

NOTICE OF FILING

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Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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

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



Form 59
Rule 29.02(1)

Affidavit

No. NSD 527 of 2024

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

Fortescue Limited (ACN 002 594 872) and Ors

Applicants

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

Respondents

Affidavit of: **Paul Alexander Dewar**
Address: Level 4, 7 Macquarie Place, Sydney, NSW 2000
Occupation: Lawyer
Date: 30 May 2024

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

[Version 3 form approved 02/05/2019]

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4.	Annexure "PAD-13", being a copy of the transcript of the hearings on 9 and 14 May 2024.	7	63–131
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6.	Annexure "PAD-15", being a copy of Search Orders dated 14 May 2024.	8(b)	140–169
7.	Annexure "PAD-16", being a copy of Court's orders dated 14 May 2024, concerning interim suppression and confidential.	8(c)	170–174
8.	Annexure "PAD-17", being a document marking up the standard form of search order in the Search Orders Practice Note (GPN-SRCH) against the orders as made by Perry J on 14 May 2024.	10	175–223
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I, Paul Alexander Dewar, of Level 4, 7 Macquarie Place, Sydney in the State of New South Wales, Lawyer, affirm:

A. Background

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.
2. This is my fourth affidavit in this proceeding (**Fourth Affidavit**). My first affidavit was affirmed on 1 May 2024 (**First Affidavit**), my second affidavit was affirmed on 9 May 2024, and my third affidavit was affirmed on 14 May 2024. The defined terms in my First Affidavit are adopted in this Fourth Affidavit.
3. I am authorised to make this affidavit on behalf of the Applicants.
4. I am not instructed, and do not intend in this affidavit, to waive privilege on behalf of the Applicants, nor do I have the authority to do so.




B. The proceedings

5. The proceedings were commenced on 30 April 2024, when I caused the Applicants' Originating Application, Statement of Claim, and Genuine Steps Statement to be filed.
6. In this affidavit I refer to the Applicant's application for a search order as the **Application**, which is annexed to this affidavit and marked Annexure "**PAD-11**". The Application was provided to the chambers of Justice Abraham, as duty judge, on 1 May 2024.
7. The Application was heard ex parte by her Honour Justice Perry, sitting as duty judge, on 9 and 14 May 2024. Annexed to this affidavit and marked Annexure "**PAD-12**" is a redacted copy of the Applicants' written submissions dated 8 May 2024 which summarises the background to the dispute. I have caused all confidential text to be redacted from this copy of the Applicants' written submissions. Also annexed to this affidavit and marked Annexure "**PAD-13**" is a copy of the transcript of the hearings on 9 and 14 May 2024.
8. On 9 and 14 May 2024, Justice Perry made the following sets of orders:
 - (a) orders dated 9 May 2024, concerning interim suppression and confidentiality, which are annexed to this affidavit and marked Annexure "**PAD-14**";
 - (b) search orders dated 14 May 2024 (**Search Orders**), which are annexed to this affidavit and marked Annexure "**PAD-15**"; and
 - (c) orders dated 14 May 2024, concerning interim suppression and confidentiality, which are annexed to this affidavit and marked Annexure "**PAD-16**".
9. The Search Orders that were sought in the Application, and ultimately made by her Honour, were based on the standard form of search order contained in the Search Orders Practice Note (GPN-SRCH), with modifications.
10. On 30 May 2024 I caused the Search Orders made by Perry J on 14 May 2024 to be marked up against the standard form of search order in the Search Orders Practice Note (GPN-SRCH), so that the variations to the standard form of search orders can be conveniently reviewed. That marked up document is annexed to this affidavit and marked Annexure "**PAD-17**".

C. Timely Compliance with Search Order 23

11. Order 23 of the Search Orders is a standard form of order as set out in the Search Orders Practice Note (GPN-SRCH). It provides as follows:

23. Subject to paragraph 24 below, You must:



(a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of Your ability inform the Applicant in writing as to:

(i) the location of the Listed Things;

(ii) the name and address of everyone who has supplied You, or offered to supply You, with any Listed Thing;

(iii) the name and address of every person to whom You have supplied, or offered to supply, any Listed Thing; and

(iv) details of the dates and quantities of every such supply and offer.

(b) within 10 working days after being served with this order, make and serve on the Applicant an affidavit setting out the above information.

12. The Applicants are concerned to obtain a copy of the Respondents' written notification as to the Listed Things (pursuant to Search Order 23(a)) and corresponding affidavits (pursuant to Search Order 23(b)) in a timely fashion in the event that it becomes apparent, for example, that the Applicants need to make a further interlocutory application so as to ascertain the location of "Listed Things" which the Applicants identify to be missing from the reports of the Independent Lawyers, the Independent Computer Experts, and the Respondents' affidavits.
13. I have been provided with the affidavit of Mr Stephen Klotz affirmed on 29 May 2024. From my brief review of that affidavit, it is apparent that at least some of the Listed Things have not yet been located. By way of example, there is no mention in Mr Klotz's affidavit of:
- (a) the Toshiba branded USB drive with serial no. 07080A078F1B6304 (Listed Thing 1(a)); or
 - (b) the Kingston branded USB drive with serial no. 900042ACAE668708 (Listed Thing 1(b)).

D. Preservation of seized material

14. The Applicants seek orders that would allow the Independent Computer Expert to retain a copy of materials obtained from the search of the Premises, but not to provide that copy to any party in the proceedings in the absence of an order of the court. This is to allow for a back up copy of the materials to be kept securely, in an abundance of caution.

 R. M. Ligne

 Joel

E. Confidentiality regime

- 15. On 27 May 2024 I emailed the lawyers for the First, Second and Fourth Respondents a proposed confidentiality regime. A copy of that email is annexed to this affidavit and marked Annexure "PAD-18".
- 16. If the suppression regime is maintained, and should information relating to this matter be disclosed to the public despite that suppression regime, Fortescue is unable to predict the effect that such disclosure may have on the market.
- 17. Fortescue has ongoing ASX obligations in relation to material disclosures. Specifically, if a section of the market knows something that another section does not, then Fortescue may be required to update the market.
- 18. Accordingly, Fortescue is concerned that maintaining the suppression regime may place Fortescue in a position where it is unable to comply with its ongoing ASX obligations.

Affirmed by Paul Alexander Dewar)
 at Sydney in New South Wales)
 on 30 May 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 Collison Cave Law Pty Ltd
 7 Macquarie Place, Sydney 2000

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

Fortescue Limited (ACN 002 594 872) and Ors

Applicants

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

Respondents

ANNEXURE PAD-11

This is the annexure marked **PAD-11** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his Fourth Affidavit on 30 May 2024.

Before me:



ROHIT MANOJ DIGHE
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (New South Wales)
Davies Collison Cave Law Pty Ltd
7 Macquarie Place, Sydney 2000

Form 35
Rule 17.01(1)

Interlocutory application

No. NSD 527 of 2024

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

Fortescue Ltd (ACN 002 594 872) and others

Applicants

Element Zero Pty Ltd (ACN 664 342 081) and others

Respondents

To the First, Second and Third Respondents

The Applicants apply for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing: [Registry will insert time and date]

Place: [address of Court]

Date: 1 May 2024

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of	Fortescue Ltd & Ors, Applicants
Prepared by	Paul Dewar
Law firm	Davies Collison Cave Law
Tel	+61 2 9293 1000
Email	PDewar@dcc.com
Address for service	Level 4, 7 Macquarie Place, Sydney NSW 2000

Interlocutory orders sought

1. Pursuant to r 7.42 of the *Federal Court Rules 2011* (Cth), a search order in the form of the orders in **Annexure I** to this application.
2. The costs of and incidental to this application be reserved.
3. Such further or other orders as the Court considers appropriate.

Service on the Respondents

It is intended to serve this application on the First, Second and Third Respondents at the time of execution of the search orders.

Date: 1 May 2024



Signed by Paul Dewar
Lawyer for the Applicants

Form 1
Rule 2.13(2)

**Annexure I to the Interlocutory Application
(Search Order Application)**

No. NSD 527 of 2024

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

Fortescue Limited ACN 002 594 872 and others named in the schedule
Applicants

Element Zero Pty Limited ACN 664 342 081 and others named in the schedule
Respondents

PENAL NOTICE

TO:

- (a) Element Zero Pty Limited ACN 664 342 081;**
- (b) Bartłomiej Piotr Kolodziejczyk;**
- (c) Bjorn Winther-Jensen; and**
- (d) the occupants of each of:**
 - (i) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;**
 - (ii) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;**
 - (iii) 5A Volga Street, Hadfield, Victoria 3046; and**
 - (iv) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019.**

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THE ORDER FOR THE DOING OF THE ACT; OR

(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,

Filed on behalf of	Fortescue Limited, Fortescue Future Industries Pty Ltd and FMG Personnel Services Pty Ltd, the Applicants		
Prepared by	Paul Dewar		
Law firm	Davies Collison Cave Law		
Tel	02 9293 1000	Fax	02 9262 1080
Email	PDewar@dcc.com		
Address for service	Level 4, 7 Macquarie Place, Sydney NSW 2000		

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

TO:

- (a) Element Zero Pty Limited ACN 664 342 081;
- (b) Bartłomiej Piotr Kolodziejczyk;
- (c) Bjorn Winther-Jensen; and
- (d) the occupants of each of
 - (i) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;
 - (ii) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;
 - (iii) 5A Volga Street, Hadfield, Victoria 3046; and
 - (iv) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019,

This is a **search order** made against You on [**] May 2024 by Justice [**insert name of Judge] at a hearing without notice to You after the Court was given the undertakings set out in **Schedule B** to this order and after the Court read the affidavits listed in **Schedule C** to this order.

The Court orders:

Introduction

1. (a) The application for this order is made returnable immediately.
- (b) The time for service of the following documents:
 - (i) the Originating Application;
 - (ii) the Statement of Claim;
 - (iii) the Interlocutory Application and Annexure I thereto (Search Application);
 - (iv) the affidavits listed in **Schedule C** and their annexures or exhibits (other than the confidential affidavit text, confidential annexures and confidential exhibits);
 - (v) any other document listed in **Schedule B, Part B.2**, paragraph 2,

is abridged and service is to be effected by the Independent Lawyer on each Respondent in accordance with **Schedule B, Part B.3**, paragraph 1, on or before [**] April 2024.

2. Subject to the next paragraph, this order has effect up to and including [**] May 2024 (**Return Date**). On the Return Date at [**] am/pm there will be a further hearing before the Duty Judge in respect of this order.
3. You may apply to the Court at any time to vary or discharge this order; including, if necessary, by telephone to the chambers of the Duty Judge.
4. This order may be served only between [**9]am and [**2]pm (Australian Western Standard Time) on a business day.
5. In this order:
 - (a) **Applicant** means the person who applied for this order, and if there is more than one applicant, includes all the applicants.
 - (b) **Independent Computer Expert** means any person identified as an independent computer expert in the Search Party referred to in **Schedule A** to this order.
 - (c) **Independent Lawyer** means any person identified as an Independent Lawyer in the Search Party referred to in **Schedule A** to this order.
 - (d) **Listed Thing** means any thing referred to as such in **Schedule A** to this order.
 - (e) **Premises** means the premises and any of the premises identified in **Schedule A** to this order, including any vehicles and vessels that are under Your control on or about the premises or that are otherwise identified in **Schedule A**.
 - (f) **Search Party** means the persons identified or described as constituting the search party in **Schedule A** to this order.
 - (g) **Thing** includes a document.
 - (h) **You**, where there is more than one of you, includes all of you and includes you if you are a corporation.
 - (i) Any requirement that something be done **in your presence** means:
 - (i) in the presence of You or of one of the persons described in paragraph 6 below; or

- (ii) if there is more than one of You, in the presence of each of You at each of the Premises, or, in relation to each of You, in the presence of one of the persons described in paragraph 6 below.

6. This order must be complied with by:
 - (a) Yourself;
 - (b) any director, officer, partner, employee or agent of Yourself; or
 - (c) any other person having responsible control of the Premises.
7. This order must be served by, and be executed under the supervision of, an Independent Lawyer.

Entry, search and removal

8. Subject to paragraphs 10 to 20 below, upon service of this order, You must permit members of the Search Party to enter the Premises so that they can carry out the search and other activities referred to in this order.
9. Having permitted members of the Search Party to enter the Premises, You must:
 - (a) permit them to leave and re-enter the Premises on the same and the following day until the search and other activities referred to in this order are complete;
 - (b) permit them to search for and inspect the Listed Things and to make or obtain a copy, photograph, film, sample, test or other record of the Listed Things;
 - (c) disclose to them the whereabouts of all the Listed Things in Your possession, custody or power, whether at the Premises or otherwise;
 - (d) disclose to them the whereabouts of all computers (including smartphones, tablets and other mobile devices), computer disks, drives or memory (including portable drives and USB drives), electronic information storage devices or systems, and online accounts (including all cloud and email accounts) at or accessible from the Premises in which any documents among the Listed Things are or may be stored, located or recorded and cause and permit those documents to be copied or printed out;
 - (e) do all things necessary to enable them to access the Listed Things, including by opening or providing keys to physical or digital locks and enabling them to access and operate computers and online accounts and providing them with all necessary passwords, access credentials and other access means;

- (f) permit any Independent Lawyer to remove from the Premises into the Independent Lawyer's custody:
 - (i) the Listed Things or things which reasonably appear to the Independent Lawyer to be the Listed Things and any things the subject of dispute as to whether they are Listed Things; and
 - (ii) the copies, photographs, films, samples, tests, other records and printed out documents referred to in paragraph 9(b) above; and
- (g) permit any Independent Computer Expert to search any computer (including any smartphone, tablet and other mobile device), computer disk, drive or memory (including any portable drive and USB drive), any electronic information storage device or system, and online accounts (including all cloud and email accounts) at or accessible from the Premises, and make a copy or digital copy of any of the foregoing and permit any Independent Computer Expert to remove any of the foregoing from the Premises as set out in paragraphs 20 and 21 below.

Restrictions on entry, search and removal

- 10. This order may not be executed at the same time as a search warrant (or similar process) is executed by the police or by a regulatory authority.
- 11. You are not required to permit anyone to enter the Premises until:
 - (a) an Independent Lawyer serves You with copies of this order and any affidavits referred to in **Schedule C** (confidential annexures and exhibits, if any, need not be served until further order of the Court); and
 - (b) You are given an opportunity to read this order and, if You so request, the Independent Lawyer explains the terms of this order to You.
- 12. Before permitting entry to the Premises by anyone other than the Independent Lawyer, You, for a time (not exceeding two hours from the time of service or such longer period as the Independent Lawyer may permit):-
 - (a) may seek legal advice;
 - (b) may ask the Court to vary or discharge this order;
 - (c) (provided You are not a corporation) may gather together any things which You believe may tend to incriminate You or make You liable to a civil penalty and hand them to the Independent Lawyer in (if You wish) a sealed envelope or container; and

- (d) may gather together any documents that passed between You and Your lawyers for the purpose of obtaining legal advice or that are otherwise subject to legal professional privilege or client legal privilege, and hand them to the Independent Lawyer in (if You wish) a sealed envelope or container.
13. Subject to paragraph 22 below, the Independent Lawyer must not inspect or permit to be inspected by anyone, including the Applicant and the Applicant's lawyers, any thing handed to the Independent Lawyer in accordance with subparagraphs 12(c) and 12(d) above and the Independent Lawyer must deliver it to the Court at or prior to the hearing on the Return Date.
 14. During any period referred to in paragraph 12 above, You must:
 - (a) inform and keep the Independent Lawyer informed of the steps being taken;
 - (b) permit the Independent Lawyer to enter the Premises but not to start the search;
 - (c) not disturb or remove any Listed Things. In the case of smartphones, You may continue to use any smartphone to obtain legal advice, provided that You comply with the terms of paragraphs 25 and 26 ('Prohibited Acts') below in relation to any such use; and
 - (d) comply with the terms of paragraphs 25 and 26 ('Prohibited Acts') below.
 15. Any thing the subject of a dispute as to whether it is a Listed Thing must promptly be handed by You to the Independent Lawyer for safekeeping pending resolution of the dispute or further order of the Court.
 16. Before removing any Listed Things from the Premises (other than things referred to in the immediately preceding paragraph), the Independent Lawyer must supply a list of them to You, give You a reasonable time to check the correctness of the list, and give You and the Applicant's lawyers a copy of the list signed by the Independent Lawyer.
 17. The Premises must not be searched, and things must not be removed from the Premises, except in Your presence or of a person who appears to the Independent Lawyer to be Your director, officer, partner, employee, agent or other person acting on Your behalf or on Your instructions.
 18. If the Independent Lawyer is satisfied that full compliance with the immediately preceding paragraph is not reasonably practicable, the Independent Lawyer may permit the search to proceed and the Listed Things to be removed without full compliance.
 19. The Applicant's lawyer and the Independent Lawyer must not allow the Applicant in person to inspect or have copies of any thing removed from the Premises nor

communicate to the Applicant information about its contents or about anything observed at the Premises until 4:30pm on the Return Date or other time fixed by further order of the Court. However, the Applicant's lawyer may communicate to the Applicant:

- (a) for the purpose of obtaining instructions if it appears it is not safe or otherwise practicable to proceed or continue with the execution of this search order at any of the Premises; and
- (b) for the purpose of obtaining instructions for the hearing on the Return Date.

Computers

20. (a) The Search Party must include a computer expert, being an expert who is independent of the Applicant and of the Applicant's lawyers (the **Independent Computer Expert**), as set out in Schedule A to this order.
- (b) Any search of a computer (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system, and online accounts (including all cloud and email accounts) must be carried out only by an Independent Computer Expert.
- (c) An Independent Computer Expert may:
- (i) make a copy or digital copy of any computer (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system and online accounts (including all cloud and email accounts), as follows:
 - (A) in the case of smartphones, tablets and other mobile devices, such copy is to be made at the Premises; and
 - (B) in any other case, such copy may be made at the Premises or offsite and
 - (ii) remove from the Premises that copy or digital copy (if made at the Premises) or the original device (if the copy is to be made offsite).
- (d) The Independent Computer Expert may search any computer (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system, and online accounts (including all cloud and email accounts) or the copy or digital copy thereof at the Premises or offsite for Listed Things and may copy the Listed Things electronically or in hard copy or both.

- (e) The Independent Computer Expert must:
 - (i) within [~~one~~ week] after the execution of this order, return any original device removed from any of the Premises; and
 - (ii) as soon as practicable and, in any event, prior to the hearing on the Return Date, deliver the copy or digital copy of the computers (including smartphones, tablets and other mobile devices), computer disks, drives or memory (including portable drives and USB drives), electronic information storage devices or systems, and online accounts (including all cloud and email accounts), and all electronic and hard copies of Listed Things to the Independent Lawyer, together with a report of what the Independent Computer Expert has done including a list of such electronic and hard copies.
 - (f) The Independent Lawyer must, at or prior to the hearing on the Return Date, deliver to the Court all things received from the Independent Computer Expert and serve a copy of the Independent Computer Expert's report on the parties.
21. (a) This paragraph 21 applies if You are not a corporation and You wish to object to complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that You:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (b) This paragraph 21 applies if You are a corporation and all of the persons who are able to comply with paragraph 20 on Your behalf and with whom You have been able to communicate, wish to object to Your complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and

- (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
- (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

Inspection

22. Prior to the Return Date, You or Your lawyer or representative shall be entitled, in the presence of the Independent Lawyer, to inspect any thing removed from the Premises and to:
- (a) make copies of the same; and
 - (b) provide the Independent Lawyer with a signed list of things which are claimed to be privileged or confidential and which You claim ought not to be inspected by the Applicant.

Provision of information

23. Subject to paragraph 24 below, You must:
- (a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of Your ability inform the Applicant in writing as to:
 - (i) the location of the Listed Things;
 - (ii) the name and address of everyone who has supplied You, or offered to supply You, with any Listed Thing;
 - (iii) the name and address of every person to whom You have supplied, or offered to supply, any Listed Thing; and
 - (iv) details of the dates and quantities of every such supply and offer.
 - (b) within [****10**] working days after being served with this order, make and serve on the Applicant an affidavit setting out the above information.
24. (a) This paragraph 24 applies if You are not a corporation and You wish to object to complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that You:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or

- (ii) are liable to a civil penalty.
- (b) This paragraph 24 also applies if You are a corporation and all of the persons who are able to comply with paragraph 23 on Your behalf and with whom You have been able to communicate, wish to object to Your complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

Prohibited Acts

25. Except for the sole purpose of obtaining legal advice, You must not, until 4:30pm on the Return Date, directly or indirectly inform any person of this proceeding or of the contents of this order, or tell any person that a proceeding has been or may be brought against You by the Applicant.
26. Until 4:30pm on the Return Date You must not destroy, tamper with, cancel or part with possession, power, custody or control of the Listed Things otherwise than in accordance with the terms of this order or further order of the Court.

Costs

27. The costs of this application are reserved to the Court hearing the application on the Return Date.

Schedule A

Premises

The premises located at:

- (a) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090; Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;
- (b) 5A Volga Street, Hadfield, Victoria 3046; and
- (c) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019 ,

including any vehicle or vehicles under Your control on or about those premises.

Listed Things

1. All computers (including smartphones, tablets or other mobile devices), computer disks, drives or memory (including any portable drives and USB drives), electronic information storage devices or systems, or online accounts (including all cloud and email accounts), at or accessible from the Premises (including offsite data storage, cloud, email and other platforms or services that are accessible from the Premises), including the following devices:
 - a. Toshiba branded USB drive with serial no. 07080A078F1B6304; and
 - b. Kingston branded USB drive with serial no. 900042ACAE668708.
2. All documents (whether in hardcopy or electronic form) containing the word “Fortescue”, “FFI”, “FMG” or “FMGL”.
3. All documents (whether in hardcopy or electronic form) recording or evidencing research and development work by or on behalf of Element Zero, Dr Kolodziejczyk or Dr Winther-Jensen, including laboratory notebooks and experimental data.
4. All documents (whether in hardcopy or electronic form) recording or evidencing the design, engineering, construction or operation of any pilot plant operated by or on behalf of Element Zero.
5. Any document listed in Annex 1 to this Schedule A (whether in hardcopy or electronic form) and any emails or communications attaching those documents.
6. Any document recording or evidencing communications to which any two or more of the Second to Fourth Respondents are parties. The email accounts and mobile numbers for the Second to Fourth Respondents include:

- a. "kolodziejczyk.bartlomiej@gmail.com", "kolodziejczykbartlomiej@gmail.com", and "bart@kolodziejczyk.com";
 - b. "bjornwj@gmail.com" and "b.wintherjensen@kurenai.waseda.jp";
 - c. "mgmasterman@gmail.com";
 - d. +61416833585;
 - e. +61447865470; and
 - f. +61418951792 or +447791288381.
7. Emails in Dr Kolodziejczyk's email accounts (including but not limited to "kolodziejczyk.bartlomiej@gmail.com", "kolodziejczykbartlomiej@gmail.com", and "bart@kolodziejczyk.com"):
- a. to or from any email account in the domain "fmgl.com.au"; or
 - b. in the period from 25 March 2019 to January.
8. Emails in Dr Winther-Jensen's email accounts (including but not limited to "bjornwj@gmail.com" and "b.wintherjensen@kurenai.waseda.jp"):
- a. to or from any email account in the domain "fmgl.com.au";
 - b. in the period from 18 January 2021 to January 2024.
9. All of the above may be located on any computer (including smartphone, tablet or other mobile device), computer disk, drive or memory (including any portable drive and USB drive), electronic information storage device or system, or online accounts (including all cloud and email accounts), at or accessible from the Premises (including offsite data storage, cloud, email and other platforms or services that are accessible from the Premises).

Search Party for Premises at Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090 and for Unit 1, 19 Oxleigh Drive Malaga, Western Australia 6090

1. Independent Lawyers:
 - (a) Adrian Chai of Ashurst Australia located at 123 St Georges Terrace, Perth, Western Australia 6000.
 - (b) Sam Mengler of Ashurst Australia located at 123 St Georges Terrace, Perth, Western Australia 6000

2. Applicant's lawyers:
 - (a) Paul Dewar of Davies Collison Cave Law located at level 4, 7 Macquarie Place, Sydney, New South Wales 2000.
3. Independent Computer Experts:
 - (a) Yian Sun of Cyter located at level 8, 280 Pitt St, Sydney, New South Wales 2000.
 - (b) Darren Michael of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.
 - (c) Phillip Russo of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.

Search Party for Premises at 5A Volga Street, Hadfield, Victoria 3046

1. Independent Lawyers:
 - (a) Lucinda Hill of Ashurst Australia located at South Tower, Level 16/80 Collins St, Melbourne, Victoria 3000.
2. Applicant's lawyers:
 - (a) Jessica Sapountsis or Lachlan Bart of Davies Collison Cave Law located at level 15, 1 Nicholson Street, Melbourne, Victoria 3000.
3. Independent Computer Experts:
 - (a) Rod McKemmish of Cyter located at level 8, 280 Pitt St, Sydney, New South Wales 2000.

Search Party for Premises at Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019

1. Independent Lawyers:
 - (a) Candice Lamb of Ashurst Australia located at 123 St Georges Terrace, Perth, Western Australia 6000.
2. Applicant's lawyers:
 - (a) Ashley Cameron of Davies Collison Cave Law located at level 4, 7 Macquarie Place, Sydney, New South Wales 2000.
3. Independent Computer Experts:

- (a) Phillip Russo of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.

