



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

No: NSD1908/2016
NSD1155/2017
NSD1388/2018

No. NSD1908/2016

GAVIN SMITH and others named in the schedule
Applicants

COMMONWEALTH OF AUSTRALIA
Respondent

No: NSD1155/2017

BRADLEY JAMES HUDSON and others named in the schedule
Applicants

COMMONWEALTH OF AUSTRALIA
Respondent

No: NSD1388/2018

KIRSTY BARTLETT and another named in the schedule
Applicants

COMMONWEALTH OF AUSTRALIA
Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 3 February 2020

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. Pursuant to s 54A(3) of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) and r 28.67(1) of the *Federal Court Rules 2011* (Cth) (**FCR**) the report of Associate



Professor Nick Osborne dated 23 December 2019 produced in accordance with Order 22 of the orders dated 2 October 2019 (**Epidemiology/Toxicology Referee Report**):

- (a) be varied so as to delete the word “not” in the second line of paragraph [71];
and
- (b) be otherwise adopted.

2. Pursuant to s 54A(3) of the FCA Act and FCR 28.67(1):

- (a) paragraphs [1], [2], [3(a)], [3(c)], [4(a)], [4(b)], [5]-[146], [148]-[152], [171]-[188] [191]-[193] and [223]-[244] of the report of Professor Chris Eves (**Land Valuation Referee**) dated 18 December 2019 produced in accordance with Order 28 of the orders dated 2 October 2019 (**Land Valuation Referee Report**) be adopted;
- (b) adoption of paragraphs [3(b)], [3(d)], [4(c)], [4(d)], [147], [153]-[170], [189], [190] and [194]-[222] of the Land Valuation Referee Report be deferred until further order.

3. Pursuant to s 54A(3) of the FCA Act and FCR 28.67(1)(b), the Land Valuation Referee is to provide an explanation by way of a further report as to:

- (a) the conclusion (referred to in [196], [201], [218]-[221] and [222(a)]) that there has been a loss of the ability to use bore water at the Hudson Property, such that the highest and best use of the Hudson Property has changed;
- (b) how, if at all, the reasoning and conclusions in [3(b)], [3(d)], [189] and [194]-[222] of the Land Valuation Referee Report would be affected if it were found that, notwithstanding the PFAS contamination, bore water is used and can be used at the Hudson Property for purposes relevant to equine operations, other than ingestion by horses or watering grass which is consumed by horses.



4. Pursuant to s 54A(3) of the FCA Act and FCR 28.67(1)(b) the Land Valuation Referee is to provide an explanation by way of a further report as to the following matters:
 - (a) having regard to:
 - (i) the fact that the Land Valuation Referee has (in [147], [163] and [166]) referred to the report of Mr Bishop in the Oakey Class Action; and
 - (ii) the fact that Mr Bishop in his report in the Katherine Class Action did not provide any opinion as to the specific property diminution values for Katherine; and
 - (iii) the conclusion expressed by the Land Valuation Referee (see [161], [162] and [170(e)]) that the direct comparison method is the most appropriate method of valuation to determine the value of the Bartlett Property and that there is market evidence available to adopt the direct comparison method;

in what ways and on what basis has the Land Valuation Referee used Mr Anderson's valuation work (and, if so, which work) in answering Katherine Question 3; and
 - (b) whether the Land Valuation Referee's view would change in light of the above matters.
5. For the purpose of the preparation of the further report by the Land Valuation Referee (addressing the matters in 3 and 4 above) the parties are to provide to counsel assisting the Land Valuation Referee a copy of the outline of submissions filed by the respondent on 29 January 2020 and the transcript of the interlocutory hearing on 30 January 2020.
6. The Land Valuation Referee is to submit the further report to the Court in accordance with FCR 28.66 addressed to the District Registrar, and to send a copy to the Associate to Lee J, on or before 14 February 2020.



7. The further report of the Land Valuation Referee is not to exceed five pages.
8. The costs of the interlocutory hearing on 30 January 2020 be reserved.

Date that entry is stamped: 4 February 2020

Sia Lagos
Registrar



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
Eighth Applicant	MARSHALLS TRANSPORT PTY LTD
Ninth Applicant	NICHOLAS MARSHALL
Tenth Applicant	MELISSA MARSHALL

No. NSD1155/2017

Second Applicant	SHARYN DANELLE HUDSON
Third Applicant	MEATIES PTY LTD (ACN 113 651 755) AS TRUSTEE FOR THE BSTS UNIT TRUST
Interested Person	BANK OF QUEENSLAND

No. NSD1388/2018

Second Applicant	ANTHONY CRAIG BARTLETT
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