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Environment and Planning Law ealert

High Court curbs local councils ability in exercising compulsory acquisition powers

High Court Win

This morning the High Court of Australia handed down its decision in the matter of *R&R Fazzolari Pty Limited –v– Parramatta City Council* and *Mac's Pty Limited –v– Parramatta City Council*.

The decision of the High Court confines the way in which local councils exercise their power of compulsory acquisition under the *Local Government Act 1993*.

The matter was heard by French CJ, Gummow, Hayne, Heydon and Kiefel JJ in November 2008.

Grounds of appeal to the High Court

One of the grounds of appeal in the High Court, was that the NSW Court of Appeal erred by interpreting the expression "*purpose of re-sale*", in subsection 188(1) of the *Local Government Act*, to require re-sale to be the dominant purpose. The Act as a whole means that re-sale could only ever be subservient to some other authorised purpose or statutory function proposed to be carried out by Council.

Purpose of re-sale

The High Court found that in proposing to acquire the Appellants' lands, in order to then transfer the land to Grocon under a development agreement, Council was acting beyond its statutory powers. The High Court upheld the decision of Biscoe J in the Land and Environment Court and awarded costs in favour of the Appellants in the High Court, the NSW Court of Appeal and reinstated the costs order in the Land & Environment Court of NSW.

Maureen Peatman represented both Appellants in the High Court. She represented Macs' Pty Limited in the Court of Appeal and the Land and Environment Court proceedings.

For further information please contact Maureen Peatman.

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