

# LAND APPEAL COURT OF QUEENSLAND

CITATION: *Ipswich City Council v BWP Management Limited & Anor*  
(No 2) [2019] QLAC 2

**Ipswich City Council**  
(appellant)

v

**BWP Management Limited**  
ACN 082 856 424  
(first respondent)

and

**W & V Nominees Pty Ltd as Tte for the Elton Family  
Trust No. 3**  
ACN 606 755 239  
(second respondent)

FILE NOS: LAC003-18

Land Court No LGR282-16, LGR283-16

DIVISION: Land Appeal Court of Queensland

PROCEEDING: Appeal from the Land Court of Queensland

ORIGINATING  
COURT: Land Court of Queensland

DELIVERED ON: 16 July 2019

DELIVERED AT: Brisbane

HEARD ON: Submissions closed 5 July 2019

HEARD AT: Heard on the papers

THE COURT: Mullins J  
FY Kingham, President of the Land Court  
WA Isdale, Member of the Land Court

ORDERS: **1. The decision and order made by the Land Court on 12 October 2018 as to costs in LGR282-16 and LGR283-16 is set aside and substituted by the following order:**

**The Respondents must pay the Appellant's costs of this appeal and the proceedings at first instance, assessed on the standard basis, if not agreed.**

**CATCHWORDS:** PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where s 57A of the *Land Court Act 2000* provides the Land Appeal Court may order costs for an appeal as it considers appropriate, including the costs of the proceedings below – where the decision appealed against concerned the interpretation of the Ipswich City Council’s budget – where the appellant succeeded – where the respondent in the appeal argued, inter alia, that the case involved novel circumstances, was arguable, and served a public interest – where the Court ordered that the respondent pay the appellant’s costs below and on appeal

*Land Court Act 2000 s 57A*

*Moreton Bay Regional Council v Mekpine Pty Ltd & Anor (No 2) (2014) 35 QLCR 273; [2014] QLAC 5, applied*

**APPEARANCES:** Not applicable

- [1] **MULLINS J:** I agree with President Kingham.
- [2] **PRESIDENT KINGHAM:** On 21 June 2019, this Court made the following order:
- “3. Unless either party provides written submissions within 14 days seeking different orders, costs follow the event”.<sup>1</sup>
- [3] The parties have now made competing submissions as to costs. Ipswich City Council, which succeeded on the appeal, submits the respondents, the owners of the land, should pay its costs of both the appeal to this Court and of the original proceedings. The owners did not address the costs of the original proceedings, although the Council had sought that relief in its Notice of Appeal. As to the costs of the appeal before this Court, the owners propose orders in the alternative. Its primary submission is that each party should bear their own costs. In the alternative, they argue the Council’s costs should be limited to no more than 50% assessed on the standard basis, if not agreed.
- [4] This Court has the power to award costs for an appeal *as it considers appropriate*. This includes the power to award costs of the original proceedings.<sup>2</sup>
- [5] On 12 October, the learned member who conducted the original proceedings awarded the owners 50% of their costs, for reasons that it is not necessary to canvass. This

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<sup>1</sup> *Ipswich City Council v BWP Management Limited & Anor* [2019] QLAC 1.

<sup>2</sup> *Land Court Act 2000 s 57A*.

Court has set aside his Honour's decision on the merits. It follows this Court should reconsider the costs of the proceeding below, as well as the costs of this appeal.

- [6] The Land Appeal Court re-stated the principles that apply to costs in this Court in *Moreton Bay Regional Council v Mekpine Pty Ltd & Anor (No 2)*:

“It has been held on many occasions that the discretion to award costs granted by s 34 is unfettered but that the discretion is to be exercised judicially, that is for reasons that may be explained and substantiated. However it has also been recognized by the Land Appeal Court that although the discretion to award costs is unfettered, the rule that costs follow the event may inform the exercise of the discretion granted under s 34(1), “as there is justice in that approach. It protects those put to unnecessary and substantial expense at the behest of others.””<sup>3</sup> (Citations omitted)

- [7] This Court decided that case before s 57A was enacted. However, s 34 and s 57A use a common description for the Court's discretion; conferring a power to award costs “as it considers appropriate”. Further, this Court has recently applied the same principles in exercising its discretion under s 57A.<sup>4</sup>

- [8] The owners make a number of submissions which I have summarised and addressed below.

- [9] Firstly, the owners submit the case involved novel circumstances, the owners' case was arguable, and interpreting the Council's budget was a complicated exercise in statutory interpretation. I accept the first two propositions, but not the third. It was not a difficult or unusual construction exercise and did not involve any novel question of law. On appeal, this Court has applied orthodox principles of interpretation. Had they been applied in the original proceedings, the Council would have succeeded.

- [10] Secondly, the owners submit the Council made arguments on appeal that it did not make in the original proceedings, and it should have identified that more than one category could apply. However, the Council has always maintained, and this Court has accepted, that only one category applied.

- [11] Thirdly, the owners argue that all parties conducted themselves efficiently in the original proceedings and the appeal, in particular by agreeing on a statement of facts.

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<sup>3</sup> *Moreton Bay Regional Council v Mekpine Pty Ltd & Anor (No 2)* (2014) 35 QLCR 273 [12]; [2014] QLAC 5 [12].

<sup>4</sup> *Chief Executive, Department of Transport and Main Roads v Pfeiffer Nominees Pty Ltd (No 2)* [2018] QLAC 3 [9].

The Court commends all parties for their approach to the litigation, which confined the hearing to the real issue between them. This is consistent with the parties' obligations to the Court.<sup>5</sup> However, this factor does not weigh in the balance on costs. All parties contributed to and benefited from the efficiency which resulted from that approach.

[12] Finally, the owners argue there was a public interest in resolving the ambiguity in the budget, the Ipswich City Council is a public authority, and the Court should not reward it with a costs order when its rating categories were ambiguous.

[13] The ambiguity in the Council's budget was limited. The fact the Court's decision may have implications beyond the immediate parties is a consequence of its role in interpreting the budget. That does not mean the Court should exercise its discretion as if this appeal were "public interest" litigation.<sup>6</sup> The owners had a (legitimate) commercial interest in pursuing the appeal. In my view that predominates over any public interest in resolving the ambiguity in applying the budget's rating category to a limited number of retailers.

[14] Further, to characterise a costs order in favour of the Council as a reward is ill conceived. A costs order compensates a party, and then not in full, for the legal costs incurred because of the proceedings.<sup>7</sup> Ultimately, a public entity is largely funded by taxpayers, in this case the Council's ratepayers.

[15] In the circumstances of this appeal, I consider there is justice in making an order for costs in favour of the successful party.

[16] It is appropriate to make the following order:

1. The decision and order made by the Land Court on 12 October 2018 as to costs in LGR282-16 and LGR283-16 is set aside and substituted by the following order:

The Respondents must pay the Appellant's costs of this appeal and the proceedings at first instance, assessed on the standard basis, if not agreed.

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<sup>5</sup> *Uniform Civil Procedure Rules 1999* r 5; *Land Court Rules 2000* r 4.

<sup>6</sup> *Oshlack v Richmond River Council* (1998) 193 CLR 72, 80; [1998] HCA 11 [20].

<sup>7</sup> *Latoudis v Casey* (1990) 170 CLR 534, 543; [1990] HCA 59 [13].

[17] **MEMBER ISDALE:** I agree with the reasons and orders proposed by President Kingham.

**MULLINS J**

**FY KINGHAM  
PRESIDENT OF THE LAND COURT**

**WA ISDALE  
MEMBER OF THE LAND COURT**