

NOTICE OF FILING

Details of Filing

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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



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.

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NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
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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



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Form 59
Rule 29.02(1)

Affidavit

Federal Court of Australia

No. NSD 527 of 2024

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

Affidavit of: **Michael Geoffrey Hales**

Address: c/- MinterEllison, Level 9, One the Esplanade, Perth WA 6000

Occupation: Solicitor

Date: 23 September 2025

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Filed on behalf of (name & role of party)

Third Respondent, Bjorn Winther-Jensen

Prepared by (name of person/lawyer)

Michael Geoffrey Hales

Law firm (if applicable) MinterEllison

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(include state and postcode)

[Version 3 form approved 02/05/2019]

I, Michael Geoffrey Hales, c/- MinterEllison, Level 9, One the Esplanade, Perth WA 6000, Solicitor, sincerely declare and affirm that:

1. I am the solicitor for the Third Respondent in these proceedings. I am the partner at MinterEllison with care and conduct of this proceeding on behalf of the Third Respondent. I am instructed to affirm this affidavit on behalf of the Third Respondent.
2. I have sworn five previous affidavits in these proceedings.
3. I affirm this affidavit from my own knowledge, except where otherwise indicated. Where I depose to matters based on information and belief, I believe these matters to be true and I set out the source of that information or belief.
4. I affirm this affidavit in response to the Applicants' interlocutory application dated 17 June 2025 (**the Applicants' IA**). I make this affidavit to respond to statements made in the affidavit of Paul Alexander Dewar affirmed 19 August 2025 (**Dewar 10**) and to clarify two paragraphs in my affidavit filed 12 September 2025 (**Hales 4**).
5. I do not waive and am not authorised to waive the Third Respondent's privilege in respect of any matter in this affidavit.
6. I supervised the process of providing discovery for the Third Respondent. A team of lawyers and specialist discovery technology consultants at MinterEllison undertook the majority of the work but I participated as well. Where below I depose to matters relating to those searches it is either from matters which are within my own knowledge or recorded in our files or information provided to me by a solicitor in the team working on discovery, Oliver Hoare, which I believe to be true.

Clarifications to Hales 4

7. Since affirming Hales 4, I have reviewed paragraphs 55 and 56 of that affidavit and wish to clarify the following.
8. In paragraph 55, the reference in the second line to *"During the discovery process, searches were conducted to locate..."* should read *"During the discovery process, searches we conducted would have located..."*.
9. In paragraph 56, the reference in the second line to *"The discovery searches searched for..."* should read *"The discovery searches we have conducted would have discovered..."*.



Response to Dewar 10

10. I wish to respond further to certain paragraphs of Dewar 10. To the extent I do not respond to the other parts of that affidavit, I am not to be taken as agreeing with them.
11. In response to paragraph 236 of Dewar 10, I am informed by the Third Respondent and believe that the business name, BWJ Materials Consulting was not a business name used by the Third Respondent to refer to Element Zero before its incorporation. The Third Respondent first used that business name for work relating to consulting in the electrochemistry and polymer industry prior to his employment at Fortescue. The latter included consulting in relation to gluing plastic components together for sewerage systems. A search for "BWJ Materials Consulting" would therefore produce a substantial number of irrelevant documents.
12. With respect to category 11(c) to 11(f), being categories relevant to the period prior to the incorporation of Element Zero, the terms "Element Zero" and "EZ" were not used as limiting search terms. I am informed by the Third Respondent, and believe, that all documents relating to BWJ Materials Consulting that fall within the discovery categories have been discovered.

Sample of Record Keeping of Third Respondent

13. I refer to paragraph 14 to 16 of Dewar 11. I am informed by the Third Respondent, and believe, that he does not accept that the discovered documents do not include any reference to those experiments but in any event, the Third Respondent's work and work practices are a matter for the final hearing. However, to demonstrate the nature of the record keeping of the Third Respondent, I annex marked MGH-11 a sample of pages taken from a notebook of the Third Respondent (BWJ.5004.0001.0024).
14. This sample has been compiled by taking every 3rd page of the notebook from March 2022 to obtain 10 pages.

The retirement project before March 2022

15. I am instructed by the Third Respondent and believe that he did not do any work in relation to the retirement project before March 2022.



Affirmed by the deponent
at Perth
in the State of Western Australia
on 23 September 2025

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Signature of deponent

Before me:



Signature of witness


Name of witness

Legal practitioner who has held a practising certificate for at
least 2 years and who holds a current practising certificate

Qualification of witness

Schedule

Federal Court of Australia

No. NSD 527 of 2024

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**

Date: 23 September 2025

