HIGH COURT OF AUSTRALIA

FRENCH CJ,
GUMMOW, HAYNE, HEYDON AND CRENNAN JJ

SPRINGFIELD LAND CORPORATION (NO 2) PTY LTD
& ANOR APPELLANTS

AND

STATE OF QUEENSLAND & ANOR RESPONDENTS

Springfield Land Corporation (No 2) Pty Ltd v Queensland [2011] HCA 15
11 May 2011
B39/2010

ORDER

Appeal dismissed with costs.

On appeal from the Supreme Court of Queensland

Representation

D F Jackson QC with M D Hinson SC for the appellants (instructed by Russell and Company Solicitors)

D R Gore QC with J M Horton for the respondents (instructed by Clayton Utz Lawyers)

CATCHWORDS

Springfield Land Corporation (No 2) Pty Ltd v Queensland

Real property – Compulsory acquisition – Compensation – Assessment – Section 25(2) of *Transport Planning and Coordination Act* 1994 (Q) empowered Chief Executive of Department of Main Roads ("Department") to acquire property "for the purposes of transport" – Section 20(3) of *Acquisition of Land Act* 1967 (Q) ("Acquisition Act") required that, in assessing compensation for acquisition, there be considered any enhancement of value of land adjoining acquired land "by the carrying out of the works or purpose for which the land is taken" – Appellants entered agreement to transfer certain land ("Transfer Land") to respondents for amalgamation with land held by Department in return for payment of compensation set in accordance with Acquisition Act – Nature of purpose for which land is acquired – Whether purpose for which Transfer Land was acquired would enhance value of appellants' adjoining land.

Words and phrases – "purpose for which the land is taken".

Acquisition of Land Act 1967 (Q), s 20(3).

1 FRENCH CJ, GUMMOW, HAYNE AND CRENNAN JJ. This is an appeal from the decision of the Court of Appeal of the Supreme Court of Queensland (Keane and Fraser JJA and Atkinson J)[1], which affirmed that of the primary judge (McMurdo J)[2]. The appeal turns upon the construction of Queensland legislation respecting resumption of land by the State for statutory purposes and the assessment of compensation. The litigation was instituted in the Supreme Court after an award made under an arbitration agreement between the relevant parties in which they had agreed that the issues between them should be determined by the arbitrator as if the ordinary statutory processes had applied.

2 Section 38 of the *Commercial Arbitration Act* 1990 (Q) ("the Arbitration Act") provides for an "appeal" to the Supreme Court "on any question of law" which arises out of an award, with the consent of all parties to the arbitration agreement, or with the leave of the Supreme Court where it considers there is "a manifest error of law on the face of the award". McMurdo J granted leave and varied an award made on 9 October 2008 by the arbitrator (the Hon WJ Carter QC) by substituting "nil" in place of the award of $1,468,806 in favour of the present appellants ("the Springfield companies")[3]. The award had been made against the State of Queensland "acting through" the Chief Executive of the Department of Main Roads. The reasons for this description of the State party will be explained below.

3 The appeal by the Springfield companies to the Court of Appeal having been dismissed, in this Court the Springfield companies seek, in effect, the reinstatement of the award by the arbitrator. For the reasons which follow, the appeal to this Court should be dismissed.

4 McMurdo J referred[4] to the development since about 1992 by the Springfield companies from a greenfield site of a large residential development 24 kilometres to the southwest of the Central Business District of Brisbane and in the local government area of Ipswich City Council. The site contains 2,851 hectares and the development is expected to house at least 60,000 people.

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1 *State of Queensland v Springfield Land Corporation (No 2) Pty Ltd* (2009) 171 LGERA 38.

2 *Queensland v Springfield Land Corporation (No 2) Pty Ltd* (2009) 169 LGERA 284.

3 (2009) 169 LGERA 284.

4 (2009) 169 LGERA 284 at 288-289.

