

CHANG & ANOR v LAIDLEY SHIRE COUNCIL (B46/2006)

Court appealed from: Court of Appeal, Supreme Court of Queensland

Date of grant of special leave: 8 December 2006

On 3 December 2004 the appellants, Shu-Ling Chang and Tai-Hsing Chen, applied for development approval to subdivide their lot into 25 lots. The development application was made pursuant to the *Integrated Planning Act* 1997 (Qld). However, prior to making the application a new planning scheme had been adopted by the respondent, under which the appellants' development application was not legally possible, but which permitted the appellants to apply within two years for permission to reconfigure their land under the previous scheme or to obtain statutory compensation in lieu. Within that two-year period, the *Integrated Planning Act* was amended by the *Integrated Planning and Other Legislation Amendment Act* 2004 (Qld) ("amending Act") to include provision for a regional plan, a draft regional plan and regulatory provisions. Draft regulatory provisions in a draft regional plan came into effect on 27 October 2004 which had the effect of prohibiting reconfiguration of the appellants' lot to lots of the size proposed in their development application which was subsequently lodged (that is, on 3 December 2004). A further effect was that the appellants' entitlement under the *Integrated Planning Act* to apply for statutory compensation ceased unless the planning application was "a properly made application" in accordance with the draft regulatory provisions, which, the respondent determined, the appellants' application was not.

Although at trial the appellants raised several grounds, on appeal to the Court of Appeal they sought to agitate only one issue, which was the entitlement to statutory compensation. The Court of Appeal (Jerrard and Keane JJA and Philippides J) dismissed the appellants' appeal. The Court rejected the appellants' argument that the legislative and regulatory provisions should be interpreted in light of principles of statutory interpretation which require that there be a clearly expressed legislative intention to adversely affect or to destroy accrued rights, and that section 20(2)(c) of the *Acts Interpretation Act* 1954 (Qld) applied to raise a presumption against retrospective abrogation of accrued rights. The Court held that the *Integrated Planning Act* created a right to compensation not upon injurious affection of the appellants' property (that is, the decrease in the value of the land they had sought to subdivide) but upon the outcome of the process of assessment by the respondent of an application to reconfigure their land. The appellants had not made "a properly made application". The Court held that the changes to the *Integrated Planning Act* by the amending Act evinced a clear legislative intention that councils such as the respondent should not be able to override the terms of the draft regional plan to consider a planning application, made after the commencement of the amending Act, which accords with the superseded planning scheme but not with the draft regional plan.

The grounds of appeal include:

- Whether the Court of Appeal erred in concluding that the right to statutory compensation under the *Integrated Planning Act* only arose upon assessment of a development application;

- Whether the Court of Appeal erred in concluding that the *Integrated Planning Act* evinced a clear intention to extinguish the appellants' accrued right to have their development application assessed and thereby become entitled to statutory compensation if rejected.