

Compulsory Acquisition - Recent Developments in relation to an “interest” in land

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A recent decision of the Court of Appeal has provided further guidance on what is considered an “interest” in land for the purposes of the *Land Acquisition (Just Terms Compensation) Act 1991 (the Act)*.

In *Dial A Dump Industries Pty Ltd v Roads and Maritime Services* [2016] NSWCA 73 the Court of Appeal dismissed an appeal by Dial A Dump Industries (**Dial A Dump**) from the decision of the Land and Environment Court in *Dial A Dump Industries Pty Ltd v Roads and Maritime Services* [2016] NSWLEC 39 dismissing its claim for compensation under the Act for the compulsory acquisition of the Alexandria Landfill site.

Land and Environment Court Decision

Land at St Peters was compulsorily acquired for the WestConnex Motorway in December 2014.

Section 37 of the Act provides that an owner of an interest in land that was divested, extinguished or diminished by compulsory acquisition is entitled to compensation. The registered owner of the acquired land was Alexandria Landfill Pty Ltd, the land was leased to Boiling Pty Ltd (**Boiling**) and Dial A Dump used the land to operate a land fill. Dial A Dump asserted that it had permission to use and occupy the land to operate a landfill and carry out crushing, grinding and separating works and commenced proceedings under s 67 of the Act to challenge the rejection of its claim for compensation by the acquiring authority.

Dial A Dump claimed it had an interest in the land being an equitable or legal interest or a right, power or privilege over the land at acquisition.

Boiling operated the Dial A Dump Industries Trust and a key issue in the case was whether Dial a Dump had an interest in land flowing from the trust.

The Court held that Dial A Dump did not have an equitable interest flowing from the trust as it did not have any beneficial interest in the lease of Boiling or any proprietary interest in the assets of the trust. Nor did Dial A Dump have any legal interest in the land flowing from any permission to occupy the land to carry out commercial operations. No proprietary interest arose from any permission to use the land as the permission was personal. That personal permission did not amount to a proprietary or quasi proprietary right and as such could not amount to a right, power or privilege of the land.

The Court of Appeal Decision

Dial A Dump appealed to the Court of appeal for determination on whether the Judge in the Land and Environment Court decision erred in finding that Dial A Dump did not have an



interest in the land.

The Court of Appeal found that Dial A Dumps' rights with respect to the land i.e. the permission to use and occupy the land as well as carry out work upon it did not give rise to a legal or equitable interest of that nature. The manner in which the three companies arranged their business activities supported the finding of the court that no legal or equitable interest arose.

As part of the appeal the Court was also asked to consider whether any such right, power or interest of the over the land must be proprietary or quasi proprietary in nature as held in previous cases. Beazley P and McColl JA agreed in finding that it need not be, whilst Leeming JA did not find it necessary to answer the question.

Impact of Decisions

The decision provided further clarity on the type of "interest" in land will not be considered to amount to a legal or equitable interest, and as a result, need not be compensated. This decision will likely affect the way that companies organise their business activities to ensure that the company using and operating on the land will be considered to have an interest.