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Updates in compulsory acquisition law – June 2021

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The past few weeks have seen rapid developments in compulsory acquisition law.

Inner-city properties being acquired for Metro West stations

On 12 May 2021, Transport for NSW announced the compulsory acquisition of 11 commercial buildings located in Sydney CBD, and two in Pyrmont. These properties include a development site owned by the Star Entertainment Group, substantial commercial towers, and iconic Sydney nightlife venue Frankies Pizza by the Slice.

Relocation of business activities not "relocation"

On 20 May 2021, Moore J delivered judgment in *G Capital Corporation Pty Limited v Transport for NSW* [2021] NSWLEC 44. This was the sixth instalment in a series of cases, which included an unsuccessful special leave application to the High Court on the vexed issue of the meaning of "actual use" of land under s59(1)(f) of the *Land Acquisition (Just Terms Compensation) Act 1991*.

Among other matters, Moore J was asked to consider whether the applicants' claims for stamp duty on the purchase of replacement land (the same claims that the Court had determined were not permissible under s59(1)(f) because the applicants had no "actual use") were allowable as disturbance under s59(1)(d). (Paragraph (d) deals specifically with stamp duty costs incurred "in connection with the purchase of land for relocation"). The applicants argued for a broad interpretation of "relocation", which included the reinstatement of a person's business. In this case, the relevant "business" was one of owning and managing property held by a special purpose vehicle as part of a broader group of companies involved in the ownership and management of land. His Honour determined that it was not.

LEC recognises that the market value of a leasehold interest may be over and above any profit rent

On 17 May 2021, Duggan J delivered judgment in *Eureka Operations Pty Ltd v Transport for New South Wales* [2021] NSWLEC 41. Two important matters of consequence arise from Her Honour's decision:

1) Duggan J determined that in certain cases (as in the acquisition of a leasehold interest over land used for the operation of a petrol station) the market value of an acquired lease may be over and above any "profit rent" and is open to be assessed by reference to the potential future income capable of being derived from that land.

Although Duggan J emphasised that "profit rental" may be the appropriate method for valuing most commercial leases, Her Honour's decision makes clear that a profits method may be permissible where land is particularly suited to a particular commercial use.

2) Duggan J allowed the fees of a traffic expert as disturbance under s59(1)(a) (the "legal fees" provision) on the basis that the meaning of legal fees although "quite specific in terms is broad in substance." Her Honour noted that fees of such ancillary experts (except valuers, which are specifically dealt with under s59(1)(b) and (2)) are recoverable under s59(1)(a) "if they are reasonably incurred and to that extent if they are reasonably necessary for the legal practitioner to provide the advice relating to the acquisition" regardless of "whether it is recoverable as a disbursement."

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