PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION:	*Wagner Investments Pty Ltd & Anor v Toowoomba Regional Council* [2019] QPEC 24
PARTIES:	**WAGNER INVESTMENTS PTY LTD (ACN 001 055 271)** (Appellant) **and** **MARCOOLA INVESTMENTS PTY LTD (ACN 103 682 382)** (Appellant) **v** **TOOWOOMBA REGIONAL COUNCIL** (Respondent)
FILE NOS:	178, 179, 181-186, 189 and 675 of 2017
DIVISION:	Planning and Environment Court of Queensland
PROCEEDING:	Hearing of an appeal
ORIGINATING COURT:	Planning and Environment Court of Queensland, Brisbane
DELIVERED ON:	27 May 2019
DELIVERED AT:	Brisbane
HEARING DATES:	20, 21, 22, 25, 26, 27 and 28 February 2019, 1, 4 and 7 March 2019 (written submissions closing 12 March 2019)
JUDGE:	RS Jones DCJ
ORDER:	**1. Insofar as they are concerned with stormwater infrastructure charges, appeals 179/17, 181/17, 185/17, 182/17, 183/17, 184/17, 178/17, 675/17 and 189/17 are allowed;** **2. Each of the stormwater charges associated with the above mentioned appeals are set aside;** **3. Appeals 183/17, 184/17 and 189/17, insofar as they are concerned with traffic trunk infrastructure charges, are dismissed;** **4. Appeals 178/17, 179/17, 181/17, 182/17, 185/17, 186/17 and 675/17, insofar as they are concerned with traffic trunk infrastructure charges, are allowed;** **5. Appeals 178/17, 179/17, 181/17, 182/17, 185/17, 186/17 and 675/17 concerning traffic trunk infrastructure charges should be returned back to**

the respondent for further consideration and assessment;

6. **I will hear further from the parties before making any further final orders concerning those appeals.**

CATCHWORDS: HEARING OF AN APPEAL – INFRASTRUCTURE CHARGES – where appellants and related entities have developed the Brisbane West Wellcamp Airport at Toowoomba – where intended development includes various uses within the Wellcamp Business Park where the airport and the Business Park located within especially designated area the Charlton Wellcamp Enterprise Area – where appellants made various development applications to the Toowoomba Regional Council (the Council) – where development applications were approved by the Council subject to conditions

WHERE APPELLANTS GIVEN INFRASTRUCTURE CHARGES NOTICES – where after representations negotiated infrastructure charges notices were given – where subject infrastructure charges were concerned with storm water, transport and reconfiguration of a lot

WHERE INFRASTRUCTURE CHARGE NOTICES CHALLENGED – where stormwater infrastructure charges challenged on the basis there was no relevant trunk infrastructure for storm water – alternatively no additional demand was placed on storm water trunk infrastructure – where challenged to transport infrastructure charges on basis of improper methodology and assessment of charges – whether transport infrastructure charges required to be assessed by particular reference to additional use and demand created by proposed development

Legislation

Planning and Environment Court Act 2016 (Qld)

Sustainable Planning Act 2009 (Qld)

Cases

Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223

Australian Retailers Association v RBA (2005) 228 ALR 28

Birkdale Flowers Pty Ltd v Redlands City Council & Anor [2016] QPELR 231

Bon Accord v Brisbane City Council & Ors [2010] QPELR 23

Buck v Bovone (1976) 135 CLR 110

Como Glass House Pty Ltd v Noosa Shire Council [2017] QPEC 75

Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation (1981) 147 CLR 297

Cypressvale Pty Ltd v Retail Shop Lease Tribunal [1996] 2 Qd R 462

Fraser Coast Regional Council v Walter Elliott Holdings Pty Ltd [2017] 1 Qd R 13

Johnson v Cassowary Coast Regional Council (2008) QPEC 102

Liwszyc v Commissioner of Taxation (2014) 218 FCR 334

MC Property Investments v Unity Water [2017] QPEC 74

Minister for Immigration and Border Protection v Eden (2016) 240 FCR 158

Minister for Immigration and Multicultural Affairs v Eshetu (1999) 197 CLR 611

Minister for Immigration and Border Protection v Singh & Anor (2014) 231 FCR 437

Minister for Immigration and Citizenship v Li & Anor (2013) 249 CLR 332

Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355

Scott v Cawsey (1907) 5 CLR 132

Western Australian Trustee Executor and Agency Co Ltd v Commissioner of State Taxation of the State of Western Australia (1980) 147 CLR 119

Westminster City Council v Great Portland Estates plc [1985] AC 661

Zappala Family Co Pty Ltd v Brisbane City Council & Ors [2014] QCA 147

COUNSEL: Mr R Bain QC with Mr M Batty and Ms D Whitehouse for the respondent
Mr R Litster QC with Mr B Job QC and Mr L Sheptooha for the appellants