McMurdo J added[5]:

> "Almost from the outset [the Springfield companies] proposed that the development would include the construction of a major road running from the Centenary Highway (where it then ended at the Ipswich Motorway) through the Springfield land, and in particular through or close to the proposed Springfield Town Centre, and continuing west beyond the Springfield land.
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> In 1994 a draft Springfield Development Control Plan was prepared which identified such a 'Regional Transport Corridor'. In 1998, [the Springfield companies] and the Ipswich City Council entered into what was called the Springfield Infrastructure Agreement, whereby certain land within the development site was to be dedicated for road purposes, and in particular for this transport corridor. In 1999, the Council approved a subdivision application by [the Springfield companies], on terms which included the transfer to the Council, free of compensation, of certain land to be held in trust in favour of [the Springfield companies] for future road purposes. That included the area described as Trust Lot 7, which was identified as the land upon which there would be constructed that part of the transport corridor from what is called the Western Interchange to the western boundary of the Springfield land."

His Honour continued:

> "By the end of 1998 the Centenary Highway had been extended to the Springfield land and by June 2000 it had been further extended to the Springfield Town Centre. This road construction was described by the arbitrator as 'very much a joint venture type arrangement' between the Queensland government, [the Springfield companies], a contractor and a financier, under which [the Springfield companies] paid for the construction. The arbitrator also found, at least from 1994, that it had been intended that this road would continue beyond the Springfield Town Centre and in turn from the western boundary of the Springfield land to the area of Ripley and ultimately to the Cunningham Highway. In January 2004, the government announced that the section of the transport corridor from Springfield to Ripley would be built and later that year, it announced the preferred route for this corridor. In early 2005, it announced that it

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5 (2009) 169 LGERA 284 at 288-289.

was committed also to the extension of the corridor from Ripley to the Cunningham Highway."

6 Two points should be made here. The first is that in the various planning proposals and documents implementing them the term "South West Transport Corridor" was used to identify the preferred route for the corridor from Springfield to Ripley and to the Cunningham Highway.

7 Secondly, for the previous development of the Centenary Highway there had been no compulsory acquisition of Springfield land. Hence the importance of the passage in which McMurdo J went on[6]:

> "In the course of planning of this extension of the corridor from the Springfield Town Centre, it was found that some of the land within Trust Lot 7 would not be required, but that some land owned by the first [appellant] adjacent to Trust Lot 7 was required instead. The land not required became known as 'the returned land'. By this time, the Department [of Main Roads] had become the owner of Trust Lot 7 in place of the Council and it transferred this land back to the first [appellant]. The newly required land [of a little less than seven hectares] was the so called Transfer Land."

8 The litigation concerns the award of compensation made by the arbitrator with respect to the Transfer Land. The events leading up to the award began with the taking of steps under s 7 of the *Acquisition of Land Act* 1967 (Q) ("the Acquisition Act") in conjunction with s 25 of the *Transport Planning and Coordination Act* 1994 (Q) ("the Planning Act"). Section 25 empowered the Chief Executive of the Department of Main Roads, acting "for the State", to acquire or otherwise deal with property "for the purposes of transport", including "the facilitation of transport infrastructure" (s 25(3)(a)), and classified the Chief Executive as a "constructing authority" within the meaning of the Acquisition Act (s 25(8)). In this Court, the State of Queensland and the Chief Executive are joined as separate parties, the first and second respondents.

9 Section 7 of the Acquisition Act, when read as so required by the Planning Act, provided for the Chief Executive to serve notices of intention to resume the Transfer Land and required that the notices "specify the particular purpose" for which the Transfer Land was required. By notices dated 13 October 2005 and 12 January 2006 ("the s 7 Notices"), the Chief Executive stated the intention to

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6 (2009) 169 LGERA 284 at 289.

take the Transfer Land "for future transport purposes including *the facilitation of transport infrastructure* (namely road and busway, rail or light rail) for the South-West Transport Corridor" (emphasis added). The terms of the s 7 Notices as to purpose thus reflected the terms of the power of acquisition conferred by s 25 of the Planning Act.

10 The statutory processes under the Acquisition Act following the giving of the s 7 Notices would have included the consideration by the Chief Executive of any objections to the taking of the land (s 8), the declaration by the Governor in Council (by gazette notice) that the Transfer Land was taken "for the purpose mentioned in the [s 7 Notices]" (s 9(7)), and the vesting of the Transfer Land in the Chief Executive (s 12). The publication of the gazette resumption notice, in the absence of rebuttal, would be conclusive evidence that the notice requirements of s 7 had been complied with (s 12(6)(b)). In any event, no attack has been made upon the validity of the s 7 Notices. There is no suggestion that there was any abuse of power in the issue of the s 7 Notices.

