

## NOTICE OF FILING

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*Sia Lagos*

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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: **Paul Alexander Dewar**  
Address: Level 4, 7 Macquarie Place, Sydney NSW 2000  
Occupation: Lawyer  
Date: 31 July 2024

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Filed on behalf of	Fortescue Limited and others, the Applicants		
Prepared by	Paul Alexander Dewar, Principal Lawyer		
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[Version 3 form approved 02/05/2019]

*R.M. Igho*

I PAUL ALEXANDER DEWAR, lawyer, affirm:

1. I am a principal of the firm Davies Collison Cave Law (**DCCL**) of Level 4, 7 Macquarie Place, Sydney, in the State of New South Wales and have the care, conduct and control of this proceeding on behalf of the Applicants (**Fortescue**).
2. I have been a partner of Davies Collison Cave and subsequently a principal of DCCL for 10 years. I have practiced in the field of commercial litigation for 26 years.
3. I am, and have been since commencing practice as a lawyer, cognisant that where a party makes an ex parte application to the Court, including an application for search orders, the party has both a duty of candour and an obligation to disclose all material facts.
4. This is my sixth affidavit in this proceeding. I am authorised to make this affidavit on behalf of Fortescue. The statements that I make in this affidavit are based on my own personal knowledge and belief, unless I expressly state otherwise. I am not instructed, and do not intend in this affidavit, to waive privilege on behalf of Fortescue, nor do I have the authority to do so.
5. I make this affidavit in answer to the First, Second and Fourth Respondents' interlocutory application dated 21 June 2024 (**Discharge Application**) in which the Third Respondents have joined. In this affidavit, I refer to Fortescue's interlocutory applications dated 9 and 14 May 2024 as the **Search Order Application**.
6. In this affidavit, I refer to:
  - (a) Fortescue's written submissions dated 8 May 2024 relied on in support of the Search Order Application (**Fortescue Submissions**);
  - (b) the affidavit of Adrian Huber, Senior Legal Counsel for the Second Applicant, sworn 1 May 2024, relied on by Fortescue in support of the Search Order Application (**Huber Affidavit**);
  - (c) the affidavit of Anand Indravadan Bhatt affirmed 1 May 2024, relied on by Fortescue in support of the Search Order Application (**Bhatt Affidavit**);
  - (d) the affidavit of Wayne McFaull affirmed 1 May 2024, relied on by Fortescue in support of the Search Order Application (**McFaull Affidavit**);
  - (e) the affidavit of the Fourth Respondent, Michael George Masterman, sworn 20 June 2024 and filed in support of the Discharge Application (**Masterman Affidavit**); and
  - (f) the affidavit of the First, Second and Fourth Respondents' solicitor, Michael John Williams, sworn 25 June 2024 and filed in support of the Discharge Application (**Williams Affidavit**).

7. By my commenting on aspects of the Masterman and Williams Affidavits in this affidavit, neither Fortescue nor I should be taken as agreeing with any aspects of those affidavits. Nor should the fact that I do not comment on any other part of the affidavits filed in support of the Discharge Application be taken as indicating that Fortescue or I agree with any aspect of those affidavits.

#### **Transcripts for Search Order Application**

8. Annexed to this affidavit and marked **Annexure PAD-22** is the transcript from the hearing before Justice Perry on 9 May 2024. Annexed to this affidavit and marked **Annexure PAD-23** is the transcript from the hearing before Justice Perry on 14 May 2024.

#### **Correction to Huber Affidavit**

9. I refer to paragraph 68 of the Huber Affidavit and in particular the date of the telephone call referred to in that paragraph. I am informed by Mr Huber and believe that, having reviewed paragraphs 65 to 74 of the Masterman Affidavit, Mr Huber considers that:
- (a) his recollection that the telephone occurred in “about August 2023” may have been incorrect; and
  - (b) the telephone call recalled by Mr Huber may have been the telephone call to which Mr Masterman refers at paragraph 72 of the Masterman Affidavit, which occurred in November 2023.

#### **Response to paragraphs 65 to 107 of the Masterman Affidavit and paragraphs 24 to 27 of the Williams Affidavit**

10. I refer to paragraphs 65 to 107 of the Masterman Affidavit and paragraphs 23 to 27 of the Williams Affidavit which assert that Fortescue failed to disclose the following allegedly “material” matters as part of the Search Order Application:
- (a) In paragraph 27 of the Williams Affidavit, Mr Williams states that “the Element Zero Respondents have serious concerns information that was material... was omitted from Fortescue’s disclosure to the Court. This included ongoing dealings between Fortescue and the Element Zero Respondents in the months prior to the Search Orders”.
  - (b) In paragraph 104 of the Masterman Affidavit, Mr Masterman states that the Fortescue representatives who attended a meeting between them and Mr Masterman on 24 January 2024 “did not give evidence about the meeting or what was discussed, such as the differences between the Fortescue and Element Zero technologies”.



11. I do not agree that material information was omitted from Fortescue's disclosure to the Court as part of the Search Order Application.
12. In making the Search Order Application, by its Statement of Claim dated 30 April 2024 (**SoC**), in summary Fortescue alleged as follows (see for example paragraphs 12 to 14, 19, 20, 25, 26, 29 to 33, 75(c) and 78(c) of the SoC):
  - (a) Dr Kolodziejczyk and Dr Winther-Jensen undertook research and development work into "Ionic Liquid R&D" whilst employed by Fortescue, during which they created the "Ionic Liquid R&D Information";
  - (b) the Ionic Liquid R&D Information (referred to in the SoC from paragraph 25 onwards as the "Fortescue Process CI") was confidential information belonging to Fortescue;
  - (c) the Fortescue Process CI was subsequently used by the Respondents in commercialising and using the "EZ Process";
  - (d) when they left Fortescue's employment, Dr Kolodziejczyk and Dr Winther-Jensen took documents (referred to in paragraphs 19 and 20 of the SoC) concerning the design, engineering, construction and operation of a green iron plant (referred to in the SoC from paragraph 26 onwards as the "Fortescue Plant CI");
  - (e) the Fortescue Plant CI was confidential information belonging to Fortescue;
  - (f) the Fortescue Process CI and the Fortescue Plant CI was subsequently used by the Respondents in designing, engineering, constructing, and operating the "EZ Plant" (being a green iron pilot plant); and
  - (g) the Respondents subsequently used the Fortescue Process CI and/or the Fortescue Plant CI in inventing, preparing and filing the Patent Applications (as defined at paragraph 6 of the SoC).
13. The allegations set out in paragraph 12 above were addressed (for example) in paragraphs 3, 4, 24 to 28, 38, 51 to 54, 56, 64, 65, 67, 69, 70 and 74 of the Fortescue Submissions and in Fortescue's evidence cited in those paragraphs.
14. I note that the allegations set out in paragraph 12 are in substance in the same form in the current version of Fortescue's pleading, being the Amended Statement of Claim dated 14 June 2024 (**ASoC**).
15. Fortescue did not allege in the SoC, and does not allege in the ASoC, that the EZ Process is the same as Fortescue's "Green Iron" process.
16. In making the Search Order Application, Fortescue distinguished between Fortescue's electrochemical reduction process and the First Respondent's (**Element Zero's**) electrochemical reduction process (i.e. the EZ Process). For example:



- (a) at paragraphs 20 and 21 of the Fortescue Submissions, Fortescue stated that Fortescue's process involves "suspending solid iron ore particles in the electrolyte", whereas the EZ Process involves "dissolving the iron ore into an electrolyte solution... using an ionic liquid".
- (b) In oral submissions on 9 May 2024, counsel for Fortescue indicated that Fortescue is currently using an "electr[o] chemical reduction approach using solid iron ore particles" (T13.27-31 and T14.1-9) that is different from the ionic process used in the EZ Process (T16.20-T17.2, see also the difference between those processes at T13.9-19).
17. In addition, Fortescue relied on detailed technical evidence about the differences between Fortescue's process and the EZ Process in Part C of the Bhatt Affidavit, in particular at paragraphs 46 to 53 (Fortescue's process) and paragraphs 33 to 45 and 89 to 98 (EZ Process).
18. In making the Search Order Application, Fortescue disclosed that:
- (a) Fortescue had indicated its concerns to Mr Masterman regarding potential intellectual property infringement by Element Zero, and Mr Masterman (on behalf of Element Zero) had indicated "there was nothing to worry about"; and
- (b) Fortescue had previously provided "samples" and "support" to Mr Masterman.
19. In particular, the Huber Affidavit stated as follows:
67. *I am informed by Phil McKeiver (Chief General Counsel of Fortescue Ltd) that on about 15 August 2023, Andrew Hamilton (Technical Director of Fortescue's Metals Technology Department) informed Mr McKeiver of concerns regarding Mr Masterman (former FFI CFO, current director of Element Zero) and his "team" that may cause the Metals Technology Department to reassess providing support in the form of supplying iron ore samples to those persons. Fortescue's Metals Technology Department had earlier provided samples to Mr Masterman (in about May 2023), and Mr Masterman was requesting further samples in July/August 2023.*
68. *In about August 2023 [note: corrected in paragraph 9 above to November 2023], Mr McKeiver spoke to Mr Masterman to raise concerns regarding potential intellectual property infringement and Element Zero's activities. I was present on the call but did not speak. I heard Mr Masterman tell Mr McKeiver that there was nothing to worry about.*

...



69(b). *Returning to Annexure AH-24... On 11 September 2023, I emailed Dr Kolodziejczyk to state I had "recently discovered that you are a co-director and shareholder of two recently incorporated companies together with some ex-employees of Fortescue, Michael Masterman (FFI's former CFO) and Bjorn Winther-Jensen (FFI's former Technology Development Lead)" , my awareness that Mr Masterman had requested iron ore samples from Fortescue, and inviting Dr Kolodziejczyk to meet "on a confidential, without prejudice basis, to discuss our concerns, and in particular, whether your patent applications are based on, or otherwise incorporate, Fortescue's intellectual property or confidential information" .*

20. I note that paragraphs 67 and 68 and Annexure AH-24 of the Huber Affidavit were referred to in paragraphs 33, 34 and 73(d) of the Fortescue Submissions.
21. In making the Search Order Application, Fortescue did not disclose the correspondence relating to the setting up of and the occurrence of the meetings on 19 December 2023 and 24 January 2024, or the correspondence relating to or the execution of the Non-Disclosure Agreement dated 23 January 2024 (**NDA**), being matters discussed in the Masterman Affidavit.
22. The matters to which I refer in paragraph 21 above were not disclosed because, taking into account the duty of candour and obligation to disclose all material facts to which I refer at paragraph 3 above, I considered that the matters were not material or relevant to the Search Order Application because:
  - (a) As Mr Masterman states at paragraphs 79 and 104 of the Masterman Affidavit, there are "differences between the Fortescue and Element Zero technologies" and "the Element Zero technology is very different from Fortescue's". The fact that the Fortescue electrochemical reduction process is different from the EZ Process is not a fact in dispute in this proceeding. Fortescue did not allege in the SoC, and does not allege in the ASoC, that the EZ Process is the same as Fortescue's "Green Iron" process. None of the claims I summarise at paragraph 12 above include any allegation about the similarities of the EZ Process and Fortescue's electrochemical reduction process. Indeed, Fortescue's disclosure to the Court in support of the Search Order Application was to the effect that there were "differences between the Fortescue and Element Zero technologies": see paragraphs 16 and 17 above;
  - (b) the basis for Fortescue's case only emerged after the meetings, following investigations by Fortescue including (see paragraph 38 and 74 of the Fortescue Submissions and Fortescue's evidence cited in those paragraphs) in January 2024, Dr Bhatt's review of Dr Winther-Jensen's emails, and in April 2024:

- (i) Mr McKemmish's forensic IT analysis of Dr Kolodziejczyk's Fortescue laptop;
  - (ii) Dr Bhatt's identification of the small number of R&D documents generated by Dr Winther-Jensen in the Fortescue Green Iron team's Sharepoint while Dr Winther-Jensen worked at Fortescue;
  - (iii) Ms Hantos' review of emails in Dr Kolodziejczyk's Fortescue inbox; and
  - (iv) Dr Bhatt's review of an Element Zero patent application, itself published in April 2024;
- (c) based on the investigations referred to in (b) above, it emerged in April 2024 that notwithstanding "differences between the Fortescue and Element Zero technologies", Fortescue had a case that:
- (i) the "Ionic Liquid R&D Information", which belonged to Fortescue, had been misused by the Respondents in respect of the EZ Process (see for example paragraphs 35 to 38, 56, 69 and 74 of the Fortescue Submissions and Fortescue's evidence cited in those paragraphs, and paragraphs 12 to 15 above); and
  - (ii) the Respondents had misused information belonging to Fortescue in designing and constructing the EZ Plant and in respect of the Patent Applications (see for example paragraphs 38, 56 and 70 of the Fortescue Submissions and Fortescue's evidence cited in those paragraphs);
- (d) in making the Search Order Application, Fortescue disclosed the matters at paragraphs 18 to 20 above, including its earlier concerns that Element Zero had potentially infringed Fortescue's intellectual property, and Mr Masterman's indication that "there was nothing to worry about". As I note above, it is not part of Fortescue's pleaded case, nor did Fortescue suggest in the course of the Search Order Application, that the EZ Process is the same as Fortescue's electrochemical reduction process.
23. I refer to paragraph 104 of the Masterman Affidavit, in which Mr Masterman suggests that Dr Bhatt (and, by extension, Fortescue in the Search Order Application) did not disclose what Fortescue officers had been told by Mr Masterman as to how the "Element Zero technology works". I agree that Mr Masterman's description to this effect was not disclosed. However, in making the Search Order Application, Fortescue relied on numerous public statements made by Element Zero representatives including on the Element Zero website and in national newspapers concerning how "the Element Zero technology works", being paragraphs 89 to 110 and Annexures AIB-22 to 28 to the Bhatt Affidavit and paragraphs 81 to 88 and Annexures WM-5 and 6 to the McFaull Affidavit.





My understanding of the key features of the “EZ Process” was and is reflected at paragraph 29 of the SoC (which was cross-referenced at paragraph 4, and included in a table at paragraph 56(e), of the Fortescue Submissions).

24. I continue to hold the view that Fortescue did not fail to disclose material information in support of the Search Order Application. However, if contrary to the above the Court concludes that material information was not disclosed, in determining not to disclose such information, I did not intend to mislead the Court and nor did Fortescue.

Affirmed by Paul Alexander Dewar  
at Sydney  
in New South Wales  
on 31 July 2024  
Before me:

)  
)  
)  
)  
)  
  
\_\_\_\_\_  
Signature of Paul Alexander Dewar

  
\_\_\_\_\_  
Signature of witness

**ROHIT MANOJ DIGHE**  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (New South Wales)  
Davies Coltison Cave Law Pty Ltd  
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No. NSD527 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

**ANNEXURE PAD-22**

This is the annexure marked **PAD-22** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his affidavit on 31 July 2024.

Before me: 

ROHIT MANOJ DIGHE  
An Australian Legal Practitioner  
within the meaning of the Legal  
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**TRANSCRIPT IN CONFIDENCE**

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O/N H-1924749

**FEDERAL COURT OF AUSTRALIA****NEW SOUTH WALES REGISTRY****PERRY J****No. NSD 527 of 2024****FORTESCUE LIMITED AND OTHERS****and****ELEMENT ZERO PTY LIMITED AND OTHERS****SYDNEY****2.21 PM, THURSDAY, 9 MAY 2024****MR J.S. COOKE SC appears with MR W.H. WU and MS S.K. YATES for the applicant**

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HER HONOUR: Thank you very much. Court Officer, could I ask you please to close the courtroom door? And I'll just confirm; it looks like everybody here is a member of the legal team for the matter that's listed before me this afternoon?

