SUPREME COURT OF QUEENSLAND

CITATION:	*Nerinda Pty Ltd v Redland City Council & Ors* [2018] QCA 196
PARTIES:	**NERINDA PTY LTD** **ACN 001 325 720** **(applicant)** **v** **REDLAND CITY COUNCIL** (first respondent) **LIPOMA PTY LTD** **ACN 002 203 581** (second respondent) **LANREX PTY LTD ACN 010 740 191 as trustee for IDL INVESTMENT TRUST & ANOR** (third respondent) **VICTORIA POINT LAKESIDE PTY LTD** **ACN 106 781 757** (fourth respondent)
FILE NO/S:	Appeal No 11075 of 2017 P & E Appeal No 4940 of 2015 P & E Appeal No 2 of 2016 P & E Appeal No 44 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Planning and Environment Application and Appeal – Further Order
ORIGINATING COURT:	Planning and Environment Court at Brisbane – [2017] QPEC 53
DELIVERED ON:	24 August 2018
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGES:	Fraser and Morrison JJA and Bowskill J
ORDER:	**The second, third and fourth respondents pay the applicant's costs of the application for leave to appeal, and the appeal.**
CATCHWORDS:	APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – whether in circumstances where the applicant did not succeed on all grounds, but nevertheless was wholly successful in its appeal against the decision of the Planning and Environment Court, there is any justification for a departure from the general principle that costs should follow the outcome of the appeal

Uniform Civil Procedure Rules 1999 (Qld), r 766(1)(d)

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

COUNSEL: D R Gore QC, with J G Lyons, for the applicant
No submissions from the first respondent
C L Hughes QC, with M J Batty, for the second, third and fourth respondents

SOLICITORS: Anderssens Lawyers for the applicant
No submissions from the first respondent
McCullough Robertson for the second, third and fourth respondents

[1] **THE COURT:** On 29 June 2018 this Court gave leave to appeal, and allowed an appeal against a decision of the Planning and Environment Court. No order as to costs was made at that time. The successful applicant seeks an order that the second, third and fourth respondents pay its costs of the application and the appeal. These respondents contend that in circumstances where the applicant did not succeed on all the issues it raised, the appropriate order is that the applicant pay a proportion (30 per cent to 50 per cent) of their costs, but that an order that each party bear their own costs may also be appropriate. No order is sought by or against the first respondent, the Council, which supported the appeal.

[2] The relevant principles were summarised in *John Urquhart t/as Hart Renovations v Partington & Anor* [2016] QCA 199 at [7]-[10]. In that case the Court (McMurdo P, Morrison JA and Henry J) said, at [10]:

> "It is apparent from the terms of r 766(1)(d) and its reference to 'the whole or part of the costs' that a successful party in an appeal may be awarded less than its costs. However where a party has been successful in the outcome of the appeal the fact that it did not succeed on every issue or ground advanced will not usually warrant a departure from the general principle that costs should follow the outcome of the appeal. As much was emphasised by the High Court in *Firebird Global Master Fund II Ltd v Republic of Nauru (No 2)*[1] where *Firebird* had only partial success in respect of one of four issues. The Court observed:
>
> > '[5] If the question of costs is to be determined on the basis of success on issues, rather than on the outcome of the appeal, these factors would not suggest as appropriate an order apportioning costs, let alone one that Firebird and Nauru pay their own costs, for which Firebird contends.
> >
> > [6] In any event, the preferable approach in this case is the one usually taken, that costs should follow the outcome of the appeal. This is not a case where it may be said that the event of success is contestable, by reference to how separate issues have been determined. There are no special circumstances to warrant a departure from the

[1] (2015) 327 ALR 192 at 193.

> general rule, and good reasons not to encourage applications regarding costs on an issue-by-issue basis, involving apportionments based on degrees of difficulty of issues, time taken to argue them and the like.'"

[3] The legislative provisions in relation to costs of proceedings in the Planning and Environment Court do not apply to an appeal to this Court from such a proceeding.[2] Under rule 766(1)(d) of the *Uniform Civil Procedure Rules* this Court may make the order as to the whole or part of the costs of an appeal it considers appropriate.

[4] The applicant was wholly successful in having the primary judge's decision set aside, and having the matter remitted to the Planning and Environment Court for further consideration. The main point in the appeal – the treatment by the learned primary judge of a draft planning scheme – was determined favourably to the applicant.

[5] Despite this, the second, third and fourth respondents submit that: since the argument about the draft planning scheme on which the appeal succeeded differed in some respects from the position taken by the applicant in the court below; the applicant enjoyed only qualified success on its other argument as to relevant and irrelevant considerations (and in relation to the latter, the Court preferred, without finally deciding, the statutory construction of the "decision rules" posited by these respondents); and the applicant failed to establish grounds relating to inadequacy of reasons, delay, failure to grant a partial approval and legal unreasonableness – the applicant should not recover any of its costs and should instead be required to pay part of these respondents' costs.

[6] This is not a case where the event of success is contestable, having regard to the outcome in respect of these various issues. It is simply a case where a number of arguments were advanced, and some, but not others, succeeded resulting in the appeal being allowed and the decision being set aside. As this Court observed in *Urquhart v Partington*, that is not something which warrants a departure from the general principle that costs should follow the outcome of the appeal.

[7] It is appropriate to order that the second, third and fourth respondents pay the applicant's costs of the application for leave to appeal, and the appeal.

---

2 Cf ss 59 and 60 of the *Planning and Environment Court Act* 2016 (Qld).