

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	29/10/2024 3:27:49 PM AEST
Date Accepted for Filing:	29/10/2024 3:27:54 PM AEST
File Number:	QUD403/2024
File Title:	IN THE MATTER OF IG POWER (CALLIDE) PTY LTD) (ADMINISTRATORS APPOINTED) (ACN 082 413 885)
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "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. QUD403 of 2024

Federal Court of Australia
District Registry: Queensland
Division: General (Commercial and Corporations)

**IN THE MATTER OF IG POWER (CALLIDE) LTD (ADMINISTRATORS APPOINTED) ACN
082 413 885 & ORS**

**JOHN RICHARD PARK AND BENJAMIN PETER CAMPBELL IN THEIR CAPACITY AS
JOINT AND SEVERAL ADMINISTRATORS OF EACH OF THE SECOND TO FIFTH
PLAINTIFFS NAMED IN SCHEDULE 1**

First Plaintiffs

AND OTHERS NAMED IN SCHEDULE 1

Plaintiffs

Affidavit of: **John Richard Park**
Address: Level 20, CP1, 345 Queen Street, Brisbane QLD 4000
Occupation: Senior Managing Director of FTI Consulting and Registered Liquidator
Date: 29 October 2024

Contents

Document number	Details	Paragraph	Page
1	Affidavit of John Richard Park affirmed on 29 October 2024	1 - 25	1 - 9
2	Confidential Exhibit JRP-8		10 - 17

Filed on behalf of (name & role of party)

John Richard Park and Benjamin Peter Campbell in their capacity as
Administrators of each of the Second to Fifth Plaintiffs listed in the
Schedule

Prepared by (name of person/lawyer)

Timothy Sackar

Law firm (if applicable)

White & Case LLP

Tel + 61 2 8243 6601

Fax + 61 2 8249 2699

Email timothy.sackar@whitecase.com

Address for service

Level 50, Governor Phillip Tower, 1 Farrer Place Sydney NSW 2000

(include state and postcode)

I, John Richard Park, of Level 20, CP1, 345 Queen Street, Brisbane QLD 4000, Senior Managing Director of FTI Consulting, affirm:

Introduction

1. I am one of the two joint and several administrators appointed to each of the Second to Fifth Plaintiffs (together, the **Companies** or the **Group**), together with my colleague, Benjamin Peter Campbell (together, the **Administrators** and each an **Administrator**). Mr Campbell is also a Senior Managing Director of FTI Consulting.
2. I have over 30 years of experience in corporate recovery, insolvency and restructuring and am the Head of Australia Corporate Finance & Restructuring at FTI Consulting. I have extensive experience in the corporate recovery market and operational management in a wide variety of industries, including property, manufacturing, mining and mining services, hospitality, health, building and construction, retail and financial services.
3. I am authorised by Mr Campbell to make this affidavit on behalf of the Administrators. Where I depose below to the view or views of the Administrators, they are the view(s) which I and Mr Campbell hold at the date of affirming this affidavit.
4. This is the fifth affidavit I have affirmed in relation to this proceeding.
5. Exhibited to me at the time of affirming this affidavit is a bundle of documents labelled "**Confidential Exhibit JRP-8**".
6. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information I and staff members at FTI Consulting have obtained through my role as special purpose administrator of the Fifth Plaintiff (**IGPC**), and as an Administrator of each of the Companies (in the exercise of those respective appointments). The matters contained in this affidavit are true and correct to the best of my knowledge and belief.
7. In making this affidavit, I do not intend and have no authority to waive an entitlement to claim privilege in any communication or record of communication, that is the subject of privilege. Nothing in this affidavit should be construed as constituting a waiver of privilege.

Convening period

8. As deposed in my fourth affidavit affirmed 22 October 2024 and filed in this proceeding, I am, and I am informed by Mr Campbell that he is, of the view that in order to be in a position to adequately report to creditors as to the potential returns and outcomes

available to them at the second meetings of creditors of the Companies, the convening period should be extended.

9. At the interlocutory hearing in this proceeding held on 24 October 2024, the honourable Justice Derrington was minded to make orders 1 and 2 of the interlocutory process filed on 22 October 2024 (**Interlocutory Process**), but asked the Administrators to reconsider the end date for the convening period sought (being 6 December 2024) and in particular whether a later date would be preferred.
10. The intent behind the selection of the date of 6 December 2024 and then subsequently 20 December 2024 (as set out in the Plaintiffs' draft Short Minutes provided to the Court on 25 October 2024) was borne out of a concern that I have in relation to ongoing delays in being able to progress the transaction the subject of the Interlocutory Process (**Transaction**). I am of the view, and I am informed by Mr Campbell that he is of the view, that the Transaction is on terms and for a value that are significantly improved when compared to the best and final offer submitted to (and recommended by) the former administrators in the administrations of the Companies.
11. Having made enquiries with stakeholders of the Companies, I am of the view, and I am informed that Mr Campbell is of the view, that ongoing delays in being able to resolve the Transaction is not in the best interests of creditors of the Companies for the following reasons:
 - a. the administrations of the Companies commenced in March 2023 and have been in progress since that time, with creditors still awaiting a resolution of the administrations (and in particular, their pre-appointment claims);
 - b. Mr Campbell and I have completed the investigations into the Incident Claims, including the public examination of witnesses, and are now in a position to report to creditors in respect of those claims and the potential returns in the event that those claims are pursued. The completion of the sale transactions the subject of the judicial direction applications are the only substantial outstanding matters remaining before Mr Campbell and I will be in a position to report to creditors and call the second meeting;
 - c. Mr Campbell and I have run a comprehensive competitive sale process that has culminated in two signed transactions (being those transactions referred to at paragraphs 25 and 26 of my affidavit of 22 October 2024) (**Sale Process**). If these transactions do not complete, Mr Campbell and I would need to re-engage with bidders in the Sale Process to see if alternate transactions could




