



HIGH COURT OF AUSTRALIA

Public Information Officer

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WALKER CORPORATION PTY LIMITED v SYDNEY HARBOUR FORESHORE AUTHORITY (two matters)

Industrial land resumed for a public purpose was to be valued according to the compensation legislation, and this did not in the circumstances of this case involve valuing the land as unaffected by earlier local government proposals, the High Court of Australia held today.

In 2002, NSW Premier Bob Carr announced that the State Government would begin negotiations with Caltex Petroleum to buy the 2.5-hectare headland, Ballast Point on the Birchgrove Peninsula in Sydney, to turn it from a fuel terminal to a harbourside park. McRoss Developments Pty Ltd (which became Walker Corporation Pty Ltd) had an option to purchase the site. Two months after Mr Carr's announcement Walker exercised that option and contracts were exchanged. While the contract was still on foot, the Sydney Harbour Foreshore Authority compulsorily acquired the land. Caltex received as compensation \$14,375,000, calculated by deducting from the \$16,500,000 price \$2,125,000 for remediation of the land, which Caltex would have had to perform under its contract with Walker. The Caltex compensation is not in dispute.

The Valuer-General determined that Walker should be offered \$10.1 million in compensation. Walker lodged an objection with the Land and Environment Court, contending that the market value was \$81 million. The *Land Acquisition (Just Terms Compensation) Act* provides in section 55 that the factors to be considered in determining the amount of compensation include the market value of the land on the date of acquisition. Justice Angus Talbot ordered Walker should receive compensation of \$43,555,138.50. This was calculated by deducting the cost of completing the contract of sale from an assumed market value of \$60 million had the site been earlier zoned "residential". In 1989 and 1994, Caltex sought to have the land rezoned from "waterfront industrial" to "residential" to permit construction of apartments. Leichhardt Council resisted those proposals and initiated a scheme for a harbourside park on the site. It did not exercise its own powers of acquisition and failed to obtain State and Commonwealth funding.

Justice Talbot found that the market value had been constrained by the Council thwarting any change in zoning that would permit residential development. He held that maintenance of the industrial zoning had reduced the value of the land at the time of its resumption in 2002. On appeal by the Foreshore Authority to the NSW Court of Appeal, the matter was remitted to the Land and Environment Court. Justice Talbot again fixed compensation at \$43,555,138.50. After a second appeal by the Foreshore Authority, the Court of Appeal again remitted the matter for assessment of the market value. It held that Justice Talbot was in error in his approach. Walker appealed to the High Court against the Court of Appeal's two decisions.

The High Court unanimously dismissed the appeals. Section 56 of the Compensation Act relevantly defines market value as the amount that would have been paid if the land had been sold by a willing but not anxious seller to a willing but not anxious buyer, disregarding any increase or decrease in the value of the land caused by the proposal to carry out the public purpose for which the land was acquired. The Court held that this reflected a policy to require a disregard only of that increase or decrease (as in this case) in value for which the resuming authority – the Foreshore Authority – is responsible. Leichhardt Council's earlier conduct was not a part of the Foreshore Authority's proposal to make the land public space. The case returns to the Land and Environment Court on the second remitter ordered by the Court of Appeal.

- *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.*