5 MR COOKE: Yes, Your Honour.

HER HONOUR: All right. So I will make an order, then, that this matter will proceed in closed court. In due course, though, I will be asking that a copy of the transcript is to be provided to the respondents - - -

10

MR COOKE: Yes, of course, your Honour.

HER HONOUR: - - - with the other documents, and in that regard, I would just indicate — assuming that I'm with you on the orders — in that regard, I will indicate that my associates have spoken to the transcription services to ensure that they're aware that we really do want urgency, in terms of the turnaround of the transcript in this matter.

15

MR COOKE: Yes, thank you, your Honour.

20

HER HONOUR: Thank you. Now I can indicate that I've read the submissions which have been filed, and I have read almost all of the affidavits.

MR COOKE: Yes.

25

HER HONOUR: I didn't quite make it in the time that I had; I'm just trying to pick up — I was into the affidavit of — yes Dr Anand Bhatt - - -

MR COOKE: Yes.

30

HER HONOUR: - - - but I hadn't finished, so I'm sorry.

MR COOKE: No.

35 HER HONOUR: I didn't get the opportunity to go all the way through the materials.

MR COOKE: Thank you, your Honour, and we're sorry to have burdened you.

HER HONOUR: So it might be particularly important to focus on that, but in any event, I will allow you to commence as you wish.

40

MR COOKE: Thank you. I should foreshadow, unfortunately, there's also some additional affidavits - - -

45 HER HONOUR: Right.

MR COOKE: - - - I would seek to read in due course, and I will take you on a

through them in detail, as well. Your Honour doesn't have - - -

HER HONOUR: The only ones I've got that are additional — so these are additional, in addition to Rodney McKemmish's, and Adrian Chai.

5

MR COOKE: Yes.

HER HONOUR: Okay.

10 MR COOKE: Yes. There's some additional affidavits as well, but I will come to them in due course if I may.

HER HONOUR: Yes.

15 MR COOKE: Your Honour, there are some — if I can begin, please, I should announce my appearance.

HER HONOUR: Yes. I should have started with that; I sort of dived straight into it. My apologies.

20

MR COOKE: My name is Cooke, I appear with MR WU and MS YATES for the applicants.

HER HONOUR: Thank you. Thank you very much.

25

MR COOKE: Thank you, your Honour. Your Honour, if I could hand up a marked up interlocutory application. There are some minor amendments to that, and I've tabbed where those amendments occur, to make it easier.

30 HER HONOUR: Thank you, Mr Cooke.

MR COOKE: If I could start off with those - - -

HER HONOUR: Madam Associate, you hold onto one of those. Thank you.

35

MR COOKE: Thank you. And so, your Honour, page 2, your Honour will see it's marked up at 1(b)(iv), and that's just indicating that — your Honour will recall — there's a schedule of corrections.

40 HER HONOUR: Yes. Yes, I've seen that. Yes.

MR COOKE: So we've just indicated that in the orders, expressly.

45 HER HONOUR: Well, if there's not provision at the moment, I think I'm right in saying, ">for the transcript." And so what I was proposing that — would be that an order go in that the transcript be provided, as soon as — a copy of the transcript also be served, as soon as a copy has been made available.

MR COOKE: Yes.

HER HONOUR: Yes.

5

MR COOKE: Yes. Thank you, your Honour.

HER HONOUR: So I think if we can include that as a — well that's actually only time for service, it's not actually what documents need to be served.

10

MR COOKE: Yes. But I think, your Honour, if we look at the schedule, I think it's the affidavits in Schedule C, and in any other document listed in Schedule B part B.2, and so if we turn to that, I'm hoping that that actually refers to the transcript. I think it did.

15

HER HONOUR: What page is that?

MR COOKE: Yes. What page is that? 21, your Honour. 2(g).

20

HER HONOUR: I see.

MR COOKE: Yes. It's that - - -

HER HONOUR: Excellent. All right.

25

MR COOKE: Thank you, your Honour. So just going back to the corrections, if I might please outline those. I've noted the one on page 2. It's the same correction on page 5 at 11(a).

30

HER HONOUR: Thank you.

MR COOKE: Just that they're referring to the schedule corrections. And then over to page 12. You will see a correction there 8A, your Honour, and that's referring to two patent applications which I will come to - - -

35

HER HONOUR: Right.

MR COOKE: - - - and explain those.

40

HER HONOUR: So this is another member of your legal team.

MR COOKE: It is. It's Mr Rohed.

HER HONOUR: All right. Thank you.

45

MR COOKE: I apologise for the disturbance, your Honour. At page 14, your Honour will see there's a reference to a Mr Ross as an alternative independent



lawyer, and I think that may depend upon if there is a vulnerable person at the premises and the precise date.

5 HER HONOUR: So why have there been proposed two?

MR COOKE: Excuse me, your Honour.

10 HER HONOUR: It's not that I see there's necessarily objection, but just so I understand.

MR COOKE: I see. Sorry, it only relates to the date of execution. I understand that the availability of the two would depend upon the date of execution. So in other words, Ms Hill, I understand, might be available on some dates. Alternatively, Mr Ross would be available if Ms Hill is not. So that's why there's - - -

15 HER HONOUR: Because I understand that one of the reasons why it was suggested that female lawyers attend on the residential premises was because it was anticipated that there was I think in one residence a child of - a young child around about five or something - - -

20 MR COOKE: Yes.

HER HONOUR: - - - and then the other residence, a little bit older than that, but still.

25 MR COOKE: 16.

HER HONOUR: 16.

30 MR COOKE: Yes. And I think, I mean, for those two residences, it's the female - two female independent lawyers are going to attend those premises. And it will either be Ms - I'm told it will either be, I think, a Ms Supountis or Ms Hill will be attending.

35 HER HONOUR: Certainly on the initial occasion that there is an attendance it would be preferable - - -

MR COOKE: Yes. Yes.

40 HER HONOUR: - - - to have, I think, a female lawyer.

MR COOKE: Absolutely, your Honour. That was our intention. Then moving forward, your Honour, there's a correction there to 1(a) under the Gildercliffe Street premises. And then, your Honour, again, 21, it's the same kind of correction at 2(f).  
45 And then your Honour will see at schedule C - - -

HER HONOUR: Yes.

MR COOKE: - - - there's additional affidavits referred to, which I will take you to in due course.

5 HER HONOUR: So the two that I haven't seen at - - -

MR COOKE: Yes.

HER HONOUR: - - - all - - -

10

MR COOKE: Yes.

HER HONOUR: - - - are 9 and 10.

15 MR COOKE: Correct. That's correct, your Honour. Now, your Honour, so this is the interlocutory application as amended that the applicants would move on today.

HER HONOUR: Yes.

20 MR COOKE: If I could identify that for the transcript. Now, what I propose to do, your Honour, is to hand up a copy of our suppression and confidentiality short minutes of order, if I may, together with a list of the affidavits and other materials that we would seek to tender, together with two affidavits your Honour doesn't have.

25 HER HONOUR: And is what you're handing up now, does that include the annexures to those affidavits?

MR COOKE: Yes.

30 HER HONOUR: And the short minutes of order - right.

MR COOKE: Sorry, your Honour, I have to correct something that I just said to your Honour. Apparently Mr Dewar's annexures have not been handed up. They're on their way. That's Mr Dewar's second affidavit I've just handed up.

35

HER HONOUR: Okay.

MR COOKE: So I apologise for that.

40 HER HONOUR: I have two copies of the affidavit of Mr Dewar, so I will give one copy - - -

MR COOKE: Yes.

45 HER HONOUR: - - - to my associate.

MR COOKE: Yes, please.

HER HONOUR: But only one copy of Mr Marrast's lengthier affidavit.

5 MR COOKE: Thank you. Now, your Honour, would your Honour like another copy of Mr Marrast's affidavit for your associate?

HER HONOUR: No, I don't think we need that. It will need to be filed, obviously, in due course.

10 MR COOKE: Yes, thank you, So, your Honour, what I've provided to you, just as a convenient list of the affidavits that we would seek to lead - - -

HER HONOUR: Yes.

15 MR COOKE: - - - on the application - - -

HER HONOUR: Now, do you seek to read all of those affidavits?

20 MR COOKE: Yes, we do.

HER HONOUR: All right. Well, rather than read them all out, which will take a bit of time - - -

25 MR COOKE: Yes.

HER HONOUR: - - - I will take the affidavits numbered 1 to 10 in the document headed Fortescue Search Order Tender Materials as having been read in support of the ex parte application.

30 MR COOKE: Thank you, your Honour, and I would also seek the opportunity to supplement Mr Dewar's annexures when they arrive, which is item 10.

HER HONOUR: Yes.

35 MR COOKE: In terms of the other material, we've got the schedule of corrections, which I think I should probably seek to tender, that schedule of corrections to the affidavit.

40 HER HONOUR: I think you should, yes.

MR COOKE: Yes.

45 HER HONOUR: So I assume that these corrections have all been - reflect the deponent's views as to what their affidavit should have said.

MR COOKE: Yes, your Honour.



HER HONOUR: All right. So I will receive the schedule of corrections to the affidavits in support of the applicant's ex parte application, as exhibit A1.

5 **EXHIBIT #A1 SCHEDULE OF CORRECTIONS TO THE AFFIDAVITS IN SUPPORT OF APPLICANT'S EX PARTE APPLICATION**

10 MR COOKE: Thank you. And then item 2, under Other Materials, they relate to - they're material which is included in the court book, but, as I understand it, confidential annexure AH21 omitted the confidential attachments 1 to 7. So we've just included that as well, so I think I should formally seek to tender confidential attachments 1 to 7 as belonging to confidential annexure AH21.

15 HER HONOUR: All right. Well, I will receive - no, you've going to give them to me. They haven't been handed up, have they - - -

MR COOKE: They're in the court book behind - - -

20 HER HONOUR: They are in the court book.

MR COOKE: They are, yes, behind tabs 99 to 105.

25 HER HONOUR: Right.

MR COOKE: They just don't formally form part of confidential annexure AH21, but they should do, and so I think the appropriate course, your Honour, is I should tender confidential attachments 1 to 7, and indicate on the transcript, which I have, that they actually belong together with confidential annexure AH21.

30 HER HONOUR: All right. Well, I will receive those documents as exhibit A2.

35 **EXHIBIT #A2 CONFIDENTIAL ATTACHMENTS 1 TO 7 BELONGING TO CONFIDENTIAL ANNEXURE AH21**

MR COOKE: Thank you. Then, your Honour, if I could move to the short minutes of order, which are the orders we would seek in terms of suppression and confidentiality.

HER HONOUR: Thank you. The orders need to state the basis on which the order is sought, as in, I assume it's in just the general one, in the administration of justice.

45 MR COOKE: Yes, your Honour. These are under the interim - so the section 37AI - - -

HER HONOUR: Yes, I think that's the power rather than the ground, but I could be wrong.

5 MR COOKE: I think my learned genius is going to get that for me, but I think it's an interim order - - -

HER HONOUR: That might be why.

10 MR COOKE: - - - which we - I think you don't have to specify the ground, and it's - if you look at the - it's until the date specified in order 2.

HER HONOUR: Yes, that's correct

15 MR COOKE: Yes. Thank you, your Honour. And then the date specified in order 2 is, in fact, the date of service and execution — I think — the date of service of the documents in annexure A.

HER HONOUR: Yes.

20 MR COOKE: And then - - -

HER HONOUR: Well, then there might need to be an order requiring the court to be formally advised when execution is being completed.

25 MR COOKE: Yes, at service and execution.

HER HONOUR: Service and execution, yes.

30 MR COOKE: Yes, Your Honour.

MR COOKE: We can mark up those orders for your Honour, if your Honour would like.

35 HER HONOUR: Yes, that would be very helpful.

MR COOKE: I will take a note of that. And then — so your Honour, the same kind of form is also — if you could order 3, under Section 37AI; again an interim order, but this one is until the date specified in order 4, which I, understand is the return date, and so it works, that's the method.

40

HER HONOUR: Yes.

45 MR COOKE: Thank you, Your Honour. Then, annexure A lists the various material in there, which includes the pleadings and the affidavit, written submissions, and transcript. Annexure B refers to the confidential material, which were in the boxes ..... the actual affidavits.

HER HONOUR: Well, presumably, you will also now have to include Exhibit A2 in that list.

5 MR COOKE: Yes. Thank you, your Honour. So we will amend the orders.

HER HONOUR: And perhaps note that the document at item 18 is Exhibit A1.

10 MR COOKE: Yes. Thank you, your Honour. Thank you. So we will make those amendments. Now, your Honour — so what I intended to do, subject to your Honour's convenience, is to take you to the central parts of the affidavit evidence - - -

HER HONOUR: Yes.

15 MR COOKE: - - - in support of the interlocutory application, and if I can begin, your Honour, with taking you on to Dr Bhatt's affidavit, behind tab 44.

HER HONOUR: Can I just ask as well, just while I think it all — I'm sure I wouldn't want to forget to ask.

20

MR COOKE: Yes.

HER HONOUR: When is it currently proposed to execute the orders; is it expected to start that process tomorrow?

25

MR COOKE: No, your Honour.

HER HONOUR: Right

30 MR COOKE: It relates to Mr Dewar's second affidavit, which I will come to. We've had the — as Mr Dewar indicated his first affidavit, we've had private investigators conduct surveillance of - - -

HER HONOUR: Yes.

35

MR COOKE: - - - the respondents, in order to ensure that they're all going to be at the relevant premises, so that the search order could be executed simultaneously.

HER HONOUR: At the same moment, yes.

40

MR COOKE: Yes, exactly. What has transpired is, in the last 24 hours or thereabouts, two of the respondents have flown up to Port Hedland.

HER HONOUR: Right.

45

MR COOKE: And we think it's to do with their inspecting a parcel of land for purchase, for the project that they're working on, to expand it.

HER HONOUR: Yes.

5 MR COOKE: But I will come to it in due course — but we're going to wait for them to come back, before we can execute it.

HER HONOUR: And at the moment, no one knows when they will be back?

10 MR COOKE: No.

HER HONOUR: Simply because that might impact on the return date that's specified in the orders, among other things.

15 MR COOKE: Yes, indeed.

HER HONOUR: Yes.

20 MR COOKE: And so when I come to it, I will return after the evidence, if I may, but would have to allow — if your Honour permitted — a sufficient amount of time - - -

HER HONOUR: Yes.

25 MR COOKE: - - - for the return date, to allow the execution to occur. Now, we don't know exactly when the two respondents are going to return from Port Hedland, but we don't imagine it's going to be - - -

HER HONOUR: Be a lengthy trip, no.

30 MR COOKE: Be lengthy, no.

HER HONOUR: No.

35 MR COOKE: So ..... your Honour. So when I return to it, I think we would be seeking three to four weeks before the return date, so that the execution can occur, but also to allow the independent lawyers, and the computer experts, to prepare their reports for the court.

40 HER HONOUR: But still, it's unusual to have such a lengthy period between an ex parte order being made and the return date.

MR COOKE: Yes.

45 HER HONOUR: So you wouldn't, necessarily, wait for all the analyses to have occurred before the matter came back before the court.

MR COOKE: I think the search orders, the standard search orders - - -

HER HONOUR: Yes.

MR COOKE: - - - provide that the - - -

5

HER HONOUR: They have the two-hour window to challenge - - -

MR COOKE: Yes, yes.

