



HIGH COURT OF AUSTRALIA

Public Information Officer

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KETTERING PTY LTD v NOOSA SHIRE COUNCIL

A Queensland developer was entitled to make a claim for compensation for the injurious affection to its property covered by in a town plan, the High Court of Australia held today.

Kettering owned 19.8 hectares of land on Noosa Hill in Noosa Shire which it wished to subdivide and develop. In 1991 the shire's town plan was amended by the inclusion of the Noosa Hill Development Control Plan (DCP). The effect was to constrain the development potential of the land and hence diminish its market value. Kettering claimed compensation of \$9.3 million. The company claimed its land could reasonably have been expected to be rezoned and subdivided to allow construction of 73 houses and 132 units. After the DCP was gazetted, the planned development was limited to 24 houses and 75 units. Kettering's claim was rejected by the council and the company successfully appealed to the Planning and Environment Court. In 2001 the Queensland Court of Appeal upheld the appeal from Noosa Council, determining that under section 3.5(4)(d) of the Local Government (Planning and Environment) Act no compensation was payable to Kettering for the detrimental effect of the DCP. This decision is the subject of the first appeal to the High Court.

The Court of Appeal's orders also precluded Kettering from pursuing an alternative basis for its compensation claim, even though this had not been argued in and considered by the Planning and Environment Court, and was not raised before the Court of Appeal. Noosa Council joined Kettering in seeking a correction of the Court of Appeal's all-embracing order, but the Court declined to correct its orders. This refusal is the basis of the second appeal to the High Court.

The appeals centred on the construction of section 3.5 governing compensation. The Court held that section 3.5(4), listing circumstances where compensation is not payable, did not expressly or impliedly confine compensation to only direct and immediate effects of a DCP. The meaning of section 3.5(1)(a)(i) setting out the right to compensation was not to be construed by reference merely to the exceptions to the right. The Court held that the preferred approach was to identify the extent to which a very expansive right to compensation is reduced by quite specific exceptions. The Court of Appeal held that the exception denying compensation for prohibition on the use of land for particular purposes meant Kettering did not have a claim. But the High Court held that the effect of the DCP was upon the potential for subdivision, not upon the particular use of the land. Houses and units could still be built there, but fewer of them. It held that a right to compensation should be interpreted broadly. The onus was on the council to show that Kettering's claim fell within an exception and it had not satisfied that onus.

The Court unanimously allowed both appeals.

- *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.*