



HIGH COURT OF AUSTRALIA

8 February 2017

WESTERN AUSTRALIAN PLANNING COMMISSION v SOUTHREGAL PTY LTD & ANOR:
WESTERN AUSTRALIAN PLANNING COMMISSION v TREVOR NEIL LEITH

[2017] HCA 7

Today the High Court, by majority, allowed two appeals from the Court of Appeal of the Supreme Court of Western Australia. Part 11 of the *Planning and Development Act 2005* (WA) ("the PD Act") makes provision for a landowner to be compensated in circumstances where land has been injuriously affected by a planning scheme. The High Court held, by majority, that the owner of land at the date it is reserved for a public purpose under a planning scheme is entitled to compensation under the PD Act, but a subsequent purchaser of injuriously affected land is not so entitled.

Section 173 of the PD Act provides that any person whose land is injuriously affected by the making or amendment of a planning scheme is entitled to obtain compensation from the responsible authority. Section 177(1) provides that no compensation is payable until the land is first sold following the date of reservation (s 177(1)(a)); or the responsible authority refuses a development application (or grants it on unacceptable conditions) (s 177(1)(b)). Section 177(2) provides that compensation is payable only once, and is payable under s 177(1)(a) to the person who was the owner of the land at the date of reservation (s 177(2)(a)); or is payable under s 177(1)(b) to the person who was the owner of the land at the date of the development application (s 177(2)(b)). The Peel Region Scheme is a planning scheme which came into effect in March 2003 and reserved certain land, including the land in question in these appeals, for a public purpose.

In October 2003, the respondents in the first appeal purchased land affected by the reservation and in 2008 applied to develop it. In June 2003, the respondent in the second appeal purchased land affected by the reservation and in 2009 applied to develop it. Both applications were refused. The respondents each claimed compensation pursuant to the provisions of Pt 11 of the PD Act. The claims were refused by the appellant, the Western Australian Planning Commission, on the basis that compensation under the PD Act was available only to a person who owned land at the date of its reservation.

The respondents each brought proceedings in the Supreme Court of Western Australia, in which they claimed to be entitled to compensation. Special cases were prepared, the question arising in each special case being whether a person can be entitled to compensation under the PD Act in circumstances where the land has been sold following the date of the reservation, and where no compensation has been previously paid under the PD Act. The primary judge held that a person to whom compensation may be payable under s 177(2)(b) includes a person who is the owner at the date of the development application and was not the owner at the date of reservation. The primary judge thus answered the question in the special case in the affirmative. The Court of Appeal upheld that decision.

By grants of special leave, the Western Australian Planning Commission appealed to the High Court. A majority of the High Court allowed the appeals. The majority considered that once land is sold following its reservation, even where the original owner has not claimed compensation, later refusal to grant a development application does not give rise to an entitlement to compensation. Accordingly, the respondents were not entitled to compensation. The High Court therefore held that the question of law stated for determination in each special case should be answered "no".

- *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.*