SUPREME COURT OF QUEENSLAND

CITATION:	*Tarong Energy Corporation Limited v South Burnett Regional Council (formerly Nanango Shire Council) (No 2)* [2009] QCA 304
PARTIES:	**TARONG ENERGY CORPORATION LIMITED** (applicant/respondent) **v** **SOUTH BURNETT REGIONAL COUNCIL (FORMERLY NANANGO SHIRE COUNCIL)** (respondent/appellant)
FILE NO/S:	Appeal No 3703 of 2009 SC No 7937 of 2007
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal – Further Order
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	Judgment delivered 8 September 2009 Further order delivered 9 October 2009
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGES:	Muir and Fraser JJA and White J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Vary paragraph 2 of the orders made on 8 September 2009 by putting that order into the following form:** **"2. In lieu thereof order that** **(a) the South Burnett Regional Council delivers to Tarong Energy Corporation Limited a copy of part of the document identified as "Report considered in Closed Session of Respondent Convened on 27 August 2008" in Schedule 1 Part 2 of the Respondent's Amended List of Documents dated 19 January 2009, being a report dated 20 August 2008 prepared by Gary Rinehart of SGS Consulting being that part which is Exhibit JPB3 to the affidavit of John Paul Butt affirmed on 7 April 2009;** **(b) there be no order as to the costs of the application filed on 23 February 2009."**

CATCHWORDS: PROCEDURE – JUDGMENTS AND ORDERS – AMENDING, VARYING AND SETTING ASIDE – CORRECTION UNDER SLIP RULE – where Court overturned the primary judge's decision that the appellant disclose to the respondent a report containing legal advice received by it – where Court did not order that the appellant was still to disclose those parts of the report not containing legal advice – where Court ordered that the respondent pay the appellant's costs of the original application – where respondent argues that the appellant did not challenge the order that it disclose parts of the report not containing legal advice on appeal or seek the costs of the original application on appeal – whether the orders should be varied under the 'slip rule' to reflect what was sought in the appellant's notice of appeal

Uniform Civil Procedure Rules 1999 (Qld), r 388

COUNSEL: S P Fynes-Clinton for the appellant
M Hinson SC, with P Telford, for the respondent

SOLICITORS: King & Company for the appellant
Clayton Utz for the respondent

[1] **MUIR JA:** I agree with the reasons and proposed order of Fraser JA.

[2] **FRASER JA:** On 8 September 2009 the Court set aside an order made in the Trial Division that the appellant ("Council") deliver to the respondent ("Tarong") a copy of a report by the Council's consultant, Mr Rinehart, which adverted to legal advice given to the Council.[1] The Court then made the following orders:

> "1. Allow the appeal and set aside the orders made by the primary judge on 10 March 2009.
>
> 2. Order that the application filed on 23 February 2009 be dismissed with costs.
>
> 3. Order that the respondent pay the appellant's costs of and incidental to the appeal, except for the costs associated with the appellant's application to adduce new evidence."

[3] Tarong has applied under the "slip rule" (UCPR rule 388) to correct the orders so that paragraph 2 provides:

> '2 In lieu thereof order that
>
> (a) the South Burnett Regional Council delivers to Tarong Energy Corporation Limited a copy of part of the document identified as "Report considered in Closed Session of Respondent Convened on 27 August 2008" in Schedule 1 Part 2 of the Respondent's Amended List of Documents dated 19 January 2009, being a report dated 20 August 2008 prepared by Gary Rinehart of SGS Consulting being that part which is Exhibit JPB3 to the affidavit of John Paul Butt affirmed on 7 April 2009;

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1 *Tarong Energy Corporation Limited v South Burnett Regional Council (formerly Nanango Shire Council)* [2009] QCA 265.

(b) there be no order as to the costs of the application filed on 23 February 2009."

[4] The exhibited report described in proposed order 2(a) is in a form which masked references to the Council's legal advice. As I noted in paragraph [11] of my reasons, the Council delivered a masked version of the report after the primary judge had made the order against which the Council appealed. I thought that there was no point in ordering the Council to deliver a document which it had already delivered, but Tarong points out that the Council's notice of appeal limited its challenge to the primary judge's order only insofar as it required the Council to disclose those parts of the report which adverted to the Council's legal advice. The proposed order appropriately reflects that limitation upon the Council's challenge. The Council does not oppose the order now sought by Tarong if the Court concludes, as I do, that it was the result of a slip.

[5] Tarong also points out that the Council's notice of appeal did not seek the costs of the application in the Trial Division and the Council contended in the appeal that each party should bear its own costs of that application. The Council now takes a different stance. It seeks to support the costs order made by the Court on the ground that Tarong wholly failed on the issue which was in substantive contest in the Trial Division. That was why I proposed the costs order which was ultimately made by the Court, but in doing so I overlooked the fact that the Council had refrained from putting such an order in issue in the appeal. It is not appropriate now to permit the Council to revise its position.

[6] Accordingly I would vary paragraph 2 of the orders made on 8 September 2009 by putting that order into the form set out in paragraph [3] of these reasons.

[7] **WHITE J:** I agree with Fraser JA’s assessment that the proposed order appropriately reflects the underlying intention of the Court when disposing of the appeal. I also agree with his Honour that the Council ought not be permitted to revise its approach to the costs of the appeal contended for in its notice of appeal.