

The Hon. Dr PETER PHELPS: Did the Court of Appeal decision overturn Hammerschlag's decision in its entirety?

Professor SHEEHAN: No, it did not, because one of the peculiarities of the Court of Appeal decision—and I am not giving any legal advice here, let me say; I know there is parliamentary privilege—was that it narrowed onto specifically Desane's property in Lilyfield Road. Then they went through the process of whether or not there would have been a proper public purpose for the acquisition. But the Court of Appeal did leave open—I think it might be **clause 113 of the Court of Appeal decision but I can take that on notice and give the secretariat a reference to that**—where they said but if there had only been a partial acquisition, the PAN actually has to have a public purpose because clearly if you have got only half your property taken, the rest of the property, for the valuer to come along—the valuer for RMS for example or the Valuer General, or even the court for that matter—they have to know the potential use on the Government acquired land so you can work out the injurious effect upon the rest of the land.

The correct “paragraphs” (not clauses) referenced from the Court of Appeal decision were:



Court of Appeal
Supreme Court

New South Wales

Case Name: Roads and Maritime Services v Desane Properties Pty Ltd

Medium Neutral Citation: [2018] NSWCA 196

Hearing Date(s): 28 and 29 June, 3 July 2018

Date of Orders: 6 September 2018

Decision Date: 6 September 2018

Before: Bathurst CJ, Ward JA, Payne JA

Decision:

- (1) Appeal allowed.
- (2) Set aside orders 1-4 (inclusive) made by the primary judge on 22 May 2018 and in lieu thereof make the following orders:
 - (a) Summons and Further Amended Commercial List Statement be dismissed.
 - (b) The plaintiff to pay the costs of the second defendant of the trial as agreed or assessed.
- (3) The respondent to pay the costs of the appellant of the appeal as agreed or assessed.

Paragraphs 267 & 268:

267 It may be accepted, for the purposes of a landowner to whom s 55(f) was relevant, that the landowner may wish to obtain his or her own valuation as part of the good faith negotiations

being conducted with the acquiring authority, to guide those negotiations. It may also be accepted that properly to consider the question of the value to be attributed to land adjoining or severed from the proposed acquired land, a putative landowner would need to know the public purpose for which the land was to be acquired in order to brief a valuer to identify the amount of compensation to which the landowner would be entitled under s 55(f).

268 It is also clear, however, that properly to consider the question of the value to be attributed to land adjoining or severed from the proposed acquired land, a putative landowner would need to know much more than the bare "public purpose". In identifying the amount of compensation to which a landowner is entitled under s 55(f), detail about matters such as noise and amenity may need to be taken into account in addressing a valuation of the effect on the value of land adjoining or severed from the acquired land: see for example *Roads & Traffic Authority of New South Wales v Peak* [2007] NSWCA 66 at [17] which addressed the relevance for s 55(f) purposes of "prognostic" acoustic evidence about noise created by a roadway yet to be built. That "prognostic" acoustic evidence was based on assumptions about traffic volumes, speed limits and lane configurations, which are all matters travelling well beyond any bare statement of public purpose. An incident of the negotiation in good faith required by the *Just Terms Act* is the provision of information by the acquiring authority about such matters as are within its knowledge about the effect on the value of land adjoining or severed from the acquired land.