

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Patterson v Council of the City of Gold Coast & Ors* [2020]
QPEC 69

PARTIES: **MELINDA JANE PATTERSON**
(appellant)

v

COUNCIL OF THE CITY OF GOLD COAST
(respondent)

and

**ROBERT ANDREW JAMES AND AMANDA MAREE
JAMES**
(first co-respondent by election)

and

MARK SIDNEY ALFRED ROTHWELL
(third co-respondent by election)

FILE NO/S: 1410 of 2020

DIVISION: Planning and Environment

PROCEEDING: Application in Pending Proceeding

ORIGINATING
COURT: Planning and Environment Court, Brisbane

DELIVERED ON: 19 November 2020, *ex tempore*

DELIVERED AT: Brisbane

HEARING DATE: 19 November 2020

JUDGE: Rackemann DCJ

ORDER: **Orders as per amended draft**

CATCHWORDS: PLANNING AND ENVIRONMENT – COSTS – where
application to vary earlier orders necessitated by late
notification of additional expert – where limited costs order
made

COUNSEL: M J McDermott for the appellant

K W Wylie for the respondent

The first co-respondent by election appeared on her own
behalf

The third co-respondent by election appeared on his own

behalf

SOLICITORS: Mills Oakley for the appellant

HopgoodGanim Lawyers for the respondent

The first co-respondent by election appeared on her own behalf

The third co-respondent by election appeared on his own behalf

- [1] The respondent applies for its costs on this application. The application was one which was triggered by the appellant's late notification of an additional expert, namely a photo montage expert. That resulted in the need for the timetable set by a previous directions order to be altered. The appellant accepts that, in the circumstances, the jurisdiction to award costs is enlivened. It is a matter of how the discretion should be exercised.
- [2] The relief that was sought by the respondent was for an order that the appellant provide the curriculum vitae of the new expert and that orders be made extending the dates for the joint meeting process. The appellant provided the curriculum vitae and acknowledged that the joint meeting process dates ought be altered, but contended for a tighter amended timetable, with the intent of maintaining the current trial listing of the matter for the February sittings, rather than the April sittings which was contended for by the respondent.
- [3] Pursuant to a previous order of the Court, the experts were to be notified by the 23rd of September 2020. There was some non-compliance with that. The appellant's experts otherwise were not notified until the 6th of October. And the respondent notified its traffic expert late on the 16th of October. So, strictly speaking, the timetable would have required some alteration. In substance, however, the substantial reworking of the timetable has been caused by the late notification of the photo montage expert, who was notified only on the 29th of October.
- [4] It would seem that the need for photo montages was first identified by the appellant in the course of a conference that was held on the 9th of October. Several steps had to be taken, however, between then and the 29th of October before she was in a

position to notify her expert. In the meantime, the respondent had got wind that there might be a further expert notified and was expressing a concern about the need for the timetable to be altered. In particular, by an email dated the 29th of October 2020, immediately prior to being formally notified of the additional expert, the solicitors for the respondent put the appellant on notice that it was preparing an application in pending proceeding in relation to the matter.

- [5] Ultimately, when the appellant notified the additional expert, but failed to bring the matter before the Court, the respondent filed the subject application on the 6th of November. It is obvious that the appellant ought to have acted more swiftly in bringing the matter before the Court to vary the directions. It should have not been left to the respondent to make the application. In my view, the appellant ought to pay the respondent's costs of the application at least insofar as those costs exceed those costs which the respondent would have incurred had an application to vary the order been brought by the appellant.
- [6] The respondent argues, however, that it ought have an order that its costs of the application be paid in full. In that regard, it points out that the resetting of the timetable was not done in a brief mention before the Court, but was, rather, the subject of a lengthy debate on the basis of substantial material. It was pointed out that that debate occurred because of the appellant's suggestion that a tighter timetable ought be adopted so as to preserve the February sittings. It was suggested that that position was an unreasonable position for the appellant to have adopted, such that the Court should exercise its discretion by ordering costs of the application in their entirety.
- [7] Whilst I have, in substance, adopted the respondent's timeline, it seems to me that the issue about which regime to adopt was not one which was beyond argument. And whilst there certainly is jurisdiction to make the orders sought by the respondent, I exercise my discretion to limit the costs to the respondent's costs of and incidental to the application to the extent to which costs exceed those which would have been incurred by the respondent in the event that the appellant had brought an application to the Court for variation of the Court's earlier orders. I will adjourn the matter to permit the parties to agree on the quantum of the costs.