Annex 1 to Schedule A Specified Listed Things

Documents referred to in paragraph 19 of the Statement of Claim

1. Green Update (02.08.2021).pdf
2. Copies of the specifications and drawings, as filed on 24 May 2021, of Australian provisional patent application no. 2021901547 entitled 'Apparatus and process for producing iron' in the name of Fortescue Future Industries Pty Ltd, including documents with the file names "35557986AU- Specification as filed (35557986).pdf" and "35557986AU - Drawings as filed (35557986).pdf"
3. Document titled "Basis of Design – Chameleon Pilot Plant" having document number or file name FFI0302-10000-00-EG-BOD-0001
4. Bumblebee PID markups 26_10_21.pdf

Documents referred to in paragraph 20 of the Statement of Claim

5. 211029_Iron ore leaching_Report_ASH.R1.docx
6. 211014_FFI Green Steel_Ore Leach_ASH_XRF results.csv
7. 211014_FFI Green Steel_Ore Leach_ASH_ICP results.csv
8. Technical Evaluation.xlsx
9. Email from David White sent on 4 November 2024 with Subject "Technical Evaluation of Green Iron process"
10. Microsoft PowerPoint document with the internal title, 'Green Iron Forum', internally dated 1 November 2021, including documents with the file name "Green Iron Update (01.11.2021)"
11. Copies of the specifications and drawings, as filed on 24 May 2021, of Australian provisional patent application no. 2021901547 entitled 'Apparatus and process for producing iron' in the name of Fortescue Future Industries Pty Ltd, including documents with the file names "35557986AU- Specification as filed (35557986).pdf" and "35557986AU - Drawings as filed (35557986).pdf"

SharePoint documents referred to in Affidavit of Dr Anand Bhatt

12. 2. FFI Pilot - concept flowsheet REV0.pdf
13. 2. FFI pilot plant (Project Chameleon).msg
14. 20210813 All Operations Tailings Chemistry to Current_SCH.xlsx
15. 210827_Leaching project draft plan_NTH_ASH edits.docx
16. 210920_Update presentation_ASH.pptx
17. 211004_Leaching experimental design_ASH.xlsx

18. 211029_Iron ore leaching_Report_ASH.R1.docx
19. 570CBC0001-02007-BD-EG-0001_1_US.pdf
20. A22314 - ISAMill SigPlot Report Final.pdf
21. A22314 - SigPlot Report Final edit.xlsx
22. Brief notes on processing product from 'filter press' test rig 10_6_21.docx
23. BumbleBee FFI0301-10000-00-EG-BOD-0001_A.docx
24. Bumblebee layout.docx
25. Christmas Creek OPF2 Mass Balance.xlsx
26. Effluent stream potentials.docx
27. Electrochemical ore reduction Figures and flow diagram (002).pptx
28. Engineering Diary Week 36_21 12_9_21.docx
29. Example Flow Diagrams 22_2_21.docx
30. Feed Input calc.XLS
31. FFI INNOVATION CENTRE Engineering Diary Week 42_21 22_10_21 DJA input.docx
32. FFI0001-0001-00-DR-PR-0002_rA_COMMINUTION STAGE - CHECK.pdf
33. FFI0001-0001-00-DR-PR-0004_rA_LEACHING STAGE - CHECK.pdf
34. FFI0301-0001-00-DR-PR-0001_rA GS RIG OVERALL BLOCK DIAGRAM.pdf
35. FFI0302-8100-EG-BOD-0001_A.docx
36. FFI0302-8100-EG-TNN-0001 - Questions.docx
37. FFI0303-8100-EG-PLN-0002 Comminution Testing Plan.xlsx
38. FFICGreen_Steel_Process_Overview_Memo_v2.docx
39. FFI-Green_Steel_Process_Overview_Memo_v1.docx
40. filter press concepts 22_3_21.pdf
41. filter press conversion.pdf
42. Filter Press tesfa.docx
43. green iron quick intro.pptx
44. Green Iron Update (10.09.2021) v1.pdf
45. Green_Steel_PFD_Example_Overview_BWJ_16-07-21_Comments.pdf
46. Green_Steel_PFD_Example_Overview_NOT_FOR_USE.pdf
47. Green_Steel_PFD_Rev1_v2_Example.png
48. GreenSteel_ProcessFlow_Schematic_v4.pdf
49. GS_PFD.png
50. IsaMill Budget Quote ETM 2120 6721.pdf
51. Isamill call 28_4_21docx.docx
52. Isamill purchase review.pdf
53. IsaMill_Technology_Used_in_Efficient_Grinding_Circuits.pdf
54. Leaching results_Rob.xlsx
55. Multiple Aspen software files located within the folder named Models

56. Ore composition after drying.xlsx
57. Pilot Plant Assumptions.xlsx
58. Pilot Plant Basis of Design - Mechanical.docx
59. Pilot Plant MEL draft.xlsx
60. Pilot Plant Technical Workshop .potx
61. Pilot Plant Workshop_Outputs.pptx
62. PTHPSM01_3BF00564-PTH_PRN_Belmont_0576_001.pdf
63. SGS Filter Press review 29_03_21.docx
64. SOL DID Rc chip polished blocks grades_JCedits final.xlsx
65. Solomon_Stratigraphy_Geo-Met_GE.pptx
66. SWI RS-WI-MT-0101 Wet Low Intensity Magnetic Sperator (Rev 0) SG.doc
67. Tailings stream potentials.docx
68. Tank Review 1_6_21 expanded .docx
69. tanks.xlsx
70. Test Plan for leaching variables.docx
71. ULT_Green Steel_u330327.a_Alkali roasting_Diff NaOH trial+Wash trial.csv
72. ULT_Green Steel_u330327.b_ICP_Bjorn Leach solution.csv
73. ·V1.0_Estimated Grade_Logging_Template_8mm_Sample__Post_Scrub_20201216 AL.xlsx

Internal Fortescue procedure and specification documents

74. Any of the documents in the table below.

Document Number	Title
100-PR-PM-0013	FMG Procedure Safety In Design
100-SP-CI-0003	FMG Engineering Specification Concrete
100-SP-CI-0007	FMG Engineering Specification Earthworks
100-SP-EL-0001	FMG Engineering Specification Electrical Design Criteria
100-SP-EL-0002	FMG Engineering Specification Earthing & Bonding
100-SP-EL-0005	FMG Engineering Specification Low Voltage MCCs and Switchboards
100-SP-EL-0006	FMG Engineering Specification Distribution and Control Panels
100-SP-EL-0008	FMG Engineering Specification Electrical Installation
100-SP-EL-0009	FMG Engineering Specification for Preferred Electrical Equipment
100-SP-EL-0010	FMG Engineering Specification Testing and Commissioning of Electrical Installations
100-SP-EL-0013	FMG Engineering Specification Low Voltage Induction Motors
100-SP-EL-0014	FMG Engineering Specification High Voltage Induction Motors
100-SP-IN-0001	FMG Engineering Specification Preferred Instrumentation List

Document Number	Title
100-SP-IN-0002	FMG Engineering Specification Instrumentation and Control Design
100-SP-IN-0014	FMG Engineering Specification Instrumentation
100-SP-IN-0015	FMG Engineering Specification Field Communication and Marshalling Panels
100-SP-IN-0019	FMG Engineering Specification Instrument Installations
100-SP-ME-0002	FMG Engineering Specification Mechanical Equipment
100-SP-ME-0004	FMG Engineering Specification Installation of Mechanical Equipment
100-SP-ME-0042	FMG Engineering Specification Centrifugal Pumps
100-SP-PI-0001	FMG Engineering Specification Pipe Work and Valves
100-SP-ST-0001	FMG Engineering Specification Structural Steelwork Fabrication
100-SP-ST-0002	FMG Engineering Specification Structural Steelwork Erection
100-SP-ST-0003	FMG Engineering Specification Protective Coating Systems – Hot Dip Galvanising
500CB-00000-SP-PI-0002	Manual Valves Specification
500CB-00000-SP-PI-0007	Special Piping Items

**Schedule B:
Undertakings given to the Court**

B.1 Undertakings given to the Court by each Applicant by their counsel:

1. The Applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
2. The Applicant will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
3. The Applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.

B.2 Undertakings given to the Court by each Applicant's lawyer:

1. The Applicant's lawyer will pay the reasonable costs and disbursements of the Independent Lawyer and of any Independent Computer Expert.
2. The Applicant's lawyer will provide to the Independent Lawyer for service on each Respondent copies of the following documents:
 - (a) this order;
 - (b) the Originating Application;
 - (c) the Statement of Claim;
 - (d) the Applicant's genuine steps statement;
 - (e) the Interlocutory Application and Annexure I thereto (Search Application);
 - (f) the following material in so far as it was relied on by the Applicant at the hearing when the order was made:
 - (i) the affidavits listed in **Schedule C** (other than confidential affidavit text);
 - (ii) annexures and exhibits capable of being copied (other than confidential annexures and exhibits);
 - (iii) the Applicant's written submissions filed on [**] April 2024; and
 - (iv) any other document that was provided to the Court.
 - (g) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submissions that were put, to the Court.
3. The Applicant's lawyer will answer to the best of the lawyer's ability any question as to whether a particular thing is a Listed Thing.
4. The Applicant's lawyer will use the lawyer's best endeavours to act in conformity with the order and to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to each Respondent.
5. The Applicant's lawyer will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
6. The Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.

7. The Applicant's lawyer will not disclose to the Applicant any information that the lawyer acquires during or as a result of execution of the search order, until 4:30pm on the Return Date or other time fixed by further order of the Court, unless the disclosure is permitted by paragraph 19 of this order or with the leave of the Court.
8. The Applicant's lawyer will use best endeavours to follow all directions of the Independent Lawyer.

B.3 Undertakings given to the Court by each Independent Lawyer:

1. The Independent Lawyer will use his or her best endeavours to serve each Respondent with this order and the other documents referred to in undertaking **Part B.2** of the above (undertakings by each Applicant's lawyer).
2. Before entering the Premises, the Independent Lawyer will:-
 - (a) offer to explain the terms and effect of the search order to the person served with the order and, if the offer is accepted, do so; and
 - (b) inform each Respondent of his or her right to take legal advice.
3. Except for the Independent Computer Expert's removing computers, other devices and their copies or digital copies for copying or searching in accordance with paragraph 20 of this order and subject to undertaking 4 below, the Independent Lawyer will retain custody of all things removed from the Premises by the Independent Lawyer pursuant to this order until delivery to the Court or further order of the Court.
4. At or before the hearing on the Return Date, the Independent Lawyer will provide a written report on the carrying out of the order to the Court and provide a copy to the Applicant's lawyers and to each Respondent or each Respondent's lawyers. The report will attach a copy of any list made pursuant to the order and a copy of any report received from an Independent Computer Expert.
5. The Independent Lawyer will use best endeavours to ensure that members of the Search Party act in conformity with the order and that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to each Respondent, and will give such reasonable directions to other members of the Search Party as are necessary or convenient for the execution of the order.
6. The Independent Lawyer will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
7. The Independent Lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.

B.4 Undertakings given to the Court by each Independent Computer Expert

1. The Independent Computer Expert will use his or her best endeavours to act in conformity with the order and to ensure that the order, so far as it concerns the Independent Computer Expert, is executed in a courteous and orderly manner and in a manner that minimises disruption to each Respondent.
2. The Independent Computer Expert will remove computers and other devices from the Premises for copying and searching in accordance with paragraph 20 of this order.
3. The Independent Computer Expert will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
4. The Independent Computer Expert will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.
5. The Independent Computer Expert will use best endeavours to follow all directions of the Independent Lawyer.

**Schedule C:
Affidavits relied on**

No.	Name of deponent	Date affidavit made
1.	Anand Indravadan Bhatt	1 May 2024
2.	Wayne McFaull	1 May 2024
3.	Susanne Monica Hantos	1 May 2024
4.	John Paul William Testaferrata Olivier	1 May 2024
5.	Adrian Huber	1 May 2024
6.	Paul Alexander Dewar	1 May 2024

Name and address of Applicant's lawyers

The Applicant's lawyers are:

Davies Collison Cave Law

Level 4, 7 Macquarie Place, Sydney NSW 2000

Email: PDewar@dcc.com ; ACameron@dcc.com ; RDighe@dcc.com

Mobile: +61 404 047 047

Tel: 02 9293 1000

Fax: 02 9262 1080

**Schedule D:
Schedule of Parties**

No. NSD of 2024

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

Applicants

Second Applicant: **Fortescue Future Industries Pty Ltd ACN 625 711 373**
Third Applicant: **FMG Personnel Services Pty Ltd ACN 159 057 646**

Respondents

Second Respondent: **Bartlomiej Piotr Kolodziejczyk**
Third Respondent: **Bjorn Winther-Jensen**
Fourth Respondent: **Michael George Masterman**

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

Fortescue Limited (ACN 002 594 872) and Ors

Applicants

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

Respondents

ANNEXURE PAD-12

This is the annexure marked **PAD-12** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his Fourth Affidavit on 30 May 2024.

Before me



ROHIT MANOJ DIGHE
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (New South Wales)
Davies Collison Cave Law Pty Ltd
7 Macquarie Place, Sydney 2000

FORTESCUE LIMITED (ACN 002 594 872) and others

Applicants

ELEMENT ZERO PTY LIMITED (ACN 664 342 081) and others

Respondents

APPLICANTS' CONFIDENTIAL OUTLINE OF SUBMISSIONS

1. This is a case brought by Fortescue Ltd, together with two of its subsidiaries (collectively **Fortescue**) against three former employees and their company for industrial scale misuse of Fortescue's confidential information in its Green (carbon dioxide-free) Iron technology and related causes of action.
2. In 2021, the second and third respondents, **Dr Kolodziejczyk** and **Dr Winther-Jensen**, were employed by Fortescue as the Chief Scientist and Technology Development Lead respectively.¹ From Oct 2020 to Jul 2022, the fourth respondent, **Mr Masterman**, was employed as the Chief Financial Officer of the second applicant, Fortescue Future Industries (**FFI**).² In Dec 2022, the first respondent, **Element Zero** Pty Ltd was incorporated.³ From Dec 2022 to Jan 2024, Dr Kolodziejczyk, Dr Winther-Jensen and Mr Masterman were directors of Element Zero.⁴ Dr Kolodziejczyk and Mr Masterman remain directors and are Element Zero's Chief Technology Officer and Chief Executive Officer respectively.⁵ All three remain Element Zero shareholders.⁶
3. While working at Fortescue, Dr Kolodziejczyk and Dr Winther-Jensen undertook and led R&D work, including work on a confidential process of electrochemical reduction of iron oxide to iron using ionic liquid electrolytes (**Ionic Liquid R&D**).⁷ Without Fortescue's knowledge or permission, much of that research was taken by Dr Kolodziejczyk and Dr Winther-Jensen when they resigned from Fortescue in late 2021 (**Ionic Liquid R&D Information** or **Fortescue Process CI**).⁸ Also without Fortescue's knowledge or permission, when they resigned, Dr Kolodziejczyk and Dr Winther-Jensen copied and

¹ Statement of Claim (**SOC**) [7](c)-(d), [8](c)-(d); Huber [31], [39] (AB tab 13).

² **SOC** [9](c)-(d); Huber [31], [39] (AB tab 13).

³ **SOC** [5](a); AH-3 (AB tab 16).

⁴ **SOC** [7](e), [8](e), [9](d); AH-3 (AB tab 16).

⁵ **SOC** [7](e), [9](d); AH-3 (AB tab 16).

⁶ **SOC** [7](f), [8](g), [9](g)-(h); AH-3 (AB tab 16). Mr Masterman's shareholding is through a company, Symmall Pty Limited, controlled by him: Huber [80] (AB tab 13) and AH-28 (AB tab 43).

⁷ **SOC** [12].

⁸ **SOC** [13], [25].

took with them certain confidential documents relevant to designing, engineering, constructing and operating an industrial pilot plant for an electrochemical reduction process (listed in the SOC at [19] and [20]) (collectively, the **Fortescue Plant CI**).

4. In early 2024, Dr Kolodziejczyk and Mr Masterman announced in an article in the *Australian Financial Review* (**AFR**) that their company Element Zero had developed and was commercialising an electrochemical reduction **process** using ionic liquid electrolytes (**EZ Process**)⁹ and had built a pilot industrial **plant** that implemented that process (**EZ Plant**).¹⁰ Fortescue has also recently discovered that Element Zero is the named applicant for a number of patent applications (**Patent Applications**),¹¹ which from their title and the contents of two applications (which has been published)¹² concern the EZ Process and/or EZ Plant.¹³
5. Fortescue alleges that the respondents have used: **(a)** the Fortescue Process CI in using and commercialising the EZ Process;¹⁴ **(b)** the Fortescue Process CI and the Fortescue Plant CI in designing, engineering, constructing and operating the EZ Plant;¹⁵ and **(c)** the Fortescue Process CI and/or Fortescue Plant CI in inventing the invention described or claimed in each Patent Application, in preparing and filing each of them, and in causing them to be published.¹⁶ These acts constitute breaches of equitable duties of confidence.¹⁷ They also constitute contraventions of s 183 of the *Corporations Act 2001* (Cth),¹⁸ which founds the Court's federal jurisdiction.
6. Fortescue applies for a search order at certain premises owned or occupied by Element Zero, Dr Kolodziejczyk and Dr Winther-Jensen to preserve evidence for this proceeding. For the reasons below, Fortescue respectfully submits that the Court ought to make the orders sought by Fortescue.

⁹ SOC [29]; AH-25 p 193 (AB tab 38).

¹⁰ SOC [30]; AH-25 p 195 (AB tab 38).

¹¹ SOC [5](c)-(d).

¹² Hantos [31], [38] (AB tab 89).

¹³ Bhatt [106] (AB tab 44) (“I consider that the matters disclosed by the Element Zero PCT application are consistent with (i) what Element Zero has disclosed on its website and to the media (Part F.1 above)”).

¹⁴ SOC [31](b)(i), [33](a).

¹⁵ SOC [31](b)(ii), [33](b).

¹⁶ SOC [31](b)(iii)-(iv), [34].

¹⁷ SOC [36].

¹⁸ SOC [46]-[50].

7.	These submissions will address the following matters:	
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C	Strong prima facie case on accrued causes of action: FCR 7.43(a).....	12
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C.3	Breach of equitable obligations of confidence: application.....	13
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D	Respondents possess important evidentiary material: FCR 7.43(c)(i).....	22
E	Real risk of destruction: FCR 7.43(c)(ii)	22
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A Factual background

8. These submissions adopt **red text** when discussing material in the Application Book (**AB**) over which Fortescue makes a claim of confidentiality.

A.1 Roadmap of evidence

9. Fortescue relies on the following affidavits.
10. The affidavit of Paul **Dewar**, Principal at Davies Collison Cave Law (AB tab 7), who provides an overview of the parties and the causes of action on which Fortescue relies, and details relevant to making the search order including the location of the premises and details of the independent lawyers and independent computer experts proposed to be included in the search parties.
11. The affidavit of Adrian **Huber**, Senior Legal Counsel of FFI (AB tab 13), who gives evidence of Dr Kolodziejczyk's and Dr Winther-Jensen's roles at Fortescue (Parts C.2 and C.3), the information security policy that applied to them (Part D), and certain

investigations and correspondence taking place after their departure from the company (Parts E and F). Mr Huber also identifies the confidential information taken and inferred to have been taken by Dr Kolodziejczyk and Dr Winther-Jensen before their departure (Part H). He also gives evidence relevant to the risk of destruction and seriousness of prejudice if a search order is not made.

12. The affidavit of Dr Anand Indravadan **Bhatt**, an Electrochemist and Materials Scientist employed by Fortescue and working at FFI (AB tab 44), who gives evidence about the chemical processes underlying the production of “Green Iron”, particularly the EZ Process (Part C.2 and F) and Fortescue (Part C.3) respectively. Dr Bhatt also analyses information from Dr Kolodziejczyk’s Fortescue email inbox that he has identified as relevant to the EZ Process (Parts D, E, G); identifies a body of information to which Dr Kolodziejczyk and Dr Winther-Jensen had access while at Fortescue (Part H); explains the import of certain technical documents taken from Fortescue by Dr Winther-Jensen (Part I); and identifies another body of information expected to have been created by Dr Winther-Jensen, but which cannot now be located on Fortescue’s systems (Part J).
13. The affidavit of Mr Wayne **McFaull**, a specialised plant engineer and current Manager of Energy Technology Scale-Up at Fortescue (AB tab 82) who gives evidence of research and development timelines for technology involving mineral processing (Part B), and compares the time, money and resources invested by Fortescue in its process and plant (Part C) with the corresponding phases of development of the EZ Process and the EZ Plant (Parts D and E). Mr McFaull then gives his opinion on the usefulness of Fortescue’s confidential information to Element Zero (Parts F, G and H) and how it could have been used by Element Zero to overcome its apparent lack of resources (Part I).
14. The affidavit of Ms Susanne Monica **Hantos**, Registered Patent Attorney and Technology Intelligence Counsel at (AB tab 89), who gives evidence of the patent applications filed by the parties (Parts C and D), identifies the risk that Fortescue’s confidential information has been comingled with the Patent Applications filed by Element Zero (Part E), and sets out the investigations she undertook in April 2024 to review emails of interest in Dr Kolodziejczyk’s Fortescue email inbox (Part G) and the Fortescue SharePoint folder used by Dr Kolodziejczyk and Dr Winther-Jensen (Part H).
15. The affidavit of Mr John Paul William Testaferrata **Olivier**, Director of Innovation & Technology, Fortescue Ltd (AB tab 93) who gives evidence about the nature of a document taken by Dr Winther-Jensen before his departure from Fortescue (Part F). Mr Olivier also gives evidence about Dr Kolodziejczyk’s role in the development of green iron technology (Part E), the value of Fortescue’s green iron developments to the business of Fortescue

(Parts B, C and D), and the likely prejudice to Fortescue if a search order is not made (Part G).

16. The affidavit of Mr Rodney **McKemmish**, Director of CYTER, regarding his ability, and the ability of contractors from Evidence Advisory, to act as independent computer experts in the search parties proposed by the Applicants. This affidavit has been sent to chambers separately to the AB.
17. The affidavit of Mr Adrian **Chai** of Ashurst Australia, regarding his ability, and the ability of other Ashurst solicitors Catherine Pedler, Sam Mengler, Angus Ross and Lucinda Hill, to act as independent lawyers in the search parties proposed by the Applicants. It is intended that this affidavit will be provided to chambers on the afternoon of 8 May 2024.

A.2 Green Iron Technology

18. **Green iron technology** is technology for processing iron ore into metallic iron without burning fossil fuels which produce carbon dioxide.¹⁹ Although there are different technologies for making “green” iron, this proceeding is concerned with a subset of that technology which involves the **electrochemical reduction** of the iron oxides found in iron ore to produce metallic iron.
19. Such processes are “electrochemical” because the iron ore is placed into a solution (an electrolyte), to which an external voltage is applied.²⁰ This causes a “reduction” of the iron oxide compound (the removal of oxygen atoms), to produce iron.²¹
20. At a high level, among other Green Iron technology, participants in the global iron-making industry are involved in developing proprietary processes that fall within the two approaches of electrochemical reduction: **(1)** dissolving the iron ore into an electrolyte solution (for example, an **ionic liquid**);²² or **(2)** suspending solid iron ore particles in the electrolyte.²³
21. Fortescue currently operates a pilot plant implementing the second approach, the reduction of solid ore particles, which it implements at pilot scale.²⁴ Element Zero has announced that it has commercialised and used the EZ Process, being a process

¹⁹ Olivier, [8] (AB tab 93); Bhatt [22] (AB tab 44).

²⁰ Bhatt [24] (AB tab 44).

²¹ Bhatt [20], [25] (AB tab 44).

²² Bhatt [33(a)], [35]-[45] (AB tab 44).

²³ Bhatt [33(b)], [46]-[53] (AB tab 44).

²⁴ McFaul [64(a)] (AB tab 82).

implementing the first approach, using an ionic liquid, which it implements at pilot plant scale.²⁵

22. As discussed below, Dr Kolodziejczyk and Dr Winther-Jensen had been developing proprietary processes falling within each of the first and second approaches when they worked at Fortescue.

A.3 The Respondents

A.3.1 Early research into ionic liquids

23. Dr Kolodziejczyk was involved in the development of Green Iron technology on behalf of Fortescue since the commencement of his employment in Mar 2019.²⁶
24. By mid-2020, Dr Kolodziejczyk was investigating opportunities for Fortescue to develop Green Iron technology that used electrochemical reduction *with an ionic liquid*. This is evidenced by Dr Kolodziejczyk's emails with Fortescue management, Fortescue's legal counsel, and external research partners in the period from Sep 2020 to Jan 2021, which Dr Bhatt has summarised.²⁷
25. For example, in one email on 22 Dec 2020 attaching a 'patent assessment form', Dr Kolodziejczyk stated he had already tested "*in a laboratory setting*" an invention for the "*use of ionic solvents and electrochemical devices for the low-temperature reduction of ores and oxides*".²⁸ Dr Bhatt's evidence is that, to have developed such an invention and undertaken such laboratory testing by Dec 2020, Dr Kolodziejczyk would need to have started preliminary work on ionic liquids at Fortescue from as early as Jun 2020.²⁹
26. On 7 Dec 2020, Dr Kolodziejczyk recruited his former PhD supervisor, Dr Winther-Jensen, to work as an electrochemist on the development of "*low temperature processing from ionic liquids*".³⁰ By Jan and Feb 2021, Dr Kolodziejczyk and Dr Winther-Jensen exchanged emails about possible forms of Green Iron technology to be developed by Fortescue.³¹ On 29 Jan 2021, Dr Kolodziejczyk told Dr Winther-Jensen that he had already "*looked at water, ionic liquids and molten carbonate*" for dissolving ore.³²

²⁵ McFaul [81] (AB tab 82).

²⁶ Olivier [18] (AB tab 93)

²⁷ Bhatt [54]-[78] (AB tab 44), see also Hantos [55] (AB tab 89).

²⁸ Bhatt [69]-[72] (AB tab 44); AIB-13 (AB tab 57).

²⁹ Bhatt [85] (AB tab 44).

³⁰ SMH-3 pp 50, 52 (AB tab 92)

³¹ Bhatt [79]-[83] (AB tab 44).

³² AIB-19 (AB tab 63).

