



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 NG

DATE OF ORDER: 18 October 2017

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

Access Macquarie Subpoena – (S12)

1. Leave be granted to the solicitors for the New South Wales Environment Protection Authority (**NSW EPA**) to have access to (and to uplift) the documents produced in response to the subpoena issued to The Proper Officer, Access Macquarie Limited (**Access Macquarie Subpoena**) (S12) until 4.30pm on 25 October 2017.
2. By 4.30pm on 25 October 2017:
 - 2.1. The solicitors for the NSW EPA are to notify the solicitors for the Applicants and the Respondents in writing of any confidentiality or privilege claims made over the documents produced in response to the subpoena addressed to Access Macquarie Limited with such notification to identify:
 - 2.1.1. each document in relation to which a full claim of confidentiality or privilege is made;
 - 2.1.2. each document in relation to which a partial claim of confidentiality or privilege is made; and



- 2.1.3. 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.
- 2.2. The solicitors for the NSW EPA must provide the Court with:
 - 2.2.1. a redacted copy of each document produced in response to the Access Macquarie Subpoena 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
 - 2.2.2. a separate envelope containing all documents produced in response to the Access Macquarie Subpoena in relation to which a full claim of confidentiality or privilege is made.
3. The solicitors for the NSW EPA return the documents produced in response to the Access Macquarie Subpoena to the Registry by 4.30pm on 25 October 2017.
4. Leave be granted to the solicitors for the Applicants and the Respondents to access and uplift for the purposes of inspection and copying:
 - 4.1. the documents produced in response to the Access Macquarie Subpoena in respect of which no confidentiality / privilege claims have been made in accordance with Order 2, and
 - 4.2. any redacted copies of documents produced in response to the Access Macquarie Subpoena in respect of which partial claims of confidentiality and/or privilege have been made in accordance with Order 2,from 9am on 26 October 2017.

AECOM Subpoena- S19

5. 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, AECOM Services Pty Ltd ACN 000 691 690 (**AECOM Subpoena**) (S19) until 4.30pm on 15 November 2017.
6. By 4.30pm on 15 November 2017:
 - 6.1. 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 AECOM Subpoena with such notification to identify:
 - 6.1.1. each document in relation to which a full claim of confidentiality or privilege is made;



- 6.1.2. each document in relation to which a partial claim of confidentiality or privilege is made; and
 - 6.1.3. 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.
- 6.2. The solicitors for the Respondent must provide the Court with:
- 6.2.1. a redacted copy of each document produced in response to the AECOM Subpoena 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
 - 6.2.2. a separate envelope containing all documents produced in response to the AECOM Subpoena in relation to which a full claim of confidentiality or privilege is made.
7. The solicitors for the Respondent return the documents produced in response to the AECOM Subpoena to the Registry by 4.30pm on 15 November 2017.
8. Leave be granted to the solicitors for the Applicants to access and uplift for the purposes of inspection and copying:
- 8.1. the documents produced in response to the AECOM Subpoena in respect of which no confidentiality / privilege claims have been made in accordance with Order 6, and
 - 8.2. any redacted copies of documents produced in response to the AECOM Subpoena in respect of which partial claims of confidentiality and/or privilege have been made in accordance with Order 6,
- from 9am on 16 November 2017.

Sullivan Nicolaides - (S17 and S18)

9. 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, Sullivan Nicolaides Pty Ltd.

NSW EPA Subpoena

10. The subpoena addressed to The Proper Officer, New South Wales Environment Protection Authority be adjourned to 9:30 am on Wednesday, 25 October 2017 at the Law Courts Building, Queens Square, Sydney.

Westpac and GHD Subpoena




11. The subpoenas issued to The Proper Officer, The Proper Officer, Westpac Banking Corporation ACN 007 457 141 and The Proper Officer, GHD Pty Ltd ACN 008 488 373 be adjourned to 9:30 am on Wednesday, 1 November 2017 at the Law Courts Building, Queens Square, Sydney.

General

12. Leave pursuant to Orders 1, 4, 5, 8 and 9 to access and uplift documents produced in response to the subpoenas issued to Access Macquarie Limited, AECOM and Sullivan Nicolaides 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.
 - 12.3. Documents be returned promptly and, in any event, when an officer of the Registry so requests.

Date that entry is stamped: 18 October 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