10 HER HONOUR: - - - or such further time as the independent lawyer sees fit.

MR COOKE: Yes. And then the independent lawyer and the computer expert, I think, have to provide their reports to the court - - -

15 HER HONOUR: Yes.

MR COOKE: - - - at the return date or before. So that will take a little bit of time.

HER HONOUR: Yes.

20

MR COOKE: I think, perhaps, a couple of days or a week.

HER HONOUR: But in any event - - -

25 MR COOKE: But we're in your Honour's hands.

HER HONOUR: In any event, we will have the liberty to apply on short notice, obviously.

30 MR COOKE: Yes, exactly.

HER HONOUR: Yes.

35 MR COOKE: Yes. Thank you. But I will return to that after the evidence, if I may. So Dr Bart's affidavit behind tab 44 – and so Dr Bart's role is identified in paragraph 1, your Honour. He's the position manager of minerals research and development of the third applicant. He's an experienced electrochemist and material scientist. And then at paragraph 8, your Honour, there's further overview of his expertise, including in relation to green iron, which your Honour knows is the broad field that this matter  
40 concerns. Over at paragraph 17, there's some further details about his expertise, relevant – your Honour, of course, all of this is relevant to him being able to provide an opinion - - -

HER HONOUR: Yes.

45

MR COOKE: - - - which he does in this affidavit. Your Honour, down at paragraph 22, back to the field of technology, being the green iron technology and, in particular



how that includes electrochemical reduction of iron ore into iron. Over to 24, your Honour, there are some details about the electrochemical reduction process, and at 27, there's a number of factors which are considered when designing and implementing electrochemical reduction process. And some of the key factors are indicated from (a) to (e) on page 9, including at (a) "particle purity preparation", which is relevant to leaching. And your Honour is aware that one of documents which was taken concerned leaching. We will come back to that in due course.

At paragraph 33, it's explained that there are two approaches to electrochemical reduction currently being developed in the iron making industry: (a) the electrowinning or electroplating approach; and (b) the electrochemical reduction of solid iron ore particles approach. Dealing with the first of those approaches, that's what's dealt with at paragraph 35 and following. What's explained there, your Honour, is that that's referred to as the ionic process where molten ionic liquid or molten salt is used as the electrolyte. The thing to remember, your Honour, that's in solution, the ionic process. What's identified at paragraphs 37; 29, first sentence; and last sentence of 42, is that the terms "iron liquids" and "molten salts" are synonymous; they're used interchangeably. So when one sees those terms in the document, sometimes, you will see one or the other.

20

HER HONOUR: Yes.

MR COOKE: They mean the same thing.

25 HER HONOUR: Right.

MR COOKE: Over to section C3 of the affidavit, commencing at paragraph 46, here, there's an explanation of what approach Fortescue is currently using, and that concerns the electric chemical reduction approach using solid iron ore particles. So that was the – your Honour, that was second approach identified in (b) at paragraph 33, your Honour.

30

HER HONOUR: So that's the – and that's being done by a pilot program, as I recall.

35

MR COOKE: This is at a pilot plant scale.

HER HONOUR: Pilot plant. My apologies for that.

40 MR COOKE: Yes.

HER HONOUR: Yes.

MR COOKE: Pilot plant scale.

45

HER HONOUR: Yes.

MR COOKE: But the important thing here is, that's the solid iron ore particles approach - - -

HER HONOUR: Yes.

5

MR COOKE: - - - currently being used by Fortescue. And as is clarified at 47, the process used by Fortescue is an example of that approach, but it's not the only way of performing it; it's obviously proprietary, but it's one of the — it falls within that category. If your Honour could please now turn to paragraph 54, this deals with Dr Kolodziejczyk's development of the ionic process while at Fortescue; so that's ionic, that's the liquid electrolyte process. 54, in order to understand the work undertaken by Dr Kolodziejczyk during his employment at Fortescue, in January 2024, I caused a review to be undertaken of all emails sent or received by him on his Fortescue email address, during his employment at Fortescue between 25 March 2019 and 5 November 2021, which were reviewed by Ms Hantos.

Following the review — which he indicates at 55 — he was provided with the emails, and asked to provide his understanding of those emails, in terms of the development. Then over the page at — he firstly deals with the correspondence between Dr Kolodziejczyk and [REDACTED] between August to October 2020, and the Professor we understand to be the [REDACTED], because that was in his signature block. And then, your Honour, if your Honour turns to paragraph 63, there we can see that in October 2020, in the email, Dr Kolodziejczyk there indicates to the Professor that they've been doing work in ionic liquids, and low temperature iron ore reduction.

So, here begins the trail of evidence that this individual had been working on, in research and development, the ionic process, and then, under D.2, there's a number of emails to senior Fortescue management, at 65. In early to mid-December 2020, he sent emails to senior Fortescue management, in which he stated that he developed and would continue to develop low-temperature processing of iron ore, using an ionic liquid electrolyte. And you can see there at A, for example, there's an email from the individual to Dr Forrest, of that nature. And at B, there's an email, again from the individual, to Mr Masterman — the fourth respondent — again indicating the work that Dr Kolodziejczyk had done in relation to the ionic process. At 66, the deponent notes, from the above emails that Dr Kolodziejczyk suggested that he could develop a low temperature ionic process that mimics the [REDACTED] process, that occurs over 14,000 degrees Celsius. Then he explains that's a particularly - - -

HER HONOUR: Which is not particularly green, one would imagine.

MR COOKE: No, I don't know. Well, I don't know, your Honour, but I think - - -

HER HONOUR: It's obviously an incredibly different process - - -

45

MR COOKE: Yes.

HER HONOUR: - - - given the differences in temperature.

MR COOKE: Yes.

5 HER HONOUR: Yes.

MR COOKE: At very high temperatures.

HER HONOUR: Yes.

10

MR COOKE: At 67, he then starts talking about the evidence that we have of Dr Kolodziejczyk, by late December 2020, in relation to the patent assessment form, where he states he's working on a patent application for low temperature electrochemical iron ore reduction in ionic liquid electrolytes. And again, he's indicating in an email to senior persons, including Dr Forrest and Michael Masterman, that he had been working on that ionic liquid process. Then at 69, 22 December, from the second respondent to another individual, attaching a completed patent assessment form, and in that - in 71, in that patent assessment form, the second respondent describes, amongst other things, an invention entitled the low-temperature electrochemical oil reduction involving the use of ionic - if I can paraphrase, ionic liquids. And then he says - as underlined, it says:

15

20

*The concept has been tested in a laboratory setting and is intended to be scaled up to a commercial system in 2021. The invention -*

25

He says:

*The invention has not been publicly disclosed. All information related to this intervention is kept internally within Fortescue.*

30

Then at 72, the second respondent states that the technology is proven. He says:

*I have developed this method and tested it in a small-scale laboratory setting before.*

35

At D.4, there's evidence, through email correspondence, that he continued his development of the process, and at 73, the email correspondence shows that, in late-December 2020 to January 2021, the second respondent was progressing two technologies for processing iron ore into iron, one of them being the ionic process. And then at 74, the second respondent to Ms Shuttleworth, who is the former CEO of Fortescue's future industries, states that:

40

*We're proposing the development of two green steel technologies. One will be the low-temperature electrochemical reduction in ionic liquids.*

45

And then there's further evidence just set out from paragraph 75, which is to Mr Masterman, the fourth respondent, and following. Then at 77, again, there's further

evidence there. This is in relation to the second respondent's indication to Fortescue's media and corporate affairs employees. In the middle, he's talking about reducing Fortescue's iron ore dissolved in a unique electrolyte, and of course, "dissolved" is referring to an ionic liquid, ie, dissolving it in there.

5

HER HONOUR: So you've just - here we are. I've got it.

MR COOKE: Yes, thank you, your Honour. And then what's noted at 78 is, despite the evidence one has about the intention to file patent applications in relation to the ionic liquid process that I've just referred to, Fortescue has no such filed patent applications in relation to that subject matter. That's what's noted at 78. 79, there's further evidence, this time in relation to Dr Winther-Jensen, who's the third respondent. Now, Dr Winther-Jensen, as noted in paragraph 79, started with Fortescue on 15 February 2021, and there was some correspondence referred to paragraph 80 and following between the second and the third respondents about the need for doing or achieving something fast (pilot project).

And then, over at 81, the second respondents confirmed to the third respondent that, to date, it had looked at water ionic liquids, which were underlined, etcetera, for processing iron ore into ore. And then, at 82, there's an email from Dr Winther-Jensen to the second respondent, February 2021, suggesting that the preferred priority scenario from a research and development standpoint would be the pursuit of a solid-state reduction, which is the one that Fortescue is currently doing. But importantly, your Honour, for the application, the draft research plan suggested that the ionic process be considered as parallel research, so in other words, at the same time but with a longer lead time. At 84, the deponent notes that Ms Hantos hasn't been able to find any other records in Fortescue's records, other than the ones referred to above, relating to the ionic process.

HER HONOUR: So the last reference we have, effectively, is to that being developed in parallel - - -

MR COOKE: Yes.

HER HONOUR: - - - with a longer lead time, to the solid-state process.

MR COOKE: Yes. So that - - -

HER HONOUR: And then everything goes silent.

40

MR COOKE: Yes. And our - - -

HER HONOUR: As far as records are concerned.

MR COOKE: Exactly. And our theory is that they took the research with them when they left, and they've used it in the first respondent's - the EZ process and to

set up the plant, and there's other evidence, which I will take your Honour – that corroborates that theory.

5 Now, at 85, Mr – Dr Bhatt, based upon the emails I've referred your Honour to, considers that a likely timeline of the second respondent's work on the ionic process is as follows, and what he has done, based on his expert opinion – he has gone through all of the emails, and he sets out a timeline, shown at pages 21 and 22, about when it began and when it continued through to November 2021 – is when they left.

10 HER HONOUR: Would you mind just giving me a moment to read that.

MR COOKE: Yes. No. No.

15 HER HONOUR: Yes. Thank you very much. Thank you.

MR COOKE: Same as well, your Honour. At paragraph 86, Dr Bhatt indicates that assuming the above timeline is correct, based on his experience and expertise, he would expect to be able to locate the following documents and information in the system, and he lists it, (a) through to (i), but as he notes at 87, no documents have  
20 been located other than the emails I've taken your Honour to. At 88:

25 *I'm, therefore, concerned that the second and third respondents have intentionally not uploaded onto the Fortescue IT system and/or taken and/or deleted the above work product during or prior to ceasing their employment with Fortescue.*

30 That's at paragraph 88. Then he moves on to discussing Element Zero's process, and at F.1, paragraph 91, he there sets out a number of publicly available documents about the Element Zero – or EZ process - - -

HER HONOUR: Yes.

35 MR COOKE: - - - and plant. And so he sets that out. And then, your Honour, at 98, he sets out his opinion. He says:

*In my opinion, based upon the information referred to above –*

40 he considers that the Element Zero process has a number of features, and he lists them at (a) to (e). And at 99, he notes – says he believes there's an additional element, which is a leaching step, prior to the electrochemical reduction step, and he sets out his reasoning why that is the case.

45 And if your Honour then, please, turns to paragraph 105, he there reviews a PCT application of Element Zero which recently became open to public inspection, so recently became publicly available. That was on 25 April of this year. And he reviews it, and at 106, he considers the matters disclosed by the PCT application are consistent with what Element Zero has disclosed on its website and the media



referred to above and his view as to chemistry that would be required to achieve the water-free conditions in electrowinning process operating at 250 to 300 degrees C.

5 And then, your Honour – if your Honour turns to paragraph 110, please. He says  
based on his experience, he considers that while the second respondent was  
employed at Fortescue, he developed, tested and was continuing to work on a process  
of electrochemical reduction that had the features described in the table below. So  
what he does there, he lists the features which he had referred to previously and he  
refers to the paragraphs above, or which we have references to the work product  
10 being done by the second respondent, and then he compares it to the Element Zero  
process, and he sets out the paragraph there.

15 So then he moves on to the review of a SharePoint folder, which is held within  
Fortescue. So before I move on to section H, I should note, your Honour, so what  
we've established up to paragraph 110 is, on that evidence, that the second and third  
respondents, we submit, were working on the ionic liquid R&D information, whilst  
they were at Fortescue, and that they've taken that research with them. And that,  
Your Honour, is referred to in paragraph 12 and 13 of our statement of claim.

20 Now, moving on, at section H to the SharePoint folder, he says, in January 2024,  
he's conferring with another member, Mr Adrian Huber, who was investigating the  
conduct of the second and third and fourth respondents, whilst employed at  
Fortescue. He was informed by Mr Huber that the second and third respondents  
were both using a SharePoint folder with our members of the Green Iron Project  
25 team, that's at paragraph 112. He then gets an archived version of the SharePoint  
site, which he refers to at paragraph 114.

30 Then, at 116, asked Ms Hantos to compile some keywords relevant to the  
development of a pilot plant, and direct electrochemical reduction of the process, and  
then what he does is he uses the keywords to search for documents in the archived  
SharePoint folder. And then he visually scanned the documents which came up in  
response to that search, and he sets out the categories which the documents fell  
within in 117(a) through to (f). And then at the end of 18, he creates a list of those  
documents in the archive SharePoint folder, which would of been of particular value  
35 in progressing the research and development project in relation to electrochemical  
reduction. And pausing there, your Honour, the list that he has created is what  
appears in the list of things in annexure I under the third heading which is titled  
SharePoint.

40 And then, your Honour, we move on to section I, which is Fortescue's confidential  
information taken by Dr Winther-Jensen. Now, your Honour, this section deals with  
the documents referred to in paragraph 20 of our statement of claim, being part of the  
Fortescue plant confidential information. What occurred, there was a search of Dr  
Winther-Jensen's Outlook at Fortescue, as indicated paragraph 120, and then 121,  
45 what was identified following that search was which was conducted from January  
2024 onwards, and then I think a thousand documents - - -

HER HONOUR: Yes.

MR COOKE: therefore, were spread – five documents were identified where Dr Winther-Jensen had emailed to himself after he had handed his notice of resignation,  
5 but before he left in that short period between 3 and 12 November. And then what Dr Bhatt does is he reviews each of those documents, and in his opinion, they're directly relevant to the Fortescue project, and, in particular, they are relevant to setting up pilot plant.

10 Now, the first is the leaching technical report, and he identifies 129 what information that contains. And then at paragraph 133, he explains the potential use of that document by the respondents.

HER HONOUR: Sorry, which paragraph was that?

15

MR COOKE: 133.

HER HONOUR: 133.

20 MR COOKE: 1-3-3.

HER HONOUR: Yes.

MR COOKE: Yes. And then, your Honour, his concern is heightened, because at  
25 134, he's referring back to the Element Zero PCT application, which I've already referred your Honour to. It contains the same temperature window as referred to in the leaching document. His second document he moves on to is the Iron Ore Leaching Update. As an overview, at paragraph 137 explains what that contains. It's raw data for the above-mentioned leaching experiments.

30

And then over at 140 to 141, he then again refers to a particular use and value that could be made of that information. He then goes to the next document, the TEA sheet and email. He describes, by way of overview, what that contains at paragraph  
35 145. And then, your Honour, at paragraph 147, he sets out the potential - the value, being about half a million, just of that information in that document. And then he gives more detail at 148 about the particular value of the confidential information contained in the TEA sheet, and then explains how that information could be used to design a pilot plant at paragraph 149.

40 At 150 onwards, he moves to the fourth document, which is the Fortescue Green Iron Provisional Application. So this refers to a document which the third respondent, and, in fact, also we have evidence of the second respondent, accessing before they left Fortescue, which is one of Fortescue's own patent applications. At that stage, that patent application was not open to public inspection, and the details of those  
45 given in paragraph 151. At paragraph 155, again indicated that that contained confidential information belonging to Fortescue that would not have been publicly available prior to 8 December 2022.

