

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Interlocutory Application - Form 35 - Rule 17.01(1)(a)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 22/11/2024 6:34:55 PM AEDT  
Date Accepted for Filing: 25/11/2024 11:05:54 AM AEDT  
File Number: NSD527/2024  
File Title: FORTESCUE LIMITED ACN 002 594 872 & ORS v ELEMENT ZERO PTY LIMITED ACN 664 342 081 & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA  
Reason for Listing: Hearing  
Time and date for hearing: 06/02/2025, 10:15 AM  
Place: Please check Daily Court List for details



*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 35  
Rule 17.01(1)



## Interlocutory application

No. NSD527 of 2024

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

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

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

To the Applicants

The First, Second and Fourth Respondents 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:** 6 February 2025

**Place:** Law Courts Building, 184 Phillip Street, Queens Square, Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to

Date:

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

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Filed on behalf of (name & role of party) The First, Second and Fourth Respondents  
Prepared by (name of person/lawyer) Michael John Williams, Partner  
Law firm (if applicable) Gilbert + Tobin  
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### **Interlocutory orders sought**

1. Pursuant to rules 20.13 and 20.15 of the *Federal Court Rules 2011* (**Federal Court Rules**), the Applicants give discovery of the documents in categories annexed to these orders and marked "Annexure A" by filing a verified list of documents pursuant to rule 20.17 of the Federal Court Rules.
2. The Applicants pay the First, Second and Fourth Respondents' costs of this Application.
3. Such further or other orders as the Court considers appropriate.

### **Service on the Applicant**

It is intended to serve this application on the Applicants.

Date: 22 November 2024

A handwritten signature in blue ink, appearing to read "M Williams", with a long horizontal flourish extending to the right.

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Signed by Michael John Williams  
Solicitor for the First, Second and Fourth  
Respondents



## Annexure A

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

**Document** has the same meaning as in the *Evidence Act 1995* (Cth) not including any Excluded Documents.

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

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

### Notes:

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

#### *FASOC [12]*

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

#### *FASOC [13]*

3. Documents recording or referring to the end of Dr Kolodziejczyk's employment with Fortescue, including documents concerning:
  - a. his resignation and terms on which his employment ended, including the preparation of a Deed of Separation;
  - b. any instructions given to him in respect of the period following him giving notice of his resignation; and
  - c. communications and records of any meetings between Dr Kolodziejczyk and Fortescue employees between 22 October 2021 and 5 November 2021.

#### *FASOC [15], [59]*



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

*FASOC [19]*

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

*FASOC [19]*

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

*FASOC [23, 28 and 53]*

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

*FASOC [65]*

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

*FASOC [19], [20]*

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

*FASOC [75]*

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

*FASOC [14]*



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

*FASOC [12] particulars*

- c. any consideration by Fortescue of the investigations or the results or findings of the investigations into the Respondents' conduct up to the commencement of the Proceedings.
11. Documents recording or referring to the Green Iron technology developed by Element Zero and including consideration by Fortescue of any features or elements of that technology.

*FASOC [29]*

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

*FASOC [29]*

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

*FASOC [82]*