



HIGH COURT OF AUSTRALIA

Public Information Officer

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WESTERN AUSTRALIAN PLANNING COMMISSION v TEMWOOD HOLDINGS PTY LTD

A developer had no right to compensation for the Crown taking over ownership of a foreshore reserve, the High Court of Australia held today.

Temwood in 1992 acquired an area on the coast south of Perth which it proceeded to subdivide and develop in 1993 as the Bayshore Garden Estate with houses, a primary school, a recreation reserve and other facilities. Thirty years earlier a 200-metre-wide 20-hectare strip running the length of the foreshore frontage of the land was reserved as parks and recreation area on the gazettal of the Metropolitan Region Scheme (MRS). This reservation did not divest ownership from the former owner, who was never paid compensation. The *WA Town Planning and Development Act* conferred a power of compulsory acquisition of land for a town planning scheme but that power was not taken up. The MRS forbade any development on the foreshore reserve with approval of the Planning Commission. In 1999 and 2000, Temwood lodged three applications with the commission for subdivision approval. Each was approved, subject to the condition that the foreshore reserve be ceded to the Crown free of cost and without any compensation paid.

Temwood appealed to the Town Planning Appeal Tribunal against the Planning Commission tying the approvals to the condition. The tribunal dismissed the appeal. Temwood then appealed to the WA Supreme Court, arguing that the condition was invalid because the commission had no power to impose it and it was imposed for the improper purpose of defeating Temwood's subsisting right to compensation. Justice Carmel McLure dismissed the appeal, holding that Temwood did not have a vested right to compensation and the commission's power was not improperly exercised. Temwood successfully appealed to the Full Court of the Supreme Court, which held that it had an unequivocal right to compensation. The Full Court held that this right was deferred until an event stipulated in section 36 of the *MRS Act*. This was either when the land was first sold following the date of reservation or when the commission refused an application for subdivision or approved the subdivision subject to conditions that were unacceptable. The Full Court held that the condition was beyond power and invalid and served no planning purpose and was not imposed as a bona fide exercise of the commission's powers. The commission appealed to the High Court, contending that the Full Court erred in characterising the condition as an extinguishment of a statutory right, and the condition was imposed for a proper planning purpose of securing the land for public access.

The High Court, by a 3-2 majority, allowed the appeal. It held that the tribunal did not err in law in approving the condition. The condition was one the tribunal had power to approve, was imposed for a legitimate planning purpose, and was reasonably related to the proposed development. Only the person who owned the land when the reservation was made could obtain compensation. Temwood as a subsequent purchaser of the land had no right to compensation.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*