

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: 22 October 2024

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

Introduction

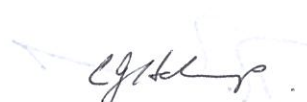
1. I am one of the two joint and several administrators appointed to each of the Second to Fifth Plaintiffs (together, the **Companies** or the **Group**), together with my colleague, Benjamin Peter Campbell (together, the **Administrators** and each an **Administrator**). Mr Campbell is also a Senior 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 fourth affidavit I have affirmed in relation to this proceeding.
5. Exhibited to me at the time of affirming this affidavit are two bundles of documents labelled "**Confidential Exhibit JRP-6**" and "**Confidential Exhibit JRP-7**".
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.

Purpose of Affidavit

8. I make this affidavit in support of the relief sought by the Plaintiffs in the Interlocutory Process filed in these proceedings on 22 October 2024 (**Interlocutory Process**). The Interlocutory Process seeks both a judicial direction in respect of a binding agreement between IGPC and a selected bidder (**Binding Bidder**) and an extension of the convening period in respect of each of the Companies to 6 December 2024.
9. Below, I set out an update on the progress of the administrations of the Companies since the Administrators' appointment and the reasons that I am of the view, and I am informed that Mr Campbell is of the view, that an extension to the convening period of the Companies is necessary.

Commencement of Appointment

10. Mr Campbell and I were appointed as special purpose administrators (**SPAs**) of IGPC by order of this honourable Court on 29 January 2024 (**29 January Orders**). Pursuant to Annexure A of the 29 January Orders, Mr Campbell and I in our capacity as SPAs were appointed to, among other things:
 - a. conduct investigations into the cause or causes of the two catastrophic incidents at the Callide C Power Station, specifically the explosion of the unit C4 turbine on 25 May 2021 and the partial collapse of the cooling tower on or around 31 October 2022 (together the **Incidents**);
 - b. prepare and make applications for examinations and obtain orders for document production for the purposes of the investigations;
 - c. give consideration to the claims available to IGPC or its administrators in relation to the Incidents arising from the investigations (**Incident Claims**); and
 - d. commence and prosecute any legal proceedings in the name of IGPC or the administrators arising from the investigations, examinations and examinations of books and records of IGPC that I (or IGPC) determined was necessary to commence.
11. Mr Campbell and I were appointed as Administrators of the Companies pursuant to orders made by Justice Derrington on 27 June 2024 (**Appointment Orders**). Mr Campbell and I were appointed in replacement of Mr Hughes and Mr Sparks of Deloitte who had been appointed as voluntary administrators of the Companies on 24 March 2023.

12. The Appointment Orders also provided for an extension of the convening period to 31 October 2024.
13. Having regard to the lengthy history of the administrations of the Companies, Mr Campbell and I determined that in order to most appropriately be able to report to creditors of the Companies at second meetings of creditors within the convening period, we should adopt the following course of action:
 - a. secure funding for the Administration;
 - b. run a comprehensive market testing process for a sale or recapitalisation of the Companies or any of their assets (**Sale Process**);
 - c. continue our investigations into the Incident Claims in order to determine whether any claims are available to IGPC and the likely return to creditors in the event that the Incident Claims were pursued; and
 - d. engage independent valuers to determine the value of IGPC's interest in the unincorporated joint venture that owns and operates the Callide C Power Station (**Joint Venture**).
14. I discuss the progress of each of these work streams in this affidavit.

Sale Process

15. I refer to my previous affidavits, which detail the steps that have been taken by the Administrators in relation to the Sale Process. I provide further detail on the steps taken by the Administrators in relation to the Sale Process below.
16. From the outset of our appointment, I have retained White & Case as the Administrators' legal advisor in relation to matters arising out of the administration of the Companies (including the investigations we have conducted) and the Sale Process.
17. On 12 July 2024, I engaged Houlihan Lokey as sale adviser to conduct the Sale Process, which involves a competitive market testing campaign seeking proposals for:
 - a. funding the administration of the Companies up until the end of the convening period (31 October 2024); and
 - b. a sale or recapitalisation of the Companies and/or any of their assets.

