SUPREME COURT OF QUEENSLAND

CITATION:	*Conquest & Anor v Bundaberg Regional City Council* [2016] QCA 351
PARTIES:	**In Appeal No 236 of 2014:** **CONQUEST, Ann** (applicant) **v** **BUNDABERG REGIONAL CITY COUNCIL** (respondent) **In Appeal No 237 of 2014:** **CONQUEST, Robert John** (applicant) **v** **BUNDABERG REGIONAL CITY COUNCIL** (respondent)
FILE NO/S:	CA No 236 of 2014 CA No 237 of 2014 DC No 48 of 2012 DC No 49 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Criminal) – Further Order
ORIGINATING COURT:	District Court at Brisbane – [2014] QDC 166
DELIVERED ON:	23 December 2016
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGES:	Fraser and Philip McMurdo JJA and Daubney J Judgment of the Court
ORDER:	**That there be no order as to the costs of the application.**
CATCHWORDS:	APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – where the applicants were found guilty of an offence against s 4.3.15 of the *Integrated Planning Act* 1997 (Qld) for failing to comply with an enforcement notice – where the District Court dismissed their appeals – where the applicants applied for leave to appeal under s 118 of the *District Court of Queensland Act* 1967 (Qld) – where the application for leave to appeal under s 118 of the *District Court of Queensland Act* 1967 was refused – where the respondent departed from the position it had adopted in the Magistrates Court and the District Court – whether there is

	ground for departing from the ordinary rule that costs ought follow the event
	Integrated Planning Act 1997 (Qld), s 4.3.15
	Conquest & Anor v Bundaberg Regional Council [2016] QCA 203, related
COUNSEL:	No appearance for the applicants, the applicants' submissions were heard on the papers No appearance for the respondent, the respondent's submissions were heard on the papers
SOLICITORS:	Payne Butler Lang for the applicants Connor O'Meara for the respondent

[1] **THE COURT:** The Court refused applications for leave to appeal from decisions in the District Court dismissing appeals to that court against decisions in the Magistrates Court which found each applicant guilty of an offence against s 4.3.15 of the *Integrated Planning Act* 1997 of failing to comply with an enforcement notice.[1]

[2] The Court then granted the parties leave to make submissions about the costs of the applications for leave to appeal. The respondent submits that the applicants ought to pay the respondent's costs of the applications for leave to appeal on the standard basis. The respondent argues that there is no ground for departing from the ordinary rule that costs ought to follow the event. The applicants submit that the appropriate order is that the parties bear their own costs of the applications in this Court. They argue that there are three grounds warranting departure from the ordinary rule that costs ought to follow the event: the applications involved an important legal question (whether or not proof of offence an offence against s 4.3.15 required proof of the validity of the enforcement notice), the application involved difficult legal questions about the nature and scope of an appeal from the District Court pursuant to s 119(1) of the *District Court of Queensland Act* 1967 (Qld), and in this Court the respondent departed from the position it had adopted in the Magistrates Court and in the District Court upon the question whether proof of the offence against s 4.3.15 required proof of the validity of the enforcement notice.

[3] There is merit in the argument that a departure from the ordinary rule that costs follow the event is warranted by the respondent's change of position in this Court. In the Magistrates Court, the respondent proceeded upon the premise that the elements of the offences charged against the applicants included that the applicants had committed the development offence mentioned in the enforcement notice. The applicants confined their appeal in the District Court to a factual contention which was relevant only to that question. The District Court judge, like the magistrate, proceeded upon the footing that proof of the offences against s 4.3.15 required proof that the applicants had committed the development offence. The judge affirmed the magistrate's finding against the applicants upon that point. It was that point which the applicants sought to agitate in their proposed appeal in this Court.

[4] It was only after the Court raised the question whether it was an element of the offence against s 4.3.15 that the person who was given the enforcement notice had committed

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1 *Conquest & Anor v Bundaberg Regional Council* [2016] QCA 203.

a development offence that, in submissions made by leave after the hearing, the respondent departed from its previous position and contended that the elements of the offence did not require proof that the applicants had committed a development offence. The Court accepted that contention and refused the application for leave to appeal upon the ground that the question about the development offence which the applicants sought to litigate in their proposed appeal was irrelevant to their liability for the offence of which each applicant was convicted.[2]

[5] The approach to the elements of the offence which the respondent adopted in the Magistrates Court and in the District Court did not create any forensic disadvantage for the applicants. Even so, the respondent, which prosecuted the applicants, contributed to the unnecessary complication of the proceedings in the Magistrates Court, the District Court, and this Court by introducing an irrelevant and substantial issue into those proceedings. As a result, the proceedings in this Court were delayed by the need to consider further submissions after the hearing of the application. This avoidable complication must have increased the costs of the proceedings in all three courts.

[6] In all of the circumstances, notwithstanding that the event of the application favoured the respondent, the appropriate order is that there be no order as to the costs of the application.

[7] The order of the Court is that there be no order as to the costs of the application.

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2 [2016] QCA 203 at [27].