SUPREME COURT OF QUEENSLAND

CITATION:	*Traspunt No 4 Pty Ltd v Moreton Bay Regional Council* [2019] QCA 253
PARTIES:	**TRASPUNT NO 4 PTY LTD** ACN 102 581 313 (applicant/cross respondent) **v** **MORETON BAY REGIONAL COUNCIL** (respondent/cross applicant)
FILE NO/S:	Appeal No 531 of 2018 P & E Appeal No 3002 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave *Sustainable Planning Act* – Further Orders
ORIGINATING COURT:	Planning and Environment Court at Brisbane – [2015] QPEC 49 (Horneman-Wren SC DCJ)
DELIVERED ON:	15 November 2019
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGES:	Gotterson and McMurdo JJA and Davis J
ORDERS:	**In each proceeding, Traspunt No 4 Pty Ltd pay to the Council its costs of the application for leave to appeal, and of the appeal.**
CATCHWORDS:	APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – where an applicant for a development permit (Traspunt) and the relevant council each applied for leave to appeal against a judgment of the Planning and Environment Court – where the council succeeded in its challenge to that judgment – where Traspunt failed in its challenge, for reasons consistent with the council's arguments – where Traspunt submits that the council did not succeed in the appeal entirely, in the sense that it retreated from a position opposing the development application entirely, to one opposing a significant part of it – where, despite that retreat, the council's legal arguments remained relevant and the council sought that the limited work be permitted pursuant to an order in terms different to those made by the Planning and Environment Court – whether the council in substance succeeded entirely – whether there are sufficient reasons to depart from the usual rule that costs should follow from the event APPEAL AND NEW TRIAL – PROCEDURE –

QUEENSLAND – POWERS OF COURT – COSTS – where a planning and environment applicant (Traspunt) and the relevant council each applied for leave to appeal against a judgment of the Planning and Environment Court – where the council succeeded in its challenge to that judgment – where Traspunt failed in its challenge, for reasons consistent with the council's arguments – where Traspunt submits that each party should bear its own costs as the applications to the Court of Appeal raised and resolved significant issues relating to the interrelationship of planning and environment statutes and instruments – where the applications did raise questions of importance beyond the present proceeding – where Traspunt was not litigating in the public interest but was doing so for its own commercial purposes – whether there are sufficient reasons to depart from the usual rule that costs should follow from the event

Oshlack v Richmond River Council (1998) 193 CLR 72; [1998] HCA 11, distinguished
Queensland Construction Materials Pty Ltd v Redland City Council & Ors (2010) 175 LGERA 153; [2010] QCA 248, distinguished
Traspunt No 4 Pty Ltd v Moreton Bay Regional Council [2019] QCA 51, related

COUNSEL: S J Given for the applicant/cross respondent
D R Gore QC, with A N S Skoien, for the respondent/cross applicant

SOLICITORS: MacPherson Kelly for the applicant/cross respondent
Moreton Bay Regional Council for the respondent/cross applicant

[1] **GOTTERSON JA:** I agree with the orders proposed by McMurdo JA and with the reasons given by his Honour.

[2] **McMURDO JA:** On 26 March 2019, this Court determined two applications for leave to appeal from a judgment of the Planning and Environment Court.[1] The applications raised many legal questions for the Court's determination which had not been considered, at least in this Court, in a previous case. The proceedings arose from a proposal by the applicant ("Traspunt") to clear vegetation on two pieces of land within the area of the respondent Council. The Planning and Environment Court had held that Traspunt was able to clear firebreaks along the northern and eastern boundaries of the lots, but not, as Traspunt had also proposed, along the southern and western boundaries. Traspunt and the Council each applied for leave to appeal against that outcome.

[3] The Council challenged the decision of the Planning and Environment Court that the proposed works along the northern and eastern boundaries did not involve assessable development. For two reasons, this Court held that the Planning and Environment Court had erred on that question, and that the work was assessable

1 *Traspunt No 4 Pty Ltd v Moreton Bay Regional Council* [2019] QCA 51.

development. The Planning and Environment Court had held that, if the development was assessable, it would be permitted on the planning merits. That finding, which was one of fact, was not challenged in this Court. The outcome of the Council's application for leave to appeal was that the Council succeeded on the arguments which it had made to this Court. The case was remitted to the Planning and Environment Court, for orders in relation to the northern and eastern boundaries, but not because the Council had failed in this Court in any respect.

[4] The other application for leave to appeal was made by Traspunt, complaining of the decision that it not be permitted to clear firebreaks along the southern and western boundaries. Traspunt failed in that challenge, for reasons which were consistent with the Council's arguments.

[5] In these circumstances, the Council seeks its costs of each application for leave to appeal, upon the basis that costs should follow the event.

[6] However that is resisted by Traspunt, on essentially two arguments. The first is that, Traspunt suggests, this was a case where neither side was entirely successful. Reference is made to what I said at paragraph [3] of the judgment, that neither side had been content with the outcome in the Planning and Environment Court, and that each had applied for leave to appeal against the judgment, saying that it should have succeeded entirely.

[7] It can be said that the Council did not succeed entirely, in the sense of preventing the work on the northern and eastern boundaries. As I said in the same point of the judgment, by the time of the hearing in this Court, the Council's position had changed, by no longer opposing the work on the northern and eastern boundaries, but saying that this should be permitted pursuant to a different order than that made by the judge. The Council's argument on the legal questions remained relevant, and they were determined in its favour. The substance of the matter is that in this Court the Council did succeed entirely.

[8] The second argument for Traspunt seeks to liken this case to *Oshlack v Richmond River Council*,[2] and *Queensland Construction Materials Pty Ltd v Redland City Council & Ors*.[3] That submission cannot be accepted. The case certainly raised legal questions having an importance beyond this particular proceeding. But Traspunt was not litigating in the public interest; it was doing so for its own commercial purposes. In *Queensland Construction Materials Pty Ltd*, this Court referred to the considerations discussed by the High Court in *Oshlack,* when observing that the proceeding in question was brought by an individual who did not stand to gain personally from the litigation and was motivated to ensure that laws governing an application for approval of development that she opposed were observed.[4] Clearly, that is different from the present case.

[9] In my view, no reason is demonstrated for departing from the usual rule that costs should follow the event. I would order that, in each proceeding, Traspunt No 4 Pty Ltd pay to the Council its costs of the application for leave to appeal, and of the appeal.

[10] **DAVIS J:** I agree with the orders proposed by McMurdo JA and the reasons his Honour gives.

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2 (1998) 193 CLR 72; [1998] HCA 11.
3 (2010) 175 LGERA 153; [2010] QCA 248.
4 (2010) 175 LGERA 153 at 158 [20]; [2010] QCA 248 at [20].