27. On 23 Feb 2021, Dr Winther-Jensen prepared and provided a research plan to Dr Kolodziejczyk. In that document, he identified that the technology involving an ionic liquid would require a "*longer lead time*" when compared with technology involving solid-state reduction.³³ Accordingly, Dr Winther-Jensen recommended that research into dissolving iron ore (including with an "*ionic liquid*") should be investigated "*in parallel*" to the priority workstream of using solid state reduction.³⁴
28. From that point onwards, there are no records of electrochemical reduction using an ionic liquid in Dr Kolodziejczyk's Fortescue email account.³⁵ There is also a lack of records of Dr Winther-Jensen's work product while at Fortescue.³⁶

Resignations and investigation into Dr Kolodziejczyk and Dr Winther-Jensen

29. On 27 Oct 2021, Dr Kolodziejczyk resigned from Fortescue. His last day was 5 Nov 2021.³⁷
30. ██████████ FFI conducted an internal investigation into Dr Kolodziejczyk ██████████. As part of that investigation, Deloitte Financial Advisory Pty Ltd (**Deloitte**) was engaged to forensically analyse Dr Kolodziejczyk's work-issued laptop for signs of IP theft.³⁸ The findings of the investigation included that Dr Kolodziejczyk had (i) made material misrepresentations in his CV,³⁹ (ii) deleted a folder named "Temp SD" (including its subfolder 'To Save\ Fortescue IP') from his work-issued computer on the day of his resignation,⁴⁰ and (iii) accessed the same files on a USB connected to his work-issued laptop on 5, 18 and 22 Oct 2021.⁴¹ At the time, however, Deloitte did not identify "*information that may suggest the Employee had removed or attempted to remove commercially sensitive intellectual property from the FFI network*".⁴²
31. In preparing its report, Deloitte took a forensic image of Dr Kolodziejczyk's work-issued laptop. For reasons to which these submissions will come, this forensic image was

³³ AIB-20 p 130 (AB tab 64).

³⁴ Bhatt [82] (AB tab 44), see also AIB-20 p 132 (AB tab 64).

³⁵ Bhatt [84] (AB tab 44), Hantos [56] (AB tab 89).

³⁶ Bhatt [156]-[159] (AB tab 44).

³⁷ Huber [57] (AB tab 13).

³⁸ AH-22, item 1.3 (AB tab 35).

³⁹ Huber [61(a)] (AB tab 13), ██████████

⁴⁰ AH-22, item 4.3 (AB tab 35).

⁴¹ Huber [61(b)] (AB tab 13); AH-22, item 4.5 (AB tab 35).

⁴² AH-22, item 4.6 (AB tab 35).

- re-examined in Apr 2024 by Mr McKemmish, whose detailed analysis reveals that Dr Kolodziejczyk used Toshiba and Kingston USB drives and accessed various files containing Fortescue's confidential information in the days before his exit from Fortescue.
32. On 4 Nov 2021 (the day before Dr Kolodziejczyk's last day), Dr Winther-Jensen also resigned from Fortescue. His last day was on 12 Nov 2021.⁴³ No investigations into possible IP theft by Dr Winther-Jensen were carried out at the time.
33. Eight months later, on 31 Jul 2022, Mr Masterman left his role as CFO of FFI.⁴⁴ He maintained contact with Fortescue's Metals Technology Department, who provided him with iron ore samples for "testing" in May 2023.⁴⁵ This relationship continued until Aug 2023, when the Technical Director of Fortescue's Metals Technology Department raised concerns about the samples and "support" being supplied to Mr Masterman.⁴⁶ This in turn led to Fortescue's Chief General Counsel, Mr Phil McKeiver, identifying potential intellectual property infringement in connection with Mr Masterman's activities.⁴⁷ When Mr McKeiver raised these concerns with Mr Masterman on a telephone call, Mr Masterman assured him there was "nothing to worry about".⁴⁸
34. But it became apparent in around Aug or Sep 2023 that Mr Masterman was collaborating with Dr Kolodziejczyk and Dr Winther-Jensen, and that they had caused Element Zero to be incorporated. On 11 Sep 2023, Mr Huber wrote to Dr Kolodziejczyk to inform him he had recently become aware that: **(i)** he (Dr Kolodziejczyk), Dr Winther-Jensen and Mr Masterman had incorporated Element Zero; **(ii)** Element Zero was "*potentially developing technology that is similar to technology you developed for Fortescue*"; and **(iii)** Element Zero had been "*seeking the supply of iron ore samples from Fortescue to help test [Element Zero's] technology*"; and **(iv)** recent searches by Fortescue revealed two patents for "ore processing" filed by Element Zero.⁴⁹
35. On 17 Jan 2024, Dr Kolodziejczyk and Mr Masterman participated in an interview with the AFR, which launched the public profile of Element Zero.⁵⁰ The first sentence that Dr Kolodziejczyk is quoted as saying is:

⁴³ Huber [62] (AB tab 13).

⁴⁴ Huber [47] (AB tab 13).

⁴⁵ Huber [67] (AB tab 13).

⁴⁶ Huber [67] (AB tab 13).

⁴⁷ Huber [68] (AB tab 13).

⁴⁸ Huber [68] (AB tab 13).

⁴⁹ Huber [65] and [69] (AB tab 13); AH-24 (AB tab 37).

⁵⁰ AH-25 (AB tab 38).

“Everything we do was developed after Fortescue and doesn’t bring anything from Fortescue”.

36. Dr Kolodziejczyk also told the AFR that the idea to pursue Element Zero’s electroreduction method had not previously occurred to him: *“You actually had to step out of Fortescue to brainstorm, ideate and develop a pathway”.*
37. With these statements, the AFR article set in train a line of enquiry at Fortescue, which involved reviewing the projects that Dr Kolodziejczyk and Dr Winther-Jensen had been working on, and investigating their Fortescue email inboxes,⁵¹ group SharePoint folder,⁵² and two laptops,⁵³ on suspicion of IP leakage.
38. Those suspicions proved correct when:
- (a) On 19 Jan 2024, Dr Bhatt identified that Dr Winther-Jensen had sent five emails before his departure from Fortescue from his work email address to his personal email address, containing the confidential information as set out in SOC 20 and below:⁵⁴
 - (i) the **Leaching Report**, being the document identified in SOC 20(a);⁵⁵
 - (ii) **Leaching Data**, being the documents identified in SOC 20(b)-(c);⁵⁶
 - (iii) documents filed in support of Fortescue’s provisional application no. 2021901547, being the documents identified at SOC 20(d) and 19(b);⁵⁷ and
 - (iv) the **Technical Evaluation Email** and **Technical Evaluation Sheet**; being the documents identified at SOC 20(e)-(f);⁵⁸ and
 - (v) the **Green Iron Update**, being the document identified at SOC 20(g).⁵⁹

⁵¹ The review of Dr Kolodziejczyk’s inbox: Hantos [50]-[65] (AB tab 89). The review of Dr Winther-Jensen’s inbox: Bhatt [119]-[150] (AB tab 44), [REDACTED] AIB-34 (AB tab 78); and Olivier [19]-[24] (AB tab 93), [REDACTED]

⁵² Bhatt [156]-[159]; Hantos [66]-[68].

⁵³ One laptop being Dr Kolodziejczyk’s work-issued laptop: Huber [77] (AB tab 13), AH-27 (AB tab 41), the other being the Fortescue laptop used by members of the Green Iron team based at a laboratory at the University of Western Australia: Huber [76] (AB tab 13), AH-26 (AB tab 39).

⁵⁴ Bhatt [121] (AB tab 44).

⁵⁵ Bhatt [127]-[134] (AB tab 44), [REDACTED]

⁵⁶ Bhatt [135]-[141] (AB tab 44), [REDACTED]

⁵⁷ Bhatt [150]-[155] (AB tab 44), [REDACTED]

⁵⁸ Bhatt [142]-[149] (AB tab 44), [REDACTED]

⁵⁹ Olivier [19]-[25] (AB tab 93), [REDACTED]

- (b) On 24 Apr 2024, Mr McKemmish identified that Dr Kolodziejczyk had: **(i)** accessed the following documents on his work-issued laptop using a USB; and **(ii)** deleted a local file with corresponding folder paths and file names, before his final day at Fortescue, containing the confidential information as set out in SOC 19 and below:
- (i) “Green Iron Update (02.08.2021).pdf”, being the document identified at SOC 19(a);⁶⁰
 - (ii) documents filed in support of Fortescue’s provisional application no. 2021901547, being the documents identified at SOC 20(d) and 19(b);
 - (iii) “FFI0302-10000-00-EG-BOD-0001_A (002) (BK).docx” being a Basis of Design document for the “Chameleon Pilot Plant”, identified at SOC 19(c);⁶¹
 - (iv) “Bumblebee PID markups 26_10_21.pdf”, being the document identified at SOC 19(d).⁶²
- (c) In around Apr 2024, Dr Bhatt identified that Dr Winther-Jensen had only produced and saved five R&D documents in the Fortescue Green Iron team’s SharePoint, notwithstanding that he was the “Technology Development Lead”, he was supervising a team of four scientists, and he should have produced and saved a significantly greater amount of R&D work to the SharePoint site.⁶³
- (d) On 25 Apr 2024, one of Element Zero’s patent applications became public as a PCT Application.⁶⁴ The PCT Application is consistent with the previous information published about the EZ Process and the EZ Plant,⁶⁵ and the temperature window described in the PCT Application falls within the window of temperatures tested and analysed in the Leaching Report.⁶⁶

⁶⁰ Huber [77(f)] (AB tab 13), AH-27 attachment (AB tab 42) “Master Chronology” sheet, rows 66270-66304 and 124479-124494.

⁶¹ Huber [77(d)] (AB tab 13), AH-27 attachment (AB tab 42) “Master Chronology” sheet, rows 66305-66333 (access time 22 Oct 2021). See also rows 56133-56137 (access time 18 Oct 2021) and 69505 (accessed 25 Oct 2021).

⁶² Huber [77(e)] (AB tab 13), AH-27 attachment (AB tab 42) “Master Chronology” sheet, rows 70016-70035 and 70805-70816 (access date 26 Oct 2021), and 74560, 74564, 74569, 74577, 74586, 74590 (access date 1 Nov 2021).

⁶³ Bhatt [157]-[158] (AB tab 44).

⁶⁴ Bhatt [105] (AB tab 44).

⁶⁵ Bhatt [105]-[106],[134] (AB tab 44); Hantos [41]-[49] (AB tab 89).

⁶⁶ Bhatt [134] (AB tab 44).

- (e) Having reviewed Fortescue's expenditure on its pilot plant, the documents taken by, and the documents available to, Dr Kolodziejczyk and Dr Winther-Jensen at Fortescue, on 1 May 2024, Mr McFaul reached a concluded view that the EZ Process and the EZ Plant could only have been achieved with the modest resources available to Element Zero *if* Dr Kolodziejczyk, Dr Winther-Jensen and Element Zero had used a substantial amount of the information from the documents referred to in paragraphs 38(a) and 38(b) above, together with other Fortescue confidential information.⁶⁷

39. It is against the above factual background that Fortescue makes the following application for a search order.

B Principles

40. The Court has the power to make a search order under s 23 of the *Federal Court of Australia Act 1976* (Cth)⁶⁸ and rule 7.42 of the *Federal Court Rules 2011* (Cth) (**FCR**).

41. FCR **7.42** provides:

*The Court may make an order (a **search order**), in any proceeding ... in the Court, with or without notice to the respondent, for the purpose of securing or preserving evidence and requiring a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence that is, or may be, relevant to an issue in the proceeding or anticipated proceeding.*

42. FCR **7.43** provides:

The Court may make a search order if the Court is satisfied that:

- (a) *an applicant seeking the order has a strong prima facie case on an accrued cause of action; and*
- (b) *the potential or actual loss or damage to the applicant will be serious if the search order is not made; and*
- (c) *there is sufficient evidence in relation to a respondent that:*
 - (i) *the respondent possesses important evidentiary material; and*

⁶⁷ McFaul [120]-[121] (AB tab 82).

⁶⁸ *Chandrasekaran v Commonwealth* [2019] FCA 1169 at [26] (Wigney J); *Central Equity v Chua* [1999] FCA 1067 at [3] (Weinberg J); *Microsoft v Goodview Electronics* [1999] FCA 754; 46 IPR 159 at [10] (Branson J); *Television Broadcasts v Nguyen* (1988) 21 FCR 34 at 34, 38 (Lee J).

- (ii) *there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the Court.*

43. The use of search orders is not limited to “counterfeiting” scenarios; they have also been used where former employees or competitors are alleged to have misused the applicant’s confidential information.⁶⁹

C Strong prima facie case on accrued causes of action: FCR 7.43(a)

C.1 Causes of action

44. Fortescue pleads six causes of action against the various respondents: **(1)** breach of confidence (SOC 31-36); **(2)** breach of fiduciary duties (SOC 37-45); **(3)** contravention of *Corporations Act*, s 183 (SOC 46-50); **(4)** breach of contract (SOC 51-64); **(5)** copyright infringement (SOC 65-74); and **(6)** misleading conduct (SOC 75-81).

45. For this application, Fortescue relies on two causes of action: **(1)** breach of equitable obligations of confidence; and **(2)** contravention of *Corporations Act*, s 183 (to satisfy Federal jurisdiction).

C.2 Breach of equitable obligations of confidence: principles

46. The Full Court (Finn, Sundberg and Jacobson JJ) identified the elements for a breach of equitable obligations of confidence in *Optus Networks v Telstra Corporation Ltd* [2010] FCAFC 21; 265 ALR 281 at [39]:

- (a) the information in question must be identified with specificity;
- (b) it must have the necessary quality of confidence;
- (c) it must have been received by the defendant in circumstances importing an obligation of confidence; and
- (d) there must be an actual or threatened misuse of the information without the plaintiff’s consent.

⁶⁹ For example, *Anton Piller v Manufacturing Processes* [1976] Ch 55 at 58G-59F; *Metso Minerals v Kalra* [2007] FCA 2093 at [4]-[11], [21], [31]-[35] (Flick J); *Rauland Australia v Johnson (No 2)* [2019] FCA 1175 at [8]-[16] (Stewart J); *Clover Corporation v Tobias (No 2)* [2020] FCA 1710 at [3]-[5] (O’Callaghan J); *Eltrak International and Staff v Collins* [2021] FCA 484 at [1]-[4] (Rangiah J); *Skytraders v Meyer* [2021] NSWSC 1670 at [2]-[4] (Rein J); *Showcase Realty v Circosta* [2022] NSWSC 336 at [4]-[6] (Ward CJ in Eq); *Sundarjee Bros (Aust) v Sundarjee* [2022] NSWSC 1722 at [1]-[4] (Ball J).

47. The second element (quality of confidence) is a question of fact having regard to various factors, including those in *Wright v Gasweld* (1991) 22 NSWLR 317 at 334 (Kirby P); ***Del Casale v Artedomus (Aust)*** [2007] NSWCA 172; (2007) 165 IR 148 at [40] (Hodgson JA, McColl JA agreeing). The factors commonly arising in an employment context include (e.g., ***Gold Titan v Lopez*** [2021] FCA 918 at [86](1)-(6) (Abraham J)):
- (a) the extent to which the information is known outside the business;
 - (b) the skill and effort expended to collect the information;
 - (c) the extent to which the information is treated as confidential by, for example, the employer;
 - (d) the value of the information to the applicant and its competitors;
 - (e) the ease or difficulty with which the information can be duplicated by others;
 - (f) whether it was made known, for example, to the employee that the information was confidential.
48. The third element (circumstances importing confidentiality obligation) is tested by asking whether a reasonable person in the defendant's position "would have realised that upon reasonable grounds the information was being given to him in confidence": *Coco v AN Clark* [1969] RPC 41 at 47-48; *Del Casale* at [104]; *Gold Titan* at [87].

C.3 Breach of equitable obligations of confidence: application

49. Fortescue submits that it has a strong prima facie case against each of Element Zero, Dr Kolodziejczyk and Dr Winther-Jensen for breach of an equitable duty of confidence, for the following reasons.
50. **First**, Fortescue has specifically identified two bodies of information:
51. The first body of information is "**Ionic Liquid R&D Information**"/"Fortescue Process CI": **SOC 25**.
- (a) This is information created by Dr Kolodziejczyk, Dr Winther-Jensen and other FMGPS employees in undertaking research and development work into electrochemical reduction of iron oxide to create iron, having defined features including the use of ionic liquid electrolytes (**Ionic Liquid R&D**): **SOC 12, 13**.
 - (b) Although Fortescue now cannot locate documents recording the Ionic Liquid R&D Information,⁷⁰ these documents *must have existed* because Dr Kolodziejczyk

⁷⁰ See **SOC** [14]; **Hantos** [50]-[68] (**AB** tab 89); **Bhatt** [84], [87] (**AB** tab 44).

referred to the Ionic Liquid R&D in multiple internal and external communications, in the period at least from Sep 2020 to Jan 2021.⁷¹ Dr Kolodziejczyk described the Ionic Liquid R&D in (among other things): a patent assessment form (AIB-13 (AB tab 57)); an email to FFI's then-CEO (AIB-14 (AB tab 58)); a draft board paper (SMH-3 pp 77, 82 (AB tab 82)); and to Dr Winther-Jensen (AIB-19 (AB tab 63)). In Feb 2021, Dr Winther-Jensen proposed that the Ionic Liquid R&D work be undertaken as “[p]arallel research with longer lead-time”.⁷²

52. The second body of information is “**Fortescue Plant CI**”: SOC 26. This refers to information in specific documents Fortescue alleges Dr Kolodziejczyk and Dr Winther-Jensen took in their final days at Fortescue: SOC 19 and 20 (referred to in paragraphs 38(a) and 38(b) above).
53. **Secondly**, the information in the two bodies has the necessary quality of confidence, having regard to the following matters:
- (a) **Nature of the information.** The Ionic Liquid R&D Information and Fortescue Plant CI are information resulting from Fortescue's R&D efforts into Green Iron technology and attempts to commercialise that technology. This information by its nature is confidential.
 - (b) **Not known outside Fortescue.** The Ionic Liquid R&D Information is not known outside Fortescue. This was admitted by Dr Kolodziejczyk in the patent assessment form (AIB-13 p 99 (AB tab 57): “No, [the] invention has not been publicly disclosed. All information related to this invention is kept internally within [FFI]”) and in an email to a public relations colleague (AIB-17 p 112 (AB tab 61)): “The selection of electrolyte, electrode material, and other materials used in the process is proprietary, and at this point, Fortescue's trade secret”.
 - (c) The Fortescue Plant CI is also not known outside Fortescue. The documents in SOC 19 were accessed on Dr Kolodziejczyk's Fortescue laptop,⁷³ which (as with other Fortescue IT systems) was protected by a password.⁷⁴ The documents in SOC 20 were internal emails or their attachments, in which all parties have

⁷¹ Bhatt [60]-[81], [85]-[86] (AB tab 44); Hantos [55] (AB tab 89).

⁷² AIB-20 pp 130, 132-133 at [1](c)-(d) (AB tab 64).

⁷³ Huber [77](a)-(g) (AB tab 13); AH-27 p 328 (AB tab 41); AH-27 attachment (AB tab 42), “TempSD” sheet, items 29118 and 29120; AH-27 attachment (AB tab 42), “Master Chronology” sheet, rows 70016-70035, 70805-70816, 74560, 74564, 74569, 74577, 74586, 74590.

⁷⁴ Huber [52](a), (b) and (e) (AB tab 13).

addresses in Fortescue's domain @fmgl.com.au.⁷⁵ The Green Iron Update document (SOC 20(g)) is specifically marked "Strictly private and confidential" on every page.⁷⁶

- (d) **Access controls.** Employees generally stored electronic documents in their Fortescue department SharePoint site, on on-site servers and file-shares, or on their company-issued computer.⁷⁷ These were protected by passwords.⁷⁸
- (e) **Value of the information.** The value of the Ionic Liquid R&D Information is not precisely known. Mr McFaul estimates that Fortescue's research and development and concept testing phases took place in Feb to Sep 2021⁷⁹ and during that period, Fortescue cumulatively spent just under ████████ on its project. Green Iron could sell for as high as \$900 per tonne,⁸⁰ which means hundreds of millions in revenue per year for Fortescue.⁸¹
- (f) As for Fortescue Plant CI, Mr McFaul estimates that the documents "*would have saved months of testing work*" on leaching tests⁸² and generated "*significant savings in development time and costs*" in Element Zero's project of building a pilot plant.⁸³
- (g) **Confidentiality obligations on employees.** Each of Dr Kolodziejczyk and Dr Winther-Jensen executed employment agreements with terms that contained contractual confidentiality obligations.⁸⁴ Moreover, each of Dr Kolodziejczyk and Dr Winther-Jensen agreed not to access and use Fortescue's IT systems "*without authorisation or in excess of authorisation*" or "*for private commercial intentions, personal monetary acquisition or for conducting personal business*".⁸⁵

⁷⁵ Bhatt [127]-[155] (AB tab 44); AIB-30 p 190 (AB tab 74); AIB-32 p 215 (AB tab 76); AIB-33 p 224 (AB tab 77); AIB-34 p 229 (AB tab 78) (external sender is Fortescue's patent attorney); Olivier [19]-[25] (AB tab 93); JPO-04 p 209 (AB tab 97).

⁷⁶ JPO-04 pp 211-218 (AB tab 97).

⁷⁷ Huber [52](a), (b) (AB tab 13).

⁷⁸ Huber [52](e) (AB tab 13).

⁷⁹ WM-4 p 43, "1 Program Setup and Testing" and "2 Electrolyser Concept Testing" (AB tab 86).

⁸⁰ Olivier [15] (AB tab 93).

⁸¹ Fortescue produce 190 million tonnes of iron ore in FY23: Olivier [15] (AB tab 93).

⁸² McFaul [113] (AB tab 82).

⁸³ McFaul [116] (AB tab 82).

⁸⁴ (Dr Kolodziejczyk) AH-7 p 69, "Confidentiality" (AB tab 20); (Dr Winther-Jensen) AH-13 p 101, "Confidentiality" (AB tab 26).

⁸⁵ (Dr Kolodziejczyk) AH-7 p 70, "Use of Information Technology" (AB tab 20); (Dr Winther-Jensen) AH-13 p 102, "Use of Information Technology" (AB tab 26).

54. **Third**, the Ionic Liquid R&D Information and the Fortescue Plant CI were obtained by each of Dr Kolodziejczyk and Dr Winther-Jensen in circumstances where a reasonable person in his position would have realised the information was obtained in confidence. Fortescue relies on the matters in each of paragraphs 53(a) to 53(g) above. It matters not that Dr Kolodziejczyk and Dr Winther-Jensen created some of the Ionic Liquid R&D Information; each of them was not free to deal with the information as his own.⁸⁶
55. Element Zero is subject to the same confidentiality obligation because its controlling minds, Dr Kolodziejczyk and Dr Winther-Jensen, were subject to that obligation.
56. **Fourthly**, there is strong evidence of misuse:
- (a) **Dr Kolodziejczyk** accessed the documents in SOC 19 on his Fortescue laptop while connected to a USB device.⁸⁷ This occurred on or after 22 Oct 2021,⁸⁸ the day he resigned.⁸⁹ Both devices had a folder named “TempSD” with a similar folder structure, which suggests the files in the laptop folder were copied to the USB device’s folder.⁹⁰ One subfolder in “TempSD” on both devices is in the path “To save” > “Fortescue IP”,⁹¹ from which it may be inferred that Dr Kolodziejczyk intended to copy Fortescue’s intellectual property. The “TempSD” laptop folder was deleted on 22 Oct 2021,⁹² the day he resigned.⁹³
- (b) **Dr Winther-Jensen** sent the documents in SOC 20 to his personal email address “bjornwj@gmail.com” from 5 to 11 Nov 2021,⁹⁴ in the days after his resignation on 4 Nov 2021.⁹⁵ There was no text in each forwarding email.⁹⁶ Fortescue’s Dr Bhatt

⁸⁶ *IPC Global v Pavetest (No 3)* [2017] FCA 82; 122 IPR 445 at [210] (Moshinsky J).

⁸⁷ Huber [77](a)-(g) (AB tab 13); AH-27 p 328 (AB tab 41); AH-27 attachment (AB tab 42), “TempSD” sheet, items 29118 and 29120; AH-27 attachment (AB tab 42), “Master Chronology” sheet, rows 70016-70035, 70805-70816, 74560, 74564, 74569, 74577, 74586, 74590.

⁸⁸ *Ibid.*

⁸⁹ Huber [57] (AB tab 13); AH-20 (AB tab 33).

⁹⁰ Huber [77](c) (AB tab 13); AH-27 pp 332-334 [40]-[45], finding 8 (AB tab 41).

⁹¹ AH-27 pp 332-333 [40], [43], [44] (AB tab 41).

⁹² AH-27 p 332 [40] (AB tab 41).

⁹³ Huber [57] (AH tab 13); AH-20 (AB tab 33).

⁹⁴ Bhatt [127]-[155] (AB tab 44); AIB-30 p 190 (AB tab 74); AIB-32 p 215 (AB tab 76); AIB-33 pp 224 (AB tab 77); AIB-34 p 229 (AB tab 78); Olivier [19]-[25] (AB tab 93); JPO-04 p 209 (AB tab 97).

⁹⁵ Huber [62] (AB tab 13); AH-23 (AB tab 36).

⁹⁶ AIB-30 p 190 (AB tab 74); AIB-32 p 215 (AB tab 76); AIB-33 pp 224 (AB tab 77); AIB-34 p 229 (AB tab 78); JPO-04 p 209 (AB tab 97).

is unaware of any legitimate reason why Dr Winther-Jensen would send those emails to himself.⁹⁷

- (c) Fortescue cannot locate documents recording the **Ionic Liquid R&D Information** after Dr Kolodziejczyk's and Dr Winther-Jensen's departure.⁹⁸ There is a lack of records of Dr Winther-Jensen's work product while at Fortescue.⁹⁹ It may be inferred from these matters that Dr Kolodziejczyk and Dr Winther-Jensen took the documents.
- (d) Dr Kolodziejczyk, Dr Winther-Jensen and Mr Masterman incorporated Element Zero in Dec 2022.¹⁰⁰ In Jan 2024, Element Zero publicly announced its electrochemical reduction process that uses an ionic liquid electrolyte.¹⁰¹
- (e) There are strong similarities between the features of Ionic Liquid R&D (described by Dr Kolodziejczyk while he was at Fortescue) and of Element Zero's process (described publicly) — see summary table in Bhatt [110] (AB tab 44) (reproduced below).

