

SUPREME COURT OF QUEENSLAND

CITATION: *Lockyer Valley Regional Council v Westlink Pty Ltd & Ors*
[2012] QCA 2

PARTIES: **LOCKYER VALLEY REGIONAL COUNCIL**
(applicant)
v
WESTLINK PTY LTD AS TRUSTEE FOR WESTLINK INDUSTRIAL TRUST
(first respondent)
CHIEF EXECUTIVE, DEPARTMENT OF ENVIRONMENT AND RESOURCE MANAGEMENT
(second respondent)
MICHAEL WILLIAM ASHLEY
(third respondent)
GERALD SCOTT
(fourth respondent)
KEEP LOCKYER RURAL INC
(fifth respondent)
LYNNE HALL
(sixth respondent)
GEOFFREY KING
(seventh respondent)

FILE NO/S: Appeal No 6388 of 2011
P & E Appeal No 2606 of 2010

DIVISION: Court of Appeal

PROCEEDING: Application for Leave *Sustainable Planning Act* – Further Order

ORIGINATING COURT: Planning and Environment Court at Brisbane

DELIVERED ON: Judgment delivered 9 December 2011
Further Order delivered 3 February 2012

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Fraser and White JJA and Douglas J
Judgment of the Court

FURTHER ORDER: **Pursuant to s 15(1) of the *Appeal Costs Fund Act 1973 (Qld)*, an indemnity certificate in respect of the appeal is granted to the first respondent.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – WHEN GRANTED – where the applicant succeeded on its appeal on the basis that the primary judge failed to carry out a

statutory task – where the first respondent submitted below that the statutory task had to be conducted – whether an indemnity certificate should be granted

Appeal Costs Fund Act 1973 (Qld), s 15(1)

COUNSEL: No appearance by the applicant, the applicant’s submissions were heard on the papers
 No appearance by the first respondent, the first respondent’s submissions were heard on the papers
 No appearance for the second to seventh respondents

SOLICITORS: Connor O’Meara Solicitors for the applicant
 McInnes Wilson Lawyers for the first respondent
 No appearance for the second to seventh respondents

- [1] **THE COURT:** In an earlier decision in this matter, *Lockyer Valley Regional Council v Westlink Pty Ltd & Ors* [2011] QCA 358, the Court allowed the applicant Council’s appeal from a decision of the Planning and Environment Court which had allowed an appeal from the Council’s decision to refuse the first respondent’s application for a development permit. The Court held that the primary judge erred in law in deciding that the use proposed by the first respondent did not conflict with the Council’s Planning Scheme, and that his Honour should have considered whether there were sufficient grounds to justify approval of the application despite the conflict.
- [2] The first respondent has now applied for an indemnity certificate under the *Appeal Costs Fund Act 1973 (Qld)*. Section 15(1) of the *Appeal Costs Fund Act* confers a discretion to grant a respondent an indemnity certificate in respect of the appeal where the appeal succeeds on a question of law. The jurisdiction is therefore enlivened in this case.
- [3] In the circumstances of this case, the discretion to grant a certificate should be exercised because, as the first respondent pointed out, it had submitted in the Planning and Environment Court that there was a conflict, albeit of a technical nature, which required the primary judge to consider whether there were “sufficient grounds to justify the decision despite the conflict” in terms of s 3.5.14(2) of the *Integrated Planning Act 1997 (Qld)*. It was the primary judge’s failure to carry out that statutory task which necessitated the appeal and the order remitting the matter for further consideration by the primary judge. The case for a certificate is therefore an unusually strong one. There is no apparent discretionary consideration opposed to the grant of the certificate.
- [4] Pursuant to s 15(1) of the *Appeal Costs Fund Act*, the Court orders that an indemnity certificate in respect of the appeal be granted to the first respondent.