

## **AMENDED NOTICE OF MOTION**

### **COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2020/359004

### **TITLE OF PROCEEDINGS**

Plaintiff	<b>DANNY MARIELLE MOUSSA</b>
First Defendant	<b>CAMDEN COUNCIL</b>
Second Defendant	<b>CORNISH GROUP SPRING FARM PTY LTD ACN 120 837 381</b>
Third Defendant	<b>SMEC TESTING SERVICES PTY LTD (IN LIQUIDATION) ACN 101 164 792</b>

### **FILING DETAILS**

Person seeking orders	<b>DANNY MARIELLE MOUSSA</b> , Plaintiff
Filed in relation to	Documents to be Discovered by the Defendants
Legal representative	André Joseph Adams, Mayweathers
Legal representative reference	210733
Contact name and telephone	André Joseph Adams, 02 8020 5720
Contact email	andre.adams@mayweathers.com.au

### **PERSON AFFECTED BY ORDERS SOUGHT**

**CAMDEN COUNCIL**, First Defendant  
**CORNISH GROUP SPRING FARM PTY LTD, ACN 120 837 381**, Second Defendant  
**SMEC TESTING SERVICES PTY LTD (IN LIQUIDATION), ACN 101 164 792**, Third Defendant

### **HEARING DETAILS**

This motion is listed on 14 March 2023 his Honour Garling J.

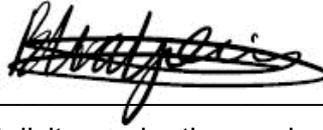
## ORDERS SOUGHT

- 1 ~~By 28 October 2022 and pursuant to r 21.2(1)(a) of the UCPR, the First Defendant is to give discovery to the Plaintiff of the documents set out in Schedule A to these Orders along with an amended list of documents in accordance with rr 21.3 and 21.4 of the UCPR and the Electronic Exchange Protocol appearing at Schedule A of the Orders of 11 February 2022 (**Protocol**).~~
- 2 ~~By 28 October 2022 and pursuant to r 21.2(1)(a) of the UCPR, the Second Defendant is to give discovery to the Plaintiff of the documents set out in Schedule B to these Orders along with an amended list of documents in accordance with rr 21.3 and 21.4 of the UCPR and the Protocol.~~
- 3 ~~By 28 October 2022 and pursuant to r 21.2(1)(a) of the UCPR, the Third Defendant is to give informal discovery to the Plaintiff of documents within the classes described in Schedule C of these Orders.~~
- 4 ~~By 25 November 2022, the Third Defendant is to give discovery of documents within the classes described in Schedule C of these Orders:~~
  - (a) ~~by serving a verified list of documents in accordance with rr 21.3 and 21.4 of the UCPR, the format of which may be modified so as to accommodate the terms of the Protocol; and~~
  - (b) ~~electronically, in accordance with the Protocol, including by serving a copy of all documents, other than wholly privileged documents set out in the verified list and which are in its possession, custody and power.~~
- 5 Pursuant to r 21.2(1)(a) of the UCPR, the First Defendant is to give discovery to the Plaintiff of documents within the classes described in Schedule D of these Orders.
- 6 ~~By 24 February 2023~~ 22 January 2024 the First Defendant is to give discovery pursuant to Order 5 above:
  - (a) by serving a verified list of documents in accordance with rr 21.3 and 21.4 of the UCPR, the format of which may be modified so as to accommodate the terms of the Protocol; and
  - (b) electronically, in accordance with the Protocol, including by serving a copy of all documents, other than wholly privileged documents set out in the verified list and which are in its possession, custody and power.

- 7 Pursuant to r 21.2(1)(a) of the UCPR, the Second Defendant is to give discovery to the Plaintiff of documents within the classes described in Schedule E of these Orders.
- 8 By ~~24 February 2023~~ 22 January 2024, the Second Defendant is to give discovery pursuant to Order 7 above:
- (a) by serving a verified list of documents in accordance with rr 21.3 and 21.4 of the UCPR, the format of which may be modified so as to accommodate the terms of the Protocol; and
  - (b) electronically, in accordance with the Protocol, including by serving a copy of all documents, other than wholly privileged documents set out in the verified list and which are in its possession, custody and power.
- 9 Pursuant to r 21.2(1)(a) of the UCPR, the Third Defendant is to give discovery to the Plaintiff of documents within the classes described in Schedule F of these Orders.
- 10 By ~~24 February 2023~~ 22 January 2024, the Third Defendant is to give discovery pursuant to Order 9 above:
- (a) by serving a verified list of documents in accordance with rr 21.3 and 21.4 of the UCPR, the format of which may be modified so as to accommodate the terms of the Protocol; and
  - (b) electronically, in accordance with the Protocol, including by serving a copy of all documents, other than wholly privileged documents set out in the verified list and which are in its possession, custody and power.

