

Infrastructure charges:

WAGNER WINS THE WAR

In what has been referred to as a ‘labyrinthine legal dispute’, Wagner Corporation successfully appealed against infrastructure charges levied by the Toowoomba Regional Council (TRC) sending a clear message about the appropriate methodology for calculating the charges.

For developers, infrastructure charges are a significant ‘upfront’ cost of development and can materially affect the viability of a project and the likelihood of it proceeding.



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Lawyer Luke Hefferan says this decision highlights two key lessons for developers and Queensland councils:

1. Council must establish there is trunk infrastructure in existence or planned for the development and there is extra demand placed on the trunk infrastructure as a result of the development.
2. Council must not calculate infrastructure charges in an unreasonable manner where the charges levied bear no legitimate relationship with the actual impact of the development on trunk infrastructure.

Although TRC has appealed the Planning and Environment Court decision, these are important lessons for both developers and councils.

BACKGROUND

TRC granted development approval to Wagner to construct an airport and business centre at Wellcamp near Toowoomba.

Council levied infrastructure charges on Wagner for stormwater infrastructure and transport network infrastructure of approximately \$3 million in relation to a range of uses approved for the development.

Wagner challenged the calculation of the charges on the basis they did not demonstrate a reasonable correlation with the actual impacts of the development on trunk infrastructure.

STORMWATER CHARGES

Wagner challenged whether trunk infrastructure existed, and if it did, whether there was extra demand placed on it as a result of the development.

Council’s argument relied on a local creek being deemed to be part of their trunk stormwater infrastructure so infrastructure charges could be calculated and applied. However, the creek in question was not identified as trunk infrastructure in the Council’s Local Government Infrastructure Plan.

The Court dismissed Council’s argument on the basis that:

- There must be trunk infrastructure—no part of the creek was in the vicinity of the development, the creek did not service the development, and no trunk infrastructure was planned to be provided by Council in relation to the development.

- There must be extra demand placed on the trunk infrastructure—the Court said if trunk infrastructure did exist, then potential impacts on stormwater infrastructure would be adequately managed within the development itself without placing extra demand on trunk infrastructure.

The Court concluded the stormwater infrastructure charges should be nil.

TRANSPORT CHARGES

Wagner challenged the transport network charges and said the charges calculated by Council were unreasonable to such an extent that no reasonable local council could levy them.

The development approvals covered several uses which the Council, seemingly arbitrarily, categorised as either ‘industry’ or ‘essential’ services requiring infrastructure charges to be calculated on a gross floor area rate. Wagner argued some uses should instead be categorised as ‘specialised uses’ which required Council to attempt to estimate the actual impact on trunk infrastructure created by those uses.

The Court said Council’s ‘broad brush’ approach in categorising each of the uses was unreasonable and created a significant overestimation of traffic volume created by the development. The Court agreed with Wagner that some uses should have been

categorised as ‘specialised uses’ which meant Council had to make a meaningful attempt to accurately estimate the impact of these specialised uses on trunk infrastructure.

The charges levied by Council did not reflect a legitimate relationship between those charges and the extra demand imposed on the trunk infrastructure. The Court therefore held the transport infrastructure charges for the specialised uses should be remitted to Council for reassessment.

CONCLUSION

This case sends two clear messages. Firstly, although Council’s calculation of infrastructure charges is often justified, a simple perfunctory approach to the calculation of charges may run afoul of the statutory requirements under the Queensland Planning Act.

Secondly, the Planning and Environment Court is willing to step in to rectify unreasonableness on the part of Council if a developer can establish the charges levied bear no legitimate relationship with the actual impact of their development on trunk infrastructure.

Our Real Estate lawyers can help you with appeals against infrastructure charge notices and other town planning issues.

