



IN THE SUPREME COURT OF WESTERN AUSTRALIA

CIV/1582/2022

BETWEEN:

**KYM MINING PTY LTD (ACN 632 846 694)**

First Plaintiff

AND

**NEX METALS EXPLORATIONS PTY LTD  
(ACN 124 706 449)**

First Defendant

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**ORDERS OF JUSTICE HILL  
MADE ON 22 JUNE 2022**

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**Pursuant to Order 43 rule 16 of the Rules of the Supreme Court 1971 (WA), IT IS ORDERED that:**

**PLEADINGS**

1. On or before 28 June 2022, the plaintiff do file and serve its statement of claim.
2. On or before 12 July 2022, the defendant do file and serve any defence and counterclaim.

**AMENDMENT OF PLEADINGS**

3. Unless the Case Manager otherwise orders:
  - (a) any party may without leave amend any pleading at any time prior to the date 2 weeks before the day fixed for the commencement of the trial by filing and serving the amended pleading; and
  - (b) any other party may without leave make consequential amendments within 7 working days from service of the amendment by filing and serving the amended pleading.
4. Within 7 days after the service on a party of a pleading amended under par 3, that party may apply to the Case Manager to disallow the amendment.
5. Unless the Case Manager otherwise orders, the costs incurred and thrown away by reason of a party amending a pleading under paragraph 3(a) be the other party's in any event.

**INTERLOCUTORY DISPUTES**

6. If any interlocutory dispute arises between any of the parties, their respective solicitors shall, within 3 working days of the dispute arising, confer and attempt to resolve it.
7. If the dispute has not been resolved after the parties' solicitors have conferred in an attempt to resolve it and a directions hearing is scheduled to take place within 7 days then the party seeking the interlocutory relief shall file and serve a minute of the relief sought by that party and the dispute shall be heard at the next directions hearing.
8. If the dispute has not been resolved after the parties' solicitors have conferred in an attempt to resolve it and a directions hearing is not scheduled to take place within 7 days then the party seeking the interlocutory relief shall forthwith exercise their right to seek the re-listing of the matter for the purpose of applying for interlocutory relief.
9. The party applying for interlocutory relief at a directions hearing shall, not later than the day before the directions hearing, file and serve a minute of the orders sought by that party by way of interlocutory relief.

### **NON-COMPLIANCE WITH DIRECTIONS**

10. In the event of default by any party for five (5) working days in complying with a direction for the taking of any interlocutory step, the solicitor for the party in default shall submit to the solicitor for each other party a proposed revised timetable for the interlocutory steps outstanding. If the party in default has previously defaulted, the period of five (5) working days is reduced to two (2) working days.
11. Upon receipt of the revised timetable the solicitor for each party shall forthwith inform that solicitor's client:
  - (a) of the existing timetable;
  - (b) of the fact of the default;
  - (c) of the proposed revised timetable,and obtain the client's instructions as to whether the client consents to the proposed revised timetable.
12. Upon receipt of the client's instructions the solicitor for each party shall forthwith inform the solicitor for the party in default of those instructions.
13. If all parties consent to the proposed revised timetable, interlocutory steps shall proceed in accordance with it, and the Case Manager may at the next review hearing make an order that the timetable be revised accordingly. (The Case Manager may nevertheless remove the matter from the CMC List or impose other sanctions if not satisfied that the parties are proceeding with the diligence and expedition appropriate).
14. If all parties do not consent to the proposed revised timetable, the solicitor for the party in default shall forthwith secure the re-listing of the matters for review by the Case Manager so that appropriate directions may be given.

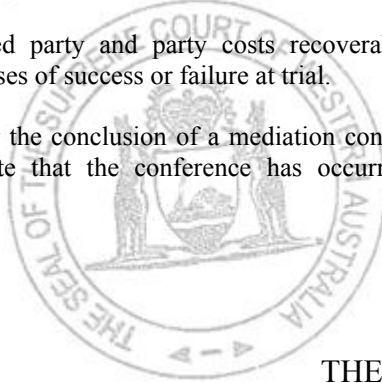
### **MEDIATION**

15. The matter be referred to mediation pursuant to Pt VI of the Supreme Court Act 1935.
16. (a) On or before 29 June 2022 the defendant do advise the plaintiff on or before 29 June 2022 of the dates on which the advising parties are unavailable for mediation for the months of August to November 2022 for a mediation of 1 day's duration.
  - (b) By 1 July 2022 after receiving the advice referred to in the preceding sub paragraph the

plaintiff lodge a request for appointment in the approved form, completed so as to show one list of all parties' available dates.

(c) Without limiting the power of the Court to make any order for costs of the action or the mediation, the plaintiff should pay the fee prescribed when lodging the request for an appointment for mediation.

17. At least 14 days prior to the mediation conference, the solicitors for the parties give their client a copy of the Court booklet "Mediation Programme - A Guide for Litigants".
18. Each party shall attend the mediation or if a party is not a natural person, a representative of that party familiar with the substance of the litigation and with authority to compromise it, and the solicitor or counsel, if any, representing each party.
19. At least 14 days prior to the mediation conference, the solicitors for the parties give their client a memorandum setting out:
  - (a) The exact costs and disbursements to the date of the memorandum;
  - (b) The estimated future costs and disbursements up to and including a mediation conference lasting no more than one day;
  - (c) The estimated future costs and disbursements to and including trial, and the length of trial assumed in making the estimate; and
  - (d) The estimated party and party costs recoverable by, or payable by, the party in the respective cases of success or failure at trial.
20. Within 7 days after the conclusion of a mediation conference the plaintiff shall inform the Case Manager's Associate that the conference has occurred as directed and the outcome of the conference.



BY THE COURT

THE HONOURABLE JUSTICE J HILL