be pursued. A delay in being able to undertake this work will only negatively impact the position of all stakeholders;

d. any further delay in resolving the administrations may prejudice the Transaction. This is because:

i. the Transaction can be terminated by the counterparty if the judicial direction sought in the Interlocutory Process is not obtained prior to the "CP Satisfaction Date" as defined in Confidential Exhibit JRP-7. Accordingly, there is a risk that the counterparty may seek to negotiate improved pricing if the "CP Satisfaction Date" is reached and the transaction has not completed. I have made enquiries with the counterparty to this transaction about a possible extension to the "CP Satisfaction Date" which has, as at the time of affirming this affidavit, not been provided. I expect that any extension agreed will be of limited duration, such that an extended schedule for determination of the Interlocutory Process increases the risk of prejudice to the transaction. I am also of the opinion that my ability to negotiate an extension of the CP Satisfaction Date will be significantly improved if there was a hearing this calendar year. A copy of a letter from White & Case to the counterparty's solicitors appears at pages 11 to 12 of Confidential Exhibit JRP-8, and a copy of a letter from the counterparty's solicitors appears at pages 13 to 14 of Confidential Exhibit JRP-8; and

ii. the return to creditors under this transaction could be negatively impacted by substantial delays given the ongoing costs of the administration process and the increasing exposures of creditors;

e. Mr Campbell and I have limited funding to continue trading the business of the Companies, which is insufficient to continue trading beyond January 2025. While I note it is available to us to seek additional funding, this would burden the Companies with additional debt with the result that the value of the transactions (if completed) to the IG Power companies would diminish. For this reason, I am reluctant, at this stage, to burden the Group with additional liabilities unless I have no choice but to do so. I am of the view that there is a difference to having to borrow modestly while a judgement has been reserved, compared to having to borrow more significantly while awaiting a hearing date in calendar year 2025;




f. Mr Campbell and I understand that trading of the Companies into next calendar year will also prejudice the Companies, including exposing them to increased trading costs, for reasons including:

- i. a material contract in relation to the operation of the business of the Companies expires at the end of November 2024, and Mr Campbell and I have little confidence that this contract can be renewed or its term extended on the same terms for an extended period. I hold this view based on my negotiation of this contract at the outset of the Administrators' appointment to the Companies, at which time we were unable to agree a term beyond November 2024. I am more confident of being able to agree an extension of one to two months with the backdrop of a reserved decision than an extension of five months with a hearing yet to take place. A copy of an email from the counterparty to this contract appears at page 15 of Confidential Exhibit JRP-8; and
- ii. a key trade creditor of the Companies is requiring improved pricing under its contract, which would have a material impact on the trading costs of the business. Again, I am of the view, and I am informed that Mr Campbell is of the view, that our ability to manage this counterparty and their own respective trading position is significantly improved the sooner the Interlocutory Process can be heard which in turn is likely to mean a reduced amount of financial support this counterparty might need. A copy of a letter from that creditor appears at pages 16 to 17 of Confidential Exhibit JRP-8.

12. As at the date of affirming this affidavit, I understand there to be only two parties seeking to be heard on the Interlocutory Process compared to the multitude of stakeholders and creditors involved in this matter a number of whom have been noted or referenced in this affidavit.
13. Having considered my interactions with creditors, stakeholders and transaction counterparties during this administration, and while I of course am very sensitive to the realities of the Court timetable as an officer of the Court, I am of the view, and I am informed by Mr Campbell that he is of the view, that it is consistent with our statutory and professional duties in the circumstances to be seeking to pursue a hearing of the Interlocutory Process this calendar year. I am of the view, and I am informed by Mr Campbell that he is of the view, that a delay into calendar 2025 will have a significant



impact on being able to manage this administration in the interests of creditors, stakeholders and transaction counterparties, including for the reasons noted above.