SOLICITORS: QUDA Law on behalf of the appellants
AJ and Company for the respondent

[1] This hearing is concerned with a number of appeals against infrastructure charge notices issued by the Toowoomba Regional Council (the Council) to the appellants

(the Wagner Group), pursuant to the *Sustainable Planning Act* 2009 (SPA). For the reasons set out below the orders of the court are:

1. Insofar as they are concerned with stormwater infrastructure charges, appeals 179/17, 181/17, 185/17, 182/17, 183/17, 184/17, 178/17, 675/17 and 189/17 are allowed;
2. Each of the stormwater charges associated with the above mentioned appeals are set aside;
3. Appeals 183/17, 184/17 and 189/17, insofar as they are concerned with traffic trunk infrastructure charges, are dismissed;
4. Appeals 178/17, 179/17, 181/17, 182/17, 185/17, 186/17 and 675/17, insofar as they are concerned with traffic trunk infrastructure charges, are allowed;
5. Appeals 178/17, 179/17, 181/17, 182/17, 185/17, 186/17 and 675/17 concerning traffic trunk infrastructure charges should be returned back to the respondent for further consideration and assessment;
6. I will hear further from the parties before making any further final orders concerning those appeals.

Background

[2] The Wagner Group is in the process of developing the Brisbane West Wellcamp Airport and Wellcamp Business Park, both of which are located in a specially designated area, the "*Charlton Wellcamp Enterprise Area*" within the Council's local government area. The total area of the land is some 2,000 hectares, located approximately 15 kilometres west of Toowoomba Central Business District.

[3] Access to the land is from the Toowoomba Cecil Plains Road onto the newly constructed Airport Drive. The associated business park also has access from that road via the newly constructed International Drive. International Drive also connects to the existing airport terminal area.

[4] Of particular significance is that, in addition to access being gained from the Toowoomba Cecil Planes Road, the land is bounded along its southwestern boundary by Westbrook Creek.

[5] The airport is currently operational but significant future expansion is planned. It is envisaged that by 2024 approximately one million passenger movements will occur from the airport facility. Also, while some development is occurring associated with the planned Business Park, it is at a very early stage when compared to what is envisaged upon final completion of the entire project.

[6] Relevant to these appeals, between 4 December 2012 and 12 April 2016, the Wagner Group made various development applications to the Council over the subject land in respect of development of both the airport and the business park. Between at or about 19 December 2013 to 1 December 2016, the development applications were approved subject to conditions. Of particular relevance is that infrastructure charges notices were issued and, following representations made on behalf of the Wagner Group, negotiated infrastructure charges notices were issued by the Council.

[7] While more detail of the subject development is discussed below, it is convenient to identify at this stage that:[1]

- Appeal 178 of 2017 is concerned with infrastructure charges associated with the approval of a development identified as "*warehouse 1*";
- Appeal 179 of 2017 is concerned with the infrastructure charges levied in respect of the development referred to as the "*the hangers*";
- Appeal 181 of 2017 is concerned with infrastructure charges levied in respect of the development referred to as the "*fuel storage facility*";
- Appeal 182 of 2017 is concerned with an appeal against the infrastructure charges associated with the development referred to as the "*airport terminal services*";
- Appeal 185 of 2017 is concerned with an appeal against the infrastructure charges levied in respect of the development referred to as the "*airport terminal*";
- Appeal 183 of 2017 is concerned with an appeal against the infrastructure charges levied in respect of the development referred to as the "*the Schlumberger depot*";
- Appeal 184 of 2017 is concerned with an appeal against the infrastructure charges levied in respect of the development referred to as the "*MUI facility*";
- Appeals 186 and 189 of 2017 are concerned with infrastructure charges levied in respect of the development referred to as the "*reconfiguration and warehouse three*"; (transport infrastructure only)
- Appeal 675 of 2017 is concerned with the infrastructure charges levied in respect of the development referred to as the "*warehouse 2*";

[8] Each of those developments, save for appeal 186, attracted infrastructure charges both in respect of transport and storm water (quantity). Unsurprisingly, the amount

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1 See Exhibits 1, 5 and 28.

of the charges levied vary significantly, and again, it is sufficient at this stage to identify that the total amount of the infrastructure charges was $2,930,239.03. The development associated with appeal 186 attracted transport infrastructure charges only.

