

SUPREME COURT OF QUEENSLAND

CITATION: *Wood v Redland City Council* [2011] QCA 340

PARTIES: **GREGORY MARK WOOD**
(applicant)
v
REDLAND CITY COUNCIL
(respondent)

FILE NO/S: Appeal No 3966 of 2011
Appeal No 3967 of 2011
P & E Appeal No 3592 of 2010
P & E Application No 2394 of 2010

DIVISION: Court of Appeal

PROCEEDING: Applications for Leave *Integrated Planning Act* – Further Orders

ORIGINATING COURT: Planning and Environment Court at Brisbane

DELIVERED ON: 25 November 2011

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Muir JA, Margaret Wilson AJA and North J
Judgment of the Court

ORDER: **Applications for costs refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – where the applicant was largely unsuccessful on appeal from two matters in the Planning and Environment Court – where the matters concerned the applicant’s entitlement to carry on his commercial fishing business from his residence – where the respondent’s lawful conduct in carrying out a statutory duty caused the applicant and his family hardship – where no costs order was sought against the applicant at first instance – where the applicant was given no prior notice that costs would be sought against him on appeal – where the respondent applied for costs after the determination of the appeal – where the applicant did not file submissions as to costs – whether it would be just to award costs against the applicant

COUNSEL: No appearance by the applicant, the applicant’s submissions were heard on the papers
No appearance by the respondent, the respondent’s submissions were heard on the papers

SOLICITORS: The applicant appeared on his own behalf
 Norton Rose Australia for the respondent

- [1] **THE COURT:** On 16 September 2011 this Court ordered in CA No 3967 of 2011 that leave to appeal be granted and that the declaration made by the primary judge be varied. The appeal was otherwise refused. The application for leave to appeal in CA No 3966 of 2011 was refused.
- [2] The two matters were related. In a broad sense, they concerned the applicant's entitlement to continue to carry on his business of commercial fisherman on and from his land which was located in a residential A zone.
- [3] No costs orders were sought against the applicant at first instance and, so far as one can tell from the material before this Court, the applicant was not put on notice that the respondent council would seek costs orders on the appeals. The respondent's outline of argument sought no costs order and no costs order was requested or adverted to orally on the hearing of the appeal.
- [4] The respondent filed and served submissions on 28 September 2011 in which it sought orders that the applicant pay the respondent's costs of the applications for leave to appeal and of the appeal. The applicant made no submissions.
- [5] The respondent is a local authority fulfilling its statutory duty. The applicant is a ratepayer who resisted, unsuccessfully, the destruction of his livelihood arising from his failure to obtain the approvals necessary to enable him to continue his business activities on his land. The primary judge commented:

“This case has unfortunate consequences for the appellant and his family. It is highly likely that the dismissal of his appeal will cause financial hardship for the appellant and his son-in-law who is employed in the family business.”
- [6] It was not contended that the applicant acted unreasonably in attempting to preserve his livelihood. The respondent, properly, acted to the great detriment of the applicant in what it perceived to be the public interest. In those circumstances, particularly as no notice or warning was given to the applicant that he might be subjected to costs order, it would be unjust to burden him with such an order. The respondent's applications are refused.