11 However, events took a different course. By written agreement made 21 April 2006 between the State "acting through the Chief Executive of the Department of Main Roads" and the Springfield companies and styled "Springfield Acquisition Agreement" ("the Agreement"), the parties agreed (cll 3.6, 3.7) that processes under the legislation for the resumption of the Transfer Land would be discontinued. This discontinuance was permitted by Pt 3 (ss 16-17) of the Acquisition Act. The agreed discontinuance of procedures under the statute for resumption was in exchange for (i) the transfer of the Transfer Land for amalgamation with land already held by the Department of Main Roads (cl 3.4), and (ii) payment of compensation for the Transfer Land, in accordance with the requirements of Pt 4 (ss 18-35) of the Acquisition Act, "as if" the Transfer Land had been taken under that statute on 26 September 2006 (cl 6.2(b)). In the absence of agreement, the issue of the compensation payable was to be submitted to arbitration (cll 6.2(c), 6.3). Had the statutory procedures remained in play, s 24 of the Acquisition Act would have provided for the hearing and determination by the Land Court of Queensland of the matter of the amount of compensation.

12 The Springfield companies emphasised in submissions to this Court that by the time of the Agreement large parts of the Springfield land had been developed and sold. However, the South West Transport Corridor identified the preferred route of proposed construction from Springfield to Ripley and the Cunningham Highway. The arbitrator accepted expert evidence that the Springfield Town Centre, together with other land for proposed commercial development and undeveloped residential areas still held by the Springfield companies, would derive, from the acquisition of the Transfer Land for the

purpose of development of the South West Transport Corridor, enhancement in value clearly exceeding the value of the Transfer Land. However, the arbitrator went on to accept the submission by the Springfield companies that, on its proper construction, s 20 of the Acquisition Act confined the relevant enhancement so as to exclude consideration of the enhanced value of these other Springfield lands.

13 Section 20 of the Acquisition Act thus is the provision of central importance. The heading states "Assessment of compensation", and the section at the relevant time read:

> "(1) In assessing the compensation to be paid, regard shall in every case be had not only to the value of land taken but also to the damage (if any) caused by either or both of the following, namely –
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> (a) the severing of the land taken from other land of the claimant;
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> (b) the exercise of any statutory powers by the constructing authority otherwise injuriously affecting such other land.
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> (2) Compensation shall be assessed according to the value of the estate or interest of the claimant in the land taken on the date when it was taken.
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> (3) In assessing the compensation to be paid, there shall be taken into consideration, by way of set-off or abatement, *any enhancement of the value of the interest of the claimant in any land adjoining* the land taken or severed therefrom by the carrying out of the works or purpose for which the land is taken.
>
> (4) But in no case shall subjection (3) operate so as to require any payment to be made by the claimant in consideration of such enhancement of value." (emphasis added)

14 McMurdo J recorded[7]:

> "The issues for the arbitrator concerned the valuation of the Transfer Land, whether there was any enhancement for the purposes of s 20(3) and whether the value of the returned land was to be set-off against the compensation. There is no challenge to the arbitrator's finding that the

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7 (2009) 169 LGERA 284 at 289.

> value of the Transfer Land was, in aggregate, the sum of $1,468,806 (which became the assessed compensation). Nor is there any challenge to the arbitrator's conclusion that the value of the returned land should not be brought into account[8]. The challenge concerns the enhancement issue."

His Honour added[9]:

> "As appears to be common ground, the onus was upon the [State of Queensland] to establish that there was some relevant enhancement and its amount. Ultimately the [State of Queensland's] case was that the value of the [Springfield companies'] land would be enhanced by the carrying out of the works which were the extension of the transport corridor west from the Springfield Town Centre. The Transfer Land was being taken for the carrying out of that work or for that purpose, although it would constitute only a very small part of the land required. The [Springfield companies'] case was that the purpose for which the Transfer Land was being taken was merely to effect a realignment of the designated transport corridor, which of itself would cause no enhancement in the value of their land. That argument was upheld by the arbitrator."