**SIGNATURE**

Signature of legal representative



Capacity

Solicitor under the employ of the Solicitor on Record

Date of signature

15 December 2023

**NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT**

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

**REGISTRY ADDRESS**

Street address

Supreme Court of New South Wales, Level 5, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW 2000

Postal address

Supreme Court of NSW, GPO Box 3, Sydney NSW 2001, Australia

Telephone

1300 679 272

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## **SCHEDULE A**

### **~~CATEGORIES OF DOCUMENTS TO BE DISCOVERED BY THE FIRST DEFENDANT~~**

- ~~1 — Sheet numbers 1 to 5 and 7 to 10 of the document titled, "Sydney Regional Environmental Plan No. 9" located at CAM.001.001.0970.~~
- ~~2 — The document referred to at CAM.001.001.1605 and titled, "Geotechnique Report: 11324/1-AA dated 14 February 2007".~~
- ~~3 — The document referred to at CAM.001.001.1599 and titled, "Salinity Assessment: 42-50 Springs Road, Spring Farm, Prepared for Camden Council, Prepared by Geotechnique Pty Ltd, Ref No 11324/1-AA, Dated 14 February 2007".~~
- ~~4 — The document attached to the email of 3 February 2009, at CAM.001.001.1890 and referred to as "legal advice".~~
- ~~5 — The document referred to at CAM.001.001.1884 as, "Development Application No. 1089/2008".~~
- ~~6 — The document referred to at CAM.001.001.1192 as, "Validation report".~~
- ~~7 — The documents referred to in the report at CAM.001.001.0619 and titled:
 
  - ~~(a) — "Site Investigations for Urban Salinity, Spring Farm Stages 1 and 2 Remediation Action Plan, SMEC, April 2006"; and~~
  - ~~(b) — "Salinity Hazard Assessment & Management Plan, Spring Farm Stages 1 and 2, Camden, SMEC, June 2005".~~~~
- ~~8 — The document attached to the email at CAM.001.001.1163 and titled "JT10610A-r1(rev2).pdf", and which is referred to in the email at CAM.001.001.1163 as an "amended" version of the "Geoenviro" report.~~
- ~~9 — The full version of the document that was discovered at CAM.001.001.0514 and with the subject, "Site Validation Stage 40 Spring Road, Spring Farm".~~
- ~~10 — The document referred to at CAM.001.001.0845 as, "Contamination Report".~~
- ~~11 — The documents referred to at CAM.001.001.1060 as:
 
  - ~~(a) — "DA834/2011"; and~~
  - ~~(b) — "DA835/2011".~~~~
- ~~12 — The document referred to in the email of 23 July 2013, at CAM.001.001.1051 and referred to as "Development application 423/2005".~~

- ~~13 — The document attached to the email at CAM.001.001.1122 and titled “DA50-2013 Detailed Assessment 20 lot Subdivision second referral.doc”, and which is referred to in the email at CAM.001.001.1122 as an “engineering comments and conditions for DA 50/2013”.~~
- ~~14 — The document which is referred to at CAM.001.001.1026 as, “The fill validation letter” in respect of SMEC Urban’s review of information “which dates previous to 2008”.~~
- ~~15 — The remaining documents for the File Coversheet at CAM.001.001.0773 in respect of Lot 3 in DP1176798.~~
- ~~16 — The document which is referred to at CAM.001.002.2576 as, “Property Inspection report dated 07/11/2013”.~~
- ~~17 — The documents which are referred to at CAM.001.001.1029 and titled:~~
- ~~(a) — “Statement of Environment Effects”; and~~
  - ~~(b) — “Pre-DA Advice Letter issued by Council”~~
- ~~18 — The document which is referred to at CAM.001.001.0040 as, “PMP” which is stated to be enclosed to the letter at CAM.001.001.0040, at clause “2.2”.~~
- ~~19 — The document which was purported to have been attached at CAM.001.001.0399 and which is referred to as, “Memorandum dated 6 November 2015 (Project 34288.22-1)”.~~
- ~~20 — All sheets (being at least sheets 1 to 12) of the document at CAM.001.003.4446 and titled “Section 96 Modification Application Lodgement Checklist”.~~
- ~~21 — The documents which are collectively referred to at CAM.001.002.6138 as, “the ‘missing’ Lot Classifications for Lots 4421-4425”.~~
- ~~22 — The documents referred to at page 3 of CAM.001.001.0927 as:~~
- ~~(a) — “DA 914/2006”; and~~
  - ~~(b) — “DA 781/2013”.~~
- ~~23 — Any Site Classification Report for:~~
- ~~(a) — Lot 6101 in DP1228464;~~
  - ~~(b) — Lot 6102 in DP1228464;~~
  - ~~(c) — Lot 6103 in DP1228464;~~
  - ~~(d) — Lot 6104 in DP1228464;~~
  - ~~(e) — Lot 6201 in DP1228465;~~
  - ~~(f) — Lot 6202 in DP1228465;~~