	Feature	Reference to Dr Kolodziejczyk's work at Fortescue	Reference to Element Zero Process
(a)	electrochemical reduction process	paras [56]-[65], [67], [69]-[72], [74]-[77], [82] above	paras [92], [97], [105]-[106] above
(b)	utilises electrowinning	paras [65]-[66] above	paras [92], [94], [105]-[106] above
(c)	membrane free	paras [65]-[66] above	para [92] above
(d)	operates at low temperature	paras [60]-[67], [69]-[72], [74]-[76] above	paras [92], [97], [105]-[106] above
(e)	utilises an ionic liquid electrolyte	paras [63]-[65], [67], [69]-[72], [74]-[77], [81]-[82] above	paras [94], [100]-[104], [105]-[106] above
(f)	capable of operating using renewable electricity sources.	paras [57], [65], [77] above	paras [92], [94], [97] above

- (f) Dr Kolodziejczyk's public statements in the AFR article that *"Everything we do was developed after Fortescue and doesn't bring anything from Fortescue"*, and the

⁹⁷ Bhatt [123] (AB tab 44).

⁹⁸ Hantos [50]-[68] (AB tab 89); Bhatt [84], [87] (AB tab 44).

⁹⁹ Bhatt [156]-[159] (AB tab 44).

¹⁰⁰ AH-3 p 35 (AB tab 16).

¹⁰¹ Bhatt [92], [94], [97]-[98] (AB tab 44).

ideas in Element Zero's process did not dawn on him until later,¹⁰² conflict with the documents he wrote about Ionic Liquid R&D while he was at Fortescue (paragraph 51(b) above).

- (g) That Element Zero developed and operated a pilot plant within two years after Dr Kolodziejczyk's and Dr Winther-Jensen's departure,¹⁰³ despite having a substantial resource deficit of approximately [REDACTED] in the first 20 months.¹⁰⁴ This deficit was estimated by Mr McFaul as follows:
- (i) Fortescue's and Element Zero's respective pilot plants are quite similar.¹⁰⁵ The plants took about the same time to develop, about two years.¹⁰⁶
 - (ii) This two-year timeline is only achievable if the respondents had access to the same level of resources and cashflow as Fortescue did in developing its pilot plant. In the first 20 months of its project, Fortescue spent [REDACTED].¹⁰⁷
 - (iii) In the first 20 months, the respondents had access to **\$3.8 million** provided by Symmall Pty Ltd,¹⁰⁸ Mr Masterman's company.¹⁰⁹ Element Zero did not obtain \$11.4 million venture capital funding until the 21st month (Aug 2023).¹¹⁰
 - (iv) In the circumstances, there is a resource deficit of approximately [REDACTED] in the first 20 months.¹¹¹
- (h) Element Zero's [REDACTED] resource deficit can be explained if Dr Kolodziejczyk and Dr Winther-Jensen started Element Zero's project already armed with a substantial amount of information about how the project should progress, including

¹⁰² AIB-23 pp 146, 149 (AB tab 67).

¹⁰³ McFaul [94] (AB tab 82).

¹⁰⁴ McFaul [101] (AB tab 82).

¹⁰⁵ McFaul [78], [86], [88] (AB tab 82).

¹⁰⁶ McFaul [62](a)-(b), [93] (AB tab 82).

¹⁰⁷ McFaul [100] (AB tab 82).

¹⁰⁸ Huber [79](a) (AB tab 13); AH-3 pp 35-36 (AB tab 16). Symmall's 320 NCRP shares are worth \$3.8 million ((320/1268) × \$15,205,778 = \$3,837,420.32).

¹⁰⁹ Huber [80] (AB tab 13); AH-28 (AB tab 43).

¹¹⁰ Huber [79](b), [82] (AB tab 13).

¹¹¹ McFaul [101] (AB tab 82).

research and development, the documents in SOC 19 and 20, basis of design documents and Fortescue's procedures and specifications.¹¹²

- (i) Element Zero's PCT Application is consistent with previous information published about the EZ Process and the EZ Plant,¹¹³ and is also consistent with the use of the Leaching Report (SOC 20(a)) in inventing the invention described.¹¹⁴ The titles of Element Zero's unpublished patent applications¹¹⁵ also suggest they related to the EZ Process and the EZ Plant ("metal recovery";¹¹⁶ "electrowinning"¹¹⁷ from molten salt").¹¹⁸

57. For these reasons, Fortescue respectfully submits that the Court ought to find that it has established a strong prima facie case against Element Zero, Dr Kolodziejczyk and Dr Winther-Jensen for breach of equitable obligations of confidence.

C.4 Corporations Act, s 183: principles

58. Section 183 of the **Corporations Act 2001** (Cth) provides:

Use of information—directors, other officers and employees

- (1) *A person who obtains information because they are, or have been, a director or other officer or employee of a corporation must not improperly use the information to:*
- (a) *gain an advantage for themselves or someone else; or*
- (b) *cause detriment to the corporation.*
- (2) *A person who is involved in a contravention of subsection (1) contravenes this subsection.*

59. There are six elements to establish a contravention of s 183(1). The defendant:

- (a) was, at the relevant time, an employee of the plaintiff;

¹¹² McFaull [118]-[122] (AB tab 82).

¹¹³ Bhatt [106] (AB tab 44).

¹¹⁴ Bhatt [133] (AB tab 44).

¹¹⁵ Hantos [32] (AB tab 89).

¹¹⁶ Dr Bhatt describes metallic iron as being "recovered" in electroplating by scraping or peeling it off the cathode in a batch process: Bhatt [35] (AB tab 44).

¹¹⁷ 'Electrowinning' is the same as 'electroplating': Bhatt [35] (AB tab 44). 'Electroplating' is feature (b) of the EZ Process as summarised by Dr Bhatt: Bhatt [110] (AB tab 44).

¹¹⁸ The meanings of 'molten salt' and 'ionic liquid' significantly overlap: Bhatt [37]-[43] (AB tab 44). 'Ionic liquid' is feature (e) of the EZ Process as summarised by Dr Bhatt: Bhatt [110] (AB tab 44).

- (b) acquired the relevant information;
- (c) acquired that information by virtue of his or her position as an employee of the plaintiff;
- (d) made improper use of that information;
- (e) made that improper use to gain directly or indirectly an advantage;
- (f) gained that advantage either for himself, herself, or for some other person(s); and
- (g) (alternatively to (f)) made that improper use to cause detriment to the plaintiff:

Smart EV Solutions v Guy [2023] FCA 1580 at [69] (Derrington J) and the authorities cited there.

60. As stated above, this cause of action founds the Court's federal jurisdiction.

61. Section 79 of the *Corporations Act* defines 'involved':

Involvement in contraventions

A person is involved in a contravention if, and only if, the person:

- (a) *has aided, abetted, counselled or procured the contravention; or*
- (b) *has induced, whether by threats or promises or otherwise, the contravention; or*
- (c) *has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or*
- (d) *has conspired with others to effect the contravention.*

62. Involvement requires intentional participation and knowledge of each of the essential elements of the contravention: *Native Extracts v Plant Extracts (No 2)* [2024] FCA 106 at [121], [124] (Downes J).

C.5 Corporations Act, s 183: application

63. Fortescue has established a strong prima facie case against each of Element Zero, Dr Kolodziejczyk and Dr Winther-Jensen for contravention of s 183, for the following reasons.

64. As to the six elements in paragraph 59 above, each of Dr Kolodziejczyk and Dr Winther-Jensen:

- (a) was, at the relevant time, an employee of FMGPS¹¹⁹ and respectively working in FFI as “Chief Scientist” and “Technology Development Lead”;¹²⁰
 - (b) acquired the relevant information — Fortescue relies on paragraphs 51(a), 56(a), 56(b) above;
 - (c) acquired that information by virtue of his position as an employee of FMGPS — Fortescue relies on their roles in FFI,¹²¹ the matters in paragraphs 51(a), 56(a), 56(b) above, and inferences from the emails Dr Winther-Jensen forwarded;¹²²
 - (d) made improper use of that information — Fortescue relies on the matters in paragraphs 56(a) to 56(i) above;
 - (e) made that improper use to gain directly or indirectly an advantage — Fortescue relies on the matters in paragraphs 56(a) to 56(i) above, particularly the advantages in overcoming Element Zero’s resource deficit and in allowing it to develop the EZ Process and/or the EZ Plant to a point where it was able to attract venture capital funding (paragraphs 56(g), 56(h) above);
 - (f) gained that advantage either for himself or for some other person/s — Fortescue relies on the matters in the previous subparagraph. The advantages were for Element Zero and themselves as shareholders of that company.¹²³
65. As to Element Zero’s involvement (SOC 50), Fortescue relies on Element Zero’s role as the corporate vehicle through which Dr Kolodziejczyk and Dr Winther-Jensen was commercialising the EZ Process and the EZ Plant, and that their knowledge of the essential elements of their contravention can be imputed to Element Zero.
66. For these reasons, the Court ought to find that Fortescue has established a strong prima facie case against Element Zero, Dr Kolodziejczyk and Dr Winther-Jensen for contravention of s 183.

¹¹⁹ (Dr Kolodziejczyk) Huber [31], [35] (AB tab 13); AH-6 p 59 (AB tab 19); (Dr Winther-Jensen) Huber [39], [43] (AB tab 13); AH-12 p 91 (AB tab 25).

¹²⁰ (Dr Kolodziejczyk) Huber [31] (AB tab 13); (Dr Winther-Jensen) Huber [39] (AB tab 13).

¹²¹ (Dr Kolodziejczyk) Huber [31] (AB tab 13); (Dr Winther-Jensen) Huber [39] (AB tab 13).

¹²² AIB-30 p 190 (AB tab 74); AIB-32 p 215 (AB tab 76); AIB-33 pp 224 (AB tab 77); AIB-34 p 229 (AB tab 78); JPO-04 p 209 (AB tab 97).

¹²³ AH-3 p 36 (AB tab 16).

D Respondents possess important evidentiary material: FCR 7.43(c)(i)

67. Element Zero, Dr Kolodziejczyk and Dr Winther-Jensen possess important evidentiary information, for the following reasons:
- (a) Fortescue cannot now locate the Ionic Liquid R&D Information, which it may be inferred is in the possession of Element Zero, Dr Kolodziejczyk and/or Dr Winther-Jensen — paragraph 51(b) above;
 - (b) Dr Kolodziejczyk is likely to possess the two USB devices he connected to his Fortescue laptop,¹²⁴ at least one of which he used to copy Fortescue material — paragraph 56(a) above;
 - (c) Dr Winther-Jensen is likely to have control over his personal email address to which he sent Fortescue material — paragraph 56(b) above; and
 - (d) each of Element Zero, Dr Kolodziejczyk and Dr Winther-Jensen is likely to have documents evidencing their subsequent uses of Ionic Liquid R&D Information and Fortescue Plant CI in developing the EZ Process and the EZ Plant and in inventing the inventions described or claimed in the Patent Applications — paragraph 56(a) to 56(i) above.

E Real risk of destruction: FCR 7.43(c)(ii)

68. The risk of destruction is typically inferred “*where it is clearly established ... that the defendant has engaged in nefarious activity which renders it likely that he is an untrustworthy person*”.¹²⁵ The risk must be “real” because the Court does not presume that most people would destroy incriminating evidence.¹²⁶
69. Fortescue relies on the following matters in support of the real risk of destruction:
- (a) Dr Kolodziejczyk deleted the “TempSD” folder on his Fortescue laptop, and it can be inferred that he did so to hide the fact that he had copied Fortescue material in his final days at Fortescue — paragraph 56(a) above;
 - (b) Dr Winther-Jensen sent the SOC 20 documents to his personal email address. There was no text in each forwarding email,¹²⁷ which text would have made them

¹²⁴ See also AH-27 p 316 [25] (AB tab 41).

¹²⁵ *Indicii Salus v Chandrasekaran* [2007] EWHC 406 (Ch) at [15] (Warren J), quoting *Dunlop Holdings v Staravia* [1982] Comm LR 3 at 3 (Oliver LJ).

¹²⁶ *Addison Wesley Longman Australia v Kopystop* [2004] FCA 1518 at [12] (Stone J).

¹²⁷ AIB-30 p 190 (AB tab 74); AIB-32 p 215 (AB tab 76); AIB-33 pp 224 (AB tab 77); AIB-34 p 229 (AB tab 78); JPO-04 p 209 (AB tab 97).

- easier to find. They were only discovered by Dr Bhatt's review of Dr Winther-Jensen's Fortescue email inbox (a thousand emails)¹²⁸ — paragraph 56(b) above;
- (c) Fortescue cannot locate the documents recording Ionic R&D Information which should exist, from which it may be inferred Dr Kolodziejczyk and Dr Winther-Jensen took them or caused them to be unavailable — paragraphs 51(b), 56(c) above;
 - (d) Dr Kolodziejczyk and Dr Winther-Jensen took Fortescue material electronically (via USB and email) — paragraphs 56(a), 56(b), 67(b) above.
 - (e) Dr Kolodziejczyk's public statements in the AFR article ("*Everything we do was developed after Fortescue and doesn't bring anything from Fortescue*", and the ideas in Element Zero's process did not dawn on him until later)¹²⁹ conflict with the documents he wrote about Ionic Liquid R&D while he was at Fortescue — paragraphs 51(b), 56(f) above;
 - (f) An investigation by Fortescue into Dr Kolodziejczyk after his employment found that Dr Kolodziejczyk had materially misrepresented his qualifications and experience when applying for his position at Fortescue — paragraph 30 above.

F Serious prejudice, loss or damage if search order not made: FCR 7.43(b)

70. Fortescue will suffer serious prejudice, loss or damage if the search order sought is not made. The prejudice includes:
- (a) inability to find out the true extent of Dr Kolodziejczyk's and Dr Winther-Jensen's exfiltration and misuses of Fortescue material;
 - (b) if evidence is destroyed, Fortescue may be unable to prove its confidential information was used in, and prove its title to or interest in, the EZ Process and/or the EZ Plant, such that Fortescue would be deprived of the benefit of the confidential information, patent rights, or licence to patent rights;¹³⁰ and
 - (c) consequently, Fortescue will suffer significant commercial prejudice in the form of loss of opportunity to license or sell the technology to third parties, or (if Element Zero's process is licensed to a competitor) loss of competitive advantage.¹³¹

¹²⁸ Bhatt [120]-[121] (AB tab 44).

¹²⁹ AIB-23 pp 146, 149 (AB tab 67).

¹³⁰ Olivier [26](a)-(c) (AB tab 93).

¹³¹ Olivier [27] (AB tab 93).

G Discretionary matters

71. Even though Dr Kolodziejczyk and Dr Winther-Jensen left Fortescue some time ago, the relevant facts about misappropriation of confidential information were only unearthed recently, in the period Jan to Apr 2024.
72. The preliminary investigations into Dr Kolodziejczyk undertaken by Fortescue in Nov 2021 were inconclusive and revealed little copying of IP.¹³² There was no investigation into Dr Winther-Jensen.
73. Further information emerged in Jul-Aug 2023 in a piecemeal fashion:
- (a) In Jul-Aug 2023, Dr Kolodziejczyk refused Fortescue's requests for a confirmatory assignment of the inventions for which he was co-inventor;¹³³
 - (b) In Jul 2023, Fortescue identified Element Zero's patent applications;¹³⁴
 - (c) In mid-Aug 2023, Fortescue personnel expressed concerns about continuing to provide iron ore samples to Mr Masterman and "his team";¹³⁵
 - (d) In Aug 2023, Fortescue's general counsel spoke to Mr Masterman (FFI's former CFO and Element Zero's CEO) about Fortescue's concerns of intellectual property infringement and Element Zero's activities. Mr Masterman said there was nothing to worry about.¹³⁶
74. But it was only in Jan to Apr 2024, after the AFR article about Element Zero was published, that the true picture of the misappropriation emerged. It was in that period that Fortescue undertook further investigations into Dr Kolodziejczyk and Dr Winther-Jensen,¹³⁷ that included:
- (a) Dr Bhatt's review of a thousand emails in Dr Winther-Jensen's Fortescue inbox — which uncovered the five emails in SOC 20 by which Dr Winther-Jensen sent Fortescue's confidential information to his personal email;¹³⁸
 - (b) Dr Bhatt's review of the Green Iron team's SharePoint folder — which led to Dr Bhatt identifying that: **(i)** Dr Winther-Jensen had only produced and saved five

¹³² AH-21 p 158 (AB tab 34); AH-22 p 169 [4.5]-[4.6] (AB tab 35).

¹³³ Huber [65] (AB tab 13); AH-24 pp 183-189 (AB tab 37).

¹³⁴ Huber [66] (AB tab 13).

¹³⁵ Huber [67] (AB tab 13).

¹³⁶ Huber [68] (AB tab 13).

¹³⁷ Huber [72]-[77] (AB tab 13).

¹³⁸ Bhatt [120]-[121] (AB tab 44).

documents in the Fortescue SharePoint folder, giving rise to the concern that much of his R&D work output had not been saved to Fortescue's systems;¹³⁹ and (ii) other documents in SharePoint — to which Dr Winther-Jensen and Dr Kolodziejczyk had access — would be valuable in progressing a competing R&D project for the electrochemical reduction of iron ore);¹⁴⁰

- (c) Ms Hantos' review of more than three thousand emails in Dr Kolodziejczyk's Fortescue inbox — which revealed that the body of Ionic Liquid R&D Information, which must have been created by Dr Kolodziejczyk and Dr Winther-Jensen, cannot now be located;¹⁴¹ and
- (d) Mr McKemmish's more detailed forensic IT analysis of an image of Dr Kolodziejczyk's Fortescue laptop — which revealed that Dr Kolodziejczyk likely copied documents from his work issued laptop onto a USB device, including the documents in SOC 19.¹⁴²

75. In the circumstances, Fortescue submits that there has been no culpable delay in bringing this proceeding.

H Search order sought; requirements in GPN-SRCH

76. The search order sought is in Annex I to Fortescue's interlocutory application (AB tab 1). A version marked up against the exemplar order in GPN-SRCH, is in AB tab 2. The following submissions address the changes made.

77. **Service time.** Paragraph 4 specifies the search order may be served only between 9am and 2pm (AWST) on a business day. The reason for nominating the AWST time zone is that three of the premises are in Western Australia: paragraphs 80(a), 80(c) below.

78. **Computer-related amendments.** Paragraphs 9(d), 9(e), 9(g), 20(b), 20(c), 20(d) and 20(e) have been amended to cover a wider range of computer, personal electronic devices and information storage systems and access means used in the present day, compared to when the exemplar order was introduced in 2006-2007.¹⁴³

79. **Exceptions to prohibition against communication.** Paragraph 19 has been amended to introduce two expedient exceptions to the prohibition against communicating to

¹³⁹ Bhatt [156]-[159] (AB tab 44).

¹⁴⁰ Bhatt [113]-[118] (AB tab 44).

¹⁴¹ Hantos [50]-[65] (AB tab 89).

¹⁴² AH-27 (AB tab 41).

¹⁴³ Biscoe, *Freezing and Search Orders* (3rd ed, LexisNexis Australia, 2023), Ch 6, p 340 [6.42].

Fortescue about the contents of, or anything observed at, the Premises. The first exception is to obtain instructions if it is not safe or practicable to proceed or continue with the execution of the search order. The second exception is to obtain instructions for the hearing on the Return Date. There is a consequential amendment to paragraph 7 of the Applicant's lawyer's undertakings (Sch B, Part B.2).

80. **Premises.** It is intended that execution happen simultaneously across all four premises:
- (a) Element Zero's two business premises: **Unit 2, 30 Oxleigh Drive**¹⁴⁴ and **Unit 1, 19 Oxleigh Drive**, Malaga WA 6090.¹⁴⁵ Dr Kolodziejczyk was observed at both premises in the period 22-26 April 2024, before returning to Melbourne (next).¹⁴⁶
 - (b) Dr Kolodziejczyk's residence: **5A Volga Street**, Hadfield VIC 3046.¹⁴⁷ A title search showed the property is owned by Dr Kolodziejczyk and a person believed to be his wife.¹⁴⁸ Dr Kolodziejczyk was observed at his residence on 27-28 April 2024.¹⁴⁹ He and his wife appear to have a small child.¹⁵⁰ The search party for this residence includes a female lawyer.
 - (c) Dr Winther-Jensen's residence: **Unit 4, 213 Gildercliffe Street**, Scarborough, WA 6019.¹⁵¹ This premises was also Element Zero's *former* principal place of business.¹⁵² A title search showed the property is owned by Dr Winther-Jensen and a person believed to be his wife.¹⁵³ Dr Winther-Jensen was observed at his residence in the period 23-28 April 2024.¹⁵⁴ He and his wife appear to have a teenage daughter.¹⁵⁵ The search party for this residence includes a female lawyer.

¹⁴⁴ AH-3 p 35, "Principal Place of Business" (AB tab 16).

¹⁴⁵ PAD-2 pp 154, 155, 159, 160, 164, 187, 191, 194, 201, 203, 219, 220, 227 (AB tab 9).

¹⁴⁶ PAD-2 pp 127, 128, 132-133, 157-160, 191, 194, 219, 220, 227, 228 (AB tab 9).

¹⁴⁷ AH-3 p 35, "Organisation Officers" (AB tab 16).

¹⁴⁸ PAD-2 p 51 (AB tab 9).

¹⁴⁹ PAD-2 pp 255-256, 257-260 (AB tab 9).

¹⁵⁰ PAD-2 pp 258-259 (AB tab 9).

¹⁵¹ AH-3 p 35, "Organisation Officers" (AB tab 16).

¹⁵² AH-3 p 35, "Former Principal Place of Business" (AB tab 16).

¹⁵³ PAD-2 p 78 (AB tab 9).

¹⁵⁴ PAD-2 pp 168, 185, 241, 246-247, 248 (AB tab 9).

¹⁵⁵ PAD-2 pp 117, 247 (AB tab 9).

81. **Listed Things.** It is not the practice of this Court to limit the Listed Things to documents and material directly related to the precise cause of action then known, because that limitation would make the utility of a search order doubtful.¹⁵⁶
82. As to the following Listed Things:
- (a) **1(a), 1(b)** — these are the specific USB devices referred to in Mr McKemmish’s report as having connected to Dr Kolodziejczyk’s Fortescue laptop.¹⁵⁷
 - (b) **2** — this is intended to capture all documents containing the word “Fortescue” or abbreviations for its relevant subsidiaries.
 - (c) **3** — this is intended to capture evidentiary material recording Ionic Liquid R&D Information which in Dr Bhatt’s opinion reasonably must exist.¹⁵⁸ It is also intended to capture evidentiary material that shows subsequent misuse of Ionic Liquid R&D Information.
 - (d) **4** — this is intended to capture evidentiary material that shows subsequent misuse of Fortescue Plant CI in Element Zero’s developing etc its pilot plant.
 - (e) **5** — this is intended to capture evidentiary material that shows exfiltration of specific Fortescue documents. The documents are listed in Annex 1 to Sch A.
 - (f) **6–8** — these are intended to capture communications by or involving the Respondents. The date ranges in **7** and **8** are from the beginning of Dr Kolodziejczyk’s and Dr Winther-Jensen’s employment to when Element Zero made its statements in the AFR article (paragraph 56(f) above).
83. **Independent lawyers.** The proposed independent lawyers are lawyers from Ashurst, which Davies Collison Cave Law has engaged. An affidavit from Mr Adrian Chai of Ashurst is intended to be provided to chambers on the afternoon of 8 May 2024 addressing his ability, and the ability of solicitors in Ashurst’s employ — Ms Catherine Pedler, Mr Sam Mengler, Ms Lucinda Hill and Mr Angus Ross — to act as independent solicitors.
84. **Independent computer experts.** The proposed independent computer experts are forensic computer experts from CYTER and Evidence Advisory. Each independent lawyer has agreed to give the undertakings in Sch B, Part B.4.¹⁵⁹ The lead independent computer

¹⁵⁶ *Aristocrat Technologies Australia v Global Gaming* [2006] FCA 862 at [7] (Allsop J); *Metso Minerals (Australia) v Kalra (No 3)* [2008] FCA 1201 at [28](d) (Flick J).

¹⁵⁷ AH-27 p 316 (AB tab 41).

¹⁵⁸ Bhatt [86] (AB tab 44).

¹⁵⁹ Dewar [45] (AB tab 7).

expert Mr McKemmish has confirmed CYTER and Evidence Advisory have no conflict in acting as independent computer experts.¹⁶⁰ Mr McKemmish prepared reports on Dr Kolodziejczyk's Fortescue laptop¹⁶¹ and another Fortescue laptop,¹⁶² but the preparation of these reports do not affect his independence or ability to act.¹⁶³

I Interim suppression orders

85. Fortescue seeks interim suppression and pseudonym orders to preserve the secrecy of the proceeding until the execution of the search order. It also seeks an interim suppression order to preserve the secrecy of confidential evidence until the Return Date. Fortescue will provide the Court with a short minute of order containing the interim suppression and pseudonym orders it seeks.

J Costs

86. Fortescue also seeks an order that the costs are reserved as per paragraph 27 of the search order.

K Conclusion

87. For all these reasons, Fortescue respectfully submits that the Court ought to make the search order sought in Annex I to Fortescue's interlocutory application (AB tab 1).

JS Cooke SC

WH Wu

SK Yates

Counsel for the Applicants

8 May 2024

¹⁶⁰ McKemmish [9], [11].

¹⁶¹ AH-27 (AB tab 41).

¹⁶² AH-26 (AB tab 39).

¹⁶³ See McKemmish [10], [13].

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

Fortescue Limited (ACN 002 594 872) and Ors

Applicants

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

Respondents

ANNEXURE PAD-13

This is the annexure marked **PAD-13** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his Fourth Affidavit on 30 May 2024.

Before me: 

ROHIT MANOJ DIGHE
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (New South Wales)
Davies Collison Cave Law Pty Ltd
7 Macquarie Place, Sydney 2000

**VIQ SOLUTIONS****T:** 1800 287 274**E:** clientservices@viqsolutions.com**W:** www.viqsolutions.com.au**Ordered by:** Ian Pascarl**For:** Davies Collison Cave Law (VIC)**Email:** ipascarl@davies.com.au**TRANSCRIPT OF PROCEEDINGS**

TRANSCRIPT IN CONFIDENCE

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.

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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.

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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

25

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

He says:

30

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

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

35

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

40

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:

45

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

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.*

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 - - -

30 HER HONOUR: Yes.

MR COOKE: - - - and plant. And so he sets that out. And then, your Honour, at
35 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
145. And then, your Honour, at paragraph 147, he sets out the potential - the value,
35 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 Huber'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 Huber'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 Huber 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 Huber 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.

