



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1908/2016

GAVIN SMITH and others named in the schedule
Applicant

DEPARTMENT OF DEFENCE and another named in the schedule
Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 6 June 2019

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Expert evidence (joint expert conference)

1. An order pursuant to s 33ZF and/or 37P(2) of the *Federal Court of Australia Act 1976* (Cth) that:
 - a. the parties are to arrange a joint expert conference between the following experts in the field of Chemistry (**Chemistry joint expert conference**) namely:
 - i. Professor Jennifer Field, who provided a report dated 29 August 2018, upon whom the applicants in the Smith Proceeding, the Hudson Proceeding and the Bartlett Proceeding each rely; and
 - ii. Professor Ian Cousins, who provided a report dated 18 March 2019, upon whom the respondent in the Smith Proceeding, the Hudson Proceeding and the Bartlett Proceeding relies.
 - b. by 5 July 2019, the parties are to confer and seek to reach agreement as to the form of questions and directions to be provided for the Chemistry joint experts and to thereafter file with the Associate to Justice Lee a draft order listing questions which are to be proposed to be dealt with by the Chemistry joint



expert conference with any disputed questions to be the subject of a hearing on a date convenient to the Court after 16 July 2019.

- c. Professor Field and Professor Cousins are to:
 - i. attend the joint expert conference in person commencing at 9am on 9 August 2019 and continue the Chemistry joint expert conference, with breaks approved by the Facilitator, until the joint report is complete;
 - ii. address the list of questions as ordered by the Court;
 - iii. provide a joint report addressing the list of questions ordered by the Court and any other matters which in the experts' opinion needs to be addressed;
 - iv. prepare the joint report, to the extent possible, in plain English and which explains the reasoning of the experts in as concise a manner as practicable and which does not incorporate, by reference, sections from prior reports of the Experts in the joint report; and
 - v. provide the joint report to the Court by 30 August 2019, after which time it then will be provided to the parties by the Court.
- d. Registrar Farrell is to be appointed as the Facilitator of the Chemistry joint expert conference.

2. The Chemistry joint expert conference is to be conducted as follows:

- a. in accordance with the directions of the Facilitator;
- b. each Expert must exercise their independent judgment in relation to the Joint Expert Conference, and is not to act upon any instruction or request to withhold or avoid agreement;
- c. each Expert must endeavour to reach agreement with the other Expert on any issue in dispute between them, or failing agreement, endeavour to identify and clarify, with precision, the basis of disagreement on the issues which are in dispute.

3. The parties and their lawyers are not to attend the Joint Expert Conference and must not have any communication with the Experts from the date of this order until after submission to the Court of the joint report (with the intention that all logistical



arrangements as to notification of the details of the Chemistry joint expert conference are to be made by the Facilitator).

4. The proceeding be adjourned for a further Case Management Hearing before Justice Lee and Registrar Farrell at 2:15pm on 18 June 2019.

Orders in the Hudson Proceedings

5. The time for compliance with order 10 of the Orders made by Jagot J on 14 February 2018 in respect of the applicants' reply evidence in respect of hydrology and hydrogeology be extended to 2 July 2019.
6. The time for compliance order 10 of the Orders made by Jagot J on 14 February 2018 in respect of the applicants' reply evidence in respect of land valuation be extended to 5 July 2019.
7. The time for compliance order 10 of the Orders made by Jagot J on 14 February 2018 in respect of the applicants' reply evidence in respect of remediation be extended to 18 July 2019.

Orders in the Bartlett proceedings

8. The time for compliance with order 15 of the Orders made by Jagot J on 9 October 2018 be extended to:
 - a. 21 June 2019 in respect of the respondent's land valuation and chemistry expert reports;
 - b. 8 July 2019 in respect of the respondent's epidemiology expert report;
 - c. 9 August 2019 in respect of the respondent's hydrogeology and hydrology expert reports; and
 - d. 28 June 2019 in respect of the respondent's lay evidence.

Date that entry is stamped: 6 June 2019



Warrick Soden
Registrar



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
Eighth Applicant	MARSHALLS TRANSPORT PTY LTD
Ninth Applicant	NICHOLAS MARSHALL
Tenth Applicant	MELISSA MARSHALL
Respondent	COMMONWEALTH OF AUSTRALIA (DEPARTMENT OF DEFENCE)