15 McMurdo J, and the Court of Appeal, upheld the State of Queensland's case. For the reasons which follow this was the correct result and the appeal to this Court should be dismissed.

16 Something first should be said respecting the "*Pointe Gourde* principle". The arbitrator referred to the "possible overuse" of the expression "the scheme underlying the acquisition". This is associated with what was said by the Privy Council in *Pointe Gourde Quarrying and Transport Co Ltd v Sub-Intendent of Crown Lands*[10]. But, while acknowledging the absence of the expression from s 20 of the Acquisition Act, the arbitrator said that its relevance and meaning in a particular case "will depend essentially upon the facts of the particular case". Nevertheless, the arbitrator later concluded:

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8 The arbitrator held that once the returned land was not required for the transport corridor, it was held on a resulting trust for the first [appellant] which was thereby entitled to a transfer.

9 (2009) 169 LGERA 284 at 290.

10 [1947] AC 565.

> "It is relevant to refer again briefly to the *Pointe Gourde Case* if only for the purpose of putting it aside as having no relevance to the question of enhancement to the other lands of the claimant as a consequence of the resumption. *Pointe Gourde* establishes authoritatively the principle that in valuing *the resumed lands*, one excludes as irrelevant for that purpose any appreciation or depreciation in the value of the resumed land brought about by the scheme underlying the resumption.
>
> In the context of considering enhancement to other lands for the purposes of Section 20(3), the *Pointe Gourde* principle has no place." (emphasis in original)

17 It is thus unnecessary to consider further in any detail the "*Pointe Gourde* principle", despite a certain allurement which it appears to have exercised in some of the submissions to this Court by the State of Queensland and the Chief Executive. However, it should be noted that recently the House of Lords has affirmed, consistently with what had been said by this Court in *Walker Corporation Pty Ltd v Sydney Harbour Foreshore Authority*[11], that there is no "common law" principle derived from *Pointe Gourde*; the term "scheme" was used there to explain and amplify the term "value" as understood in particular statutory compensation systems commencing with the *Land Clauses Consolidation Act* 1845 (UK)[12]. These points were made by Lord Walker of Gestingthorpe and Lord Collins of Mapesbury in *Transport for London v Spirerose Ltd*[13].

18 The present case turns upon the requirement in s 20(3) of the Acquisition Act that in assessing compensation account be taken, by way of set-off or abatement, of any enhancement of the value of the interest of the Springfield companies in any land adjoining the Transfer Land by the carrying out of the purpose for which the Transfer Land was taken.

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11 (2008) 233 CLR 259 at 273-275 [41]-[47]; [2008] HCA 5.

12 8 & 9 Vict c 18.

13 [2009] 1 WLR 1797 at 1803-1806, 1830-1832, respectively; [2009] 4 All ER 810 at 817-820, 843-845.

19 Of the reasoning by the arbitrator, McMurdo J correctly observed[14]:

> "In considering s 20(3), the arbitrator was required to identify the works or purpose for which the land was taken. He identified the purpose as 'the very narrow purpose ... to realign in minor respects an existing proposed road corridor'. In one sense at least, that was undoubtedly true. But the question is whether that could be regarded as the purpose which is relevant in the operation of s 20(3). As already noted, the purpose within s 20(3) would appear to correspond with the purpose for which there is a power of compulsory acquisition. That indicates that the purpose was to be understood as the public benefit or end to be achieved, rather than some means to that end, and that the arbitrator's identification of the purpose was incorrect."

It also should be noted that the arbitrator looked to "the reason why [the s 7 Notices] were given" and found that what had led the Chief Executive to give the s 7 Notices was the decision to realign the proposed road corridor "in minor respects".

20 The relevant "purpose" is that for which the Transfer Land would have been taken had the statutory processes set in train by the s 7 Notices not been supplanted by the Agreement. These were future transport purposes including the facilitation of transport infrastructure, being road and busway, rail or light rail for the South West Transport Corridor. This was the statutory purpose and the determinative purpose.

21 Contrary to the construction given to s 20(3) by the arbitrator, which the Springfield companies support, the "purpose" was not identified by some factual inquiry, beyond the terms of the s 7 Notices, into the reason why the s 7 Notices were given in the then current state of planning for the road corridor.

