

SUPREME COURT OF QUEENSLAND

CITATION: *Fraser Coast Regional Council v Linville Holdings Pty Ltd*
[2018] QCA 71

PARTIES: **FRASER COAST REGIONAL COUNCIL**
(appellant)
v
LINVILLE HOLDINGS PTY LTD
ACN 009 944 325
(respondent)

FILE NO/S: Appeal No 12705 of 2017
SC No 12922 of 2016

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane – [2017] QSC 252 (Jackson J)

DELIVERED EX TEMPORE ON: 18 April 2018

DELIVERED AT: Brisbane

HEARING DATE: 18 April 2018

JUDGES: Morrison and McMurdo JJA and Bowskill J

ORDERS: **1. The appeal be allowed.**
2. The declaration made by the primary judge be set aside.
3. The originating application filed in the trial division be dismissed.
4. An indemnity certificate pursuant to s 15 of the *Appeal Costs Fund Act 1975 (Qld)* be granted to the respondent.

CATCHWORDS: *Appeal Costs Fund Act 1973 (Qld)*, s 15
Local Government Act 2009 (Qld), s 94(2)
Local Government Legislation (Validation of Rates and Charges) Amendment Act 2018 (Qld)

COUNSEL: K A Barlow QC, with N J Shaw, for the appellant
J T Hastie for the respondent

SOLICITORS: CLH Lawyers for the appellant
D J Hinton Lawyers for the respondent

[1] **THE COURT:** Last November, a judge in the Trial Division declared that for each of the last three financial years, the appellant had failed to validly make and levy rates and charges, because it did not decide, by resolution at its budget meeting for that year, what rates and charges were to be levied as required by s 94(2) of the *Local Government Act 2009 (Qld)*.

- [2] After this appeal was filed, the Parliament amended the relevant legislation with the effect of overriding the decision under appeal, by declaring that a rate or charge levied by a local government is valid notwithstanding that there was no decision, by resolution, to levy that rate or charge at its budget meeting: *Local Government Legislation (Validation of Rates and Charges) Amendment Act 2018 (Qld)*. Consequently, the declaration made by the primary judge cannot stand, regardless of whether it was correct on the law as it was at the time at which it was made.
- [3] The parties have asked this Court to make orders by consent for the disposition of the appeal. It should be noted that these orders do not represent any view of the Court about the merits of the appeal prior to the amendment to the relevant legislation.
- [4] The respondent seeks an indemnity certificate under s 15 of the *Appeal Costs Fund Act 1973 (Qld)*. The parties are agreed that between them there should be no order for costs. But the certificate is sought to indemnify the respondent against its costs of the appeal. Although this Court has not had to consider the merits of the appeal, as they were before the legislative amendment, it may be accepted that the respondent's case before the primary judge was fairly arguable. There is some difference in the authorities as to whether an indemnity certificate can be granted when the appeal has been allowed by consent without any determination of the merits. But in this case, the merits are now with the appellant, according to the legislation in its present terms. Because the appeal is by way of a re-hearing, it is the present law which is to be applied.
- [5] It will be ordered by consent that:
1. The appeal is allowed.
 2. The declaration made by the primary judge be set aside.
 3. The originating application filed in the trial division be dismissed.
- [6] It will be further ordered that an indemnity certificate under s 15 of the *Appeal Costs Fund Act 1973 (Qld)* be granted to the respondent for its costs of the appeal.