5 At 81, according to the above analysis, Symmall Proprietary Limited, which is Mr
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.

15 Now, if I could ask your Honour now to turn to Mr McFaull's affidavit behind tab 82,
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?

25 MR COOKE: Yes, paragraph 26.

HER HONOUR: Thank you.

30 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
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.

35 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
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
40 flow diagram.

45 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
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:

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 –
20

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:

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].
30

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:
35

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 McKemmish'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 McKemmish'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 McKemmish'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 - - -
5

HER HONOUR: Yes.

MR COOKE: - - - that's going to be. And paragraph 3 obviously is the – that there is leave to apply - - -
10

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 - - -
15

HER HONOUR: Yes.

MR COOKE: - - - Australian Western Standard Time.
20

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 - - -
25

HER HONOUR: Yes. Forms of technology.
30

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.
35
40

HER HONOUR: Just look at paragraph 25 and 26.

MR COOKE: Yes.

HER HONOUR: Yes. Thank you.
45

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 –
25 obviously, it’s a decision for your Honour as well, you know, as it all is, but I think 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 - - -

15 HER HONOUR: No.

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.

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

MR COOKE: No, thank you, your Honour.

45 HER HONOUR: All right. Well thank you, all, very much for your attendance and 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**

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TRANSCRIPT OF PROCEEDINGS

TRANSCRIPT IN CONFIDENCE

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?

5 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.

10 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.

15 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.

20 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.

30 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.

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

MR COOKE: Correct.

40 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 - - -

45 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 20th or the 21st, just in case.

HER HONOUR: So that's effectively a week.

MR COOKE: Yes.

5

HER HONOUR: So the 21st.

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 27th. We would be available, we could indicate, any time after 11 am on the 28th, 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 28th.

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 28th, to commence on the 29th. 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 28th, any time on the 29th, any time on the 30th, and any time on the 31st.

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

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 30th?

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 30th 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 - - -

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 30th – 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, they're the orders that we would seek.
10

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."

35 MR COOKE: Thank you, your Honour.

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

40 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?

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

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

Fortescue Limited (ACN 002 594 872) and Ors

Applicants

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

Respondents

ANNEXURE PAD-14

This is the annexure marked **PAD-14** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his Fourth Affidavit on 30 May 2024.

Before me:



ROHIT MANOJ DIGHE
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (New South Wales)
Davies Collison Cave Law Pty Ltd
7 Macquarie Place, Sydney 2000

Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD527/2024

FORTESCUE LIMITED ACN 002 594 872 and another/others named in the schedule
Applicant

ELEMENT ZERO PTY LIMITED ACN 664 342 081 and another/others named in the
schedule
Respondent

ORDER

JUDGE: JUSTICE PERRY

DATE OF ORDER: 09 May 2024

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. Until the date specified in order 2 below or further order, pursuant to s 37AI of the *Federal Court of Australia Act 1976* (Cth):
 - (a) each document referred to in **Annexure A** to these orders and the information contained therein is not to be published or disclosed to any person other than:
 - (i) any Judge, employee or other personnel of this Court;
 - (ii) the Applicants, their external legal representatives and such other persons to whom the Applicants have consented;
 - (iii) the Independent Lawyers and Independent Computer Experts referred to in Annexure I to the Applicant's interlocutory application dated 4 May 2024;
 - (b) the Applicants be identified and referred to in this proceeding by the pseudonyms QFM1, QFN2 and QFP3 and be so identified in documents filed and issued in the proceeding; and

- (c) the Respondents be identified and referred to in this proceeding by the pseudonyms RAB1, RAC2, RAD3 and RAE4 and be so identified in documents filed and issued in the proceeding.
2. The interim suppression order and interim confidentiality orders referred to in order 1 above continue to have effect until, if the Court makes the search orders pursuant to the Applicants' application, the successful execution of those search orders, being the service of the documents in **Annexure A** on the occupant(s) of each of the Premises to be searched.
3. The Applicants are to advise the Associate to Justice Perry within one business day of when the search orders have been successfully executed.
4. Until the date specified in order 5 below or further order, pursuant to s 37AI of the *Federal Court of Australia Act 1976* (Cth), each document (or each part of each document) referred to in **Annexure B** to these orders and the information contained therein is not to be published or disclosed to any person other than:
- (a) any Judge, employee or other personnel of this Court;
 - (b) the Applicants, their external legal representatives and such other persons to whom the Applicants have consented;
 - (c) the Independent Lawyers and Independent Computer Experts referred to in Annexure I to the Applicant's interlocutory application dated 4 May 2024;
 - (d) the Respondents' external legal representatives subject to them first giving confidentiality undertakings to the Applicants in a form agreed between the parties or ordered by the Court.
5. The interim suppression order referred to in order 4 above continue to have effect until, if the Court makes the search orders pursuant to the Applicants' application, the return date of those search orders.

Date: 9 May 2024

Annexure A

1. These orders;
2. Originating Application dated 30 April 2024;
3. Statement of Claim dated 30 April 2024;
4. Applicants' genuine steps statement dated 30 April 2024;
5. Applicants' interlocutory application
6. Affidavit of Paul Alexander **Dewar** affirmed on 1 May 2024 and its annexures;
7. Affidavit of Adrian **Huber** sworn on 1 May 2024 and its annexures, except for confidential information in boxed text in the affidavit body and in annexures AH-11, AH-21 and AH-26 attachment (row 127 onwards);
8. Affidavit of Dr Anand Indravadan **Bhatt** affirmed on 1 May 2024 and its annexures, except for confidential information in boxed text in the affidavit body and in annexures AIB-5, AIB-6, AIB-9, AIB-10, AIB-14, AIB-15, AIB-30, AIB-31, AIB-32 and AIB-33;
9. Affidavit of Wayne **McFaul** affirmed on 1 May 2024 and its annexures, except for confidential information in boxed text in the affidavit body and in annexures WM-2 and WM-3;
10. Affidavit of Susanne Monica **Hantos** affirmed on 1 May 2024 and its annexures, except for confidential information in boxed text in the affidavit body and in annexure SMH-3;
11. Affidavit of John Paul William Testaferrata **Olivier** affirmed on 2 May 2024 and its annexures, except for confidential information in boxed text in the affidavit body and in annexures JPO-03 and JPO-04;
12. Affidavit of Rodney **McKemmish** sworn on 6 May 2024;
13. Affidavit of Adrian **Chai** sworn on 8 May 2024 and its annexure;

14. Affidavit of Nicolas **Marrast** affirmed on 8 May 2024 and its annexures, except for confidential information in boxed text in annexures NM-2 and NM-3;
15. Second Affidavit of Paul Alexander **Dewar** affirmed on 9 May 2024 and its annexures;
16. Applicants' written submissions dated 8 May 2024;
17. Transcript of hearing on 9 and 14 May 2024.
18. List of affidavits and tender documents handed up to the Court on 9 May 2024.
19. Schedule of Corrections to the affidavits in support of the Applicants' ex parte application for a search order (application book tab 98; Exhibit A1).
20. The large printed version of the Gantt chart depicted in paragraph 70 of Mr McFaull's affidavit (Exhibit A3).

Annexure B

1. Confidential information in boxed text in the body of Mr Huber's affidavit and in annexures AH-11, AH-21 and AH-26 attachment (row 127 onwards);
2. Confidential information in boxed text in the body of Dr Bhatt's affidavit and in annexures AIB-5, AIB-6, AIB-9, AIB-10, AIB-14, AIB-15, AIB-30, AIB-31, AIB-32 and AIB-33;
3. Confidential information in boxed text in the body of Mr McFaull's affidavit and in annexures WM-2 and WM-3;
4. Confidential information in boxed text in the body of Ms Hantos' affidavit and in annexure SMH-3;
5. Confidential information in boxed text in the body of Mr Olivier's affidavit and in annexures JPO-03 and JPO-04;
6. Confidential information in boxed text in annexures NM-2 and NM-3 to Mr Marrast's affidavit;
7. Confidential Attachment 1 to annexure AH-21 to Mr Huber's affidavit (application book tab 99; Exhibit A2);
8. Confidential Attachment 2 to annexure AH-21 to Mr Huber's affidavit (application book tab 100; Exhibit A2);
9. Confidential Attachment 3 to annexure AH-21 to Mr Huber's affidavit (application book tab 101; Exhibit A2);
10. Confidential Attachment 4 to annexure AH-21 to Mr Huber's affidavit (application book tab 102; Exhibit A2);
11. Confidential Attachment 5 to annexure AH-21 to Mr Huber's affidavit (application book tab 103; Exhibit A2);
12. Confidential Attachment 6 to annexure AH-21 to Mr Huber's affidavit (application book tab 104; Exhibit A2);

13. Confidential Attachment 7 to annexure AH-21 to Mr Huber's affidavit (application book tab 105; Exhibit A2).

Date that entry is stamped: 9 March 2024


Registrar

Schedule

No: NSD527/2024

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Applicant	FORTESCUE FUTURE INDUSTRIES PTY LTD ACN 625 711 373
Third Applicant	FMG PERSONNEL SERVICES PTY LTD ACN 159 057 646
Second Respondent	BARTLOMIEJ PIOTR KOLODZIEJCZYK
Third Respondent	BJORN WINTHER-JENSEN
Fourth Respondent	MICHAEL GEORGE MASTERMAN

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

Fortescue Limited (ACN 002 594 872) and Ors

Applicants

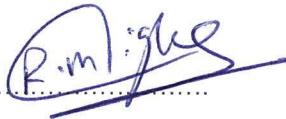
Element Zero Pty Limited (ACN 664 342 081) and Ors

Respondents

ANNEXURE PAD-15

This is the annexure marked **PAD-15** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his Fourth Affidavit on 30 May 2024.

Before me:



ROHIT MANOJ DIGHE
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (New South Wales)
Davies Collison Cave Law Pty Ltd
7 Macquarie Place, Sydney 2000

Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD527/2024

FORTESCUE LIMITED ACN 002 594 872 (currently described in the proceeding by the pseudonym QFM1) and another/others named in the schedule Applicant

ELEMENT ZERO PTY LIMITED ACN 664 342 081 (currently described in the proceeding by the pseudonym RAB1) and another/others named in the schedule Respondent

ORDER

JUDGE: JUSTICE PERRY

DATE OF ORDER: 14 May 2024

WHERE MADE: Sydney

PENAL NOTICE

TO:

- (a) Element Zero Pty Limited ACN 664 342 081;**
- (b) Bartłomiej Piotr Kolodziejczyk;**
- (c) Bjorn Winther-Jensen; and**
- (d) the occupants of each of:**
 - (i) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;**
 - (ii) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;**
 - (iii) 5A Volga Street, Hadfield, Victoria 3046; and**
 - (iv) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019.**

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THE ORDER FOR THE DOING OF THE ACT; OR

(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

TO:

- (a) Element Zero Pty Limited ACN 664 342 081;
- (b) Bartłomiej Piotr Kolodziejczyk;
- (c) Bjorn Winther-Jensen; and
- (d) the occupants of each of
 - (i) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;
 - (ii) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;
 - (iii) 5A Volga Street, Hadfield, Victoria 3046; and
 - (iv) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019,

This is a **search order** made against You on 14 May 2024 by Justice Perry at a hearing without notice to You after the Court was given the undertakings set out in **Schedule B** to this order and after the Court read the affidavits listed in **Schedule C** to this order.

THE COURT ORDERS THAT:

Introduction

1. (a) The application for this order is made returnable immediately.
 - (a) The time for service of the following documents:
 - (i) the Originating Application;
 - (ii) the Statement of Claim;
 - (iii) the Interlocutory Application and Annexure I thereto (Search Application);
 - (iv) the affidavits listed in **Schedule C** and their annexures or exhibits (other than the confidential affidavit text, confidential annexures and confidential exhibits) and the schedule of corrections to those affidavits;
 - (v) any other document listed in **Schedule B, Part B.2**, paragraph 2, is abridged and service is to be effected by the Independent Lawyer on each Respondent in accordance with **Schedule B, Part B.3**, paragraph 1, on or before 21 May 2024.

2. Subject to the next paragraph, this order has effect up to and including 31 May 2024. On the **Return Date**, 30 May 2024 at 9:30am or as otherwise advised on that day or on 31 May 2024, there will be a further hearing before the Duty Judge in respect of this order.
3. You may apply to the Court at any time to vary or discharge this order; including, if necessary, by telephone to the chambers of the Duty Judge.
4. This order may be served only between 9am and 2pm (Australian Western Standard Time) on a business day.
5. In this order:
 - (a) **Applicant** means the person who applied for this order, and if there is more than one applicant, includes all the applicants.
 - (b) **Independent Computer Expert** means any person identified as an independent computer expert in the Search Party referred to in **Schedule A** to this order.
 - (c) **Independent Lawyer** means any person identified as an Independent Lawyer in the Search Party referred to in **Schedule A** to this order.
 - (d) **Listed Thing** means any thing referred to as such in **Schedule A** to this order.
 - (e) **Premises** means the premises and any of the premises identified in **Schedule A** to this order, including any vehicles and vessels that are under Your control on or about the premises or that are otherwise identified in **Schedule A**.
 - (f) **Search Party** means the persons identified or described as constituting the search party in **Schedule A** to this order.
 - (g) **Thing** includes a document.
 - (h) **You**, where there is more than one of you, includes all of you and includes you if you are a corporation.
 - (i) Any requirement that something be done **in your presence** means:
 - (i) in the presence of You or of one of the persons described in paragraph 6 below; or

- (ii) if there is more than one of You, in the presence of each of You at each of the Premises, or, in relation to each of You, in the presence of one of the persons described in paragraph 6 below.
6. This order must be complied with by:
- (a) Yourself;
 - (b) any director, officer, partner, employee or agent of Yourself; or
 - (c) any other person having responsible control of the Premises.
7. This order must be served by, and be executed under the supervision of, an Independent Lawyer.

Entry, search and removal

8. Subject to paragraphs 10 to 20 below, upon service of this order, You must permit members of the Search Party to enter the Premises so that they can carry out the search and other activities referred to in this order.
9. Having permitted members of the Search Party to enter the Premises, You must:
- (a) permit them to leave and re-enter the Premises on the same and the following day until the search and other activities referred to in this order are complete;
 - (b) permit them to search for and inspect the Listed Things and to make or obtain a copy, photograph, film, sample, test or other record of the Listed Things;
 - (c) disclose to them the whereabouts of all the Listed Things in Your possession, custody or power, whether at the Premises or otherwise;
 - (d) disclose to them the whereabouts of all computers (including smartphones, tablets and other mobile devices), computer disks, drives or memory (including portable drives and USB drives), electronic information storage devices or systems, and online accounts (including all cloud and email accounts) at or accessible from the Premises in which any documents among the Listed Things are or may be stored, located or recorded and cause and permit those documents to be copied or printed out;
 - (e) do all things necessary to enable them to access the Listed Things,

including by opening or providing keys to physical or digital locks and enabling them to access and operate computers and online accounts and providing them with all necessary passwords, access credentials and other access means;

- (f) permit any Independent Lawyer to remove from the Premises into the Independent Lawyer's custody:
 - (i) the Listed Things or things which reasonably appear to the Independent Lawyer to be the Listed Things and any things the subject of dispute as to whether they are Listed Things; and
 - (ii) the copies, photographs, films, samples, tests, other records and printed out documents referred to in paragraph 9(b) above; and
- (g) permit any Independent Computer Expert to search any computer (including any smartphone, tablet and other mobile device), computer disk, drive or memory (including any portable drive and USB drive), any electronic information storage device or system, and online accounts (including all cloud and email accounts) at or accessible from the Premises, and make a copy or digital copy of any of the foregoing and permit any Independent Computer Expert to remove any of the foregoing from the Premises as set out in paragraphs 20 and 21 below.

Restrictions on entry, search and removal

- 10. This order may not be executed at the same time as a search warrant (or similar process) is executed by the police or by a regulatory authority.
- 11. You are not required to permit anyone to enter the Premises until:
 - (a) an Independent Lawyer serves You with copies of this order and any affidavits referred to in **Schedule C** (confidential annexures and exhibits, if any, need not be served until further order of the Court) and the schedule of corrections to those affidavits; and
 - (b) You are given an opportunity to read this order and, if You so request, the Independent Lawyer explains the terms of this order to You.
- 12. Before permitting entry to the Premises by anyone other than the Independent

Lawyer, You, for a time (not exceeding two hours from the time of service or such longer period as the Independent Lawyer may permit):-

- (a) may seek legal advice;
 - (b) may ask the Court to vary or discharge this order;
 - (c) (provided You are not a corporation) may gather together any things which You believe may tend to incriminate You or make You liable to a civil penalty and hand them to the Independent Lawyer in (if You wish) a sealed envelope or container; and
 - (d) may gather together any documents that passed between You and Your lawyers for the purpose of obtaining legal advice or that are otherwise subject to legal professional privilege or client legal privilege, and hand them to the Independent Lawyer in (if You wish) a sealed envelope or container.
13. Subject to paragraph 22 below, the Independent Lawyer must not inspect or permit to be inspected by anyone, including the Applicant and the Applicant's lawyers, any thing handed to the Independent Lawyer in accordance with subparagraphs 12(c) and 12(d) above and the Independent Lawyer must deliver it to the Court at or prior to the hearing on the Return Date.
14. During any period referred to in paragraph 12 above, You must:
- (a) inform and keep the Independent Lawyer informed of the steps being taken;
 - (b) permit the Independent Lawyer to enter the Premises but not to start the search;
 - (c) not disturb or remove any Listed Things. In the case of smartphones, You may continue to use any smartphone to obtain legal advice, provided that You comply with the terms of paragraphs 25 and 26 ('Prohibited Acts') below in relation to any such use; and
 - (d) comply with the terms of paragraphs 25 and 26 ('Prohibited Acts') below.
15. Any thing the subject of a dispute as to whether it is a Listed Thing must promptly be handed by You to the Independent Lawyer for safekeeping pending resolution of the dispute or further order of the Court.
16. Before removing any Listed Things from the Premises (other than things referred

to in the immediately preceding paragraph), the Independent Lawyer must supply a list of them to You, give You a reasonable time to check the correctness of the list, and give You and the Applicant's lawyers a copy of the list signed by the Independent Lawyer.

17. The Premises must not be searched, and things must not be removed from the Premises, except in Your presence or of a person who appears to the Independent Lawyer to be Your director, officer, partner, employee, agent or other person acting on Your behalf or on Your instructions.
18. If the Independent Lawyer is satisfied that full compliance with the immediately preceding paragraph is not reasonably practicable, the Independent Lawyer may permit the search to proceed and the Listed Things to be removed without full compliance.
19. The Applicant's lawyer and the Independent Lawyer must not allow the Applicant in person to inspect or have copies of any thing removed from the Premises nor communicate to the Applicant information about its contents or about anything observed at the Premises until 4:30pm on the Return Date or other time fixed by further order of the Court. However, the Applicant's lawyer may communicate to the Applicant:
 - (a) for the purpose of obtaining instructions if it appears it is not safe or otherwise practicable to proceed or continue with the execution of this search order at any of the Premises; and
 - (b) for the purpose of obtaining instructions for the hearing on the Return Date.

Computers

20. (a) The Search Party must include a computer expert, being an expert who is independent of the Applicant and of the Applicant's lawyers (the **Independent Computer Expert**), as set out in Schedule A to this order.
- (b) Any search of a computer (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system, and online accounts (including all cloud and email accounts) must be carried out only by an Independent Computer Expert.

- (c) Subject to (d1) and (d2) below, an Independent Computer Expert may:
 - (i) make a copy or digital copy of any computer (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system and online accounts (including all cloud and email accounts), as follows:
 - (A) in the case of smartphones, tablets and other mobile devices, such copy is to be made at the Premises; and
 - (B) in any other case, such copy may be made at the Premises or offsite and
 - (ii) remove from the Premises that copy or digital copy (if made at the Premises) or the original device (if the copy is to be made offsite).
- (d) Subject to (d1) and (d2) below, the Independent Computer Expert may search any computer (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system, and online accounts (including all cloud and email accounts) or the copy or digital copy thereof at the Premises or offsite for Listed Things and may copy the Listed Things electronically or in hard copy or both.
- (d1) For computers and other devices (except smartphones) claimed to belong to, or to be exclusively used by, an immediate family member of Dr Kolodziejczyk or Dr Winther-Jensen (including a child), an Independent Computer Expert may gain access to, operate and search that computer or other device at the Premises to see whether they can exclude the computer or other device from further search activities on the basis that it does not contain anything falling within paragraphs 2 to 9 of the Listed Things.
- (d2) For smartphones claimed to belong to, or to be exclusively used by, an immediate family member of Dr Kolodziejczyk or Dr Winther-Jensen (including a child), an Independent Computer Expert may gain access to and operate that smartphone to confirm the claim, and if so confirmed, is to return and exclude the smartphone from further search activities.

- (e) The Independent Computer Expert must:
 - (iii) return any original device removed from any of the Premises as soon as practicable, and in any event within one week after the execution of this order; and
 - (iv) as soon as practicable and, in any event, prior to the hearing on the Return Date, deliver the copy or digital copy of the computers (including smartphones, tablets and other mobile devices), computer disks, drives or memory (including portable drives and USB drives), electronic information storage devices or systems, and online accounts (including all cloud and email accounts), and all electronic and hard copies of Listed Things to the Independent Lawyer, together with a report of what the Independent Computer Expert has done including a list of such electronic and hard copies.
 - (f) The Independent Lawyer must, at or prior to the hearing on the Return Date, deliver to the Court all things received from the Independent Computer Expert and serve a copy of the Independent Computer Expert's report on the parties.
21. (a) This paragraph 21 applies if You are not a corporation and You wish to object to complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that You:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (b) This paragraph 21 applies if You are a corporation and all of the persons who are able to comply with paragraph 20 on Your behalf and with whom You have been able to communicate, wish to object to Your complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or

- (ii) are liable to a civil penalty.
- (c) You must:
 - (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

Inspection

22. Prior to the Return Date, You or Your lawyer or representative shall be entitled, in the presence of the Independent Lawyer, to inspect any thing removed from the Premises and to:
- (a) make copies of the same; and
 - (b) provide the Independent Lawyer with a signed list of things which are claimed to be privileged or confidential and which You claim ought not to be inspected by the Applicant.

Provision of information

23. Subject to paragraph 24 below, You must:
- (a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of Your ability inform the Applicant in writing as to:
 - (i) the location of the Listed Things;
 - (ii) the name and address of everyone who has supplied You, or offered to supply You, with any Listed Thing;
 - (iii) the name and address of every person to whom You have supplied, or offered to supply, any Listed Thing; and
 - (iv) details of the dates and quantities of every such supply and offer.
 - (b) within 10 working days after being served with this order, make and serve

on the Applicant an affidavit setting out the above information.

24. (a) This paragraph 24 applies if You are not a corporation and You wish to object to complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that You:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (b) This paragraph 24 also applies if You are a corporation and all of the persons who are able to comply with paragraph 23 on Your behalf and with whom You have been able to communicate, wish to object to Your complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

Prohibited Acts

25. Except for the sole purpose of obtaining legal advice, You must not, until 4:30pm on the Return Date, directly or indirectly inform any person of this proceeding or of the contents of this order, or tell any person that a proceeding has been or may be brought against You by the Applicant.
26. Until 4:30pm on the Return Date You must not destroy, tamper with, cancel or

part with possession, power, custody or control of the Listed Things otherwise than in accordance with the terms of this order or further order of the Court.

Costs

27. The costs of this application are reserved to the Court hearing the application on the Return Date.

Date that entry is stamped: 14 May 2024


Registrar

Schedule A

Premises

The premises located at:

- (a) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090; Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;
- (b) 5A Volga Street, Hadfield, Victoria 3046; and
- (c) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019,

including any vehicle or vehicles under Your control on or about those premises.

Listed Things

1. All computers (including smartphones, tablets or other mobile devices), computer disks, drives or memory (including any portable drives and USB drives), electronic information storage devices or systems, or online accounts (including all cloud and email accounts), at or accessible from the Premises (including offsite data storage, cloud, email and other platforms or services that are accessible from the Premises), including the following devices:
 - a. Toshiba branded USB drive with serial no. 07080A078F1B6304; and
 - b. Kingston branded USB drive with serial no. 900042ACAE668708.
2. All documents (whether in hardcopy or electronic form) containing the word “Fortescue”, “FFI”, “FMG” or “FMGL”.
3. All documents (whether in hardcopy or electronic form) recording or evidencing research and development work by or on behalf of Element Zero, Dr Kolodziejczyk or Dr Winther- Jensen, including laboratory notebooks and experimental data.
4. All documents (whether in hardcopy or electronic form) recording or evidencing the design, engineering, construction or operation of any pilot plant operated by or on behalf of Element Zero.
5. Any document listed in Annex 1 to this Schedule A (whether in hardcopy or electronic form) and any emails or communications attaching those documents.

6. Any document recording or evidencing communications to which any two or more of the Second to Fourth Respondents are parties. The email accounts and mobile numbers for the Second to Fourth Respondents include:
 - a. “kolodziejczyk.bartlomiej@gmail.com”, “kolodziejczykbartlomiej@gmail.com”, and “bart@kolodziejczyk.com”;
 - b. “bjornwj@gmail.com” and “b.wintherjensen@kurenai.waseda.jp”;
 - c. “mgmasterman@gmail.com”;
 - d. +61416833585;
 - e. +61447865470; and
 - f. +61418951792 or +447791288381.
7. Emails in Dr Kolodziejczyk’s email accounts (including but not limited to “kolodziejczyk.bartlomiej@gmail.com”, “kolodziejczykbartlomiej@gmail.com”, and “bart@kolodziejczyk.com”):
 - a. to or from any email account in the domain “fmgl.com.au”; or
 - b. in the period from 25 March 2019 to January 2024.
8. Emails in Dr Winther-Jensen’s email accounts (including but not limited to “bjornwj@gmail.com” and “b.wintherjensen@kurenai.waseda.jp”):
 - a. to or from any email account in the domain “fmgl.com.au”; or
 - b. in the period from 18 January 2021 to January 2024.
- 8A. Documents relating to Australian provisional patent application no. 2023902103, Australian provisional patent application no. 2023903979 and any other patent applications in the name of any of the Respondents which have not become open to public inspection as at the date of this order.
9. All of the above may be located on any computer (including smartphone, tablet or other mobile device), computer disk, drive or memory (including any portable drive and USB drive), electronic information storage device or system, or online accounts (including all cloud and email accounts), at or accessible

from the Premises (including offsite data storage, cloud, email and other platforms or services that are accessible from the Premises).

