



Summary of Judgment

CALIGIURI & ANOR V ATTORNEY-GENERAL (ON BEHALF OF THE STATE OF VICTORIA) & ORS (NO 2)

[2019] VSC 365

19 June 2019

This proceeding raises a question of general public importance concerning procedural fairness in the context of the compulsory acquisition of land in Victoria.

In 2018, the plaintiffs purchased land in Beveridge for residential subdivision. The authorities sought to acquire part of the land for the construction of water storage tanks and supply infrastructure, which was said to arise from a future water shortage due to growth in the area.

The land was the subject of a Ministerial recommendation and an Order in Council under s 5(3) of the *Land Acquisition and Compensation Act 1986* (Vic) ('the Act') certifying that a reservation is unnecessary, undesirable or contrary to the public interest.

Melbourne Water and Yarra Valley Water ('the authorities') then served notices to compulsorily acquire part of the land together with easements. The plaintiffs objected to the acquisition and submitted that there were matters of substance that they wish to put to the decision makers as to the acquisition and as to where the tanks should be sited but were not afforded the opportunity to do so.

Justice Greg Garde held that a person with an interest in land has a right to be heard before that land is compulsorily acquired by an authority. The right arises prior to the publication of a notice of acquisition in the Victoria Government Gazette under s 19 of the Act, but not at the stages of recommendation and certification under s 5(3) or service of a notice of intention to acquire under s 6.

Justice Garde was satisfied that an opportunity to be heard prior to publication of the notice of acquisition was not afforded by the authorities to the plaintiffs. His Honour declared that the notice of acquisition relating to the land was invalid and of no effect.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.