



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:** 25 October 2017

**WHERE MADE:** Sydney

#### **BY CONSENT, THE COURT ORDERS THAT:**

1. Leave be granted to the solicitors for the Respondent to have first access to (and to uplift) the documents in packet number **S20** produced in response to the subpoena addressed to The Proper Officer, New South Wales Environment Protection Authority (**NSW EPA Subpoena**) until 4.30pm on 22 November 2017.
2. By 4.30pm on 22 November 2017:
  - 2.1. 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 NSW EPA Subpoena 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 Respondent must provide the Court with:
  - 2.2.1. a redacted copy of each document produced in response to the NSW EPA 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 NSW EPA Subpoena in relation to which a full claim of confidentiality or privilege is made.
3. The solicitors for the Respondent return the documents produced in response to the NSW EPA Subpoena to the Registry by 4.30pm on 22 November 2017.
4. Leave be granted to the solicitors for the Applicants to access and uplift for the purposes of inspection and copying:
  - 4.1. the documents produced in response to the NSW EPA 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 NSW EPA Subpoena in respect of which partial claims of confidentiality and/or privilege have been made in accordance with Order 2,from 9am on 23 November 2017.
5. No access is granted to the documents in packet number **S21** produced in response to the NSW EPA Subpoena until further orders are made as sought by the Applicant and/or Respondent.

### **Access Macquarie Subpoena**

6. Order 4 made 18 October 2017 be vacated.
7. Leave be granted to the solicitors for the Applicants and the Respondents to access and uplift for the purposes of inspection and copying the documents in packet number **S22** produced in response to the subpoena issued to The Proper Officer, Access Macquarie Limited (Access Macquarie subpoena).
8. No access is granted to the documents in packet number **S23** produced in response to the Access Macquarie Subpoena until further orders are made as sought by the Applicant and/or Respondent.

### **NSW EPA Subpoena and Access Macquarie Subpoena**



9. The balance of the NSW EPA Subpoena and Access Macquarie Subpoena be stood over to 8 November 2017.

### **AECOM Subpoena**

10. The subpoena addressed to The Proper Officer, AECOM Services Pty Ltd ACN 000 691 690 (the **AECOM Subpoena**) be stood over to 9.30am on Wednesday, 1 November 2017 at the Law Courts Building, Queens Square, Sydney.
11. The date by which any notice of objection in relation to the documents produced in response to the AECOM Subpoena or any application to set aside that subpoena be filed, be EXTENDED to 1 November 2017.

### **SMEC, WSP and Coffey Subpoenas**

12. The date until which the Respondent has first access to:
  - 12.1. 1155 documents produced in response to the subpoena addressed to The Proper Officer, SMEC Australia Pty Ltd ACN 065 475 149 (the **SMEC Subpoena**) (S2) in uncommon file-type which require specialist applications to open and review
  - 12.2. 211 documents produced in response to the subpoena addressed to The Proper Officer, WSP Australia Pty Limited ACN 078 004 798 (the **WSP Subpoena**) (S7) in uncommon file-type which require specialist applications to open and review, and
  - 12.3. 274 documents produced in response to the subpoena addressed to The Proper Officer, Coffey International Limited ACN 003 835 112 (the **Coffey Subpoena**) in uncommon file-type which require specialist applications to open and review, be EXTENDED to 4.30pm on 1 November 2017.
13. The time by which the solicitors for the Respondent are to:
  - 13.1. 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:
    - 13.1.1. each document in relation to which a full claim of confidentiality or privilege is made
    - 13.1.2. each document in relation to which a partial claim of confidentiality or privilege is made, and
    - 13.1.3. 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



13.2. provide the Court with:

13.2.1. 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

13.2.2. 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 1 November 2017.

14. The date by which the solicitors for the Respondent are to return the documents referred to in Order 7 to the Registry be EXTENDED to 4.30pm on 1 November 2017.

15. The date from which leave be granted to the solicitors for the Applicants to access and uplift for the purposes of inspection and copying:

15.1. 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

15.2. 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 9am on 2 November 2017.

16. The requirement in Order 8 of the Orders of 18 October 2017 that the Respondent must, by 5:00pm on 24 October 2017, file and serve an affidavit outlining the reasons for an extension be extended to 1 November 2017 .

### **General**

17. Leave pursuant to Orders 1, 4 and 10 to access and uplift documents produced in response to the NSW EPA, SMEC, Coffey and WSP Subpoenas is granted on the following conditions:

17.1. 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.

17.2. Documents be returned to the Registry in the same condition as when uplifted.

17.3. Documents be returned promptly and, in any event, when an officer of the Registry so requests.



**Date that entry is stamped: 25 October 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