

Council's Duty of Care: Armidale City Council v Alec Finlayson Pty Ltd

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RECENTLY, THE FULL COURT OF the Federal Court delivered its decision in the matter of *Armidale City Council v Alec Finlayson Pty Ltd* (unreported – delivered on 29 March 1999). Interestingly, the court was asked to determine whether the Council owed a duty of care to a purchaser of land.

FACTS OF THE CASE

On 23 October 1985, Finlayson purchased a parcel of land for the sum of \$90 000. The Council had rezoned the land from industrial to residential, and had subsequently granted development applications for the subdivision of the land.

In March 1990, Finlayson received a letter from the Council stating that the land was contaminated from creosote and arsenic and required investigation. The evidence clearly established that the Council officers were well aware of the contamination at the time of the change in zoning. In addition, Council officers knew that the site was covered in gravel which concealed the contamination. The Council officers simply failed to apply their minds to the question of whether the contamination ought to be investigated so as to determine whether it required remediation.

FEDERAL COURT FINDING

The Full Court held that the Council owed a duty of care to subsequent purchasers of the land. This was based on the finding that the Council would have known that, if it approved the subdivisions, the overwhelming probability was that the subdividers, unaware of the contamination problem, would sell the resulting blocks to purchasers, who would also be unaware of the problem, and that the blocks would ultimately be used for residential purposes.

The Council submitted that its duty was limited to making a determination of the development application pursuant to s.90 of

the *Environmental Planning and Assessment Act*. The Full Court held to the contrary by stating that a statutory function did not preclude an action in negligence.

DUTY OF CARE

The Full Court went further by stipulating that the Council's duty could only have been discharged by refusing the development application in these circumstances.

Accordingly, Finlayson was awarded damages for economic loss arising from the Council's negligence. The case highlights the fact that councils are required to act prudently with respect to information in their possession. ■

Nick Di Girolamo's case summary first appeared in Colin Biggers & Paisley's *News Bulletin* (December 1999) and is reprinted with permission.