

SUPREME COURT OF QUEENSLAND

CITATION: *McDonald v Douglas Shire Council* [2003] QCA 235

PARTIES: **JOHN JOSEPH PETER MCDONALD**
(applicant/appellant)
v
DOUGLAS SHIRE COUNCIL
(respondent)

FILE NO/S: Appeal No 4999 of 2002
P & E Application No 1088 of 2001

DIVISION: Court of Appeal

PROCEEDING: Planning and Environment Appeal – Further Order

ORIGINATING COURT: Planning and Environment Court at Brisbane

DELIVERED ON: Judgment delivered on 23 May 2003
Further order delivered on 6 June 2003

DELIVERED AT: Brisbane

HEARING DATE: 12 May 2003

JUDGES: de Jersey CJ, Williams JA and Wilson J
Judgment of the Court

FURTHER ORDER: **That the appellant pay the respondent's costs of and incidental to the appeal, to be assessed, including the reserved costs of the application for leave to appeal and to cross-appeal**

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – COSTS OF WHOLE ACTION – GENERALLY – where decision of Planning and Environment Court affirmed on grounds different to those given by the learned primary judge – whether costs awarded to respondent

COUNSEL: P Lyons QC, with W Cochrane, for the appellant
D Gore QC, with M Rackemann, for the respondent

SOLICITORS: MacDonnells for the appellant
Williams Graham & Carman for the respondent

[1] **THE COURT:** In dismissing the appeal, costs were reserved for further consideration because the decision of the Planning and Environment Court, although affirmed, was affirmed on grounds different from those given by the learned primary Judge.

- [2] The respondent now seeks orders for costs in its favour, and the appellant does not oppose our making such orders.
- [3] Two points only need be made. As Counsel for the respondent point out, "the essential question, whether the consent endured for the appellant's benefit on the proper construction of the relevant provisions, was determined against the appellant"; and "the appeal was determined consistently with the respondent's primary submission".
- [4] There will accordingly be an order that the appellant pay the respondent's costs of and incidental to the appeal, to be assessed, including the reserved costs of the application for leave to appeal and to cross-appeal.