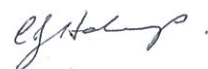


18. The Sale Process was launched on 18 July 2024, with Houlihan Lokey providing a teaser and confidentiality deed poll (**CDP**) to 161 parties that were invited to participate.
19. On 29 July 2024 a process letter, term sheet and information memorandum was provided to those interested parties that had signed and returned a CDP. A secure data room containing key information in relation to the Companies was also opened on this date, with 15 interested parties entering into the initial due diligence phase.
20. The Sale Process resulted in two proposals being made to fund the administration in accordance with 17(a) above, which I, and I am informed by Mr Campbell that he, considered carefully. Ultimately, the Administrators entered into a funding deed with Sev.en Global Investments a.s. (**Sev.en**) on 20 August 2024 (**Funding Deed**), which, in the Administrators' view was the most competitive funding proposal received and contained more favourable terms and pricing than the second proposal received.
21. As part of the Sale Process, non-binding indicative offers (**NBIOs**) for a sale or recapitalisation of the Companies and/or IGPC's interest in the Callide C Power Station were required to be made by interested parties on or before 22 August 2024.
22. The Administrators engaged and negotiated with those parties who submitted NBIOs. This included offering and attending meetings and/or calls with those parties and interrogating the terms and pricing of the NBIOs. In my experience, it is common and necessary to engage with parties following the submission of NBIOs to ensure that (among other things):
 - a. the transaction proposed is on terms that are clear;
 - b. the pricing is improved (if possible);
 - c. there is clear evidence that the bidder has adequate financing to be able to complete on the transaction proposed; and
 - d. the transaction proposed is capable of execution.
23. Two of the NBIOs received contemplated a transfer of the shares that the Second Plaintiff (**IGEH**) holds in the Third Plaintiff (**IGPH**). As detailed in my third affidavit, to allow the Administrators to consider those proposals, on 6 September 2024 I caused White & Case to file an interlocutory process seeking judicial direction as to the proper construction of certain clauses in the joint venture agreement between IGPC and Callide Energy Pty Ltd (**CEPL**), which clauses purport to give CEPL pre-emptive rights in relation to a transfer of shares in IGPC or certain of its holding companies.



That application was heard by this Honourable Court on 3 October 2024. Creditors of the Companies were given notice of the hearing, and CEPL appeared as an interested party in the proceeding.

24. On 27 September 2024, being the date that binding offers were due, the Administrators received only one binding offer, being an offer from the Binding Bidder (**Binding Offer**). This offer related to the assets of IGPC only.
25. On 12 October 2024, Mr Campbell, and I caused IGEH to enter into a binding agreement with one of the bidders in the Sale Process that had submitted an NBIO. The Administrators had been negotiating this transaction following receipt of the NBIO. This offer related to the assets of IGEH only. A copy of the relevant agreement appears at pages 14 to 39 of Confidential Exhibit JRP-6.
26. In the period from 27 September 2024 to 18 October 2024, the Administrators negotiated the Binding Offer and on 18 October 2024, as a result of those negotiations, the Administrators caused IGPC to enter into a transaction with the Binding Bidder (**Transaction**), conditional upon a judicial direction being given to the Administrators. A copy of the Transaction agreement appears at pages 41 to 135 of Confidential Exhibit JRP-7.
27. The reason for causing IGPC to enter into the Transaction subject to the condition that a judicial direction be given, rather than seeking the direction first, is that by entering into the Transaction on 18 October 2024, the purchase price and terms of the transaction are preserved. If judicial direction is not given, then the Transaction will not proceed.
28. In the event that judicial direction is given in the form sought in the Interlocutory Process, the Administrators will be in a position to proceed to "completion" under the Transaction. Given that "completion" under the Transaction is subject to the Administrators seeking a judicial direction, the Administrators thought it prudent to seek to extend the convening period to allow time for the application the subject of the Interlocutory Process to be heard and determined, and for completion under the Transaction to occur, before second meetings of creditors are held.
29. On 17 October 2024, being approximately 3 weeks after the date that binding offers were due in the Sale Process, the Administrators received a DOCA proposal in respect of IGPC. I expect to provide further detail about this proposal in a further affidavit to be affirmed by me in support of the Interlocutory Process.



Investigations

30. In addition to the Sale Process, Mr Campbell and I have progressed our investigations into the Incident Claims by causing to be performed a series of public examinations in proceeding QUD182/2024.
31. From our appointment as Administrators on 27 June 2024, Mr Campbell and I have continued to conduct the investigations that were the subject of our appointment as SPAs to IGPC.

Summary of steps taken in proceeding QUD182/2024

32. In accordance with the exercise of our functions and in the discharge of our obligations to conduct investigations, the Administrators have conducted an extensive investigation into the potential causes of action available to IGPC arising out of the Incidents.
33. The Administrators have, at a general level, and by way of a high-level summary only:
 - a. conducted public examinations (in accordance with section 596B of the *Corporations Act 2001* (Cth)) of over 50 examinees that I considered to be in possession of information relevant to the Incidents. These public examinations provided my legal advisors and me with information that enabled me to identify various lines of inquiry directly relevant to the identification and consideration of claims that may be available to IGPC as a result of the Incidents, and informed further investigations that needed to occur. By way of illustration of the examinations that occurred, examinees have included:
 - i. professional experts who have authored technical reports on the Incidents including Dr Sean Brady of Brady Heywood and Dr Raymond Hartzenberg of HartzEPM Pty Ltd on behalf of CS Energy Limited (**CSEL**) (and whose reports were both published on the CSEL website);
 - ii. past and current operational personnel of CSEL engaged at the Callide C Power Station with knowledge of:
 1. its day-to-day operations;

