

## NOTICE OF FILING

### Details of Filing

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*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59  
Rule 29.02(1)

### Affidavit

No. NSD 527 of 2024

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

**Fortescue Limited (ACN 002 594 872) and Ors**

Applicants

**Element Zero Pty Limited (ACN 664 342 081) and Ors**

Respondents

Affidavit of: **Adrian Chai**  
Address: Level 10, 123 St Georges Terrace, Perth, Western Australia 6000  
Occupation: Lawyer  
Date: 8 May 2024

I, Adrian Chai, of Level 10, 123 St Georges Terrace, Perth, in the state of Western Australia, Lawyer, do swear as follows:

#### A. Background

1. I am a Partner in the Perth Dispute Resolution Practice Group at Ashurst Australia (**Ashurst**). I have over 25 years of experience in the conduct of commercial disputes, including experience assisting independent solicitors supervising the execution of search orders, including search orders issued by the Federal Court of Australia.

Filed on behalf of (name & role of party) Fortescue Limited and others, the Applicants  
Prepared by (name of person/lawyer) Paul Alexander Dewar, Principal Lawyer  
Law firm (if applicable) Davies Collison Cave Law  
Tel (02) 9293 1000 Fax (02) 9262 1080  
Email PDewar@dcc.com  
**Address for service** Level 4, 7 Macquarie Place, Sydney NSW 2000  
(include state and postcode)

2. I have previously acted as a reserve or stand-by independent solicitor to supervise the execution of search orders issued by the Federal Court, but was not ultimately called upon to do so on that occasion. However, through that and other occasions assisting lawyers in the firm who did act as independent solicitors supervising the execution of search orders, I am familiar with the nature of the role and its duties and obligations.
3. Ashurst has been engaged by Davies Collison Cave Law (**DCCL**) to act as the independent solicitors for the execution of prospective search order (**Search Order**) at the following locations:
  - (a) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;
  - (b) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;
  - (c) Unit 4, 213 Gildercliffe Street, Scarborough Western Australia 6019; and
  - (d) 5a Volga Street, Hadfield Victoria 3046,

**(Search Locations).**
4. A copy of my curriculum vitae and the curriculum vitae for the lawyers proposed for the execution of the Search Order at the Search Locations is annexed to the affidavit of Paul Alexander Dewar affirmed 1 May 2024 as Annexure "PAD-4".
5. In case the lawyer presently proposed for the execution of the Search Order at 5a Volga Street, Hadfield Victoria 3046 is unavailable on the day, Ashurst has proposed that Angus Ross act as the independent lawyer for the execution of the Search Order at that location. Annexed to my affidavit and marked "**AC-1**" is a copy of the curriculum vitae for Angus Ross.
6. I have been instructed by DCCL that the **Applicants** are:
  - (a) First Applicant, Fortescue Ltd (ACN 002 594 872);
  - (b) Second Applicant, Fortescue Future Industries (ACN 625 711 373); and
  - (c) Third Applicant, FMG Personnel Services Pty Ltd (ACN 159 057 646).
7. I have been instructed by DCCL that the **Respondents** are:
  - (a) First Respondent, Element Zero Pty Limited (ACN 664 342 081) (**Element Zero**);
  - (b) Second Respondent, Dr Bartłomiej Piotr **Kolodziejczyk**;
  - (c) Third Respondent, Dr Bjorn **Winther-Jensen**; and
  - (d) Fourth Respondent, Michael George **Masterman**.
8. I am instructed that the Search Order is sought by the Applicants in respect of the First



to Third Respondents: Element Zero, Dr Kolodziejczyk and Dr Winther-Jensen.

**B. Conflict checks**

9. On about 19 – 23 April 2024, I caused a conflict check to be run to ascertain whether Ashurst has any conflicts of interest in acting for the Applicants against the Respondents.
10. I confirm that Ashurst does not have any conflict acting against the interests of the Respondents or any of them. Ashurst has not acted for the Respondents or any of them at any time.
11. As a firm, Ashurst has acted or is acting for the First Applicant (or one or more of its subsidiaries) in various matters involving:
  - (a) land access and native title law;
  - (b) mining, projects and development law;
  - (c) environmental, social, and governance (ESG) issues.
12. Due to the firm's duties to its clients, including the duty of confidentiality, I am unable to give more details or say anything more about those matters in this affidavit.
13. As to the lawyers proposed for the execution of the Search Order at the Search Locations:
  - (a) I have never acted in a matter involving any of the Applicants (or, to the best of my knowledge, any of their subsidiaries);
  - (b) I am informed by each of Lucinda Hill, Sam Mengler and Angus Ross, and believe, that they have each never acted in a matter involving any of the Applicants (or, to the best of their knowledge, any of their subsidiaries);
  - (c) I am informed by Catherine Pedler, and believe, that she has had limited previous involvement in two matters where the First Applicant was a client of Ashurst. Those matters involved assisting in the provision of advice to the First Applicant concerning claims and positions taken by native title holders. Ms Pedler is not currently involved on either of those matters. Other than on these two occasions, Ms Pedler has never acted in a matter involving any of the Applicants (or, to the best of her knowledge, any of their subsidiaries).