Pausing there, your Honour, there's one more document, which is the fifth document, which is referred to in Mr Olivier's affidavit, which I will now ask your Honour to turn to. Mr Olivier's affidavit is behind tab 93. It's to identify the last document  
5 referred to in paragraph 20 of the statement of claim. And Mr Olivier, as indicated at paragraph 1, is a director of Fortescue Limited. Paragraph 19, he refers to that fifth document, being a forum slide pack, which is a PDF copy of a Microsoft PowerPoint document titled Green Iron Forum.

10 And at 20, he explained that's an internal Fortescue meeting record of what occurred at that forum, and it's strictly private and confidential - that's how it's marked, and 22, the information would have been a great value to anyone seeking to establish a green iron business, including in relation to one concern with the production of iron ore to create green iron, and he sets out some examples. Now, pausing there, your Honour,  
15 those documents, the paragraph 20 statement of claim documents are referred to.

HER HONOUR: Now can I just stop you for a moment there - - -

MR COOKE: Yes.  
20

HER HONOUR: - - - is that document – that document remained on – that document is not – is that document something that is missing, or it is only – or it's not missing because a copy is annexed?

25 MR COOKE: That document - - -

HER HONOUR: It's obviously known that it was accessed.

MR COOKE: Yes, that was a document – was one of the five documents that we  
30 have evidence that Dr Winther-Jensen emailed to - - -

HER HONOUR: Right. To himself.

MR COOKE: - - - to himself.  
35

HER HONOUR: To his private email address.

MR COOKE: Yes.

40 HER HONOUR: Yes.

MR COOKE: That's right, your Honour. And so that forms part of the listed things in - - -

45 HER HONOUR: Yes.

MR COOKE: - - - the ..... application. For the record, it's annexure I and it's under the first heading in annexure I, page 16. Now, could I ask your Honour, please, to go to Mr Huber's affidavit at tab 13 – it's Adrian Huber. At paragraph 1, he identifies himself as the senior legal counsel of Fortescue Future Industries. If I could ask your Honour to turn to paragraph 77, please.

Now, what I'm doing now, your Honour, is moving into the documents referred to in paragraph 19 of the statement of claim, which is the other part of the Fortescue plant confidential information. So it's paragraphs 19 and 20 form what we have defined as the Fortescue plant confidential information, so moving on to 19. At paragraph 77 of Mr Hubert's affidavit, on 22 April 2024, I understand that Rod McKemmish – now, he's one of the independent computer experts, your Honour, on the search application – obtained a copy of the forensic image of the Fortescue laptop used by the second respondent that had been the subject of a preliminary analysis by Deloitte at an earlier period of time. I won't - - -

HER HONOUR: Sorry, I'm just not finding where the paragraph is.

MR COOKE: Sorry, 77. It's on page 19 of Dr Hubert's affidavit.

HER HONOUR: That's why I got confused. Yes.

MR COOKE: Yes. And so here, he refers to – in April, he's referring to a forensic image that had been taken by Mr McKemmish, one of the independent experts, of the laptop used by the second respondent when he was employed by Fortescue, and then he reveals what the forensic image revealed from (a) through to (g). Now, what it does reveal at (a) is that the second respondent used at least two external USB devices, and they're the two USB devices, your Honour, that we refer to in paragraph one of the listed things in the interlocutory application.

And then, your Honour, at paragraph (d) – this is 77(d) – that, your Honour, is the document referred to in paragraph 19(c) of the statement of claim. At paragraph 77(e), Mr Hubert there refers to the document referred to at paragraph 19(d) of the statement of claim. At 77(f) he refers to document 19(a) of the statement of claim, and at 77(g), he refers to the document at 19(b) of the statement of claim. So pausing there, your Honour, we have evidence that the second respondent took these documents before he left Fortescue.

Then, Dr Hubert moves on in section (g) to the capital raising for Element Zero, being the first respondent. At 79, what we can deduce, he sets out, from out publicly available information from the ASIC records, is that Element Zero issued 1,268 non-cumulative redeemable preference shares for an amount over \$15 million, and their shares were issued to two shareholders. One is Symmall Proprietary Limited, and we've calculated that holds 320 of those shares which were calculated to be equivalent to approximately 3.8 million - that's 3.8 million of the 15 over \$15 million paid. And the second is to the

Venture Capitalist, Playground Ventures, for 948, which is equivalent to approximately 11.4 million.

At 81, according to the above analysis, Symmall Proprietary Limited, which is Mr  
5 Masterman's company, appears to have provided Element Zero with about 3.8  
million in funding in return for the shares. And then at 82 - but we note that the  
issuance of the Element Zero shares equivalent to approximately 11.4 million to  
the venture Capitalists was on 21 August 2023. And pausing there, that means, your  
Honour, that in the first 20 months after the respondents had left Fortescue, on this  
10 analysis, they had approximately \$3.8 million only to resource their operations. It  
wasn't until 20 months later that they got the injection from the Venture Capitalists of  
11.4 million.

Now, if I could ask your Honour now to turn to Mr McFaull's affidavit behind tab 82,  
15 Mr McFaull identifies paragraphs 1 to 3 of his affidavit. He's a specialised engineer  
in the mining and energy sector at Fortescue, and what he says in paragraph 3 - his  
expertise is in plant design and construction, your Honour. Paragraph 26, your  
Honour, here he's giving details about the progress of process R&D projects from  
inception to delivery of a pilot plant may typically be broken down into the following  
20 phases. So he's talking generally here based on his experience.

HER HONOUR: Could you just give me that reference again, please?

MR COOKE: Yes, paragraph 26.  
25

HER HONOUR: Thank you.

MR COOKE: So he sets out here the typical phases required from inception to  
delivery of a pilot plant. You see all the phases there, your Honour? And then what  
30 he does is he provides a more detailed description of each of those phases in what  
follows, and one can there see on page 80 he starts off with phase 1, etcetera.

If one turns to phase 4 at paragraph 37 and following, at paragraph 39 there refers to,  
for example, a basis of design document as part of that phase 4 process. Your  
35 Honour, document 19(c) of the statement of claim is, in fact, a basis of the design  
document. At paragraph 40, he there refers to other kinds of documents and  
information which are typically created in being able to design and implement a pilot  
plant. He there refers to a piping and instrumentation diagram and a PFD, a process  
flow diagram.  
40

Now, your Honour, pausing there, the document referred to in paragraph 19(d) of  
the statement of claim is a PFD - sorry, it's a piping and instrumentation diagram,  
P&ID document. One can just see there the level of detail that's usually required for  
this kind of documentation which have to document the various steps and parts. And  
45 at 41, he refers to P&IDs are more detailed diagrams derived from PFDs, and he  
gives an example of a P&ID diagram at page 11.

HER HONOUR: He says they can take thousands of hours of development time to complete.

5 MR COOKE: Exactly. It's a lot of valuable information, your Honour, that's contained in these documents. And then, so it keeps going, your Honour, page 12 and following he sets out phase 5, and he sets out all of the various phases until we get to page 14, section C the Fortescue project.

10 So in this part, he gives some information about the Fortescue project. At 62, he sets out when the Fortescue project was commenced, that was commenced on 11 February 2021. It was commissioned operational by 16 February 2023, so it took two years, your Honour, from when it was commenced to when it became operational. And C, he notes that Fortescue project is ongoing, with the next milestone being the construction of a much larger pilot plant, and then ultimately a  
15 production plant.

And then, the evidence he provides at 63, he says, in my affidavit, is relevant to the progress of the Fortescue project from its inception on 11 February 2021, through to the commissioning and operation of the first pilot plant on 16 February 2023. This is  
20 in relation to the electrochemical reduction process that I referred to before. And at 64, my evidence in relation to the relevant period covers both the initial research and design of the electrochemical reduction process described in Dr Bhatt's affidavit, which he has read, and also the design and construction of the first pilot plant which is capable of processing 100 kilograms of iron ore per day. So it's called a pilot  
25 plant, but it's still - it's a fairly large plant, your Honour.

Now, 65, he notes that the Fortescue books and records - there's no document in the Fortescue books and records that summarises the progress of the Fortescue project prior to the plant state during the relevant period. Accordingly, he has been asked to  
30 provide an estimated breakdown of the project, which he has indicated in a Gantt chart, and I will hand up a larger version of what's in the affidavit in a moment, so one can see it, but he was - what he does is, you can see the Gantt chart referred to of paragraph 70, your Honour. Can I just hand up the blown-up versions of that. So what it does - - -  
35

HER HONOUR: Well, should I receive this as a separate exhibit, would that be - - -

MR COOKE: Yes, please, your Honour.

40 HER HONOUR: All right. So I will receive a chart titled Project Title, which is an enlargement of the document contained at paragraph 70 of the affidavit of Mr McFaull as exhibit A3.

45 **EXHIBIT #A3 CHART TITLED PROJECT TITLE, ENLARGEMENT OF THE DOCUMENT CONTAINED AT PARAGRAPH 70 OF THE AFFIDAVIT OF MR McFAULL**

MR COOKE: Thank you, your Honour. And, your Honour, so what it does in the left-hand column is it refers to each of the phases that Mr McFaul has described in his affidavit, and then sets the start and end date for each of those phases, and he subdivides those seven phases into more detailed phases. You can see, your Honour, in that column, taking, for example, under 1, Program Set-up and Testing. So in relation to the initial team, join an inducted, start 10 February 2021, end 20 February 2021, and then you've got the horizontal bar indicating that time period, and so it goes on.

And so one can see that it took Fortescue over two years, as indicated by the Gantt chart, from the start to getting the commissioning and getting up to be the pilot plant being commissioned and operational by 16 February 2023. Then what Mr McFaul does, at paragraph 72, indicates how much my client spent on the project, and he indicates that's in the cumulative spend graph on paragraph 75. What to note there is that in the first 20 months, your Honour, Fortescue spent [REDACTED].

Then at paragraph 74, he sets out the number of people working on the project each month. Then at 77, he is asked a question by the solicitors to explain the functionality that you expect of a complete circuit plant designed to implement a direct electrochemical reduction process, and indicate whether or not the Fortescue plant possessed that functionality as at 16 February 2023. And then he answers that question in paragraph 78 by yes or no in that table. And then he summarises his conclusion at 79 and 80, saying that the Fortescue plant consisted of certain of those elements.

Then, if I could ask your Honour, to please go to 86, he there says, for the reasons set out below, he considers that the Element Zero plant is likely to possess a number of those elements, being caused in preparation, leaching, electrolysis and electrode management; that's sort of cross-referring back to his previous table, and then he sets that up in another separate table as well, at paragraph 86.

Then paragraph 88, he gives an opinion, "based on my analysis of the Fortescue process and plant and the Element Zero process and plant set out in this affidavit, he considers that the level of complexity of the design of the Fortescue plant and Element Zero plant is likely to be quite similar, with the Element Zero plant possibly having a slightly more complex design, for the reasons he sets out in paragraph 88.

At 89, the solicitors, DCCL, asked him to provide his opinion as to whether he considered that the second respondent and the third respondent could have invented the Element Zero process, and then design and constructed the Element Zero plant in the time available to them between their leaving Fortescue in November 2021 and the Element Zero plant being operational in January 2024 – a 26 month period.

If your Honour, please, turn to paragraph 96, he indicates there:



*In my opinion, this would only have been possible if the first and second respondents in Element zero – the first respondent – had access to a similar level of resources as was available to the Fortescue project.*

5 Then 97, DCCL, the solicitors, asked him to assume that the first, second and third respondents had access to a funding of five million during the period of 1 December 2021 to 1 August 2023, the first 20 months. Pausing there, on our analysis, we calculated that they only had access to 3.8 million, but being conservative, your Honour, we gave the estimate of five million.

10 Then at paragraph 100, in answering the question, he observes that the cumulative spend for the equivalent first 20 month period of the Fortescue project was approximately [REDACTED]. And then at 1.01:

15 *Accordingly, I do not consider that funding of five million was anywhere near sufficient to finance a process R&D project in the nature and complexity of the Fortescue project and the Element Zero project during that period. In my opinion, even allowing for a reduction in capital expenditure costs for the Element Zero plant from buying second-hand equipment of say \$1 million –*

20 which he considers to be reasonable:

*...there is still an unexplained resource deficit for the Element Zero project of around [REDACTED].*

25 So that's in the first period of time, your Honour, in the first 20 month period, and that's before the capital injection. So there's an unexplained ability for Element Zero to have got where they've got with that level of resource.

30 At 102, in this section he sets out his analysis of documents provided to him by the solicitors from Fortescue's business records, which he was told by Dr Bhatt that the first and second respondents had access to during his employment. And 103, he says had a number of those internal Fortescue procedures and specific documents that they had access to, and which were relevant for the purpose of designing, building  
35 and operating process infrastructure to the requisite safety, reliability and efficiency standards. So he sets them out, your Honour.

And then at 105, he says:

40 *In my opinion, these documents could have saved Element Zero considerable time and expense to understand the design and regulatory requirements for process infrastructure, particularly with respect to safety, and then the selection and procurement of appropriate equipment to be incorporated into a pilot plant.*

45 Pausing there, your Honour, that list of documents forms part of the listed things at annexure I in the fourth section of annexure I on page 17.

If your Honour could, please, turn to paragraph 111, what he does here, he considers the documents identified by Dr Bhatt from the archived SharePoint folder – your Honour might recall that, and so what he does he reviews them, and then at  
 5 paragraph 112 is:

*I confirm I've carefully considered the identified documents, and they would have been of substantial use in development and progress, including the construction of the Element Zero plant*

10 HER HONOUR: Which paragraph again?

MR COOKE: 112.

15 HER HONOUR: 112. Thank you.

MR COOKE: And then, your Honour, 116:

20 *I consider that the identified documents were considered collectively. Had they been available at the beginning of the Element Zero project, would have provided significant savings in developed time cost of that project –*

for the reasons he described in part G above.

25 Then he moves on to their under the heading Element Zero's Resource Deficit. At 117, he refers:

30 *As stated above at part E, I do not consider the funding of five million was anywhere near sufficient to finance the R&D project of Element Zero, such as the Element Zero project in the first 20 months. In my opinion, there is an unexplained resource deficit of around [REDACTED].*

35 Then he's asked by the solicitors at 118 to provide his opinion as to whether the first, second and third respondents could have met this resource deficit using Fortescue's confidential and internal information as set out above, and he answers that question below, paragraph 120:

*Based on my assumptions as to the nature of the Element Zero plant –*

40 as he set out earlier, he considers that the amount of five million is sufficient to design and build the Element Zero plant, provided that the first, second and third respondents started the Element Zero project in December 2021 with a substantial amount of information regarding how the project should progress. More specifically, in my opinion, if they commenced the Element Zero project in December 2021  
 45 armed with the information refers to paragraph 121(a) to (f), then the Element Zero project would have been more akin to a straight construction project rather than an R&D – process R&D project. And he says:

*In my opinion, a construction product to build the Element Zero plant could have been delivered over the first 20 months for about five million.*

5 Now, if I can ask your Honour, please, now to turn to Mr Olivier's affidavit. Mr  
Olivier's affidavit is behind tab 93. I've already identified his role, your Honour,  
he's a director at Fortescue Limited, paragraph 1, and at paragraphs 26 to 28, he sets  
out there the prejudice that would be suffered by Fortescue if the search order is not  
made. I just wanted to identify that for your Honour. If I can next ask your Honour,  
10 please, to turn to Ms Hantos's affidavit at - - -

HER HONOUR: Can you just give me a moment to - - -

15 MR COOKE: Thank you, your Honour.

HER HONOUR: - - - read this through. Thank you. So the estimate of  
[REDACTED] at paragraph 17, does that include both kinds of processes – an  
estimate of the development costs of both kinds of processes so far by Fortescue, or  
is that simply the solid-state process?

