



HIGH COURT OF AUSTRALIA

Public Information Officer

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MINISTER ADMINISTERING THE CROWN LANDS ACT v NSW ABORIGINAL LAND COUNCIL

Steps taken to sell off an old motor vehicle registry in Wagga Wagga did not amount to use of the land, so the site was open to claim by the Aboriginal Land Council, the High Court of Australia held today.

On 23 May 2005, the Land Council, on behalf of the Wagga Wagga Local Aboriginal Land Council made a claim under the NSW *Aboriginal Land Rights Act* to the 815 square metre allotment in the Wagga business district. A derelict two-storey brick building stood on the site. It was used as a motor registry from 1958 to 1985 and afterwards has been used to store old office furniture. After a plan to turn the building into a laboratory was abandoned in 2004, the State government decided to sell the site. Before the land claim was made, a real estate agent was appointed, an identification survey of the land was made, the Register-General issued a certificate of title, reservation of the land for a “government supply department office and workshop” was revoked, and an auction date of 8 July 2005 was fixed. The Minister for Lands refused the claim, concluding that the land was not claimable Crown land because it was lawfully used and occupied by the Department of Lands in preparing it for sale. The *Land Rights Act*’s definition of “claimable Crown lands” was limited to lands that were “not lawfully used or occupied”.

The Land Council appealed to the NSW Land and Environment Court against the refusal of the claim. Justice Peter Biscoe dismissed the appeal and held that the decision to sell the land and the steps taken to do so were an actual use of the land. The Land Council appealed to the Court of Appeal which allowed the appeal, held that the land was not being used when the claim was made, declared that the land was claimable Crown land, and ordered the Minister to transfer the land to the Wagga Land Council. The Minister appealed to the High Court.

The Court unanimously dismissed the appeal. It held that sale of the land would amount to exploitation of the land as an asset but it did not follow that exploitation by sale amounted to use of the land. The steps taken to bring about the sale did not amount to lawful use. Nothing was being done on the land when the claim was made and nothing had been done for a considerable time before then. Visits by surveyors and the real estate agent did not amount to a use of the land for the purposes of the *Land Rights Act* and everything else that was being done towards selling the land occurred elsewhere.

- *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.*