14. I consider, and I am informed by Mr Campbell that he considers, that the Interlocutory Process should be resolved prior to a second meeting of creditors being held. This is to ensure that we can report to the creditors about the outcome of the Sale Process and so that the creditors of the Companies are in a position to vote on the future of the Companies with certainty as to whether the transaction the subject of the Interlocutory Process has been confirmed and will proceed, or not.
15. I note that Sev.en Global Investments a.s. (**Sev.en**) has sought leave to be heard in respect of the Interlocutory Process and prefers a timetable into calendar 2025 for the hearing of the Interlocutory Process. While I am of course very sensitive to the interests of stakeholders, Sev.en has been an active participant in the administrations of the Companies, by reason of:
- a. the regular dialogue I have had with representatives of Sev.en since the commencement of our role as special purpose administrators of IGPC and throughout the course of our role as voluntary administrators of all four Companies;
 - b. its active participation in the Sale Process, including by:
 - i. submitting a funding proposal both prior to and as part of the Sale Process;
 - ii. submitting multiple non-binding indicative offers throughout the Sale Process;
 - iii. being the successful bidder in relation to a transaction with the Second Plaintiff; and
 - iv. submitting a DOCA proposal approximately 3 weeks after binding bids in the Sale Process were due (this proposal was not accepted by the Administrators and is inferior in my view to the Transaction the subject of the Interlocutory Process).
16. Accordingly, I am of the view and I am informed by Mr Campbell that he is of the view, that if a date for the hearing of the Interlocutory Process could be secured for December 2024 this would provide ample time for a party such as Sev.en with its resources, knowledge of this matter and sophisticated counsel to be prepared to respond to the orders being sought.



17. I intend to address each of the above issues in further detail in my further evidence to be filed in support of the Interlocutory Process.

Confidential Exhibits

18. At the case management hearing in relation to the interlocutory process held on 24 October 2024, the Administrators foreshadowed providing a confidential copy of Confidential Exhibit JRP-7 to the solicitors for Sev.en.
19. On 24 October 2024 at 3:30pm, my solicitors, White & Case wrote to:
- a. Quinn Emanuel and Baker McKenzie, both of whom act for Sev.en, attaching a confidentiality undertaking to be signed by those solicitors that required access to Confidential Exhibit JRP-7; and
 - b. the solicitors of the counterparty to the Transaction requesting a version of Confidential Exhibit JRP-7 that their client would be comfortable being disclosed to parties seeking to be heard in respect of the Interlocutory Application.
20. On 25 October 2024 at 3:50pm, White & Case received signed confidentiality undertakings from Quinn Emanuel on the same terms as provided to Quinn Emanuel. An additional undertaking was received on 28 October 2024 at 9:42am. White & Case could not provide a copy of Confidential Exhibit JRP-7 until a redacted version was received from the solicitors for the counterparty to that transaction.
21. White & Case received a redacted version of Confidential Exhibit JRP-7 from the solicitors of the counterparty to the Transaction at 2:46pm on 28 October 2024.
22. On 28 October at 4:18pm, having reviewed the redactions that had been applied to Confidential Exhibit JRP-7, my solicitors, White & Case provided the redacted version of Confidential Exhibit JRP-7 to those parties at Quinn Emanuel who had provided a signed confidentiality undertaking.

Suppression or non-publication order in relation to Confidential Exhibit JRP-8

23. The Administrators seek orders that Confidential Exhibit JRP-8, being correspondence received from the parties referenced at paragraphs 11(d) and (f) above be treated as confidential, so as to prevent prejudice to the proper administration of justice.
24. We seek these orders on the basis that the information contained in these documents is not currently in the public domain and not otherwise publicly available, and pursuant




to the agreements to which the correspondence relates to, communications in respect of those agreements are required to be kept confidential.

Conclusion

25. I consider, and I am informed by Mr Campbell that he considers, the extension of the convening period to 20 December 2024 to be in the best interests of the creditors of the Second to Fifth Plaintiffs and consistent with, and will advance, the objectives of Part 5.3A of the Corporations Act.

Affirmed by the deponent)
 at Brisbane)
 in Queensland)
 on 29 October 2024)
 Before me:



Signature of deponent



Signature of witness

Name of Witness: Joanne Emily Dunn
 Capacity of Witness: C. DCC 97523
 Address of Witness: 20/345 Queen Street,
 Brisbane QLD 4000

SCHEDULE 1

No. QUD403 of 2024

Federal Court of Australia

District Registry: Queensland

Division: General (Commercial and Corporations)

**IN THE MATTER OF IG POWER (CALLIDE) LIMITED (ADMINISTRATORS APPOINTED)
ACN 082 413 885 & ORS****Plaintiffs**

First Plaintiff:	John Richard Park and Benjamin Peter Campbell in their capacity as joint and several administrators of each of the Second to Fifth Plaintiffs
Second Plaintiff:	IG Energy Holdings (Australia) Pty Ltd ACN 090 996 142 (Administrators Appointed)
Third Plaintiff:	IG Power Holdings Limited Pty Ltd ACN 082 413 876 (Administrators Appointed)
Fourth Plaintiff:	IG Power Marketing Pty Ltd ACN 082 413 867 (Administrators Appointed)
Fifth Plaintiff:	IG Power (Callide) Ltd ACN 082 413 885 (Administrators Appointed)