

LAND APPEAL COURT OF QUEENSLAND

CITATION: *Aurizon Property Pty Ltd v The Chief Executive, Department of Transport and Main Roads (No2)* [2024] QLAC 1

PARTIES: **Aurizon Property Pty Ltd**
ACN 145 991 724
(appellant)

v

The Chief Executive, Department of Transport and Main Roads
(respondent)

FILE NOS: LAC001-23

Land Court No AQL054-20

DIVISION: Land Appeal Court of Queensland

PROCEEDING: Appeal from the Land Court of Queensland

ORIGINATING COURT: Land Court of Queensland

DELIVERED ON: 19 February 2024

DELIVERED AT: Townsville

THE COURT: North J

Coker DCJ, Acting Member of the Land Court

WA Isdale, Member of the Land Court

HEARD ON: On the papers

- ORDERS:
- 1. The respondent pay the appellant's costs of and incidental to the appeal to be assessed on the standard basis.**
 - 2. Each parties' costs of and incidental to the hearing below be that parties' costs in the cause.**

CATCHWORDS: APPEAL – GENERAL – COSTS OF APPEAL
PROCEEDING REMITTED FOR REHEARING COSTS
FOLLOW THE EVENT

Land Court Act 2000 (Qld) s 57A(1)

Firebird Global Master Fund II Ltd v Republic of Nauru
(No2) (2015) 90 ALJR 270

John Urquhart t/as Hart Renovations v Partington & Anor
[2016] QCA 199

THE COURT:

- [1] Both parties filed and served submissions concerning costs in compliance with the Order made on 13 December 2023.
- [2] The appellant contended that the costs should follow the event and that in the circumstances of its success the respondent should pay its costs of and incidental to the appeal.¹ The respondent contended that there be no order as to costs. In support of that submission the respondent pointed to the circumstance that the order at first instance was suspended but not set aside and in so doing contended that the result of first instance may be that the order remains undisturbed.
- [3] The appellant has enjoyed a substantial measure of success. Contentions made at the trial were not addressed by the Member below resulting in the findings in orders made in this Court. The respondent chose to oppose the arguments raised by the appellant who has been vindicated. The respondent could have conceded the grounds upon which the appellant has succeeded.
- [4] This Court has a broad discretion concerning costs.² The circumstances here, reflecting the success enjoyed by the appellant, warrant an order for costs following the event.³
- [5] There should be an order that the respondent pay the appellant's costs of and incidental to the Appeal to be assessed on the standard basis.
- [6] There remains the issue of costs of the trial below. The hearing under the order for remittal may proceed upon substantially the same or similar evidence to that considered by the Member. But that is not the inevitable outcome. The evidence tendered at the rehearing may be substantially different. It is appropriate in these circumstances for the costs of the hearing below be the parties' costs in the cause.
- [7] The orders will be:
1. The respondent pay the appellant's costs of and incidental to the appeal to be assessed on the standard basis.

¹ Refer Appellant's Outline filed 30 January 2024.

² See s 57A(1) *Land Court Act 2000*.

³ See for example *Firebird Global Master Fund II Ltd v Republic of Nauru (No 2)* (2015) 90 ALJR 270 at [6] and *John Urquhart t/as Hart Renovations v Partington & Anor* [2016] QCA 199 at [10].

2. Each parties' costs of and incidental to the hearing below be that parties' costs in the cause.