~~(g) — Lot 6203 in DP1228465;~~

~~(h) — Lot 6204 in DP1228465;~~

~~(i) — Lot 6205 in DP1228465;~~

~~(j) — Lot 6206 in DP1228465; and~~

~~(k) — Lot 6207 in DP1228465.~~

## SCHEDULE B

### ~~CATEGORIES OF DOCUMENTS TO BE DISCOVERED BY THE SECOND DEFENDANT~~

- 1 — ~~The documents in the email at CGSF.004.014.1130, titled:~~
- ~~(a) — “1. WAX strip survey of the natural surface (after site clearing & topsoil removal)”;~~
  - ~~(b) — “2. WAX interim import survey reports (each stage of import dated)”;~~
  - ~~(c) — “4. Final WAX survey levels (completion of site filling to FSL)”;~~
  - ~~(d) — “5. Fill plan showing fill depths (for future site classification reports);  
and~~
  - ~~(e) — “6. Validation report (recommending that the site is suitable for  
'residential use')”.~~
- 2 — ~~The documents referred to in the email at CGSF.005.015.5351 as, “G9 Geotech level 1 certificates and other relevant documents regarding the bulk earthworks that have occurred in this area — provide documentation/advice”.~~
- 3 — ~~“Lot Classifications” referred to in CGSF.005.002.1240 for:~~
- ~~(a) — Lot 6101 in DP1228464;~~
  - ~~(b) — Lot 6102 in DP1228464;~~
  - ~~(c) — Lot 6103 in DP1228464;~~
  - ~~(d) — Lot 6104 in DP1228464;~~
  - ~~(e) — Lot 6201 in DP1228465;~~
  - ~~(f) — Lot 6202 in DP1228465;~~
  - ~~(g) — Lot 6203 in DP1228465;~~
  - ~~(h) — Lot 6204 in DP1228465;~~
  - ~~(i) — Lot 6205 in DP1228465;~~
  - ~~(j) — Lot 6206 in DP1228465; and~~
  - ~~(k) — Lot 6207 in DP1228465.~~
- 4 — ~~All correspondence (including attachments to emails) from Colin Lake to Michael Khoury in response to the email request for documents from Mr Khoury to Mr Lake contained at CGSF.008.001.0189.~~

~~5 To the extent that the documents referred to in the letter from the Plaintiff's solicitors to the Second Defendant's solicitors dated 28 September 2022 exist and have not been addressed or discovered in the letter from the Second Defendant's solicitors to the Plaintiff's solicitors dated 4 October 2022, these documents.~~

## SCHEDULE C

### **CATEGORIES OF DOCUMENTS TO BE DISCOVERED BY THE THIRD DEFENDANT**

- 1 — All agreements, contracts and/or retainers between the Third Defendant and any other person in respect of services provided by the Third Defendant in respect to any part of the Council Land.
- 2 — All documents created by, sent, or received by the Third Defendant in the period 1 July 2014 to 31 December 2015 referring to, and dealing with, services provided by the Third Defendant in respect to any part of the Council Land.
- 3 — All documents created by, sent, or received by the Third Defendant between 1 January 2007 and 31 December 2015, which refer to earthworks to be, or which were, undertaken on any part of the Council Land.
- 4 — All documents, plans, diagrams, reports, letters, advices, opinions, or laboratory or other testing results created by, sent, or received by the Third Defendant in the period 1 January 2007 to 31 December 2015 addressing or referring to:
  - (a) — the condition of the soil on any part of the Council Land;
  - (b) — the suitability of any land within the area of the Council Land for building works, including residential dwellings; and or
  - (c) — any structure built on land within the area of the Council Land.
- 5 — All documents containing details of any complaint(s), report(s) and/or identification(s) of any damage (including but not limited to, sinking, subsidence, movement, collapsing or cracking) within or on a lot, parcel of land, or a home thereon, located in the Council Land area, but excluding any document provided to the Third Defendant by the Plaintiff's solicitors in these proceedings.