20 MR COOKE: And that's, sorry, paragraph 17 - - -

HER HONOUR: 17.

25 MR COOKE: - - - of – yes.

HER HONOUR: Of the affidavit of Mr Olivier.

30 MR COOKE: That, your Honour, is just the Fortescue process that was  
implemented in the pilot plant to upgrade the pilot plant. I might just get some  
instructions on that, if I may, your Honour. I see. So I'm told that paragraph 16  
refers to the initial value of 19.3 to get - - -

35 HER HONOUR: Yes.

MR COOKE: - - - the pilot plant up to that stage. And then paragraph 17 refers to  
an additional [REDACTED] to get it to the next stage.

40 HER HONOUR: So it's only dealing with the solid-state technologies?

MR COOKE: Yes, that's the solid-state.

HER HONOUR: Okay.

45 MR COOKE: I'm told, your Honour, I should not have read out that value at  
paragraph 17 because it's in a box, so it's ask – I apologise.

HER HONOUR: I ask for that, then, to be omitted, please, from the transcript.

MR COOKE: Thank you, your Honour.

5 HER HONOUR: And we will need to double check that that has occurred in due course.

MR COOKE: Thank you, your Honour.

10 HER HONOUR: So that further sum was one to develop it to the next stage, to the more substantial - - -

MR COOKE: Yes. An additional sum, yes - - -

15 HER HONOUR: Yes.

MR COOKE: - - - for the next stage.

HER HONOUR: I won't be a moment. I will just finish this because I hadn't got  
20 this far in my reading.

MR COOKE: Thank you, your Honour.

HER HONOUR: The document at paragraph 19 is the one you've already taken me  
25 to that forms .....

MR COOKE: Yes, your Honour. I've taken you to that section, yes.

HER HONOUR: Paragraph 24 is potentially quite significant, I would have  
30 thought - - -

MR COOKE: Yes.

HER HONOUR: - - - and 25.  
35

MR COOKE: As I said before, that's one of the documents that Winther-Jensen sent to himself after he resigned but before he left in the November 2021 period.

HER HONOUR: So one thing that we probably don't have evidence of – which is,  
40 probably, in the greater scheme of things a lesser sum than what has already been spent on developing the solid-state pilot plant – and that is the cost that has been invested thus far in developing the ionic process, the documents of which relate to which have disappeared.

45 MR COOKE: Yes. That's right.

HER HONOUR: Yes. So we can't make an estimate of that, in a sense. Well, I guess one could - - -

MR COOKE: One can - - -

5

HER HONOUR: - - - and one has, in the sums that you talked me through in the previous affidavit – as to, certainly, how much it would have taken to reach that point.

10 MR COOKE: Yes.

HER HONOUR: Yes.

MR COOKE: At this stage that's all we can do because we don't have, as your  
15 Honour pointed out – we don't have those documents. But what we do know is that it seems inconceivable that the respondents could have got to where they have now with the level of resources which they seem to have had. And the reasonable inference which we would seek to draw is, together with the evidence of them actually taking documents – which we have; together with them – the evidence that  
20 they were working on the ionic process; the fact that we can't find the documents; the fact that they've got where they are now, which we say is inconceivable, without the resources – you add that all up, your Honour, and we say we have a strong prima facie case that there has been misuse of my clients' confidential information at an industrial scale.

25

HER HONOUR: Right. Thank you very much. I have read that affidavit now.

MR COOKE: Now, I will just take you to Ms Hantos' affidavit, please, behind tab  
30 89. Ms Hantos is a registered patent attorney that works at Fortescue, as identified in paragraph 1. Just pausing there, this affidavit, your Honour – you will recall that Ms Hantos did a lot of the searching.

HER HONOUR: Yes.

MR COOKE: - - - referred to by the other witnesses, so I don't intend to go through  
35 that searching in any great detail. But I would ask you, your Honour, please, to turn to paragraph 32 of the affidavit of Ms Hantos. There she sets out particulars of what we understand from publicly available information are the Element Zero applications. And so what occurs, your Honour – you can – before they become  
40 publicly available, in some instances you can see a reference to the application number and the title. Now, looking at that table, in the first – sorry – it's the second column, which is the Australian provisional patent ending 090 – we know what that is because that has become publicly available, and that's the provisional application related to the PCT application in the last column.

45

So those two patent applications have become publicly available. You will recall the concern that the witnesses had, because part of our leaching process has made its

way into those patent applications in the PCT – but what we don't have, but we know exists, are the two centre patent applications, the 103 provisional application which relates to the 979 application – we know they exist; they haven't been made publicly available. But from their titles Ore Processing Method for Metal Recovery and  
5 Electrowinning From Molten Salt. Now, you know, your Honour, molten salt is a synonym for ionic liquid. And we're concerned about those, and they form part of the list of things in paragraph 8A. Then I would ask your Honour to go to a Mr Nicholas Marrast affidavit, being one of the affidavits I handed up to your Honour today. Now, in summary – your Honour has not yet had an opportunity to review it –  
10 but in summary, this is further evidence about how secretive the second and the third respondents were before they left employment at Fortescue. And Mr Marrast notes at paragraph 1 he is employed by the third applicant in the position of operations and fabrication manager for the Fortescue project.

15 And then at paragraph 17 through to 20, he gives details about the role that he took on at Fortescue. But, your Honour, what he explains there – it's in relation to the pilot plant – the development of the pilot plant – so that's his role. And he's from the engineering perspective, as he indicates from paragraph 20 in relation to the pilot plant. Twenty, he joined the Fortescue team and he's answered directly to the  
20 second respondent. He joined on 1 October 2021. And then what he says is in 21, he tried to get up to speed with the project, and 23, his colleagues directed him to the SharePoint folder. And then at B.4, what he says that- in his opinion, there was some lack of resources in the SharePoint - - -

25 HER HONOUR: Sorry, where was this?

MR COOKE: Sorry, B.4. Section B.4.

30 HER HONOUR: I see. Yes.

MR COOKE: Yes. So he gives a bit of detail about, in his opinion, there was some lack of documents in the SharePoint folder.

35 HER HONOUR: So was he looking particularly for documents in relation to the ionic process or both?

MR COOKE: No, because this is back in October 2021. So he was interested in the, you know – the basically pilot plant, essentially.

40 HER HONOUR: In the plant.

MR COOKE: Mainly the pilot plant documents. But he was sort of coming in – he came in a month before the first and second respondent left.

45 HER HONOUR: Yes.

MR COOKE: So it was a pretty short period of time. And he was trying – what this affidavit shows – we can get to it – he was trying to engage with the second and third respondents to say, you know, where are the documents and so forth.

5 HER HONOUR: Should I just read the body of that affidavit now?

MR COOKE: I think so. I think so, your Honour.

10 HER HONOUR: I think that would be a good idea. Thank you. Then I will have a better idea. Thank you.

MR COOKE: Thank you, your Honour. Now - - -

15 HER HONOUR: They seem very serious allegations of a lack of cooperation with the person who was to manage the engineering side of things.

MR COOKE: Yes. Yes. They - - -

20 HER HONOUR: In terms of a lack of cooperation and - - -

MR COOKE: Yes. Lack of cooperation and sort of – some type - - -

HER HONOUR: So one thing that I'm just a little unclear of - - -

25 MR COOKE: Yes.

HER HONOUR: On – is – at the time that the second and third respondents left - - -

30 MR COOKE: Yes.

HER HONOUR: - - - what was the stage of the development of what has been described as the Fortescue project, which I understand to refer just to the solid state – to the development of the - - -

35 MR COOKE: Yes.

HER HONOUR: - - - solid-state pilot - - -

40 MR COOKE: Yes.

HER HONOUR: - - - plant.

MR COOKE: Look, I think it's really indicated in the Gantt table.

45 HER HONOUR: It's in the Gantt?

MR COOKE: Yes.



HER HONOUR: So if I look at that in about – so they left in October – at least - - -

MR COOKE: It's where that - - -

5

HER HONOUR: The second respondents left - - -

MR COOKE: That – where that red line is?

10 HER HONOUR: Where – where the red line is. Right.

MR COOKE: Yes. So I think what – really what, in our submission, what Mr Marrast is – he has basically got a month crossover - - -

15 HER HONOUR: Yes.

MR COOKE: - - - with these individuals, and what he is sort of explaining is, I think, really, is his frustration in the lack of cooperation - - -

20 HER HONOUR: Yes.

MR COOKE: - - - from these individuals in the four weeks that he's there. He – he's only on one, sort of, one side of the project, if you like. He's not on the chemical - - -

25

HER HONOUR: No.

MR COOKE: - - - side, no. But – so he's, sort of, expressing his frustration, and that's really the purpose of the affidavit. And, in particular, we draw – we think the most important part of Mr Marrast's affidavit is the last section, which is that email between the first – sorry – the second and the third respondents – where it says, the second says to the third, "You don't need to explain various plans to Julie." Now, Julie was the CEO of FFI – Fortescue Future Industries – at the time. "Just explore it as part of our R&D." You know. So there's just – there seemed to be – we think  
30 there seemed to be – as we've seen from the other documents – that they're working, as we understand it, on the ionic process. There was a general – there was a secrecy between them generally, and there was a lack of cooperation, in particular, you know, in the last period of time, in particular, where Mr Marrast joined. But we think that's probably the most important part of his affidavit, your Honour.  
35

40

HER HONOUR: Thank you.

MR COOKE: Thank you. Then, if I can now ask your Honour to turn to Mr Dewar's first affidavit.

45

MR WU: Second.

MR COOKE: No, the first one, behind tab 7. And, your Honour, as Mr Dewar indicates in paragraph 1, he is a principal at Davies Collison Cave Law, and he has the care and conduct and control of this proceeding – so on behalf of the applicants. And then, if I can ask your Honour, please, to turn to paragraph 30, there, he sets out the locations for the execution of the search order, and he sets them out in paragraph 33. And at 34(d), he there sets out the potential for vulnerable persons that your Honour referred to before - - -

10 HER HONOUR: Yes.

MR COOKE: - - - at each of the locations, and, as your Honour has noted at the second respondent's residence, it's his wife and a five year old child. At the third respondent's residence, it's Dr Winter-Jefferson's wife and approximately 16 year old daughter. And in the interests of mitigating the impact of the search order in respect of these vulnerable persons, the opposed independence listers have included experienced female independent lawyers for both resident locations in Perth and Melbourne. I just wanted to draw your Honour's attention to that.

HER HONOUR: Thank you. And that was why I highlight the fact, when you had an alternative independent lawyer who was a man – I think - - -

MR COOKE: Yes.

HER HONOUR: I was a little concerned because that wasn't consistent with this.

MR COOKE: I think that's right. I just want to check, if I may. What – I will – actually I will come back to your Honour if I may, but - - -

HER HONOUR: All right.

MR COOKE: Just to make sure that that's not at those residences, that the man has not been inserted there, because he should be.

MR COOKE: Yes.

MR COOKE: Anyway, we will come back to that. Back into Mr Dewar's first affidavit, under the heading Search Parties, there, he identifies Mr McKemmish of CYTER, and him coordinating the other computer experts. And then at 39, Mr Adrian Chai of Ashurst, Australia, he is proposing a number of solicitors there.

HER HONOUR: Yes.

MR COOKE: And then, the undertaking is under section K from paragraphs 44 to 46, and the undertaking has been given by Mr Chai. He does a separate affidavit giving the undertakings in any event.

HER HONOUR: Yes.

MR COOKE: And then, undertakings by Mr McKemmish referred to at paragraph 45 – he has got a separate affidavit, and at paragraph 46, the undertaking is given by Davies Collison Cave, your Honour - - -

5

HER HONOUR: Yes.

MR COOKE: - - - to the court as set out in the search application. Now, your Honour, if I can now take you to Mr Dewar's second affidavit which I handed up today. And Mr Dewar's second affidavit was affirmed today, 9 May, and just by way of summary – I will, of course, give you opportunity for your Honour to read it but - - -

10

HER HONOUR: Yes.

15

MR COOKE: - - - it's relevant to the surveillance of the second respondent who we can't locate but we think has gone to Port Hedland, referable to the matter I started with. So I'm happy to take your Honour through the affidavit. It would be on - - -

20

HER HONOUR: I will just read it.

MR COOKE: Thank you.

HER HONOUR: Thank you. All right. Yes.

25

MR COOKE: Thank you, your Honour.

HER HONOUR: Thank you. Well, there seems to be good reason, then, to suppose that he's at Port Hedland.

30

MR COOKE: Yes. Yes. Thank you, your Honour. And I indicated to your Honour there were some annexures - - -

HER HONOUR: I was just going to ask about those.

35

MR COOKE: Yes.

HER HONOUR: Thank you.

40

MR COOKE: Can I hand up one copy of those?

HER HONOUR: Thanks. Now, are there some particular documents that you should take me to in the annexures?

45

MR COOKE: I wasn't intending to. They're really just - - -

HER HONOUR: They're explained. I'm just having a look at the report in

the Age. Thank you.

MR COOKE: Thank you, your Honour. That, your Honour, leaves me with two further affidavits, being the affidavits of Mr Chai, who's the independent lawyer.

5

HER HONOUR: Yes.

MR COOKE: And also Mr McKemmish's affidavit.

10

HER HONOUR: Yes.

MR COOKE: They set out, your Honour, Mr Chai's affidavit. He's the partner — paragraph 1, partner of the Perth dispute resolution practise at Ashurst, Australia. He sets out his experience in closing the search orders there. And then he sets out the search locations. Paragraph 5, he sets out:

15

*In the case the lawyer presently proposed for execution, these aren't available on the day. Ashurst propose that Angus Wells as the independent lawyer in execution of the search order.*

20

I've got a resolution to — which I will come to, your Honour, about the orders. I think it's omitting some words. I will come back to that.

HER HONOUR: Yes, thank you very much.

25

MR COOKE: Section B sets out his conflict checks, and he caused the conflict check to be run from 19 to 23 April of this year. He confirms that Ashurst does not have any conflict acting against the interests of the respondents or any of them. So Ashurst has not acted for the respondents or any of them at any time.

30

At 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 land access and native title, mining projects and development law, environmental, social and governance issues. And then, at 13, he sets out that he has never acted for the applicants or any of their subsidiaries to the best of his knowledge.

35

At (b), Ms Hill, Mr Mengler and Mr Ross are in the same position. (c) Ms Pedlar is in a slightly different position, your Honour. She has done some native title work for the first applicant previously, but she's not currently involved in any of those matters. Then, in section (c), he sets out the policies and protocols to preserve and protect confidentiality. It's the Chinese wall, in effect, your Honour, at Ashurst.

40

HER HONOUR: So I have a slight discomfort insofar as if you look at it from the perspective of the prospective respondents, if the independent lawyers have acted - -

45

MR COOKE: Yes.

HER HONOUR: Are they acting in — they are currently acting for the first applicant in a number of matters.

5 MR COOKE: Paragraph 11 does say that.

HER HONOUR: Yes. Are you aware of there being a precedent where the independent solicitors firm have acted or are currently acting for one of the applicants?

10

MR COOKE: Not in the search order context.

HER HONOUR: Yes.

15 MR COOKE: But I suppose in a large law firm like Ashurst, there are — I would say not infrequently — there are Chinese walls put up in a large law firm whereby - - -

HER HONOUR: It's more a question of perception.

20

MR COOKE: Yes.

HER HONOUR: That's concerning me.

