



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

No: NSD1908/2016

GAVIN SMITH and others named in the schedule
Applicant

COMMONWEALTH OF AUSTRALIA (DEPARTMENT OF DEFENCE)
Respondent

ORDER

REGISTRAR: REGISTRAR TESORIERO

DATE OF ORDER: 22 August 2017

WHERE MADE: Sydney (in chambers)

BY CONSENT, THE COURT ORDERS THAT:

1. The return of subpoena hearing in relation to the subpoenas issued to The Proper Officer, Access Macquarie Limited, The Proper Officer, Jacobs Group (Australia) Pty Ltd ACN 001 024 095 and The Proper Officer, Commonwealth Bank of Australia ACN 123 123 124 on 23 August 2017 be vacated.

Access Macquarie Limited – (S12)

2. Leave be granted to the solicitors for the Respondent to have first access to (and to uplift) the documents produced in response to the Subpoena addressed to The Proper Officer, Access Macquarie Limited (S12) until 4.30pm on 20 September 2017.
3. By 4.30pm on 20 September 2017:
 - 3.1. The solicitors for the Respondent are to notify the solicitors for the Applicants in writing of any confidentiality or privilege claims made over the documents produced in response to the subpoena issued to Access Macquarie Limited with such notification to identify:
 - 3.1.1. each document in relation to which a full claim of confidentiality or privilege is made;
 - 3.1.2. each document in relation to which a partial claim of confidentiality or privilege is made; and



- 3.1.3. in respect of each document in relation to which a full or partial claim of confidentiality or privilege is made, the basis upon which that claim is made.
- 3.2. The solicitors for the Respondent must provide the Court with:
 - 3.2.1. a redacted copy of each document produced in response to the subpoena issued to Access Macquarie Limited in relation to which a partial claim for confidentiality or privilege is made with only those parts of the document over which confidentiality or privilege is claimed to be redacted, and
 - 3.2.2. a separate envelope containing all documents produced in response to the subpoenas issued to Access Macquarie Limited in relation to which a full claim of confidentiality or privilege is made.
4. The solicitors for the Respondent return the documents produced in response to the subpoena issued to Access Macquarie Limited to the Registry by 4.30pm on 20 September 2017.
5. Leave be granted to the solicitors for the Applicants to access and uplift for the purposes of inspection and copying:
 - 5.1. the documents produced in response to the Subpoena issued to Access Macquarie Limited in respect of which no confidentiality / privilege claims have been made in accordance with Order 3, and
 - 5.2. any redacted copies of documents produced in response to the Subpoena issued to Access Macquarie Limited in respect of which partial claims of confidentiality and/or privilege have been made in accordance with Order 3,from 9am on 21 September 2017.

Jacobs Group (Australia) Pty Ltd – (S9)

6. The date until which the Respondent has first access to (and to uplift) the documents produced on 12 July and 9 August 2017 in response to the Subpoena addressed to The Proper Officer, Jacobs Group (Australia) Pty Ltd ACN 001 024 095 (S9) be EXTENDED to 4.30pm on 6 September 2017.
7. The time by which the solicitors for the Respondent are to:
 - 7.1. notify the solicitors for the Applicants in writing of any confidentiality or privilege claims made over the documents produced on 12 July 2017 and/or over any additional documents produced on 9 August 2017 in response to the subpoena issued to Jacobs Group (Australia) Pty Ltd with such notification to identify:



- 7.1.1. each document in relation to which a full claim of confidentiality or privilege is made;
 - 7.1.2. each document in relation to which a partial claim of confidentiality or privilege is made; and
 - 7.1.3. in respect of each document in relation to which a full or partial claim of confidentiality or privilege is made, the basis upon which that claim is made, and
- 7.2. provide the Court with:
- 7.2.1. a redacted copy of each document produced on 12 July 2017, and each additional document produced on 9 August 2017, in response to the subpoena issued to Jacobs Group (Australia) Pty Ltd in relation to which a partial claim for confidentiality or privilege is made with only those parts of the document over which confidentiality or privilege is claimed to be redacted, and
 - 7.2.2. a separate envelope containing all documents produced on 12 July 2017, and all additional documents produced on 9 August 2017, in response to the subpoena issued to Jacobs Group (Australia) Pty Ltd in relation to which a full claim of confidentiality or privilege is made,

be EXTENDED to 4.30pm on 6 September 2017.