Note:

In these categories, the term:

- — 'Council Land' means the same as the term defined in paragraph 8 of the Further Amended Statement of Claim filed 25 August 2022 in these proceedings.
- — 'Second Defendant' means and includes Cornish Group Spring Farm Pty Ltd, its directors, officers, employees and agents, and any related bodies corporate (as that term is used in s 50 of the Corporations Act 2001 (Cth)).
- — 'Third Defendant' means and includes SMEC Testing Services Pty Limited (In Liquidation) ACN 101 164 792, its directors, officers, employees and agents, and any related bodies corporate (as that term is used in s 50 of the Corporations Act 2001 (Cth)).

## SCHEDULE D

### CATEGORIES OF DOCUMENTS TO BE DISCOVERED BY THE FIRST DEFENDANT

- 1 — ~~All development applications (including supporting documents and reports) submitted by or on behalf of the Second Defendant relating to proposed development on any part of the Cornish Masterplan Area as defined in paragraph 1(c)(i) of the Further Amended Statement of Claim filed 25 August 2022 (FASOC) excluding the Council Land as defined in paragraph 8 of the FASOC.~~
- 2 — ~~All Development Approvals granted to the Second Defendant concerning any part of the Cornish Masterplan Area excluding the Council Land.~~
- 3 — ~~All approved plans of subdivision concerning any part of the Cornish Masterplan Area excluding the Council Land.~~
- 4 — ~~All documents created by, sent, or received by Camden Council in the period 1 July 2014 to 31 December 2015 referring to, and dealing with, services provided by the Third Defendant in respect of the Cornish Masterplan Area excluding the Council Land.~~
- 5 — All documents created by, sent, or received by the First Defendant between 1 January 2007 and 31 December 2015, which refer to earthworks to be, or which were, undertaken on any part of the Cornish Masterplan Area as defined in paragraph 1(c)(i) of the Further Amended Statement of Claim filed 25 August 2022 (FASOC) excluding the Council Land as defined in paragraph 8 of the FASOC.

~~All correspondence and documents created by, sent by and received by Camden Council in the period from 1 July 2007 to 31 December 2015, referring to the fill, composition of fill, and/or the condition of the soil on any land in the area of the Cornish Masterplan Area excluding the Council Land.~~
- 6 — ~~All documents, plans, diagrams, reports, letters, advices, opinions, or laboratory or other testing results created by, sent to or received by Camden Council in the period from 1 January 2007 to 31 December 2015 addressing or referring to:~~
  - (a) — ~~the condition of the soil on any part of land within the area of the Cornish Masterplan Area excluding the Council Land;~~
  - (b) — ~~the suitability of any land within the area of the Cornish Masterplan Area excluding the Council Land for building works, including residential dwellings; and/or~~
  - (c) — ~~any structure built on land within the area of the Cornish Masterplan Area excluding the Council Land.~~

Note:

For the purposes of category 5, "earthworks" means works by way of excavation, cutting, filling, compaction and stabilisation of the former natural state of the land, including any construction by way of drainage systems or supporting structures such as retaining walls.

## SCHEDULE E

### CATEGORIES OF DOCUMENTS TO BE DISCOVERED BY THE SECOND DEFENDANT

- 1 All documents created by, sent, or received by the Second Defendant between 1 January 2007 and 31 December 2015, which refer to earthworks to be, or which were, undertaken on any part of the Cornish Masterplan Area as defined in paragraph 1(c)(i) of the FASOC excluding the Council Land as defined in paragraph 8 of the FASOC.
- 2 All documents evidencing the Second Defendant's development, or agreement to develop, any part of the land within the Cornish Masterplan Area including, but not limited to, agreements with other registered proprietors of land in the Cornish Masterplan Area relating to actual or proposed development of that land.
- 3 All Planning Agreements or Planning Instruments under the *Environmental Planning and Assessment Act 1979* (NSW) in relation to any part of the Cornish Masterplan Area.
- ~~4 All development applications (including supporting documents and reports) submitted by or on behalf of the Second Defendant relating to proposed development on any part of the Cornish Masterplan Area excluding the Council Land~~
- ~~5 All Development Approvals granted to the Second Defendant concerning any part of the Cornish Masterplan Area excluding the Council Land.~~
- ~~6 All approved plans of subdivision concerning any part of the Cornish Masterplan Area excluding the Council Land.~~
- ~~7 All documents created by, sent, or received by the Second Defendant in the period 1 July 2014 to 31 December 2015 referring to, and dealing with, services provided by the Third Defendants in respect to any part of the Cornish Masterplan Area excluding the Council Land.~~
- ~~8 All documents, plans, diagrams, reports, letters, advices, opinions, or laboratory or other testing results created by, sent, or received by the Second Defendant in the period 1 January 2007 to 31 December 2015 addressing or referring to:
 