22 In written submissions filed, by leave, after the conclusion of oral argument, the respondents emphasised the importance of other terms of the Agreement in addition to the requirement imposed by cl 6.2(a) that compensation be assessed "as if" the Transfer Land had been compulsorily acquired. Recital B of the Agreement stated that the Transfer Land was required for the South West Transport Corridor and that "Main Roads intends to construct an extension to the Centenary Highway within the South West Transport Corridor".

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14 (2009) 169 LGERA 284 at 294.

23 Reference has been made to the arrangements for certain land to be held on trust in favour of the Springfield companies for future road purposes. This included Trust Lot 7. Clause 11.1 required the parties to take all steps necessary to amend these trust instruments to reflect "the Purpose", defined in cl 1.1 in familiar terms as meaning "future transport purposes, including the facilitation of transport infrastructure (namely road and busway, rail or light rail) for the South West Transport Corridor". That term in turn was defined in cl 1.1 as meaning "the preferred route for a road and public transport corridor linking the Centenary Highway to Ripley and the Cunningham Highway at Yamanto, as shown [in the plan] at Annexure D". The further terms of the Agreement thus emphasise the incorporation of the statutory description of "purpose" which is picked up by cl 6.2(b) for the assessment of compensation in respect of the Transfer Land.

24 The appeal should be dismissed with costs.

25 HEYDON J. Section 20(3) of the *Acquisition of Land Act* 1967 (Q) ("the Act") provided:

> "(3) In assessing the compensation to be paid, there shall be taken into consideration, by way of set-off or abatement, any enhancement of the value of the interest of the claimant in any land adjoining the land taken or severed therefrom by the carrying out of the works or purpose for which the land is taken."

26 The appellants own land in the south-eastern part of Queensland. In the 1990s it was contemplated that a "South-West Transport Corridor" adjoining the appellants' land would be created. Many steps were taken pursuant to that contemplation. The appellants' land was 2851 hectares in area and was to be the site of a master planned community being developed by the appellants. The question is whether the resumption of small areas of the appellants' land in 2005-2006 created any enhancement of the value of the rest of its land which should be taken into account by way of set off against or abatement of the compensation to be paid for the land resumed in 2005-2006. Underlying the question is a further question whether any enhancement in value as a matter of fact happened much earlier than 2005-2006 and had nothing to do with the small resumptions in 2005-2006.

27 The primary question was seen by the parties as being the ascertainment of the "purpose for which the land [was] taken" within the meaning of s 20(3). The respondent State of Queensland in its further amended points of defence enunciated the position which it maintains in this appeal, namely that the land resumed in 2005-2006 "was acquired for future transport purposes, including the facilitation of transport infrastructure (namely road and busway, rail or light rail) for the South-West Transport Corridor".

28 The arbitrator disagreed. He found that the notices of intention to resume given on 13 October 2005 and 12 January 2006 "were given solely for the purpose of [the Department of Main Roads] advising an intention to realign part of the existing Corridor". He said that the notices of intention to resume evidenced only an "intention to acquire smaller parcels to achieve the desired realignment and as a further consequence to return to [the appellants] any land which had in 1998 been given to Ipswich City Council on trust and later transferred to [the Department of Main Roads], but which was no longer required." He also said that "it was the very narrow purpose of the resumption to realign in minor respects an existing proposed road corridor" and that the reason why the notices of intention to resume were given was to "provide for" or "accommodate" what the respondents' witness described as "a slightly different corridor".

29 Section 5(1) of the Act gave power to acquire land "for any purpose set out in the schedule". Paragraph (a) of the schedule listed the following purpose:

> "for the construction or erection of any public or other works which the constructing authority is authorised by any Act or resolution of Parliament to construct or erect or for the purposes of any Act".

At the material time, s 25(1) of the *Transport Planning and Coordination Act* 1994 (Q) provided:

> "(1) The chief executive may, for the State, acquire … property for the purposes of transport or for an incidental purpose."

Section 25(3)(a) provided:

> "(3) In particular, the chief executive may, for the State, acquire property for any of the following purposes –
>
> (a) the facilitation of transport infrastructure".