8. The date by which the solicitors for the Respondent are to return the documents produced on 12 July and 9 August 2017 in response to the subpoena issued to Jacobs Group (Australia) Pty Ltd to the Registry be EXTENDED to 4.30pm on 6 September 2017.
9. The date from which leave be granted to the solicitors for the Applicants to access and uplift for the purposes of inspection and copying:
 - 9.1. the documents produced on 12 July and 9 August 2017 in response to the Subpoena issued to Jacobs Group (Australia) Pty Ltd in respect of which no confidentiality / privilege claims have been made in accordance with Order 7, and
 - 9.2. any redacted copies of documents produced on 12 July and 9 August 2017 in response to the Subpoena issued to Jacobs Group (Australia) Pty Ltd in respect of which partial claims of confidentiality and/or privilege have been made in accordance with Order 7,

be EXTENDED to 9am on 7 September 2017.

Commonwealth Bank of Australia - (S13)



10. Leave be granted to the solicitors for the parties to access and uplift for the purpose of inspection and copying the documents produced in accordance with the subpoena addressed to The Proper Officer, Commonwealth Bank of Australia ACN 123 123 124 (S13).

NSW EPA

11. The subpoena addressed to The Proper Officer, New South Wales Environment Protection Authority (**NSW EPA Subpoena**) be adjourned to 9:30 am on Wednesday, 6 September 2017 at the Law Courts Building, Queens Square, Sydney.
12. The date by which any notice of objection in relation to the documents produced in response to the NSW EPA Subpoena or any application to set aside that subpoena be filed, be EXTENDED to 6 September 2017.

General

13. Leave pursuant to Orders 2, 5, 9 and 10 to access and uplift documents produced in response to the subpoenas addressed to Access Macquarie Limited, Jacobs Group (Australia) Pty Ltd and Commonwealth Bank of Australia is granted on the following conditions:
 - 13.1. If original documents rather than copies have been produced, the solicitor provides to the Registry a letter of consent from the person to whom the subpoena is addressed.
 - 13.2. Documents be returned to the Registry in the same condition as when uplifted.
 - 13.3. Documents be returned promptly and, in any event, when an officer of the Registry so requests.

Date that entry is stamped: 22 August 2017


Registrar

Subsection 35A (5) of the *Federal Court of Australia Act 1976* (the *Act*) provides that a party to proceedings in which a Registrar has exercised any of the powers of the Court under subsection 35A (1) of the Act may, within the time prescribed by the Rules of Court, or within any further time allowed in accordance with the Rules of Court, apply to the Court to review that exercise of power.

Rule 3.11 provides that a party may apply to the Court under subsection 35A (5) of the Act for review of the exercise of a power of the Court by a Registrar and that any application must be made within 21 days after the day on which the power was exercised. A party seeking a review can apply to the Court to dispense with any requirement of the Rules (Rule1.34).



Schedule

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Second Applicant	KIM SMITH
Third Applicant	ANN AND LINDSAY CLOUT SMSF PTY LTD ACN 154 516 006
Fourth Applicant	ANN CLOUT
Fifth Applicant	LINDSAY CLOUT
Sixth Applicant	JOHN ARTHUR HEWITT
Seventh Applicant	CHANTEL WALKER
Eighth Applicant	MARSHALLS TRANSPORT PTY LTD
Ninth Applicant	NICHOLAS MARSHALL
Tenth Applicant	MELISSA MARSHALL