired yesterday (order 7 made on 23 October 2024).

Yours faithfully

A handwritten signature in blue ink, appearing to read "Paul Dewar".

**Paul Dewar**  
Principal  
**DAVIES COLLISON CAVE LAW**  
[PDewar@dcc.com](mailto:PDewar@dcc.com)