



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

No: NSD1908/2016

GAVIN SMITH others named in the schedule
Applicant

COMMONWEALTH OF AUSTRALIA (DEPARTMENT OF DEFENCE)
Respondent

ORDER

REGISTRAR: REGISTRAR NG

DATE OF ORDER: 22 November 2017

WHERE MADE: Sydney

THE COURT ORDERS THAT:

The First AECOM Subpoena and GHD Subpoena:

1. 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:
 - (a) The Proper Officer, AECOM Services Pty Ltd ACN 000 691 690 and issued by the Court on 09 June 2017 (the First AECOM Subpoena) (S29); and
 - (b) The Proper Officer, GHD Pty Ltd ACN 008 488 373 (the GHD Subpoena) (S28),until 4:30pm on 20 December 2017.
2. By 4:30pm on 20 December 2017:
 - (a) the solicitors for the Respondents are to notify the solicitors for the Applicants in writing of any confidentiality orders or privilege claims made over the documents



produced in response to the First AECOM subpoena and the GHD subpoena with such notification to identify:

- (i) each document in relation to which a full claim of confidentiality or privilege is made.
- (ii) each document in relation to which a partial claim of confidentiality or privilege is made.
- (iii) 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.

(b) The solicitors for the Respondent must provide the Court with:

- (i) a redacted copy of each document produced in response to the First AECOM Subpoena and the GHD Subpoena in relation to which a partial claim for confidentiality or privilege is made with only those parts of the document over which the confidentiality or privilege is claimed to be redacted.
- (ii) A separate envelope containing all documents produced in response to the First AECOM subpoena and the GHD Subpoena in relation to which a full claim of confidentiality or privilege is made.

3. The solicitors for the Respondent are to return the document produced in response to the First AECOM Subpoena and the GHD Subpoena to the Registry by 4:30pm on 20 December 2017.

4. Leave be granted to the solicitors for the Applicants to access and uplift for the purposes for inspecting and copying:

- (a) The documents produced in response to the First AECOM Subpoena and the GHD Subpoena in respect of which partial claims have been made in accordance with Order 2, and



(b) Any redacted copies of documents produced in response to the First AECOM Subpoena and GHD Subpoena in respect of which partial claims of confidentiality or privilege have been made in accordance with Order 2,

from 9:00am on 20 December 2017.

5. The balance of the subpoena addressed to First AECOM Subpoena and issued by the Court on 09 June 2017 be adjourned to 9:30am on Wednesday 29 November 2017 at Law Courts Building, Queens Square, Sydney.
6. The date by which any notice of objection in relation to any further documents produced in response to the First AECOM Subpoena, or any other application to set aside those subpoenas be filed, be extended to 29 November 2017.

The Second AECOM Subpoena:

7. The subpoena addressed to the Proper Officer, AECOM Services Pty Ltd ACN 000 691 690 and issued by the Court on 04 September 2017 (the Second AECOM Subpoena) be adjourned to 9:30am on Wednesday, 29 November 2017 at the Law Courts Building, Queens Square, Sydney.
8. The date by which any notice of objection in relation to any further documents produced in response to the Second AECOM Subpoena, or any application to set aside those subpoenas be filed, be extended to 29 November 2017.

NSW EPA Subpoena:

9. Further to orders made on 25 October 2017 the date until which the Respondent has first access to the documents produced in response to the subpoena addressed to The Proper Officer, New South Wales Environment Protection Authority (the **NSW EPA Subpoena**) packet number S20 be extended to 4:30pm on 29 November 2017.



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

- (a) Notify the solicitors for the Applicants in writing of any confidentiality or privilege claims made over the documents produced in response to the NSD EPA Subpoena, with such notification to identify:
 - (i) each document in relation to which a full claim of confidentiality or privilege is made;
 - (ii) each document in relation to which a partial claim of confidentiality or privilege is made;
 - (iii) 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
- (b) provide the Court with:
 - (i) a redacted copy of each document produced in response to the NSW EPA Subpoena in relation to which a partial claim of confidentiality or privilege is made with only those parts of the document over which the confidentiality or privilege is claimed to be redacted, and
 - (ii) 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,

be extended to 4:30pm on 29 November 2017.

11. The date by which the solicitors for the Respondents are to return the documents produced in relation to the NSW EPA Subpoena to the Registry be extended to 4:30pm on 29 November 2017.

12. The date from which leave is granted to the solicitors for the Applicants to access and uplift for the purpose of inspection and copying:



- (a) The documents produced in response to the NSW EPA Subpoena in respect of which no confidentiality and / or privilege claims have been made in accordance with Order 10, and
- (b) 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 10,

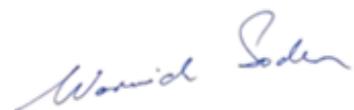
be extended to 9:00am on 30 November 2017.

General:

13. Leave pursuant to Orders 1, 4, 9 and 12 to access and uplift documents produced in response to the AECOM, GHD and NSW EPA is granted on the following conditions:

- (a) 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.
- (b) Documents to be returned to the Registry in the same condition as when uplifted.
- (c) Documents be returned promptly and, in any event, when an officer of the Registry so requests.

Date that entry is stamped: 23 November 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

No: NSD1908/2016

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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
Respondent	COMMONWEALTH OF AUSTRALIA (DEPARTMENT OF DEFENCE)