



mean at the time of judgment, because I'm mindful that Mr Gallagher has submitted that this ought to have been a conditions case.

I do not agree - I do not accept this submission. I think that whilst, as he pointed out, many of the findings in my judgment clearly go in favour of his client, I consider that those findings were only capable of being reached after a great deal of evidence called, not only by the appellant, but by the respondent and also by the first respondent by election. So that the findings in my judgment are not ones that I consider could have been made by the council assessing the application, even if further information might have been requested, which as Mr Gallagher points out it wasn't.

I did make the comment in my judgment that I found it difficult to understand why the town planning recommendations had not been accepted, but I do not consider that that comment alone puts this appeal within that category of cases which are covered by the authorities to which Mr Gallagher referred, where a council not only goes against the town planner's recommendations, but then, as Mr Hughes pointed out, does not call sufficient evidence to explain that refusal.

I think it is clear from the totality of the evidence that emerged at the end of the appeal that this was indeed a complex case, and in reaching the findings that I did in my judgment, I was assisted by the counsel for all parties including, as I consider it relevant to this application, counsel for the first respondent by election.

I do not consider that this appeal is similar to that which was discussed by Judge Dodds in Browne and Fitzroy because I think here the appellant did not provide sufficient information to enable a proper assessment by the respondent Council. Indeed there was not only supplementary information, which I think is the term that Judge Dodds used, but indeed something along the spectrum towards Mr Hughes' "moving target".

I agree with him that indeed the evidence was cumulative during the appeal, and indeed I agree with Mr Trotter that the proposal was "refined". I might add that I think that at the end of the day that cumulative process has assisted in the determination of the public interest and has, in the long run, been to the public good. And these are, of course, matters which are relevant to the exercise of my unfettered discretion concerning costs.

Specifically dealing then with the question of the Maroochy Shire Council, I agree with Mr Hughes that there was, and probably still is, considerable public interest. I agree with him that the case was arguable on all issues which were raised by the Council. The Council led evidence which assisted the Court in respect of all of the disputed issues. I do not accept the submission of Mr Gallagher that it came down to the suitability of conditions, and in this respect I again distinguish Browne and Fitzroy and other similar cases.

So far as the first respondent by election is concerned, I note Mr Trotter's submission that it has a connection with the area and that financial interest alone does not disqualify it, However, it is clear from the authorities that it is a competitor. In the exercise of my discretion, I need to take this into account as a relevant factor.

As I indicated to Mr Trotter, I was initially uncertain as to whether the issue of need was one that should bear an order for costs. However, having heard his submissions, and Mr Gallagher's, I am now satisfied that that would not be an appropriate order and in doing this I indicate that I am satisfied that Boral was not "merely a competitor protecting its own interest", although, of course, there was an element of that. I also am satisfied that its interest was not the "protection of a purely private interest".

The evidence which was led by Boral and which formed the totality of the evidence in the appeal assisted the Court in the determination of the issues from a general public perspective.

I, therefore, make no order as to costs.

-----