PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION:	*Wellham v Douglas Shire Council* [2014] QPEC 57
PARTIES:	**GORDON ALLAN WELLHAM** (Appellant) v **DOUGLAS SHIRE COUNCIL** (Respondent)
FILE NO:	123 of 2014
DIVISION:	Planning & Environment Court
PROCEEDING:	Application
ORIGINATING COURT:	Planning and Environment Court at Brisbane
DELIVERED ON:	Judgment delivered ex tempore 15 September 2014
DELIVERED AT:	Brisbane
HEARING DATE:	15 September 2014
JUDGE:	Everson DCJ
ORDER:	**1. Application allowed** **2. The appellant to pay the respondent's costs of and incidental to the application on a standard basis.**
CATCHWORDS:	ENVIRONMENT AND PLANNING – APPLICATION - where the appellant seeks enlargement of the time for filing a notice of appeal – whether there is a satisfactory explanation for the delay. COSTS – whether costs discretion enlivened. *Sustainable Planning Act* 2009 (Qld) ss 497, 457(2)(k). *Driesen v Gold Coast City Council & Anor* [2014] QPEC 42, applied.
COUNSEL:	
SOLICITORS:	All About Law for the appellant King & Co. Solicitors for the respondent

[1] This is an application seeking leave to enlarge the time for filing a notice of appeal pursuant to section 497 of the Sustainable Planning Act 2009 ("SPA").

[2] The appellant was not legally represented at the time he should have filed the notice of appeal. He was seeking to negotiate certain conditions of a development approval with the respondent. He behaved in a cavalier fashion which was not in accordance with his legal obligations and ultimately was informed by the respondent that he was out of time for filing a notice of appeal in circumstances where the negotiations had not progressed to a satisfactory resolution from the perspective of the appellant.

[3] Foolishly, the appellant wrote by email to the mayor of the respondent, stating that he had "started to prepare a Notice of Appeal and called the Planning and Environment Court for advice". He then represented that "they agreed that my case was strong, but suggested that, instead of lodging the Appeal, I invite DCS to join in an Alternative Dispute Resolution process." At no point in the affidavit material that has been filed does the appellant explain what he means by this. I do not accept this extraordinary assertion.

[4] In the respondent's submissions, it is stated, apparently uncontroversially, that the appellant's time for filing a notice of appeal expired on 4 July 2014. The appellant was therefore significantly out of time when he filed the notice of appeal on 21 July 2014.

[5] The relevant considerations in determining an application of this type were canvassed recently in Driesen v Gold Coast City Council & Anor [2014] QPEC 42. Of pivotal importance is the explanation for the delay. It appears that the explanation for the delay is the failure of the appellant, then acting in person, to appreciate the intricacies of the time limits for filing a notice of appeal pursuant to SPA.

[6] Although I am unimpressed with the cavalier approach of the appellant in making representations which are clearly inappropriate to the mayor, I nonetheless accept that the reason for the delay lies in the ignorance of the appellant as to his legal rights and obligations pursuant to SPA. I am satisfied that this is the satisfactory explanation for the delay in the circumstances. Other relevant considerations include prejudice to the respondents and, in this regard, I note that the respondent does not submit that it has suffered any prejudice other than the costs of investigating this matter and determining what position to take. In my view, this is not sufficient prejudice to refuse the relief sought. Other considerations, such as public interest considerations, the merits of the appeal and fairness as between the appellant and the respondent do not appear to be of any consequence.

[7] I therefore allow the application and enlarge the time for filing the notice of appeal to 21 July 2014.

[8] The respondent seeks costs pursuant to section 457 of SPA and, in particular, pursuant to section 457(2)(k), which states that the Court, in making an order for costs, may have regard to whether a party has incurred costs because another party has not complied with, or has not fully complied with, a provision

of SPA or another Act relating to a matter the subject of the proceeding. The cavalier approach of the appellant has brought about a need for this hearing and, in the circumstances, I am of the view that the appellant ought to pay the respondent's costs of and incidental to this application on the standard basis. I therefore make an order in terms of the draft, which I have amended.