Search Party for Premises at Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090 and for Unit 1, 19 Oxleigh Drive Malaga, Western Australia 6090

1. Independent Lawyers:
 - (a) Nicholas Beech of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000, assisted by:
 - (b) Ebenezer Assibey-Bonsu of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000; or
 - (c) Alexander Crowhurst of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000.
2. Applicant's lawyers:
 - (a) Paul Dewar of Davies Collison Cave Law located at level 4, 7 Macquarie Place, Sydney, New South Wales 2000.
3. Independent Computer Experts:
 - (a) Rod McKemmish of Cyter located at level 8, 280 Pitt St, Sydney, New South Wales 2000.
 - (b) Darren Michael of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.
 - (c) Phillip Russo of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.

Search Party for Premises at 5A Volga Street, Hadfield, Victoria 3046

1. Independent Lawyers:
 - (a) Katherine Payne of Hall & Wilcox located at Level 11, Rialto South Tower, 525 Collins Street, Melbourne, Victoria 3000.
2. Applicant's lawyers:
 - (a) Rohit Dighe of Davies Collison Cave Law located at Level 4, 7 Macquarie Place, Sydney, New South Wales 2000.

3. Independent Computer Experts:
 - (a) Yian Sun of Cyter located at level 8, 280 Pitt St, Sydney, New South Wales 2000.
4. Independent child support person:
 - (a) Dr Felicity McFarlane (child psychologist) of Melbourne Children's Psychology Clinic located at 617 Hampton St, Brighton, Victoria 3186.

Search Party for Premises at Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019

1. Independent Lawyers:
 - (a) Penelope Ford of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000.
2. Applicant's lawyers:
 - (a) Ashley Cameron of Davies Collison Cave Law located at level 4, 7 Macquarie Place, Sydney, New South Wales 2000.
3. Independent Computer Experts:
 - (a) Phillip Russo of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.

Annex 1 to Schedule A

Specified Listed Things

Documents referred to in paragraph 19 of the Statement of Claim

1. Green Update (02.08.2021).pdf
2. Copies of the specifications and drawings, as filed on 24 May 2021, of Australian provisional patent application no. 2021901547 entitled 'Apparatus and process for producing iron' in the name of Fortescue Future Industries Pty Ltd, including documents with the file names "35557986AU- Specification as filed (35557986).pdf" and "35557986AU - Drawings as filed (35557986).pdf"
3. Document titled "Basis of Design – Chameleon Pilot Plant" having document number or file name FFI0302-10000-00-EG-BOD-0001
4. Bumblebee PID markups 26_10_21.pdf

Documents referred to in paragraph 20 of the Statement of Claim

5. 211029_Iron ore leaching_Report_ASH.R1.docx
6. 211014_FFI Green Steel_Ore Leach_ASH_XRF results.csv
7. 211014_FFI Green Steel_Ore Leach_ASH_ICP results.csv
8. Technical Evaluation.xlsx
9. Email from David White sent on 4 November 2024 with Subject "Technical Evaluation of Green Iron process"
10. Microsoft PowerPoint document with the internal title, 'Green Iron Forum', internally dated 1 November 2021, including documents with the file name "Green Iron Update (01.11.2021)"
11. Copies of the specifications and drawings, as filed on 24 May 2021, of Australian provisional patent application no. 2021901547 entitled 'Apparatus and process for producing iron' in the name of Fortescue Future Industries Pty Ltd, including documents with the file names "35557986AU- Specification as filed (35557986).pdf" and "35557986AU - Drawings as filed (35557986).pdf"

SharePoint documents referred to in Affidavit of Dr Anand Bhatt

12. 2. FFI Pilot - concept flowsheet REV0.pdf

13. 2. FFI pilot plant (Project Chameleon).msg
14. 20210813 All Operations Tailings Chemistry to Current_SCH.xlsx
15. 210827_Leaching project draft plan_NTH_ASH edits.docx
16. 210920_Update presentation_ASH.pptx
17. 211004 Leaching experimental design_ASH.xlsx
18. 211029_Iron ore leaching_Report_ASH.R1.docx
19. 570CBC0001-02007-BD-EG-0001_1_US.pdf
20. A22314 - ISAMill SigPlot Report Final.pdf
21. A22314 - SigPlot Report Final edit.xlsx
22. Brief notes on processing product from 'filter press' test rig 10_6_21.docx
23. BumbleBee FFI0301-10000-00-EG-BOD-0001_A.docx
24. Bumblebee layout.docx
25. Christmas Creek OPF2 Mass Balance.xlsx
26. Effluent stream potentials.docx
27. Electrochemical ore reduction Figures and flow diagram (002).pptx
28. Engineering Diary Week 36_21 12_9_21.docx
29. Example Flow Diagrams 22_2_21.docx
30. Feed Input calc.XLS
31. FFI INNOVATION CENTRE Engineering Diary Week 42_21 22 10_21 DJA input.docx
32. FFI0001-0001-00-DR-PR-0002_rA_COMMINUTION STAGE - CHECK.pdf
33. FFI0001-0001-00-DR-PR-0004_rA_LEACHING STAGE - CHECK.pdf
34. FFI0301-0001-00-DR-PR-0001_rA GS RIG OVERALL BLOCK DIAGRAM.pdf
35. FFI0302-8100-EG-BOD-0001_A.docx
36. FFI0302-8100-EG-TNN-0001 - Questions.docx
37. FFI0303-8100-EG-PLN-0002 Comminution Testing Plan.xlsx

38. FFICGreen Steel Process Overview_Memo_v2.docx
39. FFI-Green_Steel_Process_Overview_Memo_v1.docx
40. filter press concepts 22_3_21.pdf
41. filter press conversion.pdf
42. Filter Press tesfa.docx
43. green iron quick intro.pptx
44. Green Iron Update (10.09.2021) v1.pdf
45. Green Steel_PFD_Example_Overview_BWJ 16-07-21 Comments.pdf
46. Green_Steel_PFD_Example_Overview_NOT_FOR_USE.pdf
47. Green_Steel_PFD_Rev1_v2_Example.png
48. GreenSteel_ProcessFlow_Schematic_v4.pdf
49. GS_PFD.png
50. IsaMill Budget Quote ETM 2120 6721.pdf
51. Isamill call 28_4_21docx.docx
52. Isamill purchase review.pdf
53. IsaMill_Technology_Used_in_Effecient_Grinding_Circuits.pdf
54. Leaching results_Rob.xlsx
55. Multiple Aspen software files located within the folder named Models
56. Ore composition after drying.xlsx
57. Pilot Plant Assumptions.xlsx
58. Pilot Plant Basis of Design - Mechanical.docx
59. Pilot Plant MEL draft.xlsx
60. Pilot Plant Technical Workshop .potx
61. Pilot Plant Workshop_Outputs.pptx
62. PTHPSM01 3BF00564-PTH_PRN_Belmont_0576_001.pdf
63. SGS Filter Press review 29 03 21.docx

64. SOL DID Rc chip polished blocks grades_JCedits final.xlsx
65. Solomon_Stratigraphy_Geo-Met_GE.pptx
66. SWI RS-WI-MT-0101 Wet Low Intensity Magnetic Sperator (Rev 0) SG.doc
67. Tailings stream potentials.docx
68. Tank Review 1_6_21 expanded .docx
69. tanks.xlsx
70. Test Plan for leaching variables.docx
71. ULT Green Steel_u330327.a_Alkali roasting_Diff NaOH trial+Wash trial.csv
72. ULT_Green Steel_u330327.b_ICP_Bjorn Leach solution.csv
73. ·V1.0_Estimated Grade_Logging_Template_8mm_Sample
Post_Scrub_20201216 AL.xlsx

Internal Fortescue procedure and specification documents

74. Any of the documents in the table below.

Document Number	Title
100-PR-PM-0013	FMG Procedure Safety In Design
100-SP-CI-0003	FMG Engineering Specification Concrete
100-SP-CI-0007	FMG Engineering Specification Earthworks
100-SP-EL-0001	FMG Engineering Specification Electrical Design Criteria
100-SP-EL-0002	FMG Engineering Specification Earthing & Bonding
100-SP-EL-0005	FMG Engineering Specification Low Voltage MCCs and Switchboards
100-SP-EL-0006	FMG Engineering Specification Distribution and Control Panels
100-SP-EL-0008	FMG Engineering Specification Electrical Installation
100-SP-EL-0009	FMG Engineering Specification for Preferred Electrical Equipment
100-SP-EL-0010	FMG Engineering Specification Testing and Commissioning of Electrical Installations
100-SP-EL-0013	FMG Engineering Specification Low Voltage Induction Motors
100-SP-EL-0014	FMG Engineering Specification High Voltage Induction Motors
100-SP-IN-0001	FMG Engineering Specification Preferred Instrumentation List
100-SP-IN-0002	FMG Engineering Specification Instrumentation and Control Design
100-SP-IN-0014	FMG Engineering Specification Instrumentation

100-SP-IN-0015	FMG Engineering Specification Field Communication and Marshalling Panels
100-SP-IN-0019	FMG Engineering Specification Instrument Installations
100-SP-ME-0002	FMG Engineering Specification Mechanical Equipment
100-SP-ME-0004	FMG Engineering Specification Installation of Mechanical Equipment
100-SP-ME-0042	FMG Engineering Specification Centrifugal Pumps
100-SP-PI-0001	FMG Engineering Specification Pipe Work and Valves
100-SP-ST-0001	FMG Engineering Specification Structural Steelwork Fabrication
100-SP-ST-0002	FMG Engineering Specification Structural Steelwork Erection
100-SP-ST-0003	FMG Engineering Specification Protective Coating Systems – Hot Dip Galvanising
500CB-00000-SP-PI-0002	Manual Valves Specification
500CB-00000-SP-PI-0007	Special Piping Items

Schedule B

Undertakings given to the Court

B.1 Undertakings given to the Court by each Applicant by their counsel:

1. The Applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
2. The Applicant will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
3. The Applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.

B.2 Undertakings given to the Court by each Applicant's lawyer:

1. The Applicant's lawyer will pay the reasonable costs and disbursements of the Independent Lawyer and of any Independent Computer Expert.
2. The Applicant's lawyer will provide to the Independent Lawyer for service on each Respondent copies of the following documents:
 - (a) this order;
 - (b) the Originating Application;
 - (c) the Statement of Claim;
 - (d) the Applicant's genuine steps statement;
 - (e) the Interlocutory Application and Annexure I thereto (Search Application);
 - (f) the following material in so far as it was relied on by the Applicant at the hearing when the order was made:
 - (i) the affidavits listed in **Schedule C** (other than confidential affidavit text) and the schedule of corrections to those affidavits;
 - (ii) annexures and exhibits capable of being copied (other than confidential annexures and exhibits);
 - (iii) the Applicant's written submissions dated 8 May 2024; and
 - (iv) any other document that was provided to the Court.
 - (g) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submissions that were put, to the Court.
3. The Applicant's lawyer will answer to the best of the lawyer's ability any question as to whether a particular thing is a Listed Thing.
4. The Applicant's lawyer will use the lawyer's best endeavours to act in conformity with the order and to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to each Respondent.

5. The Applicant's lawyer will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
6. The Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.
7. The Applicant's lawyer will not disclose to the Applicant any information that the lawyer acquires during or as a result of execution of the search order, until 4:30pm on the Return Date or other time fixed by further order of the Court, unless the disclosure is permitted by paragraph 19 of this order or with the leave of the Court.
8. The Applicant's lawyer will use best endeavours to follow all directions of the Independent Lawyer.

B.3 Undertakings given to the Court by each Independent Lawyer:

1. The Independent Lawyer will use his or her best endeavours to serve each Respondent with this order and the other documents referred to in undertaking **Part B.2** of the above (undertakings by each Applicant's lawyer).
2. Before entering the Premises, the Independent Lawyer will:-
 - (a) offer to explain the terms and effect of the search order to the person served with the order and, if the offer is accepted, do so; and
 - (b) inform each Respondent of his or her right to take legal advice.
3. Except for the Independent Computer Expert's removing computers, other devices and their copies or digital copies for copying or searching in accordance with paragraph 20 of this order and subject to undertaking 4 below, the Independent Lawyer will retain custody of all things removed from the Premises by the Independent Lawyer pursuant to this order until delivery to the Court or further order of the Court.
4. At or before the hearing on the Return Date, the Independent Lawyer will provide a written report on the carrying out of the order to the Court and provide a copy to the Applicant's lawyers and to each Respondent or each Respondent's lawyers. The report will attach a copy of any list made pursuant to the order and a copy of any report received from an Independent Computer Expert.
5. The Independent Lawyer will use best endeavours to ensure that members of the Search Party act in conformity with the order and that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to each Respondent, and will give such reasonable directions to other members of the Search Party as are necessary or convenient for the execution of the order.
6. The Independent Lawyer will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
7. The Independent Lawyer will not inform any other person of the existence of this

proceeding except for the purposes of this proceeding until after 4:30pm on the
Return Date.

B.4 Undertakings given to the Court by each Independent Computer Expert

1. The Independent Computer Expert will use his or her best endeavours to act in conformity with the order and to ensure that the order, so far as it concerns the Independent Computer Expert, is executed in a courteous and orderly manner and in a manner that minimises disruption to each Respondent.
2. The Independent Computer Expert will remove computers and other devices from the Premises for copying and searching in accordance with paragraph 20 of this order.
3. The Independent Computer Expert will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
4. The Independent Computer Expert will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.
5. The Independent Computer Expert will use best endeavours to follow all directions of the Independent Lawyer.

Schedule C
Affidavits relied on

No.	Name of deponent	Date affidavit made
1.	Anand Indravadan Bhatt	1 May 2024
2.	Wayne McFaull	1 May 2024
3.	Susanne Monica Hantos	1 May 2024
4.	John Paul William Testaferrata Olivier	2 May 2024
5.	Adrian Huber	1 May 2024
6.	Paul Alexander Dewar	1 May 2024
7.	Rodney McKemmish	6 May 2024
8.	Adrian Chai	8 May 2024
9.	Nicolas Marrast	8 May 2024
10.	Paul Alexander Dewar	9 May 2024
11.	Stephen Klotz	14 May 2024
12.	Paul Alexander Dewar	14 May 2024

Name and address of Applicant's lawyers

The Applicant's lawyers are:

Davies Collison Cave Law

Level 4, 7 Macquarie Place, Sydney NSW 2000

Email: PDewar@dcc.com ; ACameron@dcc.com ; RDighe@dcc.com

Mobile: +61 404 047 047

Tel: 02 9293 1000

Fax: 02 9262 1080

Schedule D

Schedule of Parties

No: NSD527/2024

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

Second Applicant	FORTESCUE FUTURE INDUSTRIES PTY LTD ACN 625 711 373 (currently described in the proceeding by the pseudonym QFN2)
Third Applicant	FMG PERSONNEL SERVICES PTY LTD ACN 159 057 646 (currently described in the proceeding by the pseudonym QFP3)
Second Respondent	BARTLOMIEJ PIOTR KOLODZIEJCZYK (currently described in the proceeding by the pseudonym RAC2)
Third Respondent	BJORN WINTHER-JENSEN (currently described in the proceeding by the pseudonym RAD3)
Fourth Respondent	MICHAEL GEORGE MASTERMAN (currently described in the proceeding by the pseudonym RAE4)

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

Fortescue Limited (ACN 002 594 872) and Ors

Applicants

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

Respondents

ANNEXURE PAD-16

This is the annexure marked **PAD-16** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his Fourth Affidavit on 30 May 2024.

Before me:



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD527/2024

FORTESCUE LIMITED ACN 002 594 872 (currently described in the proceeding by the pseudonym QFM1) and others named in the schedule

Applicant

ELEMENT ZERO PTY LIMITED ACN 664 342 081 (currently described in the proceeding by the pseudonym RAB1) and others named in the schedule

Respondent

ORDER

JUDGE: JUSTICE PERRY

DATE OF ORDER: 14 May 2024

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. Until the date specified in order 2 below or further order, pursuant to s 37AI of the *Federal Court of Australia Act 1976 (Cth)*:
 - (a) each document referred to in **Annexure A** to these orders and the information contained therein is not to be published or disclosed to any person other than:
 - (b) any Judge, employee or other personnel of this Court;
 - (c) the Applicants, their external legal representatives and such other persons to whom the Applicants have consented; and
 - (d) the Independent Lawyers and Independent Computer Experts referred to in Annexure I to the Applicant's interlocutory application dated 4 May 2024.
2. The interim suppression order and interim confidentiality orders referred to in order 1 above continue to have effect until, if the Court makes the search orders pursuant to the Applicants' application, the successful execution of those search orders, being the service of the documents in **Annexure A** on the occupant(s) of each of the Premises to be searched.

3. The Applicants' solicitors are to advise the Associate to Justice Perry within one business day of the successful execution of the search orders pursuant to the Applicants' application.

Date that entry is stamped: 14 May 2024


Registrar

Annexure A

1. These orders.
2. The third affidavit of Paul Alexander Dewar affirmed on 14 May 2024 and its annexures.
3. The affidavit of Stephen Klotz affirmed on 14 May 2024 and its annexures.

Schedule

No: NSD527/2024

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Applicant	FORTESCUE FUTURE INDUSTRIES PTY LTD ACN 625 711 373 (currently described in the proceeding by the pseudonym QFN2)
Third Applicant	FMG PERSONNEL SERVICES PTY LTD ACN 159 057 646 (currently described in the proceeding by the pseudonym QFP3)
Second Respondent	BARTLOMIEJ PIOTR KOLODZIEJCZYK (currently described in the proceeding by the pseudonym RAC2)
Third Respondent	BJORN WINTHER-JENSEN (currently described in the proceeding by the pseudonym RAD3)
Fourth Respondent	MICHAEL GEORGE MASTERMAN (currently described in the proceeding by the pseudonym RAE4)

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

Fortescue Limited (ACN 002 594 872) and Ors

Applicants

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

Respondents

ANNEXURE PAD-17

This is the annexure marked **PAD-17** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his Fourth Affidavit on 30 May 2024.

Before me:



ROHIT MANOJ DIGHE
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (New South
Wales)
Davies Collison Cave Law Pty Ltd
7 Macquarie Place, Sydney 2000

Example Form of Search Order

No. of 20

Federal Court of Australia

District Registry: [State]
New South Wales

Division: [Division] General _____ No:
NSD527/2024

[Name of First

**FORTESCUE LIMITED ACN 002 594 872 (currently described in
the proceeding by the pseudonym QFM1) Applicant** [if 2 or more add "and another" or "and
/others"] named in the schedule
Applicant[s]

[Name of First Applicant

**ELEMENT ZERO PTY LIMITED ACN 664 342 081 (currently described in
the proceeding by the pseudonym RAB1) Respondent** [if 2 or more add "and another" or "and
others"] named in the schedule
Respondent[s]

Respondent

ORDER

JUDGE: JUSTICE PERRY

DATE OF ORDER: 14 May 2024

WHERE MADE: Sydney

PENAL NOTICE

TO: [name of person against whom

(a) Element Zero Pty Limited ACN 664 342

081; (b) Bartłomiej Piotr Kolodziejczyk;

(c) Bjorn Winther-Jensen; and

(d) the ^{order is made}occupants of each of:

(i) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;

(ii) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;

(iii) 5A Volga Street, Hadfield, Victoria 3046; and

(iv) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia

6019. IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THE ORDER FOR THE DOING OF THE ACT; OR

(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS

TO:

(a) Element Zero Pty Limited ACN 664 342

081; (b) Bartlomiej Piotr Kolodziejczyk;

(c) Bjorn Winther-Jensen; and

(d) the occupants of each of

(i) Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090;

(ii) Unit 1, 19 Oxleigh Drive, Malaga, Western Australia 6090;

(iii) 5A Volga Street, Hadfield, Victoria 3046; and

(iv) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019.

~~ORDER~~ AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

~~TO:~~ *[name of person against whom the order is made]*

This is a ~~search order~~ **search order** made against you You on ~~insert date~~ 14 May 2024 by Justice ~~insert name of Judge~~ Perry at a hearing without notice to you You after the Court was given the undertakings set out in ~~Schedule B~~ **Schedule B** to this order and after the Court read the affidavits listed in **Schedule C** to this order.

~~The Court orders:~~

THE COURT ORDERS

THAT: Introduction

1. ~~the~~ (a) The application for this order is made returnable immediately.

~~the~~ (a) The time for service of the ~~application, supporting following~~ documents:

(i) the Originating

Application; (ii) the Statement

of Claim;

(iii) the Interlocutory Application and Annexure I thereto (Search Application);

(iv) the affidavits ~~and originating process~~ listed in **Schedule C** and their annexures or exhibits (other than the confidential affidavit text, confidential annexures and confidential exhibits) and the schedule of corrections to those affidavits;

(v) any other document listed in **Schedule B, Part B.2**, paragraph 2,

is abridged and service is to be effected by *[insert time and date]*, the Independent Lawyer on each Respondent in accordance with **Schedule B, Part B.3**, paragraph 1, on or before 21 May 2024.

2. ___ Subject to the next paragraph, this order has effect up to and including ~~[insert date]~~ **(the Return Date)**.

~~31 May 2024~~. On the **Return Date, 30 May 2024** at ~~[insert time]~~
~~am/pm~~ **9:30am** or as otherwise advised on that day or on 31 May 2024,
there will be a further hearing **before the Duty Judge** in respect of this
order ~~before Justice [insert name of Judge]~~.

3. ___ You may apply to the Court at any time to vary or discharge this order;
including, if necessary, by telephone to the ~~judge referred to in the immediately preceding~~
~~paragraph (phone No.)~~ or to **chambers of** the Duty Judge ~~(phone No.)~~.

4. ___ This order may be served only between ~~[insert time] am/pm and [insert time] am/pm~~ **9am**
and 2pm (Australian Western
Standard Time) on a business day~~^~~.

5. ___ In this order:

(a) ~~'applicant'~~ **Applicant** means the person who applied for this order, and
if there is more than one applicant, includes all the applicants.

(b) ~~'independent computer expert'~~ **Independent Computer Expert** means
~~the~~**any** person ~~(if any)~~ identified as ~~the~~**an** independent computer expert in
the ~~search party~~**Search Party** referred to in ~~Schedule A~~ **Schedule A** to this
order.

(c) ~~'independent lawyer'~~ **Independent Lawyer** means ~~the~~**any** person identified as ~~the~~
~~independent lawyer~~**an Independent**
Lawyer in the ~~search party~~**Search Party** referred to in **Schedule A** to this
order.

(d) ~~'listed thing'~~ **Listed Thing** means any thing referred to ~~as such~~ in ~~Schedule A~~ **Schedule**
A to this order.

~~(e) 'premises'~~ **Premises** means the premises and any of the premises identified
in ~~Schedule A~~ **Schedule**
A to this order, including any vehicles and vessels that are under ~~the~~
~~respondent's~~**Your** control on or about the premises or that are otherwise
identified in ~~Schedule A~~ **Schedule A**.

(f) ~~'search party'~~ **Search Party** means the persons identified or described as
constituting the search party in ~~Schedule A~~ **Schedule A** to this order.

(g) ~~'thing'~~ **Thing** includes a document.

(h) ~~you~~ You, where there is more than one of you, includes all of you and includes you if you are a corporation.

(i) ~~any~~ Any requirement that something be done **in your presence** means:

(i) in the presence of ~~you~~ You or of one of the persons described in ~~(paragraph 6)~~ below;
or

(ii) ___ if there is more than one of ~~you~~You, in the presence of each of ~~you~~You at each of the Premises, or, in relation to each of ~~you~~You, in the presence of one of the persons described in ~~(paragraph 6)~~ below.

6. ___ This order must be complied with by:

(a) ~~yourself~~ Yourself;

(b) ___ any director, officer, partner, employee or agent of ~~yourself~~Yourself; or

(c) ___ any other person having responsible control of the ~~premises~~Premises.

7. ___ This order must be served by, and be executed under the supervision of, ~~the independent lawyer.~~an

Independent Lawyer.

Entry, search and removal

8. ___ Subject to paragraphs 10 to 20 below, upon service of this order ~~you,~~ You must permit members of the ~~search party,~~Search Party to enter the ~~premises~~Premises so that they can carry out the search and other activities referred to in this order.

9. ___ Having permitted members of the ~~search party,~~Search Party to enter the ~~premises,~~ you~~Premises,~~ You must:

(a) ___ permit them to leave and re-enter the ~~premises~~Premises on the same and the following day until the search and other activities referred to in this order are complete;

(b) ___ permit them to search for and inspect the ~~listed things~~Listed Things and to make or obtain a copy, photograph, film, sample, test or other record of the ~~listed things~~Listed Things;

(c) ___ disclose to them the whereabouts of all the ~~listed things~~Listed Things in ~~the respondent's~~Your possession, custody or power, whether at the ~~premises~~Premises or otherwise;

(d) ___ disclose to them the whereabouts of all computers, (including smartphones, tablets and other mobile devices), computer disks ~~and~~ drives or memory (including portable drives and USB drives), electronic information storage devices or systems, and online accounts (including all cloud and email accounts) at or accessible from the ~~premises~~Premises

in which any documents among the ~~listed things~~ [Listed Things](#) are or may be stored, located or recorded and cause and permit those documents to be [copied or](#) printed out;

(e) do all things necessary to enable them to access the ~~listed things,~~ [Listed Things.](#)

including by opening or providing keys to physical or digital locks and enabling them to access and operate computers and online accounts and providing them with all necessary passwords, access credentials and other access means;

(f) permit the independent lawyer any Independent Lawyer to remove from the premises Premises into the independent lawyer's

Independent Lawyer's custody:

(i) the listed things Listed Things or things which reasonably appear to the independent lawyer Independent Lawyer to be the listed things Listed Things and any things the subject of dispute as to whether they are listed things Listed Things; and

(ii) the copies, photographs, films, samples, tests, other records and printed out documents referred to in paragraph 9(b) above; and

(g) permit the independent computer expert (if there is one) any Independent Computer Expert to search any computer (including any smartphone, tablet and other mobile device), computer disk, drive or memory (including any portable drive and USB drive), any electronic information storage device or system, and online accounts (including all cloud and email accounts) at or accessible from the Premises, and make a copy or digital copy of any computer hard drive of the foregoing and permit the independent computer expert (if any) or the independent lawyer any Independent Computer Expert to remove any computer hard drive and computer of the foregoing from the premises Premises as set out in paragraphs 20 and 21 below.

