



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: 20 September 2017

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

1. The return of subpoena hearing on 20 September 2017 in relation to the subpoenas addressed to:
 - 1.1. The Proper Officer, AECOM Services Pty Ltd ACN 000 691 690 (the **AECOM Subpoena**)
 - 1.2. The Proper Officer, New South Wales Environmental Protection Authority (the **NSW EPA Subpoena**)
 - 1.3. The Proper Officer, GHD Pty Ltd ACN 008 488 373 (the **GHD Subpoena**)
 - 1.4. The Proper Officer, Westpac Banking Corporation ACN 007 457 141 (the **Westpac Subpoena**)
 - 1.5. The Proper Officer, Coffey International Limited, ACN 003 835 112 (the **Coffey Subpoena**), and



1.6. The Proper Officer, CRC Care Pty Ltd, ACN 113 908 044 (the **CRC Care Subpoena**),

be vacated.

AECOM, Westpac, NSW EPA and GHD

2. The subpoenas addressed to:

2.1. The Proper Officer, AECOM Services Pty Ltd ACN 000 691 690 (the **AECOM Subpoena**)

2.2. The Proper Officer, New South Wales Environmental Protection Authority (the **NSW EPA Subpoena**), and

2.3. The Proper Officer, GHD Pty Ltd ACN 008 488 373 (the **GHD Subpoena**), and

2.4. The Proper Officer, Westpac Banking Corporation ACN 007 457 141 (the **Westpac Subpoena**).

be adjourned to 9.30am on Wednesday, 4 October 2017 at the Law Courts Building, Queens Square, Sydney.

3. The date by which any notice of objection in relation to:

3.1. the documents produced in response to the NSW EPA Subpoena

3.2. the documents produced in response to the AECOM Subpoena

3.3. the documents produced in response to the Westpac Subpoena, and/or

3.4. the further documents produced in response to the GHD Subpoena,

or any application to set aside those subpoenas be filed, be EXTENDED to 4 October 2017.

Coffey International and CRC Care



4. Leave be granted to the solicitors for the Respondent to have first access to (and to uplift):
 - 4.1. the documents produced in response to the subpoena addressed to The Proper Officer, Coffey International Limited, ACN 003 835 112 (the **Coffey Subpoena**), and
 - 4.2. any further documents produced on 20 September 2017 in response to the subpoena addressed to The Proper Officer, CRC Care Pty Ltd, ACN 113 908 044 (the **CRC Care Subpoena**),

until 4.30pm on 11 October 2017.
5. By 4.30pm on 11 October 2017:
 - 5.1.1. 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 referred to in Order 4 with such notification to identify:
 - 5.1.2. each document in relation to which a full claim of confidentiality or privilege is made;
 - 5.1.3. each document in relation to which a partial claim of confidentiality or privilege is made; and
 - 5.1.4. 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,
- 5.2. the solicitors for the Respondent must provide the Court with:
 - 5.2.1. a redacted copy of each document referred to in Order 4 in relation to which a partial claim of confidentiality or privilege is made with only



those parts of the document over which confidentiality or privilege is claimed to be redacted, and

5.2.2. a separate envelope containing all documents referred to in Order 4 in relation to which a full claim of confidentiality or privilege is made.

6. The solicitors for the Respondent return the documents referred to in Order 4 to the Registry by 4.30pm on 11 October 2017 or until further order of this Court.

7. Leave be granted to the solicitors for the Applicants to access and uplift for the purposes of inspection and copying:

7.1. the documents referred to in Order 4 in respect of which no confidentiality or privilege claims have been made in accordance with Order 5, and

7.2. any redacted copies of the documents referred to in Order 4 in respect of which partial claims of confidentiality and/or privilege have been made in accordance with Order 5,

from 9.30am on 12 October 2017.

Jacobs Group, SMEC, WSP and GHD Subpoenas- first access period

8. The date until which the Respondent has first access to the documents produced:

8.1. 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 (the **Jacobs Group Subpoena**) (S9)

8.2. in response to the subpoena addressed to The Proper Officer, WSP Australia Pty Limited ACN 078 004 798 (the **WSP Subpoena**) (S7)

8.3. in response to the subpoena addressed to The Proper Officer, SMEC Australia Pty Ltd ACN 065 475 149 (the **SMEC Subpoena**) (S2), and



8.4. on 10 August 2017 in response to the subpoena addressed to The Proper Officer, GHD Pty Ltd ACN 008 488 373 (the **GHD Subpoena**) (S10),

be EXTENDED to 4.30pm on 11 October 2017.

9. The time by which the solicitors for the Respondent are to:

9.1. notify the solicitors for the Applicants in writing of any confidentiality or privilege claims made over the documents referred to in Order 7, with such notification to identify:

9.1.1. each document in relation to which a full claim of confidentiality or privilege is made

9.1.2. each document in relation to which a partial claim of confidentiality or privilege is made, and

9.1.3. in respect of each document in relation to which a full or partial claim of confidentiality is made, the basis upon which that claim is made, and

9.2. provide the Court with:

9.2.1. a redacted copy of each document referred to in Order 7 in relation to which a partial claim of confidentiality or privilege is made with only those parts of the document over which confidentiality or privilege is claimed to be redacted, and

9.2.2. a separate envelope containing all documents referred to in Order 7 in relation to which a full claim of confidentiality or privilege is made,

be EXTENDED to 4.30pm on 11 October 2017.

10. The date by which the solicitors for the Respondent are to return to the Registry the documents referred to in Order 7, be EXTENDED to 4.30pm on 18 October 2017.



11. The date from which leave be granted to the solicitors for the Applicants to access and uplift for the purposes of inspection and copying:
 - 11.1. the documents referred to in Order 7 in respect of which no confidentiality and/or privilege claims have been made in accordance with Order 8; and
 - 11.2. any redacted copies of documents referred to in Order 7 in respect of which partial claims of confidentiality and/or privilege have been made in accordance with Order 8,
- be EXTENDED to 9.30am on 12 October 2017.

General

12. Leave granted pursuant to Orders 4, 7, and 11 to access and uplift documents is granted on the following conditions:
 - 12.1. 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,
 - 12.2. documents be returned to the Registry in the same condition as when uplifted, and
 - 12.3. documents be returned promptly and, in any event, when an office of the Registry so requests.
13. On completion of this matter, the Registrar may return to the addressee of any subpoena any document without giving the issuing party any further notice.



Date that entry is stamped: 20 September 2017

Warwick Soden
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 (Rule 1.34).



Schedule

No: NSD1908/2016

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

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