**C. Policies and protocols to preserve and protect confidentiality at Ashurst**

14. As a partner of the firm, I am aware that Ashurst is committed to, and has policies and protocols for, ensuring that all members of the firm including its members, employees and relevant third parties comply with and observe all relevant confidentiality obligations.
15. The information barriers and protocols that can be and are employed and implemented by the firm from time to time include:
- (a) **Separate team members:** On designated matters, team members must be pre-authorised by the lead partner or a compliance officer to work on the matter or have access to its hard copy or electronic files. Active steps are taken to avoid confidential information passing between teams or outside the information barrier. Once a matter is designated as subject to an information barrier, an email is sent to the lead partner advising of the conditions of that barrier and what steps need to be taken to prevent information being revealed. The lead partner bears the responsibility of advising his/her team in writing of their obligations. This applies to other partners, lawyers, assistants, trainees, paralegals or secretaries working on the matter.
  - (b) **Electronic 'walls':** Ashurst has a Risk & Compliance Department that uses "Walls" software to set up, control, monitor and report on user access across the IT systems where client information is stored. In that way, electronic documents can only be accessed by the respective client team members, Risk & Compliance Department and Ashurst IT system administrators. Each team member is required to ensure that any document they create, or the creation of which they authorise, is stored in the correct restricted file network.
  - (c) **Physical records and separate devices:** The client teams use secure printers, faxes and photocopying machines. Physical records are kept and stored securely, separate from the other client teams.
16. I confirm that all of these protocols and procedures will be applied and implemented for this matter.


**D. Practice Note GPN-SRCH and Undertakings**


17. I believe that I am, and I have been informed by Lucinda Hill, Sam Mengler, Angus Ross and Catherine Pedler that each of them believes that they are, capable of fulfilling the role of an independent solicitor in respect of the Search Order.



18. I have read Federal Court Practice Note GPN-SRCH and the undertakings set out in the Search Order, and agree to be bound by those undertakings. I also informed by Lucinda Hill, Sam Mengler, Angus Ross and Catherine Pedler that each of them has read Federal Court Practice Note GPN-SRCH and the undertakings set out in the Search Order, and that each of them agrees to be bound by those undertakings.

Sworn by the deponent )  
at Perth in Western Australia )  
on 8 May 2024 )  
Before me: )  
)

  
\_\_\_\_\_  
Signature of deponent

  
\_\_\_\_\_  
Signature of witness  
Jordan Sarah Leahy

**An experienced lawyer as described  
In the Oaths, Affidavit and  
Statutory Declarations Act 2005**



## Angus Ross

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Disputes Investigations and  
Advisory  
Dispute Resolution

Angus is a disputes and investigations lawyer with over 30 years' experience, including extended periods of practice in London and Hong Kong as well as in Australia. He advises organisations and individuals involved in complex commercial disputes and regulatory investigations, particularly in the financial services sector.

### Matters

- Advising on regulatory investigations, including by the OAIC, arising from a data incident.
- Acting in a confidential ASIC investigation.
- Acted for the bank in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.
- Acting in an ASIC investigation, and ensuing administrative and civil penalty proceedings, relating to its customer acquisition, account management and sales practices.
- Acting for a bank in an ASIC investigation and subsequent civil penalty proceedings relating to customer account administration practices and remediation.
- Acting for a bank in an investigation by the Hong Kong Monetary Authority in relation to its foreign exchange spot trading operations in various Asian jurisdictions over a five year period including the review of a very large volume of electronic communications; preparation of reports to interested regulators and advice on remediation and employment related aspects.
- Acting for a major bank in a confidential ASIC investigation into to customer account fees and remediation.
- Acting for a bank in responding to a significant ASIC information request relating to the client's credit activities and in an associated internal review of its processes in that area.
- Advising on the bank's response to an ASIC inquiry into its breach reporting practices.
- Acting for a bank in proceedings brought by customers of the bank claiming to recover derivatives losses arising from dealings with a third party on the basis that the bank should not have transferred the investment funds to the third party on the customer's instructions.
- Acting for a bank in a dispute with a customer regarding the valuation of transactions terminated under an ISDA Master Agreement.