Restrictions on entry, search and removal

10. This order may not be executed at the same time as a search warrant (or similar process) is executed by the police or by a regulatory authority.

11. You are not required to permit anyone to enter the premises Premises until:

(a) the independent lawyer an Independent Lawyer serves you You with copies of this order and any affidavits referred to in Schedule C Schedule C (confidential annexures and exhibits,

if any, need not be served until further order of the Court~~);~~ and the schedule of corrections to those affidavits; and

(b) ~~you~~ You are given an opportunity to read this order and, if ~~you~~ You so request, the ~~independent lawyer~~ Independent Lawyer explains the terms of this order to ~~you~~ You.

12. Before permitting entry to the ~~premises~~ Premises by anyone other than the ~~independent lawyer, you~~ Independent

Lawyer, You, for a time (not exceeding two hours from the time of service or such longer period as the ~~independent lawyer~~Independent Lawyer may permit):-

- (a) __ may seek legal advice;
- (b) __ may ask the Court to vary or discharge this order;
- (c) __ (provided youYou are not a corporation) may gather together any things which youYou believe may tend to incriminate youYou or make youYou liable to a civil penalty and hand them to the ~~independent lawyer~~Independent Lawyer in (if youYou wish) a sealed envelope or container; and
- (d) __ may gather together any documents that passed between youYou and yourYour lawyers for the purpose of obtaining legal advice or that are otherwise subject to legal professional privilege or client legal privilege, and hand them to the ~~independent lawyer~~Independent Lawyer in (if youYou wish) a sealed envelope or container.

13. __ Subject to paragraph 22 below, the ~~independent lawyer~~Independent Lawyer must not inspect or permit to be inspected by anyone, including the ~~applicant~~Applicant and the ~~applicant's~~Applicant's lawyers, any thing handed to the ~~independent lawyer~~Independent Lawyer in accordance with subparagraphs 12(c) and 12(d) above and the ~~independent lawyer~~Independent Lawyer must deliver it to the Court at or prior to the hearing on the Return Date.

14. __ During any period referred to in paragraph 12 above, youYou must:

- (a) __ inform and keep the ~~independent lawyer~~Independent Lawyer informed of the steps being taken;
- (b) __ permit the ~~independent lawyer~~Independent Lawyer to enter the ~~premises~~Premises but not to start the search;

(c) __ not disturb or remove any ~~listed things; and~~Listed Things. In the case of smartphones, You

- (d) may continue to use any smartphone to obtain legal advice, provided that You comply with the terms of paragraphs 25 and 26 ('Prohibited Acts') below. in relation to any such use; and

(d) comply with the terms of paragraphs 25 and 26 ('Prohibited Acts') below.

15. Any thing the subject of a dispute as to whether it is a ~~listed thing~~Listed Thing must promptly be handed by youYou to the ~~independent lawyer~~Independent Lawyer for safekeeping pending resolution of the dispute or further order of the Court.
16. Before removing any ~~listed things~~Listed Things from the ~~premises~~Premises (other than things referred

to in the immediately preceding paragraph), the ~~independent lawyer~~Independent Lawyer must supply a list of them to ~~you~~You, give ~~you~~You a reasonable time to check the correctness of the list, and give ~~you~~You and the ~~applicant's~~Applicant's lawyers a copy of the list signed by the ~~independent lawyer~~Independent Lawyer.

17. The ~~premises~~Premises must not be searched, and things must not be removed from the ~~premises~~Premises, except in ~~the~~Your presence ~~of you~~ or of a person who appears to the ~~independent lawyer~~Independent Lawyer to be ~~your~~Your director, officer, partner, employee, agent or other person acting on ~~your~~Your behalf or on ~~your~~Your instructions.
18. If the ~~independent lawyer~~Independent Lawyer is satisfied that full compliance with the immediately preceding paragraph is not reasonably practicable, the ~~independent lawyer~~Independent Lawyer may permit the search to proceed and the ~~listed things~~Listed Things to be removed without full compliance.
19. The ~~applicant's~~Applicant's lawyer and the ~~independent lawyer~~Independent Lawyer must not allow the ~~applicant~~Applicant in person to inspect or have copies of any thing removed from the ~~premises~~Premises nor communicate to the ~~applicant~~Applicant information about its contents or about anything observed at the ~~premises~~Premises until 4:30pm on the ~~return date~~Return Date or other time fixed by further order of the Court. However, the Applicant's lawyer may communicate to the Applicant:
- (a) for the purpose of obtaining instructions if it appears it is not safe or otherwise practicable to proceed or continue with the execution of this search order at any of the Premises; and
- (b) for the purpose of obtaining instructions for the hearing on the Return Date.

Computers

20. (a) ~~if it is expected that a computer will be searched, the search party~~ The Search Party must include a computer expert, being an expert who is independent of the ~~applicant~~Applicant and of the ~~applicant's~~Applicant's lawyers (~~the independent~~

~~computer expert~~, the **Independent Computer Expert**), as set out in Schedule A to this order.

(b) Any search of a computer (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system, and online accounts (including all cloud and email accounts) must be carried out only by ~~the independent computer expert~~.

an Independent Computer Expert.

- (c) ~~The independent computer expert~~ Subject to (d1) and (d2) below, an Independent Computer Expert may:
- (i) make a copy or digital copy of ~~the computer hard drive and any computer~~ (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system and online accounts (including all cloud and email accounts), as follows:
- (A) in the case of smartphones, tablets and other mobile devices, such copy is to be made at the Premises; and
- (B) in any other case, such copy may be made at the Premises or offsite and
- (ii) remove ~~from the Premises~~ that copy or digital copy ~~from~~(if made at the premises- Premises) or the original device (if the copy is to be made offsite).
- (d) ~~The independent computer expert~~ Subject to (d1) and (d2) below, the Independent Computer Expert may search ~~the any computer (including smartphone, tablet and other mobile device), computer disk, drive or memory (including portable drive and USB drive), electronic information storage device or system, and online accounts (including all cloud and email accounts)~~ or the copy or digital copy of ~~the computer hard drive thereof at the premises and/or away from the premises~~ Premises or offsite for ~~listed things~~Listed Things and may copy the ~~listed things~~Listed Things electronically or in hard copy or both.
- (d1) For computers and other devices (except smartphones) claimed to belong to, or to be exclusively used by, an immediate family member of Dr Kolodziejczyk or Dr Winther-Jensen (including a child), an Independent Computer Expert may gain access to, operate and search that computer or other device at the Premises to see whether they can exclude the computer or other device from further search activities on the basis that it does not contain anything falling within paragraphs 2 to 9 of the Listed Things.

(d2) For smartphones claimed to belong to, or to be exclusively used by, an immediate family member of Dr Kolodziejczyk or Dr Winther-Jensen (including a child), an Independent Computer Expert may gain access to and operate that smartphone to confirm the claim, and if so confirmed, is to return and exclude the smartphone from further search activities.

(e) ~~The independent computer expert~~ The Independent Computer Expert must:

(iii) return any original device removed from any of the Premises as soon as practicable, and in any event within one week after the execution of this order; and

(iv) as soon as practicable and, in any event, prior to the hearing on the ~~return date~~Return Date, deliver the copy or digital copy of the ~~computer hard drive~~computers (including smartphones, tablets and other mobile devices), computer disks, drives or memory (including portable drives and USB drives), electronic information storage devices or systems, and online accounts (including all cloud and email accounts), and all electronic and hard copies of ~~listed things~~Listed Things to the ~~independent lawyer~~Independent Lawyer, together with a report of what the ~~independent computer expert~~Independent Computer Expert has done including a

list of such electronic and hard copies.

~~(f) The independent lawyer must, at or prior to the hearing on the return date, deliver to the Court all things received from the independent computer expert and serve a copy of the latter's report on the parties.~~

(f) The Independent Lawyer must, at or prior to the hearing on the Return Date,

Expert and serve a copy of the Independent Computer Expert's report on the parties.

21. (a) This paragraph 21 applies if You are not a corporation and You wish to object to complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that You:

~~(e) If no independent computer expert has been appointed, but the independent lawyer considers it necessary to remove a computer from the premises for safekeeping or for the purpose of copying its contents electronically and printing out information in documentary form, the independent lawyer may remove the computer from the premises for that purpose and cause that purpose to be achieved.~~

~~21. (a) This paragraph (21) applies if you are not a corporation and you wish to object to complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that you:~~

(i) have committed an offence against or arising under an Australian law or a law of a foreign country; or

(ii) are liable to a civil penalty.

(b) This paragraph (21) applies if you/You are a corporation and all of the persons who are able to comply with paragraph 20 on your/Your behalf and with whom you/You have been able to communicate, wish to object to your/Your complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:

(i) have committed an offence against or arising under an Australian law or a law of a foreign country; or

(ii) are liable to a civil penalty.

 (c) You must:

- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
- (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
- (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

Inspection

22. Prior to the Return Date, youYou or yourYour lawyer or representative shall be entitled, in the presence of the ~~independent lawyer~~Independent Lawyer, to inspect any thing removed from the ~~premises~~Premises and to:

- (a) make copies of the same; and
- (b) provide the ~~independent lawyer~~Independent Lawyer with a signed list of things which are claimed to be privileged or confidential and which youYou claim ought not to be inspected by the ~~applicant~~Applicant.

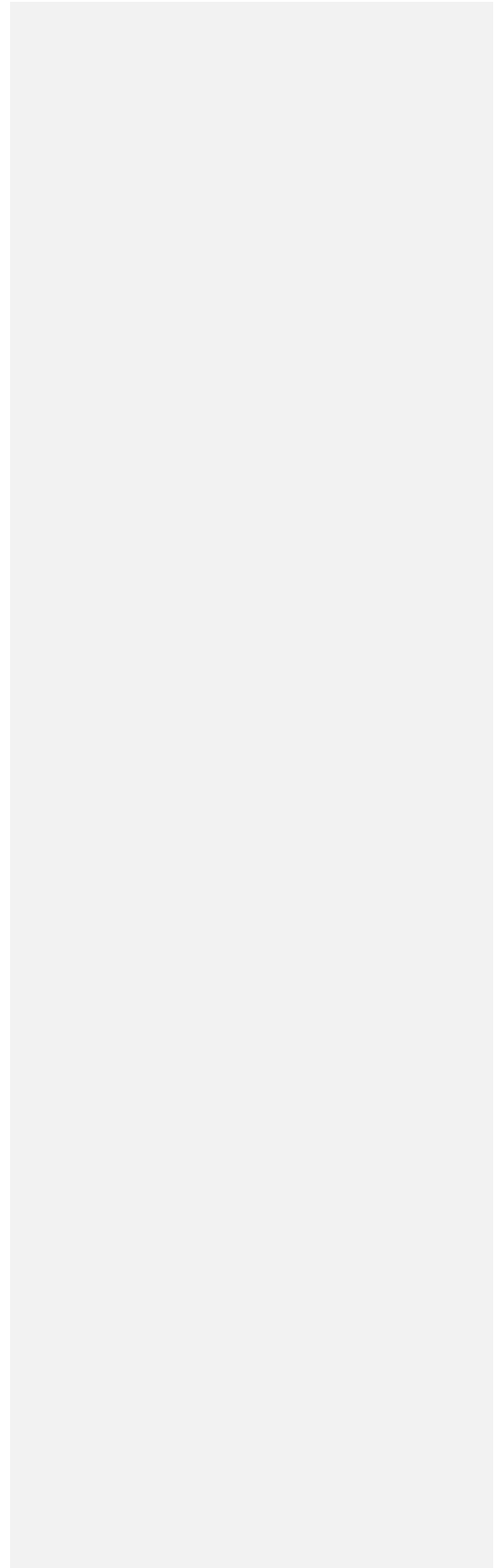
Provision of information

23. Subject to paragraph 24 below, youYou must:

- (a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of yourYour ability inform the ~~applicant~~Applicant in writing as to:
 - (i) the location of the ~~listed things~~Listed Things;
 - (ii) the name and address of everyone who has supplied youYou, or offered to supply youYou, with any ~~listed thing~~Listed Thing;
 - (iii) the name and address of every person to whom youYou have supplied, or offered to supply, any ~~listed thing~~Listed Thing; and
 - (iv) details of the dates and quantities of every such supply and offer.

(b) within 10 working days after being served with this order, make and serve ~~on the applicant an affidavit setting out the above information.~~

~~24. (a) This paragraph (24) applies if you are not a corporation and you wish to object to complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that you:~~



on the Applicant an affidavit setting out the above information.

24. (a) This paragraph 24 applies if You are not a corporation and You wish object to complying with paragraph 23 on the grounds that some or all

- (i) __ have committed an offence against or arising under an Australian law or a law of a foreign country; or
- (ii) __ are liable to a civil penalty.

(b) This paragraph (24) also applies if ~~you~~You are a corporation and all of the persons who are able to comply with paragraph 23 on ~~your~~Your behalf and with whom ~~you~~You have been able to communicate, wish to object to ~~your~~Your complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:

- (i) __ have committed an offence against or arising under an Australian law or a law of a foreign country; or

(ii) __ are liable to a civil penalty.

(c) __You must:

- (i) __ disclose so much of the information required to be disclosed to which no objection is taken; and
- (ii) __ prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
- (iii) __ file and serve on each other party a separate affidavit setting out the basis of the objection.

Prohibited Acts

25. Except for the sole purpose of obtaining legal advice, ~~you~~You must not, until 4:30pm on the Return Date, directly or indirectly inform any person of this proceeding or of the contents of this order, or tell any person that a proceeding has been or may be brought against ~~you~~You by the ~~applicant~~Applicant.

26. Until 4:30pm on the Return Date you must not destroy, tamper with, cancel
or

part with possession, power, custody or control of the ~~listed things~~ [Listed Things](#) otherwise

than in accordance with the terms of this order or further order of the Court.

Costs

27. The costs of this application are reserved to the Court hearing the application on the Return Date.

[Schedule A](#)

[Date that entry is stamped: 14 May 2024](#)


Registrar

Schedule A

Premises

The premises located at:

(a) ~~[insert address or addresses]~~ Unit 2, 30 Oxleigh Drive, Malaga, Western Australia 6090; Unit 1, 19

Oxleigh Drive, Malaga, Western Australia

6090; (b) 5A Volga Street, Hadfield, Victoria

3046; and

(c) Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019.

including any vehicle or vehicles under ~~the respondent's~~Your control on or about those premises. **Listed Things**

1. All computers (including smartphones, tablets or other mobile devices), computer disks, drives or memory (including any portable drives and USB drives), electronic information storage devices or systems, or online accounts (including all cloud and email accounts), at or accessible from the Premises (including offsite data storage, cloud, email and other platforms or services that are accessible from the Premises), including the following devices:

a. Toshiba branded USB drive with serial no. 07080A078F1B6304;

and b. Kingston branded USB drive with serial no.

900042ACAE668708.

2. All documents (whether in hardcopy or electronic form) containing the word "Fortescue", "FFI", "FMG" or "FMGL".

3. Listed Things

1-{}

2-{}

3-{}

All documents (whether in hardcopy or electronic form) recording or evidencing research and development work by or on behalf of Element Zero.

Dr Kolodziejczyk or Dr Winther- Jensen, including laboratory notebooks and experimental data.

4. All documents (whether in hardcopy or electronic form) recording or evidencing the design, engineering, construction or operation of any pilot plant operated by or on behalf of Element Zero.

5. Any document listed in Annex 1 to this Schedule A (whether in hardcopy or electronic form) and any emails or communications attaching those documents.

6. Any document recording or evidencing communications to which any two or more of the Second to Fourth Respondents are parties. The email accounts and mobile numbers for the Second to Fourth Respondents include:

- a. “kolodziejczyk.bartlomiej@gmail.com”,
“kolodziejczykbartlomiej@gmail.com”, and
“bart@kolodziejczyk.com”;
- b. “bjornwj@gmail.com” and “b.wintherjensen@kurenai.waseda.jp”;
- c. “mgmasterman@gmail.com”;
- d. +61416833585;
- e. +61447865470; and
- f. +61418951792 or +447791288381.

7. Emails in Dr Kolodziejczyk’s email accounts (including but not limited to “kolodziejczyk.bartlomiej@gmail.com”, “kolodziejczykbartlomiej@gmail.com”, and “bart@kolodziejczyk.com”):

- a. to or from any email account in the domain “fmgl.com.au”;
- or b. in the period from 25 March 2019 to January 2024.

8. Emails in Dr Winther-Jensen’s email accounts (including but not limited to “bjornwj@gmail.com” and “b.wintherjensen@kurenai.waseda.jp”):

- a. to or from any email account in the domain “fmgl.com.au”; or
- b. in the period from 18 January 2021 to January 2024.

8A. Documents relating to Australian provisional patent application no. 2023902103, Australian provisional patent application no. 2023903979 and any other patent applications in the name of any of the Respondents which have not become open to public inspection as at the date of this order.

9. All of the above may be located on any computer (including smartphone, tablet or other mobile device), computer disk, drive or memory (including any portable drive and USB drive), electronic information storage device or system, or online accounts (including all cloud and email accounts), at or accessible

from the Premises (including offsite data storage, cloud, email and other platforms or services that are accessible from the Premises).

Search Party for Premises at Unit 2, 30 Oxleigh Drive, Malaga, Western Australia

~~1. The independent lawyer: [insert name and address]~~

6090 and for Unit 1, 19 Oxleigh Drive Malaga, Western Australia 6090

1. Independent Lawyers:

- (a) Nicholas Beech of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000, assisted by:
- (b) Ebenezer Assibey-Bonsu of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000; or
- (c) Alexander Crowhurst of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000.

2. The applicant's lawyer or Applicant's lawyers:

~~(a) [insert name and address] [or description e.g. a partner or employee lawyer of A, B and Co].~~

~~(b) [insert name and address] [or description e.g. a partner or employee lawyer of A, B and Co].~~

~~(c) [insert name and address] [or description e.g. a partner or employee lawyer of A, B and Co].~~

- (a) Paul Dewar of Davies Collison Cave Law located at level 4, 7 Macquarie Place, Sydney, New South Wales 2000.

3. Independent Computer Experts:

- (a) Rod McKemmish of Cyter located at level 8, 280 Pitt St, Sydney, New South Wales 2000.
- (b) Darren Michael of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.
- (c) Phillip Russo of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.

Search Party for Premises at 5A Volga Street, Hadfield, Victoria 3046

1. Independent Lawyers:

- (a) Katherine Payne of Hall & Wilcox located at Level 11, Rialto South Tower, 525 Collins Street, Melbourne, Victoria 3000.

2. Applicant's lawyers:

- (a) Rohit Dighe of Davies Collison Cave Law located at Level 4, 7 Macquarie Place, Sydney, New South Wales 2000.

3. Independent Computer Experts:

- (a) Yian Sun of Cyter located at level 8, 280 Pitt St, Sydney, New South Wales 2000.

4. Independent child support person:

- (a) Dr Felicity McFarlane (child psychologist) of Melbourne Children's Psychology Clinic located at 617 Hampton St, Brighton, Victoria 3186.

Search Party for Premises at Unit 4, 213 Gildercliffe Street, Scarborough, Western Australia 6019

1. Independent Lawyers:

- (a) Penelope Ford of Hall & Wilcox located at Level 19, 108 St Georges Terrace, Perth, Western Australia 6000.

2. Applicant's lawyers:

- (a) Ashley Cameron of Davies Collison Cave Law located at level 4, 7 Macquarie Place, Sydney, New South Wales 2000.

3. Independent Computer Experts:

- (a) Phillip Russo of Evidence Advisory located at level 12, 192 St Georges Terrace, Perth, Western Australia 6000.

Annex 1 to Schedule A

Specified Listed

Things

Documents referred to in paragraph 19 of the Statement of Claim

1. [Green Update \(02.08.2021\).pdf](#)
2. [Copies of the specifications and drawings, as filed on 24 May 2021, of Australian provisional patent application no. 2021901547 entitled 'Apparatus and process for producing iron' in the name of Fortescue Future Industries Pty Ltd, including documents with the file names "35557986AU-Specification as filed \(35557986\).pdf" and "35557986AU - Drawings as filed \(35557986\).pdf"](#)
3. [Document titled "Basis of Design – Chameleon Pilot Plant" having document number or file name FFI0302-10000-00-EG-BOD-0001](#)
4. [Bumblebee PID markups 26 10 21.pdf](#)

Documents referred to in paragraph 20 of the Statement of Claim

5. [211029 Iron ore leaching Report ASH.R1.docx](#)
6. [211014 FFI Green Steel Ore Leach ASH XRF results.csv](#)
7. [211014 FFI Green Steel Ore Leach ASH ICP results.csv](#)
8. [Technical Evaluation.xlsx](#)
9. [Email from David White sent on 4 November 2024 with Subject "Technical Evaluation of Green Iron process"](#)
10. [Microsoft PowerPoint document with the internal title, 'Green Iron Forum', internally dated 1 November 2021, including documents with the file name "Green Iron Update \(01.11.2021\)"](#)
11. [Copies of the specifications and drawings, as filed on 24 May 2021, of Australian provisional patent application no. 2021901547 entitled 'Apparatus and process for producing iron' in the name of Fortescue Future](#)

Industries Pty Ltd, including documents with the file names "35557986AU-Specification as filed (35557986).pdf" and "35557986AU - Drawings as filed (35557986).pdf"

SharePoint documents referred to in Affidavit of Dr Anand Bhatt

12. 2. FFI Pilot - concept flowsheet REV0.pdf

- [13. 2. FFI pilot plant \(Project Chameleon\).msg](#)
- [14. 20210813 All Operations Tailings Chemistry to Current SCH.xlsx](#)
- [15. 210827 Leaching project draft plan NTH ASH edits.docx](#)
- [16. 210920 Update presentation ASH.pptx](#)
- [17. 211004 Leaching experimental design ASH.xlsx](#)
- [18. 211029 Iron ore leaching Report ASH.R1.docx](#)
- [19. 570CBC0001-02007-BD-EG-0001 1 US.pdf](#)
- [20. A22314 - ISAMill SigPlot Report Final.pdf](#)
- [21. A22314 - SigPlot Report Final edit.xlsx](#)
- [22. Brief notes on processing product from 'filter press' test rig 10 6 21.docx](#)
- [23. BumbleBee FFI0301-10000-00-EG-BOD-0001 A.docx](#)
- [24. Bumblebee layout.docx](#)
- [25. Christmas Creek OPF2 Mass Balance.xlsx](#)
- [26. Effluent stream potentials.docx](#)
- [27. Electrochemical ore reduction Figures and flow diagram \(002\).pptx](#)
- [28. Engineering Diary Week 36 21 12 9 21.docx](#)
- [29. Example Flow Diagrams 22 2 21.docx](#)
- [30. Feed Input calc.XLS](#)
- [31. FFI INNOVATION CENTRE Engineering Diary Week 42 21 22 10 21 DJA input.docx](#)
- [32. FFI0001-0001-00-DR-PR-0002 rA COMMINUTION STAGE - CHECK.pdf](#)
- [33. FFI0001-0001-00-DR-PR-0004 rA LEACHING STAGE - CHECK.pdf](#)
- [34. FFI0301-0001-00-DR-PR-0001 rA GS RIG OVERALL BLOCK DIAGRAM.pdf](#)
- [35. FFI0302-8100-EG-BOD-0001 A.docx](#)
- [36. FFI0302-8100-EG-TNN-0001 - Questions.docx](#)
- [37. FFI0303-8100-EG-PLN-0002 Comminution Testing Plan.xlsx](#)

- [38. FFICGreen Steel Process Overview Memo v2.docx](#)
- [39. FFI-Green Steel Process Overview Memo v1.docx](#)
- [40. filter press concepts 22 3 21.pdf](#)
- [41. filter press conversion.pdf](#)
- [42. Filter Press tesfa.docx](#)
- [43. green iron quick intro.pptx](#)
- [44. Green Iron Update \(10.09.2021\) v1.pdf](#)
- [45. Green Steel PFD Example Overview BWJ 16-07-21 Comments.pdf](#)
- [46. Green Steel PFD Example Overview NOT FOR USE.pdf](#)
- [47. Green Steel PFD Rev1 v2 Example.png](#)
- [48. GreenSteel ProcessFlow Schematic v4.pdf](#)
- [49. GS PFD.png](#)
- [50. IsaMill Budget Quote ETM 2120 6721.pdf](#)
- [51. Isamill call 28 4 21docx.docx](#)
- [52. Isamill purchase review.pdf](#)
- [53. IsaMill Technology Used in Efficient Grinding Circuits.pdf](#)
- [54. Leaching results Rob.xlsx](#)
- [55. Multiple Aspen software files located within the folder named Models](#)
- [56. Ore composition after drying.xlsx](#)
- [57. Pilot Plant Assumptions.xlsx](#)
- [58. Pilot Plant Basis of Design - Mechanical.docx](#)
- [59. Pilot Plant MEL draft.xlsx](#)
- [60. Pilot Plant Technical Workshop .potx](#)
- [61. Pilot Plant Workshop Outputs.pptx](#)
- [62. PTHPSM01 3BF00564-PTH PRN Belmont 0576 001.pdf](#)
- [63. SGS Filter Press review 29 03 21.docx](#)

64. [SOL DID Rc chip polished blocks grades JCedits final.xlsx](#)
65. [Solomon Stratigraphy Geo-Met GE.pptx](#)
66. [SWIRS-WI-MT-0101 Wet Low Intensity Magnetic Sperator \(Rev 0\) SG.doc](#)
67. [Tailings stream potentials.docx](#)
68. [Tank Review 1 6 21 expanded .docx](#)
69. [tanks.xlsx](#)
70. [Test Plan for leaching variables.docx](#)
71. [ULT Green Steel u330327.a Alkali roasting Diff NaOH trial+Wash trial.csv](#)
72. [ULT Green Steel u330327.b ICP Bjorn Leach solution.csv](#)
73. [·V1.0 Estimated Grade Logging Template 8mm Sample
Post Scrub 20201216
AL.xlsx](#)

Internal Fortescue procedure and specification documents

74. [Any of the documents in the table below.](#)

<u>Document Number</u>	<u>Title</u>
100-PR-PM-0013	FMG Procedure Safety In Design
100-SP-CI-0003	FMG Engineering Specification Concrete
100-SP-CI-0007	FMG Engineering Specification Earthworks
100-SP-EL-0001	FMG Engineering Specification Electrical Design Criteria
100-SP-EL-0002	FMG Engineering Specification Earthing & Bonding
100-SP-EL-0005	FMG Engineering Specification Low Voltage MCCs and Switchboards
100-SP-EL-0006	FMG Engineering Specification Distribution and Control Panels
100-SP-EL-0008	FMG Engineering Specification Electrical Installation
100-SP-EL-0009	FMG Engineering Specification for Preferred Electrical Equipment
100-SP-EL-0010	FMG Engineering Specification Testing and Commissioning of Electrical Installations
100-SP-EL-0013	FMG Engineering Specification Low Voltage Induction Motors
100-SP-EL-0014	FMG Engineering Specification High Voltage Induction Motors
100-SP-IN-0001	FMG Engineering Specification Preferred Instrumentation List
100-SP-IN-0002	FMG Engineering Specification Instrumentation and Control
100-SP-IN-0014	FMG Engineering Specification Instrumentation

100-SP-IN-0015	FMG Engineering Specification Field Communication and Marshalling Panels
100-SP-IN-0019	FMG Engineering Specification Instrument Installations
100-SP-ME-0002	FMG Engineering Specification Mechanical Equipment
100-SP-ME-0004	FMG Engineering Specification Installation of Mechanical Equipment
100-SP-ME-0042	FMG Engineering Specification Centrifugal Pumps
100-SP-PI-0001	FMG Engineering Specification Pipe Work and Valves
100-SP-ST-0001	FMG Engineering Specification Structural Steelwork Fabrication
100-SP-ST-0002	FMG Engineering Specification Structural Steelwork Erection
100-SP-ST-0003	FMG Engineering Specification Protective Coating Systems – Hot Dip Galvanising
500CB-00000-SP-PI-0002	Manual Valves Specification
500CB-00000-SP-PI-0007	Special Piping Items

Schedule B~~3. Other members of the search party:~~~~(a) [insert name and address] in the capacity of [e.g. an independent computer expert]~~~~(b) [insert name and address] in the capacity of [insert capacity]~~**Schedule B****Undertakings****Given to the Court****B.1 Undertakings given to the Court by ~~the applicant~~ each Applicant by their counsel:**

1. The ~~applicant~~ **Applicant** undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
2. The ~~applicant~~ **Applicant** will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
3. The ~~applicant~~ **Applicant** will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.