25 MR COOKE: Yes, your Honour. We can — I mean, in view of the fact that we're going to need a few — we're going to need some extra time in order to find - - -

HER HONOUR: Yes.

30 MR COOKE: - - - the second respondent, if it is of a concern to your Honour, we can — I will get some instructions, but I think we can find another firm's solicitors to act as the independent lawyers very quickly.

HER HONOUR: It's just — what worries me, as I've said, is the perception.

35

MR COOKE: Yes. Yes.

HER HONOUR: And then — obviously it's an entirely separate law firm that's acting in this proceeding, as is entirely appropriate. But my — yes, I do have a concern about that. And it may well be a legitimate ground. I can't express my view on the merits at this stage but it might well become or be upheld as a legitimate ground of objection to those solicitors acting in that role, and that could cause things to unravel from your client's perspective which could be to — it's their prejudice.

45 MR COOKE: Yes, your Honour. Look, your Honour, I've just been communicating visually with my instructing solicitor and we have no difficulty. We

will get another firm of solicitors to act as the independent lawyers and we will prepare an affidavit indicating no conflicts.

HER HONOUR: Yes.

5

MR COOKE: And I will just work out how long we would need to do that.

HER HONOUR: Yes.

10 MR COOKE: Because we can do it by Tuesday and I don't know how long – I can't remember, being a solicitor many years ago, how long conflict searches take – but we just need probably a bit of time to do the conflict search.

15 HER HONOUR: And I know you will probably need to get a national law firm because you're executing in a number of different states. And the less potential there is for leakage from your client's perspective, the better.

MR COOKE: Yes.

20 HER HONOUR: I would have thought you would want a single national firm.

MR COOKE: Single national firm. Yes. Yes, your Honour.

HER HONOUR: Yes.

25

MR COOKE: Thank you. So if we could have until Tuesday to get that affidavit.

HER HONOUR: Yes.

30 MR COOKE: And whether we come back to your Honour and see your Honour or email it - - -

35 HER HONOUR: Well, I will speak to the duty judge for next week because it may be preferable for me to come back exceptionally next week, because I have heard all the argument today. The last thing – this is the – to my mind at the moment, I can indicate that I do agree that there is a strong prima facie case that's really established by a very substantial body of evidence. And there's also, one would have thought in light of the matters that have been covered in the written submissions, a real risk that if information were provided in advance and it weren't inter partes application, there  
40 is a real risk that information might be destroyed or hidden, squirrelled away. And obviously, the prejudice – you've clearly established prejudice of a very substantial nature to the applicants in the event that the orders are not made, so that I do consider it's appropriate to make the orders, but subject to that concern.

45 MR COOKE: Yes. Thank you, your Honour. I appreciate it. If I could take you briefly to Mr McKemmish's affidavit and then I will return to the orders, bearing in mind what your Honour has just indicated.

HER HONOUR: Unless there are further matters that you wish to raise, because I've only indicated them in a very summary way.

5 MR COOKE: No.

HER HONOUR: Although that is my view, having gone to the material, gone through the evidence.

10 MR COOKE: Thank you, your Honour. Not substantively. So what I was proposing now is to take your Honour very briefly to Mr McKemish's affidavit. In light of what your Honour has indicated, I don't think I need to address your Honour on the prima facie case any further.

15 HER HONOUR: I've been very carefully through the written submissions, which were extremely helpful, thank you - - -

MR COOKE: Thank you, your Honour.

20 HER HONOUR: - - - in pulling all of the material together.

MR COOKE: Thank you. And then what I was going to do, your Honour, after Mr McKemish's affidavit, is just take your Honour back to the orders.

25 HER HONOUR: I'm just looking for where I find that.

MR COOKE: Yes. Mr McKemish's affidavit – I think your Honour indicated you had had that one. It's an - - -

30 HER HONOUR: Yes. I've got that. Sorry, it was hiding.

MR COOKE: And he – as he indicates in paragraph 1 – is the principle of CYTER – that's the name of his specialist technology – and he sets out his expertise. And he also indicates, your Honour, most relevantly under section B to the conflicts checks,  
35 that he doesn't have any conflicts and nor does his colleagues, which he's also getting to assist in the – a firm called Evidence Advisory at paragraph 11. They don't have any conflicts - - -

HER HONOUR: Right.  
40

MR COOKE: - - - either, so just wanted to draw that to your Honour's attention. So that, your Honour - - -

HER HONOUR: Thank you.  
45

MR COOKE: Thank you, your Honour. Now, your Honour, if I can take you back to - - -



HER HONOUR: I should go to the undertakings as well, specifically.

MR COOKE: Yes. Yes, to the orders attached to the interlocutory application.  
5 Would your Honour bear with me for one moment. I'm just going to ask a question.  
Now, your Honour, so just turning to the orders attached to the interlocutory  
application - - -

HER HONOUR: So is it best if we work, then, with the document behind tab 2  
10 or - - -

MR COOKE: The – probably the one that I handed up. I - - -

HER HONOUR: The one you handed up would be - - -  
15

MR COOKE: Yes.

HER HONOUR: Because that has got those additional amendments.

MR COOKE: I do find the one behind tab 2 most useful because it actually marks  
20 up a - - -

HER HONOUR: Yes.

MR COOKE: So I – to be honest, I have both open.  
25

HER HONOUR: All right. I shall do likewise. Yes.

MR COOKE: Yes. And so paragraph 1 under the introduction – we there have a  
30 date for the abridged service, and that would be the date of – that it needs to be  
executed by, so the last date.

HER HONOUR: Yes. So that poses a slight degree of uncertainty at the moment  
because – you – perhaps you will have more certainty by Tuesday.  
35

MR COOKE: Yes. Perhaps.

HER HONOUR: Yes.

MR COOKE: Yes. It isn't – it is – as your Honour can see, it's an on or before  
40 date, so it's – so, in other words, you could execute before that date if one is given.

HER HONOUR: Yes.

MR COOKE: But as your Honour indicated, we may get more clarity by Tuesday.  
45

HER HONOUR: Yes.

MR COOKE: Thank you. And then paragraph 2 is a return date, so the next return date, allowing for obviously the period of time to execute the search order and a period of time for the independent lawyers and computer experts to prepare their report, whatever - - -

HER HONOUR: Yes.

MR COOKE: - - - that's going to be. And paragraph 3 obviously is the – that there is leave to apply - - -

HER HONOUR: Yes.

MR COOKE: - - - to the court to vary or discharge the order. And paragraph 4, that the order, therefore the execution of the search order, may only be done between 9 am and 2 pm - - -

HER HONOUR: Yes.

MR COOKE: - - - Australian Western Standard Time.

HER HONOUR: Yes.

MR COOKE: And there paragraph under the heading Entry, Search and Removal at paragraph 4, there's amendments there to the usual – or what's in the practice note, your Honour. Just wanted to draw your Honour's attention to those. They seem to be in the nature of more sort of modern – more – a reference to more modern - - -

HER HONOUR: Yes. Forms of technology.

MR COOKE: - - - devices, your Honour.

HER HONOUR: Yes. Yes.

MR COOKE: By the looks of it. And then similarly over in page 5, more modern devices. Under the next heading, Restrictions on Entry, Search and Removal, paragraph 14, I think, again deals with the modern world and, also, they're naturally for the protection of the respondent. You may continue to use any smartphone to obtain legal advice, provided that you comply with the terms below.

HER HONOUR: Just look at paragraph 25 and 26.

MR COOKE: Yes.

HER HONOUR: Yes. Thank you.

MR COOKE: Thank you, your Honour. And then, over at page 7 – paragraph 19 - - -

HER HONOUR: So would this mean, though - - -

5

MR COOKE: Yes.

HER HONOUR: - - - that, for example, the smartphone of the second and third respondents' wives and children would be – because of the terms to – of – the fact that it's to the occupants of each of the addresses, including the residential addresses – shouldn't there be some exclusion for their smartphones? There's no allegation directly - - -

10

MR COOKE: No. I think – yes.

15

HER HONOUR: Obviously, the child is irrelevant. But against the wife - - -

MR COOKE: Yes. I might get some instructions on that, but I understand what your Honour is saying.

20

HER HONOUR: Yes. Yes.

MR COOKE: So I will get those behind me and next to me to have a think about that. Moving on, your Honour, at page 7, there's some amendments there. I want to draw your attention to 19.

25

HER HONOUR: Okay. Yes.

MR COOKE: And then, under the heading, Computers, the search party must include a computer expert, being an expert who is independent of the applicant, as set out in schedule A to the orders. Sets out there - - -

30

HER HONOUR: Yes.

MR COOKE: And again, there's 20(b) - - -

35

HER HONOUR: So, possibly, there just needs to be a bit more detail in the orders about computers and the like that belong to other occupants in the house.

MR COOKE: Yes. It's sort of excluding those devices.

40

HER HONOUR: Yes.

MR COOKE: And I do have - - -

45

HER HONOUR: But obviously, they have to cooperate - - -

MR COOKE: Yes. Yes.

HER HONOUR: - - - with the search taking place and, if they know the location of things, to – that are properly sought – to assist with that or not obstruct it but – as far  
5 as an adult is concerned anyway, but - - -

MR COOKE: Yes. Yes.

HER HONOUR: Perhaps, that’s something that could be addressed before next  
10 Tuesday.

MR COOKE: Yes. Thank you, your Honour.

HER HONOUR: Yes.  
15

MR COOKE: And one can see some further amendments there. Also, to expand what is a computer at 20(c) and (d) and (e), to bring it into the modern world - - -

HER HONOUR: Now, in (e)(i), it has got within one week in square brackets with  
20 asterisks. Is that because this – that’s not necessarily what the applicants seek at this stage, or is that intended to be by way of emphasis?

MR COOKE: I think that is what the applicant seeks, but I think it’s – it was – obviously, it’s a decision for your Honour as well, you know, as it all is, but I think  
25 we wanted it as a time – timeframe. So we’re just indicating that. Yes. So – I mean, I’m told that we think, to forensically image some of the larger devices, it takes a bit more time.

HER HONOUR: Yes. Yes. But it doesn’t mean that if a device has already been  
30 forensically imaged - - -

MR COOKE: Yes.

HER HONOUR: - - - then, it couldn’t be returned earlier - - -  
35

MR COOKE: Earlier. Yes.

HER HONOUR: - - - and shouldn’t be returned earlier. So perhaps - - -

MR COOKE: Yes.  
40

HER HONOUR: - - - there could be something to say – to that effect so that the one week – it’s clear that one week is the outside where that’s necessary.

MR COOKE: Yes, your Honour. We will include words to that effect.  
45

HER HONOUR: Okay. Thank you.

MR COOKE: Thank you. Thank you. And then, over, your Honour, to schedule A – I just moved ahead because the other - - -

5 HER HONOUR: I'm just looking at paragraph 23, which also has a suggested timeframe of – but it's to the best of your ability, inform the applicant in writing as to the location of various things, etcetera. And it suggests within 10 working days, one would have thought that would suffice. But that's a fair amount of time to require provision of the information.

10

MR COOKE: Yes. Sorry, can I ask your Honour where you are?

HER HONOUR: I'm looking at paragraph 23, subparagraph B.

15 MR COOKE: Yes. Yes, your Honour. Thank you, your Honour.

HER HONOUR: Sorry, you were taking me on somewhere further, I think.

MR COOKE: Yes. I was going to take you to schedule A at page 12. Now, this  
20 sets out the listed things. So paragraph 1 is all of the computing devices, including the two USB drives that Mr McKemish's report revealed had been used. And then paragraph 2 is relating to the documents containing the words of the applicants or synonyms. Paragraph 3 is referable to the R&D done by the respondents. And paragraph 4 is referable to the design and etcetera, of the EZ pilot plan.

25

HER HONOUR: Yes.

MR COOKE: Paragraph 5 refers to any document in annexure 1 to the schedule. If  
30 I could ask your Honour to briefly turn over to schedule 1, which begins at page 16. And as I indicated in my address, this has four sections. So the documents referred to in paragraph 19 of the statement of claim, the paragraphs referred to in paragraph 20 of the statement of claim, the SharePoint documents referred to in Dr Bhatt's affidavit, and finally, at page 18, the internal Fortescue procedure and specification documents, now referred to in Mr McFaull's affidavit at paragraph 103, which I've  
35 taken your Honour to. So that's the annexure 1 documents. Turning back, if I may, your Honour, to page 12, paragraph 6, any document, recording, or evidence in communications as between the respondents, including using emails and telephone numbers. And then paragraph 7 is emails in a particular period of time – sorry .....

40 HER HONOUR: To a particular – yes.

MR COOKE: It's emails – using various email accounts, to or from any email  
45 account in the domain – which is Fortescue domain – or in the period between 25 March 2019 to January 2024. And then paragraph 8 is a similar one for the fourth respondent.

HER HONOUR: Yes.

MR COOKE: And then 8A – which is in the version I handed up today, your Honour – 8A is the patent.

5 HER HONOUR: Yes.

MR COOKE: Ad there it refers to the two patent applications which we know exists, and any other patent applications that haven't become, in the name of the respondents, haven't become open for public inspection. And then paragraph 9, all  
10 of the above may be located on any computing device, etcetera, and/or accessible from the premises and so forth. Then we turn, on page 13, to the - - -

HER HONOUR: That's again – it raises this issue about computers and the like belonging to the wife and child. But there may need to be some verification process  
15 to ensure that they're being properly claimed not to belong to the respondents.

MR COOKE: Yes. So we will give that some thought. Maybe that is - - -

HER HONOUR: Because it's quite an intrusion on, for example, the wife or the  
20 child's privacy - - -

MR COOKE: Yes. Absolutely.

HER HONOUR: - - - if, in fact, the devices do belong to them.  
25

MR COOKE: Yes. So I think, just hearing what your Honour has to say – I think there probably would have to be some verification process - - -

HER HONOUR: Yes.  
30

MR COOKE: - - - at the premises by the, you know, independent - - -

HER HONOUR: Independent lawyer or expert.

35 MR COOKE: - - - lawyer – exactly.

HER HONOUR: Yes.

MR COOKE: And, then, once they verify that it does belong to the wife or the  
40 child, then they've got to be excluded.

HER HONOUR: They would be excluded, yes.

MR COOKE: Yes. So we will set up a proposed regime for your Honour to  
45 consider - - -

HER HONOUR: Thank you.

MR COOKE: - - - on the next occasion in relation to that.

HER HONOUR: Yes. Thank you.

5

MR COOKE: Back to page 13, we've got the search parties for the various premises. Now, what your Honour picked up very quickly, ahead of any of us, is the problem, first, under the heading Search Party for Premises at 5A Volga Street, Hadfield. And under the Independent Lawyers it says a Ms – it said a Ms Hill – of course, it won't be Ms Hill now – but it indicated a female. And, then, in the orders I handed up today it says:

10

*...or a male.*

15 And, then, in the applicant – under the heading Applicant's Lawyers it indicated a female there or a male. Now, pausing there, as I understand it, your Honour, under the – in the practice note you have to have at least a female from the independent lawyers or the applicant's lawyers that must be present, so long as there's one female. So what we would propose to include in the next set of orders, even though  
20 it won't be Ashurst, is a proviso in this section – so under the 5A Volga Street, Hadfield, Victoria section, under – words something like this or to the following effect. You can specify a male and a female, for example, for the independent lawyers, and a male and female for the applicant lawyers, but on the condition that  
25 either the independent lawyer or the applicant's lawyer who is part of the search party is a woman.

HER HONOUR: Yes.

MR COOKE: To have that as an express condition.

30

HER HONOUR: I think that would satisfy my concerns.