And s 25(8) provided:

> "(8) The chief executive is a constructing authority within the meaning of the [Act]."

30 Section 7(3)(a) of the Act provided:

> "(3) A notice of intention to resume shall be in writing and shall –
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> (a) specify the particular purpose for which the land to be taken is required".

The notices of intention to resume stated that the purpose for which the land taken in 2005-2006 was required was "future transport purposes including the facilitation of transport infrastructure (namely road and busway, rail or light rail) for the South-West Transport Corridor". Section 12(6)(b) of the Act provided:

> "(6) Subject to section 11, publication of the gazette resumption notice shall be evidence, and in the absence of evidence in rebuttal, conclusive evidence that –
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> …
>
> (b) in any other case – the provisions of sections 7, 8 and 9 or, as the case may be, 7, 8 and 10 have been complied with."

That made publication conclusive evidence, in the absence of evidence in rebuttal, that the notice of intention to resume had complied with the need to specify a particular purpose for which the land to be taken was acquired. It

prevented challenge to the validity of the resumption in that respect. But it did not make publication conclusive evidence of the truth of that which was stated to be the particular purpose so as to foreclose demonstration that the actual particular purpose was different from or additional to the specified purpose. And it did not control the application of s 20(3). If, alternatively, it is correct to hold that s 12(6) made a statement of purpose in the notice of intention to resume conclusive as to its truth, in the absence of evidence in rebuttal, s 12(6) made it permissible to receive and examine evidence in rebuttal, and here there was evidence in rebuttal: the materials to which the arbitrator referred and on which he relied.

31 The arbitrator criticised the approach now supported by the respondents and rejected the corresponding valuation approach in expert evidence called by them on the following basis:

(a) the scheme to develop the South-West Transport Corridor since 1999 had enhanced the value of the appellants' land nearby;

(b) the slight alteration of the boundaries of the Corridor realignment made in 2005-2006 involved resumption of a small part of the appellants' land;

(c) s 20(3) did not require that the effect on the value of the appellants' land of the entire project since 1999 be set off against the value of the small area resumed.

32 The Court of Appeal criticised the arbitrator's approach as "narrow"[15]. It is hard to see how the arbitrator's approach can be so described, given that it takes into account the context of, and background to, the notices of intention to resume.

33 The arbitrator's approach was also said by the Court of Appeal not to reflect a "purposive approach to statutory construction"[16]. The appellants correctly submitted that the arbitrator's approach was not erroneous because it analysed the word "purpose" in s 20(3) bearing in mind the function of s 20(3) as a whole in its application to the present facts: to assess the significance of an enhancement in value of the adjoining land, which was adjacent to land that had been made available for the purposes of the South-West Transport Corridor years earlier. Contrary to what the arbitrator found, it can be assumed that there were

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15 *State of Queensland v Springfield Land Corporation (No 2) Pty Ltd* (2009) 171 LGERA 38 at 50 [38] and [40], 53 [50]-[51] and 54 [52].

16 *State of Queensland v Springfield Land Corporation (No 2) Pty Ltd* (2009) 171 LGERA 38 at 50 [39].

two "purposes". On that assumption, while in one sense the purpose of the resumptions was to facilitate transport infrastructure in the form of a road, in another it was simply to realign a short stretch of road. The predominant purpose in the particular circumstances was the second.

34 The Court of Appeal did not identify precisely how the arbitrator's approach was erroneous. The Court of Appeal did not assert, for example, and could not have asserted, that s 20(3), in express terms or by necessary implication, provided that whatever the resuming authority stated in a notice of intention to resume to be the particular purpose for which the land to be taken is required is, without more, the actual and sole purpose. Indeed to some degree the Court of Appeal accepted the correctness of the arbitrator's approach when their Honours said: "there may be cases where the purpose of an acquisition of a small parcel of land is solely for realigning a short stretch of road", and that the matter turned "on the facts of the particular case"[17]. They went on[18]:

> "It would, for example, be easier sensibly to conclude that a realignment is a purpose in itself if the road of which it was an adjunct had been constructed many years earlier or if the realignment was a response to the exigencies of transport functions in the immediate vicinity of the stretch of road being realigned. To say this, however, is to recognise that the arbitrator … acted upon a view of s 20(3) … which was apt to make such differences in the facts of the case immaterial because of the narrow focus of his approach."