2. process safety systems and processes deployed (or not) at the Station; and
 3. the events that occurred in the control room on the day of the C4 incident;
- iii. a range of current and former junior to high-ranking managerial personnel – including Secretaries, Managers, Callide C Power Station personnel, Non-Executive and Executive Directors, the Chief Financial Officer, the current Chief Executive Officer and the Chairman at the time of the Incidents; and
 - iv. government shareholder representative, the Honourable Mick de Brenni, in his capacity as the Minister for Energy and Clean Economy Jobs;
- b. conducted a range of informal interviews and investigations with various non-CSEL parties considered to have information relevant to elements of claims under consideration by my legal advisors;
 - c. issued a wide range of Directions to Produce Documents relevant to the Examinable Affairs of IGPC, in accordance with section 597(9) of the Corporations Act, to various entities and individuals (**Directions**). By way of elaboration, I have caused to be issued:
 - i. three (3) Directions to CS Energy Ltd (ACN: 078 848 745);
 - ii. a Direction to Callide Power Management Pty Ltd (ACN: 082 468 700) (**CPM**);
 - iii. Directions to some of the examinees who were publicly examined as set out in paragraph 33.a above and other corporate entities in possession of key documents and / or technical information relevant to the investigations such as:
 1. Australian Energy Market Operator (ACN 072 010 327);
 2. Queensland Electricity Transmission Corporation Limited trading as Powerlink Queensland (ACN 078 849 233);
 3. Siemens Energy Pty Ltd (ACN 636 537 409);
 4. Breezewater Pty Ltd (ACN: 129 906 047);

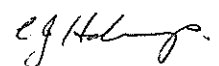


- 5. Marley Flow Control Pty Ltd (ACN: 115 680 496);
- 6. GHD Pty Ltd (ACN 008 488 373); and
- 7. HartzEPM (ACN: 165 528 870);

- d. Extensively considered and negotiated a wide range of claims for confidentiality, suppression, legal professional privilege and parliamentary privilege with the many parties whose records were sought and produced in the abovementioned document production processes;
 - e. interrogated the records of IGPC in relation to matters relevant to claims under consideration by my legal advisors; and
 - f. appointed and consulted with international engineering and other experts with subject matter expertise of the various issues under consideration.
34. The evidence adduced through these steps have provided my legal advisors and I with a substantial body of material which can be used to formulate various causes of action available to IGPC.
35. My legal advisors and I (assisted by staff within my office) have extensively examined this material in order to discharge my obligations with respect to the investigations I was tasked with conducting by the 29 January Orders and the Appointment Orders.
36. This information has been taken into account in the course of my investigations, including with respect to the potential recoveries available for the benefit of creditors.
37. At the time of swearing this affidavit, the investigations are nearing completion with the anticipated final public examinations, including the production of further documents, listed in proceeding QUD182/2024 on 24 and 25 October 2024.

Suppression or non-publication order in relation to Confidential Exhibit JRP-6 and Confidential JRP-7

38. The Administrators seek orders that Confidential Exhibits JRP-6 and JRP-7, being respectively the binding agreement with one of the bidders in the Sale Process entered into by IGEH and the Transaction agreement between IGPC and the Binding Bidder be treated as confidential, so as to prevent prejudice to the proper administration of justice.
39. 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 contains commercially sensitive information in relation to the Sale Process and

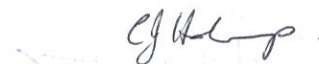
operation of IGPC. As each transaction is subject to conditions, we seek that this information remain confidential to ensure that should we need to re-open the NBIO process, the integrity of the Sale Process is not prejudiced.

Convening period

40. 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 meeting of creditors of the Companies, the convening period should be extended until 6 December 2024, or such other time as determined by this honourable court.
41. As indicated above, an extension of the convening period will allow time for the for the judicial directions sought by the Administrators (in the Interlocutory Process and in the interlocutory process filed on 6 September 2024) to be obtained and for the Transaction to be subsequently completed. In the event that the Transaction was unable to complete (for whatever reason), an extension of the convening period will also allow the Administrators the ability to re-engage with other bidders in the Sale Process before reporting to creditors.
42. Mr Campbell and I have formed the view that the Transaction will need to complete before a second meeting of creditors is held.
43. Mr Campbell and I have considered our statutory right as Administrators to open the second meetings of creditors of the Companies and to adjourn those meetings for up to 45 business days, as permitted by section 75-140(3) of the *Insolvency Practice Rules (Corporations)* 2016. We have formed the view that it would not be prudent to follow this course given it is unclear at this stage whether the judicial direction sought will be provided and therefore whether the Transaction is capable of completing. Should this honourable court not be minded to give the judicial direction sought, then Mr Campbell and I would need to revisit the Sale Process and determine whether another course of action is available in the interests of creditors.

Conclusion

44. The Administrators intend to provide notice of this application to creditors of the Second to Fifth Plaintiffs, including ASIC.
45. I consider, and I am informed by Mr Campbell that he considers, the extension of the convening period sought in the Interlocutory Process 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 22 October 2024)
 Before me:

Signature of deponent

Signature of witness

Name of Witness: Caroline Halcoop
 Capacity of Witness: Justice of the Peace (Qualified)
 Address of Witness: Level 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)