MR COOKE: Thank you, your Honour. And, then, we would include the same proviso in the Gildercliffe Street in the next section because there are some other  
35 vulnerable people at that premise as well.

HER HONOUR: Yes.

MR COOKE: So we would include a proviso to the same effect there to make sure  
40 that whoever the independent lawyers are there's always going to be a woman from either the independent lawyer or the applicant's lawyer who is part of that search party.

HER HONOUR: Some of what's playing out in my mind as a concern is, for  
45 example, if you have the second – I think it's the second respondent who has a five-year-old child - - -



MR COOKE: Yes, I think so.

HER HONOUR: Let's take that as an example. Even if you had a female lawyer present, the female lawyer, obviously, has other things that they must attend to. And  
5 if the mother isn't there but the second respondent is there, and is, obviously, concerned about what's being taken, and is trying to locate things and so on, I am just a bit worried about how, practically speaking, on the ground that is going to play out – whether there needs to be some thought given to having someone who is just like a – dedicated to being a support person of some kind. Are you aware of some  
10 regime like that having been done before or how that might occur? Because you're going to have some very distracted adults.

MR COOKE: Yes. Look, I am not - - -

15 HER HONOUR: Or whether it might be appropriate to then allow, for example – if the mother is present – for her to ring and to have another person attend, because normally you wouldn't have a third party coming in. But – or – I don't know – and perhaps she – they may well want to leave the property, but they may well not, and it's their right; they can remain.

20

MR COOKE: Yes. Could I just get some instructions on that, just briefly.

HER HONOUR: Yes. I am not quite sure what the answer is.

25 MR COOKE: Yes. I think we understand what your Honour is saying, and perhaps if we can provide a suggestion in relation to that on Tuesday.

HER HONOUR: Yes.

30 MR COOKE: But just thinking about whether it be – I don't know – whether it be provision for an additional independent lawyer who's a female or a child-care support person, potentially.

HER HONOUR: Because one can imagine you're going to have some pretty, as I  
35 said, distracted and – or preoccupied rather, distracted – preoccupied and perhaps very distressed adults.

MR COOKE: Yes. Yes.

40 HER HONOUR: And the child will pick up on all of that. So that's sort of what I'm trying to guard against.

MR COOKE: Yes. Thank you, your Honour. Yes.

45 HER HONOUR: To the best that one can.

MR COOKE: Yes. Yes. No, we understand what your Honour has said and we will - - -

5 HER HONOUR: Both children are of school age. But I'm not sure how the – whether – but even then they would come back to the home at the end of the school day and so forth.

MR COOKE: Yes, exactly.

10 HER HONOUR: So, yes.

MR COOKE: Thank you, your Honour. We will take that on board and give that some thought and come up with a proposal if we may.

15 HER HONOUR: Thank you.

MR COOKE: Now, your Honour, that takes us to Schedule B, the undertakings given to the court by each of the applicants. And of course, I give those undertakings and I will on Tuesday as well. And then the undertakings at section B.2,  
20 undertakings given to the court by each of the applicant's lawyers are set out there. And I will take you to the evidence of Mr Dewar, who has indicated that he gives those undertakings.

HER HONOUR: Just to go back to the point that I was making earlier about the  
25 children. That's probably most acute at the time of the initial execution, because one would anticipate after that time, parents will be able to, sort of, manage the situation better. But on the initial entry into the residential homes. And that first day or half day, that's where my concern is most acute.

30 MR COOKE: Thank you, your Honour. And then B.3 is the undertakings given to the court by each independent lawyer. Now, we will get another affidavit from the new law firm.

HER HONOUR: Yes.  
35

MR COOKE: Which will indicate that they will provide those undertakings, together with the conflict search. B.4, undertakings given to the court by each independent computer expert. You've got the affidavit of Mr McKemmish, I've taken you to. And the affidavit of Mr Dewar indicates that those undertakings are  
40 given. And then I've already taken you, your Honour, to Schedule C. So, your Honour, that was the material that I was intending on taking you on to.

HER HONOUR: Were there any particular points – I mean, as I said, I've been very carefully through the written submissions. And then having those, having the benefit  
45 of being taken through the evidence in a closely and in the structured way that you have, has led me to the view that it is appropriate, subject to addressing the particular

issues I've raised, to make orders in the nature that are sought. So effectively, I think I'm going to have to hold on to this matter - - -

5 MR COOKE: Thank you, your Honour.

HER HONOUR: - - - into the next week and I will make those arrangements.

10 MR COOKE: Thank you, your Honour. Could I indicate – your Honour indicated the Tuesday.

HER HONOUR: Yes.

15 MR COOKE: I'm before Perham J at 9.30 pm for a case management hearing. Now, I think that that might take 45 minutes, it might take an hour, I'm not sure. But I just wanted to indicate that to your Honour. I'm not sure what your Honour has on Tuesday.

HER HONOUR: I do have a commitment but I can actually move that.

20 MR COOKE: Sorry - - -

25 HER HONOUR: I'm only laughing because I've moved it about three times. I think I will be forgiven if I have a good reason, of which I won't be able to specify in any form of detail for obvious reasons. So I'm content if we said perhaps 11 o'clock on Tuesday?

MR COOKE: Thank you, your Honour.

30 HER HONOUR: Will that timing work - - -

MR COOKE: Yes, that's convenient.

HER HONOUR: - - - and be sufficient?

35 MR COOKE: Yes. Thank you, your Honour.

40 HER HONOUR: All right. And again, we will follow clearly the same process in terms of listings. It will just be directly between my chambers and we will ensure – there will be the further affidavits which need to be filed in the interim as well.

MR COOKE: Yes.

45 HER HONOUR: And they will all be subject to the suppression orders, which, probably I do need to make today.

MR COOKE: Yes, your Honour.

HER HONOUR: Yes, and then we will also ensure that the court file is not available. It will be subject to the – whatever the correct technological suppression process is. I'm just trying to find where the suppression orders are here. Well, we will ask the court to posit, I suppose, appropriate synonyms. I don't know whether I  
5 posit them or they do.

MR COOKE: I'm not quite sure.

HER HONOUR: Usually they come to me with synonyms already.  
10

MR COOKE: I see. Yes, I don't – I don't think we – I've done a few search orders previously, but I can tell you that the parties, solicitors and counsel have nothing to do with the choice of synonym so - - -

HER HONOUR: No.  
15

MR COOKE: - - - I'm not sure who does.

HER HONOUR: Well, we will insert those in due course in chambers which - - -  
20

MR COOKE: Yes, thank you, your Honour.

HER HONOUR: Because we did have a slight amendment to them as well, didn't we?  
25

MR COOKE: We did, so we – I think there was – there was some – there was also some annexures – I think, some exhibits that - - -

HER HONOUR: That's right, they needed - - -  
30

MR COOKE: - - - potentially had to go in.

HER HONOUR: Well if those could just be included, and then the orders sent through to my associate in Word format, then we will make those orders straight  
35 away, once they come in.

MR COOKE: Thank you, your Honour. We will attend to that straight after the hearing.

HER HONOUR: All right. Are there any other matters that we need to cover  
40 today?

MR COOKE: No, thank you, your Honour.

HER HONOUR: All right. Well thank you, all, very much for your attendance and  
45 your assistance. It's clear that an enormous amount of work has gone in behind the

scenes to bringing this matter to court today, so I acknowledge the hard work that has clearly gone into it.

5 MR COOKE: Thank you, your Honour, and thank you for sitting so late.

HER HONOUR: I hadn't even noticed the time. I will ask then that the court be adjourned, please.

10 **MATTER ADJOURNED at 16.42 pm UNTIL TUESDAY, 14 MAY 2024**

**Index of Exhibits and MFIs**

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EXHIBIT #A3 CHART TITLED PROJECT TITLE, ENLARGEMENT OF THE DOCUMENT CONTAINED AT PARAGRAPH 70 OF THE AFFIDAVIT OF MR McFAULL	P-23

No. NSD527 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

**ANNEXURE PAD-23**

This is the annexure marked **PAD-23** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his affidavit on 31 July 2024.

Before me:



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**TRANSCRIPT IN CONFIDENCE**

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O/N H-1925997

**FEDERAL COURT OF AUSTRALIA****NEW SOUTH WALES REGISTRY****PERRY J****No. NSD 527 of 2024****QFM1 (A PSEUDONYM)****and****RAB1 (A PSEUDONYM)****SYDNEY****11.05 AM, TUESDAY, 14 MAY 2024****MR J.S. COOKE SC appears with MR W.H. WU and MS S.K. YATES for the applicant**

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HER HONOUR: Thank you very much. Before we commence, Court Officer, could I ask you please to close the courtroom. And I understand that everyone who's present in the courtroom is part of the legal team for the applicant.

5 MR COOKE: Yes, your Honour.

HER HONOUR: All right. I will ask that the matter be called on now. Thank you. Thank you.

10 MR J.S. COOKE SC: May it please the Court, I appear with Mr WU and MS YATES for the applicants.

HER HONOUR: Thank you very much. Now, I've just had an opportunity to quickly peruse the documents that were sent in a short time ago and saw that the matters that I had raised appear to have been addressed. Do you want to take me through those documents a bit more - - -

MR COOKE: Yes, your Honour.

20 HER HONOUR: - - - closely?

MR COOKE: Yes. So there's two affidavits, your Honour. One is from a Mr Klotz - - -

25 HER HONOUR: Yes.

MR COOKE: - - - and the other is from a third affidavit, which is Mr Dewar's affidavit. So Mr Klotz' affidavit. We've now – the applicant's solicitors have now retained a new firm for the independent solicitors.

30 HER HONOUR: Yes, I saw that.

MR COOKE: Yes, Hall & Wilcox. That's what Mr Klotz does in his affidavit. It sets out his experience, paragraph 1, and gives some background to his engagement in the following paragraphs, and then indicates in the next section, section B, who's proposed to be part of the independent search party at the various premises. And in relation to where the vulnerable persons are, it's only going to be female solicitors, your Honour. That's at 9(c) and (d). And then – whereas Mr Beech is proposed to be the independent solicitor at the other premises and to be assisted by some other individuals. Then there's a conflict check in section C, and he confirms there is no conflict.

HER HONOUR: Yes, I saw that.

45 MR COOKE: Thank you. And then there's some policies and protocols, in any event for - - -

HER HONOUR: In relation to information barriers and obligations of confidence?

MR COOKE: Yes. And then there's an acknowledgement that each of the search party solicitors have read the practice note and that each of them agrees to give the undertakings. That's in paragraph 20. And then there – in section F, there's a discussion about measures for vulnerable persons, in particular, in relation to the independent solicitors retaining Dr McFarlane.

HER HONOUR: Yes, who has now, I gather, confirmed her availability without the earlier qualification of having to appear in Family Court proceedings.

MR COOKE: Exactly, your Honour. And there's some information set out there about that, your Honour.

HER HONOUR: Yes.

MR COOKE: And so, subject to a suppression order which we would seek – I'm not sure if your Honour has a copy of the suppression orders, but I would seek to read that affidavit and the next affidavit, Mr Dewar's affidavit, which I will take you to.

HER HONOUR: Well, the making of the suppression orders that you seek is, in substance, an extension of the orders that I've already made and just to cover those new documents, and I note that the email that accompanied these documents indicated that the transcript of today would all still be covered by the earlier confidentiality orders, so I'm content to make orders in the terms proposed today so as to suppress the orders themselves, the affidavit of Mr Dewar affirmed on 14 May, and of Stephen Klotz, also on 14 May, and its annexures in both cases.

MR COOKE: Thank you, your Honour. And in respect to Mr Dewar's affidavit, which your Honour has just referred to, that's his third affidavit in the proceeding. Section B: that updates the position in relation to identifying Dr Kolodziejczyk, being the second respondent.

HER HONOUR: So he normally resides in Victoria, but he's presently in Perth still; is that correct?

MR COOKE: Correct.

HER HONOUR: Right, so you would be waiting till his return to Victoria?

MR COOKE: No. I understand that the intention is to execute the search orders tomorrow - - -

HER HONOUR: Right.

MR COOKE: - - - once the second respondent attends the offices of the first respondent, and then – and to also execute the search order at the other premises, including the Victorian residence that you referred to.

5 HER HONOUR: Right. Now, I'm just wondering how that would work, because some of the devices and the like may well be personal devices owned by – now, forgive me. I'm not going to be able to pronounce his name properly, but Dr Kolodziejczyk.

10 MR COOKE: Yes.

HER HONOUR: I've mispronounced that terribly, I'm sure - - -

MR COOKE: I'm sure you did a lot better than me, your Honour.

15

HER HONOUR: - - - but that – and he won't be there to support his wife if she's present either.

MR COOKE: No. We understood that that would – we anticipated that they would be in telephone contact with each other. That's what we anticipated would occur. And then - - -

20

HER HONOUR: So how can he effectively supervise, from his personal perspective, what's occurring at his premises? I guess he will be supervising the – and I'm using that word in a very loose sense – during the search of premises of the – is it the first - - -

25

MR COOKE: The first.

30 HER HONOUR: - - - respondent?

MR COOKE: Yes.

HER HONOUR: So that's the business premises.

35

MR COOKE: Yes.

HER HONOUR: Yes.

40 MR COOKE: Yes. And - - -

HER HONOUR: And we have no idea of when he's returning to Victoria, which could be weeks away for all we know.

45 MR COOKE: We don't know, your Honour.

HER HONOUR: Yes.

MR COOKE: Of course, at the Victorian premises, Dr McFarlane will be attending.

HER HONOUR: That's correct.

5

MR COOKE: And the - - -

HER HONOUR: And that's actually good because - - -

10 

MR COOKE: Yes.

HER HONOUR: Yes. I - - -

15 

MR COOKE: And the independent lawyers, obviously, as well. The independent lawyers will be at all the premises.

HER HONOUR: Yes.

20 

MR COOKE: So they will be there to supervise what is happening.

HER HONOUR: Yes.

MR COOKE: And - - -

25 

HER HONOUR: And Dr McFarlane has court experience, I gather.

MR COOKE: I think so.

30 

HER HONOUR: So that she has some understanding of legal processes. And while it's not her job to explain what is going on, obviously, she would have, one would have thought, from that experience, an understanding of the sorts of pressures that these kinds of activities might bring to bear on the individuals who are present.

35 

MR COOKE: Yes. We anticipate that's correct, your Honour. Yes.

40 

HER HONOUR: Well, I think that's probably all that can be done in those circumstances, because the longer – one would have thought, from your client's perspective, the longer that you – the proceedings are not served and the orders are not served, which, as I indicated on the last occasion, I was persuaded were being appropriately sought and should be made.

MR COOKE: Yes.

45 

HER HONOUR: The longer the period, the greater the possibility that something might leak out.

MR COOKE: Exactly. Exactly, your Honour.

HER HONOUR: And, thereby, thwart the orders that I've regarded as appropriately made.

5 MR COOKE: Yes, yes. Thank you, your Honour. And then there's some further details about Dr McFarlane and section (d) of Mr Dewar's affidavit.

HER HONOUR: Now, let me have a look specifically at the details about Dr McFarlane.

10

MR COOKE: Yes.

HER HONOUR: Now, that is – are her details attached to Stephen Klotz's affidavit; is that correct?

15

MR COOKE: Sorry. These are in Mr Dewar's affidavit. Can I - - -

HER HONOUR: Mr Dewar's - - -

20 MR COOKE: Does your Honour have the annexure to Mr Dewar's affidavit? I've just been handed it. I anticipate - - -

HER HONOUR: I don't, actually.

25 MR COOKE: No.

HER HONOUR: That's - - -

MR COOKE: Probably not.

30

HER HONOUR: No, so that's what I really need to see.