The first sentence is correct, but not the second. It is true that in the present case the road to pass through the South-West Transport Corridor had not been constructed by 2005-2006, and it is true that the desire for realignment which triggered the 2005-2006 resumptions was not a response to the exigencies of transport functions arising from experience of the road in operation. But in terms of assessing the enhancement of the value of the appellants' adjoining land it was material for the arbitrator to consider that the road route being realigned for a short stretch in minor respects had been planned for years and that land had been acquired and set aside for it. The mere existence of the planning for that road is what increased the value of adjoining land, not a minor alignment to it.

35 Further, s 20 is a provision that affected the rights of individual property owners. Provisions of that kind providing compensation for compulsory

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17 *State of Queensland v Springfield Land Corporation (No 2) Pty Ltd* (2009) 171 LGERA 38 at 53 [49].

18 *State of Queensland v Springfield Land Corporation (No 2) Pty Ltd* (2009) 171 LGERA 38 at 53 [50].

acquisitions of property are customarily construed amply. Sub-sections (1) and (2) gave rights to compensation; sub-s (3) cut them back. Section 20(3) is to be construed as preserving rather than destroying the right to compensation by directing attention to specificity of purpose in particular circumstances.

36 The respondents submitted that any enhancement in the value of the adjoining land in the period leading up to the resumptions in 2005-2006 had to be taken into consideration by way of set-off against or abatement of the compensation to be paid for those resumptions. That is unsound, because the enhancement described in s 20(3) must be the result of the acquisitions for which compensation is being considered and cannot have preceded it. That proposition follows from the words "any enhancement … by the carrying out of the … purpose for which the land is taken", particularly the word "by". There was evidence before the arbitrator that the increase in value of the appellants' lands by reason of the South-West Transport Corridor was substantial, but no evidence accepted by the arbitrator that that increase in value was derived from the resumptions in 2005-2006. The onus of showing enhancement from the resumption in 2005-2006 was on the respondents. They did not discharge it, and thus they failed to exclude the possibility that any enhancement of the value of the appellants' land which adjoined the land resumed in 2005-2006 is likely to have resulted from the scheme dating from the 1990s rather than from the resumption in 2005-2006. Indeed the arbitrator positively found that value had been enhanced from at least 1999. Hence success does not flow for the respondents even if they are correct in submitting that the "purpose" of the 2005-2006 resumptions was the facilitation of transport infrastructure. The respondents did not negate the proposition that while before 2005-2006 there was an enhancement in the value of the appellants' land (as the arbitrator positively found) since no land owned by the appellants relevant to these proceedings was resumed in that period, they have no entitlement to compensation in that respect and the enhanced value is irrelevant. And the respondents did not negate the proposition that while in 2005-2006 there were resumptions, there was no enhancement "by" the carrying out of the purpose for which the land was taken, since the enhancement had occurred earlier. It is wrong to treat the "purpose", which applied over quite a number of years and which was carried out in different ways at different times over those years, as being a single thing which in an instant of time both underlay the 2005-2006 resumptions and the much earlier value-enhancing activity.

37 There are questions not posed by the respondents which call for examination because an adverse answer would favour them. Accepting that if the land resumed in 2005-2006 had in fact been resumed in the 1990s, s 20(3) would have applied, why does s 20(3) not apply when instead the land is resumed in 2005-2006? Why does a difference in the timing caused perhaps by an erroneous estimation of the appropriate alignment, not corrected until 2005-2006, matter? The answer lies in considerations touched on in the previous paragraph. If the land resumed in 2005-2006 had been resumed six years earlier, that

particular aspect of "the carrying out of the … purpose" would be related to the enhancement in value of the appellants' interests in adjoining land. But, as it happened, the land was only resumed in 2005-2006, and the respondents failed to establish that that later aspect of "the carrying out of the … purpose" was related to the enhancement in value of the appellants' interest in adjoining land.

38 The respondents relied on various authorities. None of them related to s 20(3), and it is undesirable to take up further space in a dissenting judgment analysing what the respondents said about them.

39 The appeal should be allowed and consequential orders made.