

COURT OF APPEAL

McMURDO P  
JERRARD JA  
DUTNEY J

Appeal No 4800 of 2004

WALL'S QUARRIES PTY LTD  
ACN 062 219 765

Appellant (Respondent)

and

WARWICK SHIRE COUNCIL

First Respondent (Respondent)

and

WARREN R SKINNER AND  
SANDRA E SKINNER AND  
CRAIG R SKINNER

Respondents (Second Respondents)  
(Applicants)

and

STATE OF QUEENSLAND

Respondent by Election  
(Respondent)

BRISBANE

..DATE 12/08/2004

ORDER

THE PRESIDENT: The parties in this application have requested that it be dealt with on the papers. The Court has read all the material filed in respect of this application. Wall's Quarries Pty Ltd has applied for leave to appeal against an order of the Planning and Environment Court at Brisbane on 19 April 2004 that it pay the costs of the first respondent, the Warwick Shire Council, and the second respondents, Warren R Skinner, Sandra E Skinner and Craig R Skinner ("the Skinners"). The Skinners bring this application to allow them to commence the development the subject of the primary Judge's decision.

Under s 4.1.59 *Integrated Planning Act 1997* (Qld) the development the subject of the application for leave to appeal cannot be started until any appeal is decided or withdrawn. Under s 4.1.59(2) however, this Court may, if satisfied that the outcome of the appeal before it would not be affected if the development or part of it is started before the appeal is decided, allow the development or part of it to start before the appeal is decided.

All the parties are agreeable to the Skinners' application being determined on the papers and subject to this Court's approval under s 4.1.59 they each consent to the orders that the Skinners now seek. As this appeal is only against the aspect of the judgment relating to the costs order and not the development approval itself, the Skinners should be entitled to start the development prior to the hearing of the

application for leave to appeal. The outcome of any appeal, should leave be given, would not be affected by the commencement of the development before the hearing and determination of the appeal.

I would order under s 4.1.59(2) *Integrated Planning Act* 1997 (Qld) that the second respondents may start the development the subject of the primary Judge's decision before any appeal from that decision is decided on the condition that the development complies with the terms and conditions (a) to (c) agreed by the parties in the draft consent order initialled by me and placed on the file.

JERRARD JA: I agree.

DUTNEY J: I agree.

THE PRESIDENT: That is the order of the Court.

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