HIGH COURT OF AUSTRALIA

Public Information Officer

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SHU-LING CHANG AND TAI-HSING CHANG v LAIDLEY SHIRE COUNCIL

An application to subdivide land for a housing development was rightly refused by the Laidley Council as it did not comply with legislation then in force, the High Court of Australia held today.

In 2004 the Changs applied to Laidley Council to subdivide their 16.67-hectare block at Blenheim near Laidley in south-eastern Queensland into 25 lots. The reconfiguration was not permitted under revised planning provisions. Under the Council's 1996 town plan, the subdivision was permissible. A new planning scheme adopted in March 2003 meant the 25 lots would be too small as new rural subdivisions had to be at least 100 hectares, the reconfiguration could not take place, and the value of the Changs' interest would be reduced. However, Queensland's 1997 *Integrated Planning Act* allowed affected land owners to seek redress from their Council within two years of the adoption of such a planning scheme. Within that period, expiring in March 2005, the Changs could make a "development application (superseded planning scheme)" (DA(SPS)). The Council could then either pay compensation or consent, in whole or in part, to the development sought. The Changs lodged their DA(SPS) in December 2004. However in September 2004 the earlier Act was superseded by the *Integrated Planning and Other Legislation Amendment Act* (IPOLA), which cut short the two-year period. IPOLA provided for a completely revised regional planning scheme for south-eastern Queensland. The Council did not accept the Changs' DA(SPS) as the development was contrary to the draft regulatory provisions for the regional plan provided for by IPOLA.

The Changs sought to recover compensation for the diminished value of their land. The Planning and Environment Court held that the Changs' development application was not a "properly made application". The Court of Appeal refused them leave to appeal. The Changs then appealed to the High Court. They argued their entitlement to make a DA(SPS) had accrued under the 1997 Act, that they had applied for the DA(SPS) within the two-year leeway provided by that Act, and that because the 2004 changes did not expressly or impliedly repeal the compensation provisions of the 1997 Act their entitlement to compensation survived even if the Council could no longer give approval for their proposed development.

The Court unanimously dismissed the appeal. It held that the effect of IPOLA was to deprive the Changs of what would otherwise have been an entitlement to compensation if they had made a DA(SPS) within time. Under IPOLA, the Changs' application was not a properly made application. As the application was made after IPOLA came into effect, their application fell to be determined in accordance with the legislative provisions that were then in force. The Court held that IPOLA did not have retrospective operation and that no right to compensation had accrued to the Changs.

- *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.*

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