  - ~~(a) the condition of the soil on any part of the Cornish Masterplan Area excluding the Council Land;~~
  - ~~(b) the suitability of any land within the area of the Cornish Masterplan Area excluding the Council Land for building works, including residential dwellings; and/or~~
  - ~~(c) any structure built on land within the area of the Cornish Masterplan Area excluding the Council Land.~~~~

- ~~9 — All contracts of sale between the Second Defendant and any purchaser of any lot or parcel of land in the area of the Cornish Masterplan Area excluding the Council Land since 31 December 2010.~~
- ~~10 — All correspondence between the Second Defendant and any purchaser or proposed purchaser of any lot or parcel of land in the Cornish Masterplan Area excluding the Council Land since 31 December 2010.~~
- ~~11 — All documents containing details of any complaint(s), report(s) and/or identification(s) of any damage (including but not limited to, sinking, subsidence, movement, collapsing or cracking) within or on a lot, parcel of land, or a home thereon, located in the Cornish Masterplan Area excluding the Council Land, but excluding any document provided to the Second Defendant by the Plaintiff's solicitors in these proceedings.~~

Notes:

In these categories, the term 'Second Defendant' means and includes Cornish Group Spring Farm Pty Ltd, its directors, officers, employees and agents, and any related bodies corporate (as that term is used in s 50 of the *Corporations Act 2001* (Cth)).

For the purposes of Category 1, "earthworks" means works by way of excavation, cutting, filling, compaction and stabilisation of the former natural state of the land, including any construction by way of drainage systems or supporting structures such as retaining walls.

## SCHEDULE F

### CATEGORIES OF DOCUMENTS TO BE DISCOVERED BY THE THIRD DEFENDANT

- 1 ~~———— All agreements, contracts and/or retainers between the Third Defendant and any other person in respect of services provided by the Third Defendant in respect to any part of the Cornish Masterplan Area as defined in paragraph 1(c)(i) of the Further Amended Statement of Claim filed 25 August 2022 (FASOC) excluding the Council Land as defined in paragraph 8 of the FASOC.~~
  
- 2 ~~———— All documents created by, sent, or received by the Third Defendant in the period 1 July 2014 to 31 December 2015 referring to, and dealing with, services provided by the Third Defendant in respect to any part of the Cornish Masterplan Area excluding the Council Land.~~
  
- 3 All documents created by, sent, or received by the Third Defendant between 1 January 2007 and 31 December 2015, which refer to earthworks to be, or which were, undertaken on any part of the Cornish Masterplan Area as defined in paragraph 1(c)(i) of the FASOC excluding the Council Land as defined in paragraph 8 of the FASOC.
  
- 4 All documents, plans, diagrams, reports, letters, advices, opinions, or laboratory or other testing results created by, sent, or received by the Third Defendant in the period 1 January 2007 to 31 December 2015 addressing or referring to:
  - (a) the condition of the soil on any part of the Cornish Masterplan Area excluding the Council Land;
  - (b) the suitability of any land within the area of the Cornish Masterplan Area excluding the Council Land for building works, including residential dwellings; and/or
  - (c) any structure built on land within the area of the Cornish Masterplan Area excluding the Council Land.
  
- 5 ~~———— All documents containing details of any complaint(s), report(s) and/or identification(s) of any damage (including but not limited to, sinking, subsidence, movement, collapsing or cracking) within or on a lot, parcel of land, or a home thereon, located in the Cornish Masterplan Area excluding the Council Land, but excluding any document provided to the Third Defendant by the Plaintiff's solicitors in these proceedings.~~

Note:

In these categories, the term 'Second Defendant' means and includes Cornish Group Spring Farm Pty Ltd, its directors, officers, employees and agents, and any related bodies corporate (as that term is used in s 50 of the Corporations Act 2001 (Cth)).

In these categories, the term 'Third Defendant' means and includes SMEC Testing Services Pty Limited (In Liquidation) ACN 101 164 792, its directors, officers, employees and agents, and any related bodies corporate (as that term is used in s 50 of the Corporations Act 2001 (Cth)).

For the purposes of these categories, "earthworks" means works by way of excavation, cutting, filling, compaction and stabilisation of the former natural state of the land, including any construction by way of drainage systems or supporting structures such as retaining walls.