



HIGH COURT OF AUSTRALIA

Manager, Public Information

2 April 2009

R & R FAZZOLARI PTY LTD v PARRAMATTA CITY COUNCIL
MAC'S PTY LTD v PARRAMATTA CITY COUNCIL & ANOR

Today the High Court decided that Parramatta City Council may not compulsorily acquire land owned by R & R Fazzolari Pty Ltd and Mac's Pty Ltd without their approval.

Parramatta City Council proposed to redevelop a block within the city centre bounded by Smith, Darcy, Church and Macquarie Streets. The redevelopment was to be called "Civic Place" and was to be carried out under a Public Private Partnership between Parramatta City Council and two companies in the Grocon group. The agreement between the Council and Grocon provided, amongst other things, that the Council would acquire certain land within the redevelopment block and would transfer some of the acquired land to the Grocon companies, and in return, the Council would receive substantial financial payments and other benefits from Grocon.

Some of the land which the Council had to compulsorily acquire in order for the agreement between it and Grocon to come to fruition and for the redevelopment to proceed belonged to R&R Fazzolari Pty Ltd. Some belonged to Mac's Pty Ltd. Some parts of the land – in Darcy St and Church St - were actually parts of the public roads owned by the Council under the Roads Act. Although those two streets were vested in the Council, it had to compulsorily acquire them from itself in order for them to be utilised in the redevelopment. That procedure was authorised by section 7B of the Land Acquisition (Just Terms Compensation) Act.

In NSW section 188(1) of the Local Government Act provides that if land is being acquired for the purpose of re-sale, then it may not be compulsorily acquired without the approval of the owner. Section 188(2) qualifies this constraint on a Council's power to compulsorily acquire land – it provides that the owner's approval is not required if the land is part of, adjoins or lies in the vicinity of other land acquired at the same time under Part 1 of Chapter 8 of the Local Government Act for a purpose other than re-sale.

The Council sent proposed acquisition notices to owners of land within the redevelopment block, including Fazzolari and Mac's. Each of them challenged the proposed acquisitions on the basis that their land was being acquired in order to re-sell it to Grocon. Before the NSW Land and Environment Court they successfully argued the land could not be compulsorily acquired without their consent. However three judges of the NSW Court of Appeal agreed with the Council that the land belonging to Fazzolari and Mac's was being acquired to implement the Council's "Civic Place" project and not for the purpose of re-selling it to Grocon. The Court of Appeal held the Council did not need the owners' consent to compulsorily acquire the land. Fazzolari and Mac's appealed to the High Court.

The High Court considered that the acquisition of the Fazzolari land and the Mac's land could be characterised as steps along the way in an arrangement which was directed towards the "Civic Place" re-development, but that did not detract from the fact that, under the development

agreement, the Council's purpose in acquiring the specific parcels of land owned by Fazzolari and Mac's was to re-sell them to Grocon.

At the hearing before the High Court the Council argued that, even if the land owned by Fazzolari and Mac's was being compulsorily acquired for the purpose of re-sale, both parcels of land adjoined other land (ie – Darcy St and part of Church St) acquired under Part 1 of Chapter 8 of the Local Government Act for a purpose other than re-sale. The Council argued that the application of section 188(2) of the Local Government Act meant it was not required to obtain the owners' approval for the compulsory acquisition. The High Court, however, found the Council was acquiring Darcy St and part of Church St under section 7B of the Just Terms Compensation Act, not under Part 1 of Chapter 8 of the Local Government Act, and therefore section 188(2) did not apply to relieve the Council of the need to obtain the approval of Fazzolari and Mac's before it compulsorily acquired their land.

- *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.*