MR COOKE: Yes.

35 HER HONOUR: I do have the annexures to the other affidavit, but I've only glanced through them. I haven't had a chance to properly appreciate them. Thank you.

MR COOKE: Yes.

40

HER HONOUR: Thank you.

MR COOKE: So I understand, looking at Mr Dewar's affidavit, paragraph 21, he refers to Dr McFarlane's qualifications at PAD10 on the website.

45

HER HONOUR: Yes. Right. And I'm just looking to see if we can find where PAD10 commences.

MR COOKE: Yes. Sorry. I don't actually have a copy myself. Sorry, your Honour.

5 HER HONOUR: Did I – I didn't have a printout, did I, Madam Associate?

MR COOKE: I don't think so.

HER HONOUR: Should I just look online?

10

MR COOKE: No, they haven't - - -

HER HONOUR: They haven't been filed online yet.

15 MR COOKE: I don't think so, your Honour.

HER HONOUR: No, they haven't.

MR COOKE: We can have a look on mine, your Honour.

20 HER HONOUR: Page 181.

MR COOKE: Thank you, your Honour.

25 HER HONOUR: It may well be that Dr Kolodziejczyk actually has with him his device.

MR COOKE: Yes, exactly.

HER HONOUR: That's probably the likely scenario - - -

30

MR COOKE: That's a reasonable inference.

HER HONOUR: - - - in Perth, one would have thought.

35 MR COOKE: Yes.

HER HONOUR: Well, having read Dr McFarlane's curriculum vitae as it appears on her website, she seems to be an eminently qualified and appropriate person to be present.

40

MR COOKE: Yes. Thank you, your Honour.

HER HONOUR: Now, are there some other documents within this rather large bundle that I should be looking at?

45

MR COOKE: I don't think so, your Honour. I think the other documents concern the private investigator in terms of tracking down the second respondent, and I think

that's all sufficiently outlined in Mr Dewar's affidavit. The short point is that we've been able to track him down.

5 HER HONOUR: Yes, which, as I indicated, I have read both of the affidavits before I came.

MR COOKE: Yes. Thank you. So I also read Mr Dewar's affidavit in support of the application.

10 HER HONOUR: Well, I will take both of the affidavits as read in support of the application, obviously, only at this ex parte stage because it may well be that later they are not regarded as objections to them.

15 MR COOKE: Yes. And then, your Honour, I propose, your Honour, now to take you to the revised orders that we seek, which I understand your Honour has a mark-up which has been provided, but I have a hard copy if that would assist your Honour.

HER HONOUR: I do, thank you.

20 MR COOKE: Okay.

HER HONOUR: Yes, they came through today.

25 MR COOKE: Thank you. And so, your Honour, at page 3 in order 1 and order 2 – order 1 is the date for service. So it's an on or before date for service in order 1 on top of page 3. And then order 2 is the proposed return date. Now - - -

HER HONOUR: Now, given you're proposing to execute tomorrow - - -

30 MR COOKE: If everything goes as – to plan.

HER HONOUR: If things go – yes, as long as you don't suddenly find someone's on a plane to somewhere else.

35 MR COOKE: Exactly.

HER HONOUR: You – I think you indicated 10 days, or was it 7 days?

40 MR COOKE: Usually, in our experience, it takes at least seven days, if not a bit longer, for the independent experts and the independent lawyers to prepare their reports. So we're in your Honour's hands, but the dates we had in mind would be the date for proposed order 1. It's an on or before date, just in case something doesn't go to plan tomorrow.

45 HER HONOUR: Yes, I have that in front of me.

MR COOKE: Yes, to allow the 20<sup>th</sup> or the 21<sup>st</sup>, just in case.

HER HONOUR: So that's effectively a week.

MR COOKE: Yes.

5

HER HONOUR: So the 21<sup>st</sup>.

MR COOKE: Yes.

10 HER HONOUR: Yes.

MR COOKE: And then the return date – I understand it's going to be before the duty judge, and so your Honour might - - -

15 HER HONOUR: Unless the matter has been substantively allocated by that stage.

MR COOKE: Yes.

20 HER HONOUR: So I can explore that with listings after this hearing because it would make sense for you then to have some consistency with who's dealing with the matter.

MR COOKE: Yes. Thank you, your honour.

25 HER HONOUR: Whether it comes to me or it goes to some other judge.

MR COOKE: Yes. So we sort of proposed about a week after that, so the twenty – some time during the week of the 27<sup>th</sup>. We would be available, we could indicate, any time after 11 am on the 28<sup>th</sup>, any time on 29 May, and any time on 30 May.

30

HER HONOUR: I think it would be preferable to do it in the morning on the 28<sup>th</sup>.

MR COOKE: Yes. Yes.

35 HER HONOUR: Yes.

MR COOKE: The only reason I say 11 is I'm before Perram J in a matter. It's just a directions hearing, but it's at 9.30 am.

40 HER HONOUR: At 9.30?

MR COOKE: Yes.

45 HER HONOUR: Yes. We're having quite a few judges going on a Federal Court conference.

MR COOKE: Right. On that day?



HER HONOUR: Not that they wouldn't stay. Leaving on the 28<sup>th</sup>, to commence on the 29<sup>th</sup>. That's the only - - -

5 MR COOKE: That's the only problem.

HER HONOUR: - - - spanner in the works, but that's – but not all judges are going to be attending that - - -

10 MR COOKE: All right.

HER HONOUR: - - - and I understand as well that arrangements have been made for a room to be available so that - - -

15 MR COOKE: Right.

HER HONOUR: - - - the judge – a judge on duty can still, obviously, attend to their duties even if they go to the conference.

20 MR COOKE: Yes.

HER HONOUR: So why don't we – there will be a duty judge available, as there always is, in this court during that week, so that should not concern your client.

25 MR COOKE: Yes.

HER HONOUR: So what date would be preferable?

30 MR COOKE: Your Honour, we're also – so we're available any time after 11 am on the 28<sup>th</sup>, any time on the 29<sup>th</sup>, any time on the 30<sup>th</sup>, and any time on the 31<sup>st</sup>.

HER HONOUR: Well, why don't we make it, then, 11 am, on Tuesday, the 28<sup>th</sup>?

35 MR COOKE: Thank you, your Honour.

HER HONOUR: And you feel confident, by that stage, that that – I suppose that only is a week after your last date for service. Maybe that is being a bit tight.

40 MR COOKE: It - - -

HER HONOUR: Yes.

MR COOKE: In our experience, it's a bit tight. It's a balancing - - -

45 HER HONOUR: All right.

MR COOKE: Balancing the considerations that we - - -

HER HONOUR: And there's liberty to apply, in any event, on short notice.

MR COOKE: Yes.

5

HER HONOUR: And there's the two-hour window immediately following service of the documents.

MR COOKE: Yes.

10

HER HONOUR: So why don't we say, then, Thursday, the 30<sup>th</sup>?

MR COOKE: May it please the court.

15

HER HONOUR: Yes. And make that for 9.30 am.

MR COOKE: Thank you, your Honour. Thank you. And then I've now - - -

20

HER HONOUR: So if we look at order 2 on – the first date should be – this order has effect up to and including 30 May 2024.

MR COOKE: Thank you, your Honour.

25

HER HONOUR: And on the return date, at 30 May 2024, at 9.30 am, there will be a further hearing before the duty judge.

MR COOKE: Thank you. And then, your Honour, the – if I could ask your Honour to go - - -

30

HER HONOUR: That will have - - -

MR COOKE: Sorry.

35

HER HONOUR: Actually, if I make a specified time, that doesn't always work for the duty judge.

MR COOKE: No.

40

HER HONOUR: So why don't we just say 30 May at 9.30 am, or as otherwise advised.

MR COOKE: Thank you, your Honour.

45

HER HONOUR: There – yes.

MR COOKE: And then, if I can ask your Honour please to turn to page 7, which his paragraph – proposed order 20.

HER HONOUR: Perhaps or as otherwise advised thereafter.

MR COOKE: Yes.

5

HER HONOUR: Yes. In that – but before – or – or as there – or as otherwise advised thereafter in the period 30 to 31 May.

MR COOKE: Thank you, your Honour.

10

HER HONOUR: So – 2024 – so that it is then known that it will be that week, and it's either going to be – or as otherwise advised on that day or on 31 May 2024. That's a little more elegantly expressed.

MR COOKE: Thank you, your Honour.

HER HONOUR: Okay. Yes.

MR COOKE: And then the orders up until proposed order 19 are the same as previously indicated. The change is in proposed order 20, which is highlighted.

20

HER HONOUR: Well – sorry. I'm going back to order 2.

MR COOKE: Yes.

25

HER HONOUR: The fact that we're not specifying now the 30<sup>th</sup> as the only date on which – the only date for the return date - - -

MR COOKE: May affect - - -

30

HER HONOUR: - - - means that the earlier date has to be amended, as well.

MR COOKE: Yes.

HER HONOUR: So - - -

35

MR COOKE: Perhaps we could use the same wording as your Honour indicated for that date and then define it and then use that date in the second sentence.

HER HONOUR: All right. So why don't we say up to and including 31 May 2024.

40

MR COOKE: Yes.

HER HONOUR: And we do, subject to the next paragraph and other order of the court – and that means, if it's on the 30<sup>th</sup> – sorry to be so pedantic - - -

45

MR COOKE: That's all right.

HER HONOUR: - - - but, obviously, we need absolute precision.

MR COOKE: Yes.

5

HER HONOUR: So up to and including 31 May be subject to the next paragraph and further order of the court. This order has effect up to and including 31 May 2024. On the return date, at 30 May 2024, at 9.30 am, or as otherwise advised on that day, or on 31 May 2024, there will be a further hearing before the duty judge.

10 So that's - - -

MR COOKE: Thank you, your Honour.

HER HONOUR: - - - all fine.

15

MR COOKE: Yes. And then if I could please direct your Honour to proposed order 20 and there's some - - -

HER HONOUR: Where, sorry?

20

MR COOKE: Proposed order 20.

HER HONOUR: Order 20, yes.

25 

MR COOKE: Yes. And there's some yellow highlighting to indicate the changes from the previous version.

HER HONOUR: Yes.

30 

MR COOKE: And that was to seek to accommodate your Honour's indication at the last occasion to deal with the vulnerable persons.

HER HONOUR: Yes, that addresses the concern that I had. Thank you.

35 

MR COOKE: Thank you, your Honour.

HER HONOUR: As does (e)(i).

40 

MR COOKE: Thank you. And then over to page 12, please. That's the next highlighted – the next changes which have been highlighted. There's just a typographical amendment to 8.

HER HONOUR: Yes, to insert the new independent lawyers.

45 

MR COOKE: Yes, exactly. That occurs up to page - - -

HER HONOUR: And you now have a different independent computer expert.

MR COOKE: I think they - - -

HER HONOUR: They've just swapped.

5

MR COOKE: They are the same, but they swapped - - -

HER HONOUR: All right. Okay.

10 MR COOKE: - - - location where they're going to participate in the search, if that makes sense.

HER HONOUR: Thank you.

15 MR COOKE: Thank you. And then, your Honour, the next change was schedule C on page 24, which is adding to the affidavits relied upon. Now, the first thing to note is number 8 has been omitted because that was the previous independent lawyer's affidavit, who's no longer the independent lawyer, so he has been taken out. That was a Mr Chai. So that's - - -

20

HER HONOUR: I'm just wondering whether it would be – it's not proposed – is it proposed to serve that affidavit now or not? It would seem to be irrelevant, although on the other hand there should be full disclosure, and it – it's not really going to help anybody, but - - -

25

MR COOKE: No, but we – I mean, we're in your Honour's hands. Of course we could include it. It's not relevant.

HER HONOUR: What's your view? It's discussed during the course of the - - -

30

MR COOKE: Yes, I think we should.

HER HONOUR: - - - first transcript, so - - -

35 MR COOKE: I think we should, yes.

HER HONOUR: And it was read, so - - -

MR COOKE: Yes, I think we should.

40

HER HONOUR: - - - in the interests of full disclosure, it probably should be included.

MR COOKE: Yes.

45

HER HONOUR: Not as an affidavit currently relied upon, but, obviously, historically.

MR COOKE: Yes, exactly. And I think today's transcript will make clear what your Honour has just raised. So we will ensure that Mr Chai is included back in schedule C. And then 11 and 12 are the two further affidavits which I've read today,  
5 Mr Klotz and Mr Dewar's third affidavit.

HER HONOUR: That's correct, yes.

MR COOKE: And so, your Honour, unless your Honour has any further questions,  
10 they're the orders that we would seek.

HER HONOUR: Just have a check because I went back through the transcript again this morning.

15 MR COOKE: Yes.

HER HONOUR: I think you've addressed everything that I had a concern about. There is one amendment that needs to be made to the transcript at page 37, starting at line 39 - - -  
20

MR COOKE: Thank you.

HER HONOUR: - - - which was because of the detail of the hearing, and we went through everything, and I think my comments and questions were all fairly disclosed by the transcript I didn't feel it was necessary to provide separate written reasons, but I've encapsulated the conclusions that I reached at page 37. But the transcript seems to have an error because it says:  
25

30 *...a real risk that if information were provided in advance, and it weren't inter parties application –*

should be, "and it was an inter partes application."

MR COOKE: Thank you, your Honour.  
35

HER HONOUR: So I will ask that the transcript be amended to reflect that. Yes. I have nothing further.

MR COOKE: Thank you, your Honour. And would your Honour like us to make the amendments that your Honour has indicated to proposed orders 1 and 2 and also schedule C and email that to your Honour's chambers?  
40

HER HONOUR: Yes, that would be very helpful.

45 MR COOKE: Thank you.

HER HONOUR: And that will be emailed in Word format?

MR COOKE: Yes.

HER HONOUR: Yes.

5

MR COOKE: And then if we – subject to your Honour’s convenience, we could accept all the changes, remove the highlight and then - - -

HER HONOUR: And just tidy up the document.

10

MR COOKE: Yes.

HER HONOUR: So as I said, I’ve also been through – carefully through the orders again this morning, and I had nothing – no further queries with respect to the proposed orders, and thank you for addressing those concerns - - -

15

MR COOKE: Thank you, your honour.

HER HONOUR: - - - that I raised on the last occasion. So those orders will be made once we stand the court down.

20

MR COOKE: Thank you.

HER HONOUR: Right. Is there anything further that needs to be addressed this morning?

25

MR COOKE: No, thank you, your Honour.

HER HONOUR: And the fact that there may be a delay in the transcript of today being obtained, is that accommodated in the orders in some way? It may need to be filed – may need to be served a bit later. Hopefully it will be done without difficulty today.

30

MR COOKE: Yes. I’m told that – yes, it is. 2(g) does accommodate that if the transcript’s not available today.

35

HER HONOUR: I will just – sorry. 2 – what page are you looking at?

MR COOKE: I’m not sure if it is 2(g). No, I don’t think that deals with it, your Honour.

40

HER HONOUR: I think we – I will just check. Madam Associate, can I check with you do we have this on a transcript for today? Okay. I understand that the applicants have ordered a same-day transcript, so - - -

45

MR COOKE: That should - - -

HER HONOUR: - - - one would feel pretty confident that we will have it by the end of the day today.

MR COOKE: Yes, thank you.

5

HER HONOUR: And we will confirm that with the transcript providers, given the importance, I think, of just making sure they've got everything right at the beginning when the search is executed.

10 MR COOKE: Thank you.

HER HONOUR: All right. Well, in that case, thank you again for your assistance, and I will ask now that the court be adjourned.

15

**MATTER ADJOURNED at 11.33 am UNTIL THURSDAY, 30 MAY 2024**