~~4. If the applicant has not already done so, as soon as practicable the applicant will file an interlocutory application for hearing on the Return Date and an originating process [in the form of the draft produced to the Court].~~

~~[5. The applicant will insure the things removed from the premises against loss or damage for an amount that reasonably appears to the applicant to be their full value.^[5]~~

~~[6. The applicant will^[6]:~~

~~(a) on or before [insert date] cause a written irrevocable undertaking to pay in the sum of \$[insert amount] to be issued from a bank with a place of business within Australia, in respect of any order the Court may make referred to in the undertaking as to damages contained in paragraph (1) above; and~~

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B.2

~~(b) immediately upon issue of the irrevocable undertaking to pay, cause a copy of it to be served on the respondent.~~

Undertakings given to the Court by ~~the applicant's~~ each Applicant's lawyer:

1. The ~~applicant's~~ Applicant's lawyer will pay the reasonable costs and disbursements of the ~~independent lawyer~~ Independent Lawyer and of any ~~independent computer expert~~ Independent Computer Expert.
2. The ~~applicant's~~ Applicant's lawyer will provide to the ~~independent lawyer~~ Independent Lawyer for service on ~~the respondent~~ each Respondent copies of the following documents:
 - (a) this order;
 - (b) ~~the application for this order for hearing on~~ Originating Application;
 - (c) the ~~Return Date~~ Statement of Claim;
 - ~~(d)~~ ~~the Applicant's genuine steps statement~~;
 - (e) ~~the Interlocutory Application and Annexure I thereto (Search Application)~~; (f) the following material in so far as it was relied on by the ~~applicant~~ Applicant at the hearing when the order was made:
 - (i) ~~the affidavits (or draft affidavits) listed in Schedule C (other than confidential affidavit text) and the schedule of corrections to those affidavits~~;
 - (ii) ~~annexures and~~ exhibits capable of being copied (other than confidential ~~annexures and~~ exhibits);
 - (iii) ~~any~~ the Applicant's written ~~submissions~~ submissions dated 8 May 2024; and
 - (iv) any other document that was provided to the Court.

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~~(g) (d)~~ a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral

~~submissions~~ submissions that ~~was~~ were put, to the Court; and

~~(e) the originating process, or, if none was filed, any draft originating process produced to the Court.~~

3. ~~The applicant's~~ Applicant's lawyer will answer to the best of the

~~lawyer's~~ lawyer's ability any question as to whether a particular thing is a

~~listed thing~~ Listed Thing.

4. ~~The applicant's~~ Applicant's lawyer will use the ~~lawyer's~~ lawyer's best endeavours to act in conformity with the order and to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to ~~the respondent.~~

each Respondent.

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5. ___ The ~~applicant's~~Applicant's lawyer will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
6. ___ The ~~applicant's~~Applicant's lawyer will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.
7. ___ The ~~applicant's~~Applicant's lawyer will not disclose to the ~~applicant~~Applicant any information that the lawyer acquires during or as a result of execution of the search order, ~~without the leave of the Court, until~~
4:30pm on the Return Date or other time fixed by further order of the Court, unless the disclosure is permitted by paragraph 19 of this order or with the leave of the Court.
8. ___ The ~~applicant's~~Applicant's lawyer will use best endeavours to follow all directions of the ~~independent lawyer.~~
Independent Lawyer.

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B.3 Undertakings given to the Court by ~~the independent lawyer~~ each Independent Lawyer:

1. The ~~independent lawyer~~ Independent Lawyer will use his or her best endeavours to serve ~~the respondent~~ each Respondent with this order and the other documents referred to in undertaking **Part B-(2)** of the above (undertakings by ~~the applicant's~~ each Applicant's lawyer ~~or lawyers~~).
2. Before entering the ~~premises~~ Premises, the ~~independent lawyer~~ Independent Lawyer will:-
 - (a) offer to explain the terms and effect of the search order to the person served with the order and, if the offer is accepted, do so;
and
 - (b) inform ~~the respondent~~ each Respondent of his or her right to take legal advice.

~~3. Subject~~

3. Except for the Independent Computer Expert's removing computers, other devices and their copies or digital copies for copying or searching in accordance with paragraph 20 of this order and subject to undertaking (4) below, the ~~independent lawyer~~ Independent Lawyer will retain custody of all things removed from the ~~premises~~ Premises by the ~~independent lawyer~~ Independent Lawyer pursuant to this order until delivery to the Court or further order of the Court.
4. At or before the hearing on the Return Date, the ~~independent lawyer~~ Independent Lawyer will provide a written report on the carrying out of the order to the Court and provide a copy to the ~~applicant's~~ Applicant's lawyers and to ~~the respondent~~ each Respondent or ~~the respondent's~~ each Respondent's lawyers. The report will attach a copy of any list made pursuant to the order and a copy of any report received from an ~~independent computer expert~~ Independent Computer Expert.
5. The ~~independent lawyer~~ Independent Lawyer will use best endeavours to ensure that members of the ~~search party~~ Search Party act in conformity with the order and that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to ~~the respondent~~ each Respondent, and will give such reasonable directions to other members of the ~~search party~~ Search Party as are necessary or convenient for the execution of the order.

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6. ___ The ~~independent lawyer~~ Independent Lawyer will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
7. ___ The ~~independent lawyer~~ Independent Lawyer will not inform any other person of the existence of this

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proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.

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B.4 Undertakings given to the Court by ~~the independent computer expert~~ each Independent Computer Expert

1. ~~The independent computer expert~~ Independent Computer Expert will use his or her best endeavours to act in conformity with the order and to ensure that the order, so far as it concerns the ~~independent computer expert~~ Independent Computer Expert, is executed in a courteous and orderly manner and in a manner that minimises disruption to ~~the respondent~~ each Respondent.
2. ~~The independent computer expert~~ Independent Computer Expert will remove computers and other devices from the Premises for copying and searching in accordance with paragraph 20 of this order.
3. The Independent Computer Expert will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
- ~~3.~~ 4. ~~The independent computer expert~~ Independent Computer Expert will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4:30pm on the Return Date.
- ~~4. The independent computer expert~~ 5. The Independent Computer Expert will use best endeavours to follow all directions of the ~~independent lawyer~~.

Independent Lawyer.

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Schedule C
Affidavits ~~Relied~~
On

<u>No.</u>	<u>Name of deponent</u>	<u>Date affidavit made</u>
1	Anand Indravadan Bhatt	1 May 2024
2	Wayne McFaul	1 May 2024
3	Susanne Monica Hantos	1 May 2024
4.	<u>John Paul William Testaferrata Olivier</u>	<u>2 May 2024</u>
5.	<u>Adrian Huber</u>	<u>1 May 2024</u>
6.	<u>Paul Alexander Dewar</u>	<u>1 May 2024</u>
7.	<u>Rodney McKemmish</u>	<u>6 May 2024</u>
8.	<u>Adrian Chai</u>	<u>8 May 2024</u>
9.	<u>Nicolas Marrast</u>	<u>8 May 2024</u>
10.	<u>Paul Alexander Dewar</u>	<u>9 May 2024</u>
11.	<u>Stephen Klotz</u>	<u>14 May 2024</u>
12.	<u>Paul Alexander Dewar</u>	<u>14 May 2024</u>

Inserted Cells

Inserted Cells

Name and address of ~~applicant's~~ Applicant's lawyers

The ~~Applicant's~~ Applicant's

lawyers are: Davies

Collison Cave Law

[Insert name, address, reference, email address, fax and telephone numbers both in and out office hours].

¹¹¹ Division 7.5 of the Rules and Part 2 of this practice note are harmonised in accordance with the advice of the Council of Chief Justices' Rules Harmonisation Committee.

¹¹² Normally the order should be served between 9:00am and 2:00pm on a business day to enable the respondent more readily to obtain legal advice.

¹¹³ Depending on the nature of the things likely to be removed and their likely value, and the likely particular risks of their being lost or damaged, this undertaking or a more elaborate one may be required.

¹¹⁴ See Practice Note paragraph 2.19.

Level 4, 7 Macquarie Place, Sydney NSW 2000

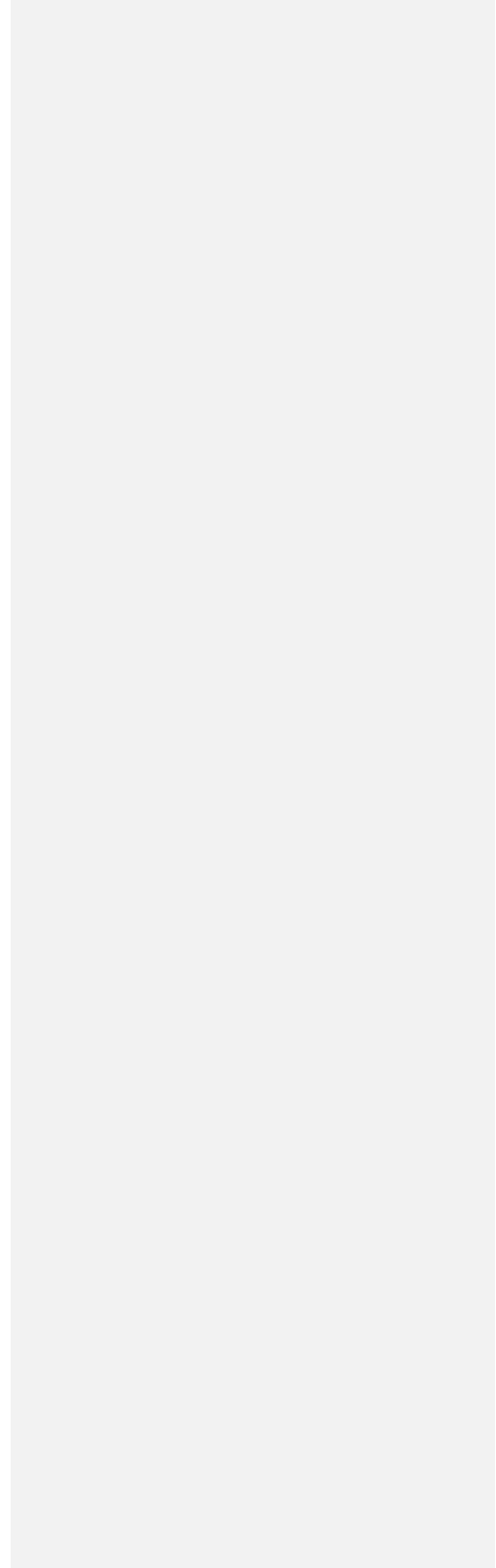
-31-

Email: PDewar@dcc.com ; ACameron@dcc.com ; RDighe@dcc.com

Mobile: [+61 404 047 047](tel:+61404047047)

Tel: [02 9293 1000](tel:0292931000)

Fax: [02 9262 1080](tel:0292621080)



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Schedule D

Schedule of Parties

No: NSD527/2024

Federal Court of Australia

District Registry: New South
Wales

Division: General

Second Applicant FORTESCUE FUTURE INDUSTRIES PTY LTD ACN 625
711

373

(currently described in the proceeding by the pseudonym
QFN2)

Third Applicant FMG PERSONNEL SERVICES PTY LTD ACN 159 057

646 (currently described in the proceeding by the pseudonym

QFP3)

Second Respondent BARTLOMIEJ PIOTR KOLODZIEJCZYK

(currently described in the proceeding by the pseudonym
RAC2)

Third Respondent BJORN WINTHER-JENSEN

(currently described in the proceeding by the pseudonym
RAD3)

Fourth Respondent MICHAEL GEORGE MASTERMAN

(currently described in the proceeding by the pseudonym
RAE4)

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

Fortescue Limited (ACN 002 594 872) and Ors

Applicants

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

Respondents

ANNEXURE PAD-18

This is the annexure marked **PAD-18** produced and shown to **PAUL ALEXANDER DEWAR** at the time of affirming his Fourth Affidavit on 30 May 2024.

Before me:



ROHIT MANOJ DIGHE
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (New South Wales)
Davies Collison Cave Law Pty Ltd
7 Macquarie Place, Sydney 2000

Rohit Dighe

From: Paul Dewar
Sent: Monday, 27 May 2024 11:03 AM
To: Rebecca Dunn
Cc: Michael Williams; Siabon Seet; Amelia Cooper; Ashley Cameron; Rohit Dighe; Kevin Huang
Subject: RE: Proceeding NSD 527 of 2024 - Fortescue Limited & Ors v Element Zero Pty Ltd & Ors
Attachments: Applicants' proposed Confidentiality Undertaking (2023413).docx

Dear Colleagues

Further to our previous email, please find **attached** a proposed confidentiality agreement for your clients' consideration.

Kind regards

Paul Dewar
Principal



DAVIES COLLISON CAVE LAW | dcc.com

T +61 2 9293 1000 | F +61 2 9262 1080

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

Davies Collison Cave Law Pty Limited (ABN 40 613 954 420) is a member of the QANTM Intellectual Property Limited Group of Companies. Information on the members of the Group can be found [here](#). Liability limited by a scheme approved under the Professional Standards Legislation.

From: Paul Dewar
Sent: Friday, May 24, 2024 4:44 PM
To: 'Rebecca Dunn' <RDunn@gtlaw.com.au>
Cc: Michael Williams <MWilliams@gtlaw.com.au>; Siabon Seet <SSeet@gtlaw.com.au>; Amelia Cooper <ACooper@gtlaw.com.au>; Ashley Cameron <ACameron@dcc.com>; Rohit Dighe <RDighe@dcc.com>; Kevin Huang <KHuang@dcc.com>
Subject: Proceeding NSD 527 of 2024 - Fortescue Limited & Ors v Element Zero Pty Ltd & Ors

Dear Colleagues

We **attach** the Applicants' proposed short minutes of order.

We acknowledge that an appropriate confidentiality regime should be in place prior to the Applicants being provided with the materials contemplated in orders 2 and 3. We will shortly provide you with a proposed confidentiality agreement.

We ask that you please indicate the First, Second and Fourth Respondents' position regarding the proposed short minutes by **5pm Monday 27 May**.

Kind regards

Paul Dewar
Principal



DAVIES COLLISON CAVE LAW | dcc.com

T +61 2 9293 1000 | F +61 2 9262 1080

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

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Confidentiality Undertaking

No. NSD 527 of 2024

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

FORTESCUE LIMITED ACN 002 594 872
and others named in the schedule

Applicants

ELEMENT ZERO PTY LIMITED ACN 664 342 081
and others named in the schedule

Respondents

In consideration of the agreement of the _____
(Respondent(s)) to provide the Confidential Material to me,

I, _____

of _____,
 being an Australian external legal practitioner or an Australian external barrister acting for the Applicants, an Eligible Disclosee, or an independent expert witness retained by the Applicants, undertake to the Court and to the Respondent(s), effective from the date set out on the final page of this undertaking, that until and unless the Court otherwise orders or the Respondent(s) otherwise agrees in writing:

1. Confidentiality, disclosure and use

- 1.1 I will keep the Confidential Material confidential at all times.
- 1.2 To the extent I have access to Confidential Material:
 - 1.2.1 I will use, handle, keep and store the Confidential Material in such a manner that will at all times preserve its confidentiality;
 - 1.2.2 I will establish and maintain reasonable security measures to safeguard the Confidential Material from unauthorised access or use; and
 - 1.2.3 I will not make any copies of Confidential Material except as reasonably necessary for the sole purpose of the conduct of the Proceeding.
- 1.3 I will not use the Confidential Material for any purpose other than for the sole purpose of the conduct of the Proceeding.

- 1.4 I will not use the Confidential Material for the purpose of:
- 1.4.1 drafting, amending or prosecuting any patent application or utility model in any jurisdiction; or
 - 1.4.2 any other legal proceeding in any jurisdiction (existing or otherwise).
- 1.5 Subject to paragraph 1.6 below, I will not disclose the Confidential Material (either in whole or in part) either directly or indirectly to any person including the Applicants, their servants, agents and related companies without the prior written consent of the Respondent(s)' Lawyers, unless:
- 1.5.1 such disclosure is expressly authorised by the Court, including by way of a determination by the Court:
 - (a) that I be released from this undertaking with respect to the relevant Confidential Material; or
 - (b) that the relevant Confidential Material is not confidential;
 - 1.5.2 the Confidential Material is in, or enters into, the public domain other than in contravention of a confidentiality undertaking or other obligation of confidence; or
 - 1.5.3 such disclosure is required by law.
- 1.6 The Confidential Material may be disclosed by me:
- 1.6.1 to any Judge, employee or other personnel of the Court or any person associated with recording the transcript at any hearing in the Proceeding for the purpose of the Proceeding and provided the Confidential Material is:
 - (a) in the case of oral disclosures of Confidential Information, stated to be subject to this confidentiality undertaking; and
 - (b) otherwise, clearly identified and marked "Confidential" and is otherwise kept confidential in accordance with this undertaking;
 - 1.6.2 to the Applicants' Lawyers and Australian external barristers retained by or on behalf of the Applicants to act for the Applicants in the Proceeding who have signed and provided to the Respondent(s)' Lawyers undertakings in the same terms as this undertaking before that person has access to the Confidential Material;
 - 1.6.3 to support and administrative staff employed by (or, in the case of Australian external barristers, employed or engaged by the barrister or by their chambers) persons referred to in sub-paragraph 1.6.2 above who reasonably require access to the Confidential Material for the purpose of the Proceeding;
 - 1.6.4 in an affidavit filed in the Proceeding by or on behalf of the Applicants, provided the Confidential Material is in an annexure or exhibit to such an affidavit and any such annexure or exhibit is clearly identified and marked "Confidential" and otherwise kept confidential in accordance with this undertaking;
 - 1.6.5 to an Eligible Disclosee who requires access to the Confidential Material for the purpose of the Proceeding who has signed and provided to the Respondent(s)' Lawyers undertakings in the same terms as this undertaking before that person has access to the Confidential Material;

- 1.6.6 to independent experts retained by the Applicants' Lawyers in relation to the Proceeding who have signed and provided to the Respondent(s)' Lawyers undertakings in the same terms as this undertaking before that person has access to the Confidential Material; and
- 1.6.7 to such other persons the disclosure to whom and the terms of which the Respondent(s) have consented in writing.
- 1.7 If I propose to disclose or otherwise use Confidential Material in any interlocutory or final hearing in the Proceeding, then subject to paragraph 1.6.4 above, I will take all necessary steps to ensure that the disclosure is not made in open Court and that the transcript of that portion of the hearing is confidential, with access thereto limited to the persons who have liberty to view such material under this undertaking or any orders of the Court.
- 1.8 Within 30 days of the final determination of the Proceeding or on the expiry of any applicable appeal period (whichever is the later) I will:
- 1.8.1 destroy all hard copies (including, without limitation, computer disks and USB drives) of all Confidential Material in my possession, custody, control or power, and give (or cause to be given) notice in writing to the Respondent(s)' Lawyers certifying the destruction of all such hard copies of Confidential Material; and
- 1.8.2 take all reasonable action to permanently delete, so as not be retrievable by any means, all Confidential Material stored in any electronic storage facility owned or used by me and give (or cause to be given) notice in writing to the Respondent(s)' Lawyers certifying the permanent deletion of all such electronic copies of Confidential Material or that I have taken such action, as the case may be,
- except that:
- 1.8.3 the Applicants' Lawyers may retain one copy of the Confidential Documents;
- 1.8.4 the Applicants' Lawyers and Australian external barristers retained by or on behalf of the Applicants may retain: (i) any notes, memoranda, summaries, reports, analyses, records and opinions made or caused to be made by the Applicants' Lawyers or Australian external barristers (including any briefs to experts and any expert reports) which may contain Confidential Information; (ii) any evidence in the Proceeding or transcript of the Proceeding which may contain Confidential Information, in each case for record-keeping purposes, provided that they are stored confidentially within the internal records of the Applicants' Lawyers or Australian external barristers (as the case may be); and
- 1.8.5 copies of the Confidential Material may be contained in electronic files created pursuant to automatic archiving and back-up procedures in the ordinary course of business,
- provided that any such copies are kept confidential, and not accessible by any person, other than in accordance with the terms of this undertaking.
- 1.9 I will notify the Respondent(s)' Lawyers (or cause the Respondent(s)' Lawyers to be notified) as soon as practicable if I become aware of any suspected or actual unauthorised access, use or disclosure of any Confidential Material, and will provide all reasonable assistance requested by the Respondent(s) and/or the Respondent(s)' Lawyers in relation to any action that the Respondent(s) may take against any person for unauthorised use or disclosure of any Confidential Document or Confidential Information provided to me pursuant to this undertaking.

2. Definitions

The following definitions apply in this undertaking:

- 2.1.1 **Applicants** means Fortescue Limited, Fortescue Future Industries Pty Ltd and FMG Personnel Services Pty Ltd.
- 2.1.2 **Applicants' Lawyers** means Davies Collison Cave Law.
- 2.1.3 **Confidential Document** means all documents (in any form or media) provided by the Respondent(s) or the Respondent(s)'s Lawyers to the Applicants' Lawyers from time to time in the course of the Proceeding that are designated in writing as confidential by the Applicant or the Applicant's Lawyers, and any copies thereof.
- 2.1.4 **Confidential Information** means the contents of, and all information in, any Confidential Document, all information derived therefrom or in notes taken or reports or other documents generated therefrom.
- 2.1.5 **Confidential Material** means Confidential Information and Confidential Documents.
- 2.1.6 **Court** means the Federal Court of Australia.
- 2.1.7 **Eligible Disclosee** means each of the following individuals:
- (a) Phil McKeiver (Internal Counsel, Fortescue Limited);
 - (b) Adrian Huber (Internal Counsel, Fortescue Future Industries Pty Ltd);
 - (c) Susanne Hantos (Internal Counsel FMG Personnel Services Pty Ltd);
 - (d) Anand Bhatt (FMG Personnel Services Pty Ltd);
 - (e) Wayne McFaull (FMG Personnel Services Pty Ltd); and
 - (f) any other person as agreed by the parties in writing from time to time.
- 2.1.8 **Proceeding** means Federal Court of Australia proceeding number NSD 527 of 2024, any cross-claim filed in that proceeding, and any appeal(s) therefrom, any applications for special leave to appeal, and any costs recovery proceedings in relation to any such proceedings.
- 2.1.9 **Respondent(s)** means the Respondent(s) to the Proceeding identified on page 1.
- 2.1.10 **Respondent(s)' Lawyers** means the respective Respondent's legal representatives as recorded in this Proceeding.

3. This undertaking

3.1 This undertaking is given:

- 3.1.1 on an interim basis until I am released from it in whole or part in writing by the Respondent(s) or the Court; and
- 3.1.2 without making any admission as to the confidentiality of the Confidential Documents or Confidential Information.

3.2 I acknowledge that this undertaking continues in force after the conclusion of the Proceeding.

3.3 I irrevocably submit to the jurisdiction of the Court for the purposes of enforcing this undertaking.

Signature: _____ Date: _____

Signature of Witness: _____

Name of Witness: _____

Schedule

No. NSD 527 of 2024

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

Applicants

Second Applicant: **FORTESCUE FUTURE INDUSTRIES PTY LTD**
ACN 625 711 373

Third Applicant: **FMG PERSONNEL SERVICES PTY LTD**
ACN 159 057 646

Respondents

Second Respondent: **BARTLOMIEJ PIOTR KOLODZIEJCZYK**

Third Respondent: **BJORN WINTHER-JENSEN**

Fourth Respondent: **MICHAEL GEORGE MASTERMAN**