



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

No: NSD1908/2016

**GAVIN SMITH** and another/others named in the schedule  
Applicant

**DEPARTMENT OF DEFENCE** and another/others named in the schedule  
Respondent

### **ORDER**

**REGISTRAR:** REGISTRAR NG  
**DATE OF ORDER:** 20 February 2018  
**WHERE MADE:** Sydney (In Chambers)


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

1. Leave be granted to the solicitors for the Respondent to have first access to (and to uplift) for the purposes of inspection and copying the documents produced in response to the subpoena addressed to Environment Protection Authority (S32) until 4.30pm on 6 March 2018.
2. By 4.30pm on 6 March 2018:
  - 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 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 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 Subpoena in relation to which a full claim of confidentiality or privilege is made.
3. The solicitors for the Respondent are to return the documents produced in response to the Subpoena to the Registry by 4.30pm on 6 March 2018.
  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 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 in respect of which partial claims of confidentiality and/or privilege have been made in accordance with Order 2,from 9am on 7 March 2018.
  5. Leave pursuant to Orders 1 and 4 to access and uplift documents produced in response to the Subpoena is granted on the following conditions:
    - 5.1. 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.
    - 5.2. Documents be returned to the Registry in the same condition as when uplifted.
    - 5.3. Documents be returned promptly and, in any event, when an officer of the Registry so requests.

**Date that entry is stamped: 20 February 2018**

  
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)