[9] Thankfully the parties were able to refine the extensive pleadings in this matter[2] to a *"summary of issues":*[3]

> "1. The issues in these appeals, identified in the pleadings, may be summarised as follows.
>
> **Stormwater**
>
> 2. Whether the charges in the Infrastructure Charges Notices (ICNs) for the stormwater quantity trunk infrastructure network are so unreasonable that no reasonable relevant local government could have imposed those charges within the meaning of s.478(2)(a) of SPA.
>
> 3. Whether the decisions to give the ICNs involved errors relating to the working out, for s.636 of SPA, of additional demand within the meaning of s.478(2)(b)(ii) of SPA.
>
> 4. Whether the charges satisfy the requirement in s.636(1) of SPA, having regard to whether:
>
> (a) there is any relevant trunk infrastructure; and
>
> (b) if there is relevant trunk infrastructure, there is any additional demand placed upon that trunk infrastructure that is generated by the Developments.
>
> **Transport**
>
> 5. Whether the charges in the ICNs for the transport infrastructure network are so unreasonable that no reasonable relevant local government could have imposed those charges within the meaning of s.478(2)(a) of SPA.
>
> 6. Whether the decision to give the ICNs involved errors relating to:
>
> (a) the application of the adopted charge identified in each of the relevant ICNs within the meaning of s.478(2)(b)(i) of SPA; and
>
> (b) the working out, for s.636 of SPA, of additional demand within the meaning of s.478(2)(b)(ii) of SPA.
>
> 7. Whether the charges satisfy the requirement is in s.636(1) of SPA that a levied charged may be only for additional demand placed upon truck infrastructure that will be generated by the Developments.
>
> 8. Whether it is reasonable to adopt GFA as the basis for working out additional demand placed upon trunk infrastructure for transport that is generated by the Developments.

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2 Exhibits 27A and 27B.

3 Exhibit 21.

9. Whether the working out of additional demand placed upon trunk infrastructure for transport that is generated by the Developments was wrong or unreasonable in that:

   (a) the GFA of the following developments was incorrectly identified:

      (i) the fuel storage facility; and

      (ii) the airport terminal and airport terminal services.

   (b) areas of GFA were included which do not correlate to material traffic generation.

Reconfiguration (Appeal 186 of 2017)

10. Whether the Reconfiguration places additional demand on trunk infrastructure.

11. Whether the levied charge the subject of the ICN for the Reconfiguration:

   (a) is so unreasonable that no reasonable relevant local government could have imposed it within the meaning of s.478(2)(a) of SPA;

   (b) involved an error relating to the application of the adopted charge within the meaning of s.478(2)(b)(i) of SPA; and

   (c) involved an error relating to the working out, for s.636 of SPA, of additional demand within the meaning of s.478(2)(b)(ii) of SPA.

12. Whether the decision to give the ICN for the Reconfiguration:

   (a) identified trunk infrastructure for transport that is relevant to the Reconfiguration;

   (b) involved working out whether there is any additional demand placed upon trunk infrastructure for transport that is generated by the Reconfiguration;

   (c) specified any additional demand placed upon trunk infrastructure for transport that is generated by the Reconfiguration;

   (d) unreasonably allocates 2,000m^2 of GFA on each of the proposed Lot 75 and the balance of Lot 172.

13. Whether, in making the decision to give the ICN for the Reconfiguration, it was necessary to:

   (a) identify trunk infrastructure for transport that is relevant to the Reconfiguration;

   (b) work out whether there is any additional demand placed upon trunk infrastructure for transport that is generated by the Reconfiguration;

   (c) specify any additional demand placed upon trunk infrastructure for transport that is generated by the Reconfiguration.

Process prescribed by Charges Resolutions

14. Whether, for the purposes of the Respondent's infrastructure charges resolutions, there were relevant assessments of use and demand for the relevant trunk infrastructure networks.

Relief

15. Whether, if the Appellants are successful in challenging the ICNs, in the exercise of the Court's discretion pursuant to section 496(1) of SPA relief ought to be granted by way of remitting the matters to the Respondent for further consideration subject to directions from the Court as to the Respondent's decision making exercise."

Some relevant statutory provisions

[10] It is uncontroversial that the relevant statutory regime for the purposes of resolving the substantive issues in dispute is the SPA. Relevantly, that Act provides:

"**478 Appeals about infrastructure charges notice**

(1) The recipient of an infrastructure charges notice may appeal to the court about the decision to give the notice.

(2) However, the appeal may be made only on 1 or more of the following grounds—

(a) the charge in the notice is so unreasonable that no reasonable relevant local government could have imposed it;

(b) the decision involved an error relating to—

(i) the application of the relevant adopted charge; or

(ii) the working out, for section 636, of additional demand; or

(iii) an offset or refund;

…

629 State planning regulatory provision governing charges

(1) A State planning regulatory provision may impose a maximum for each adopted charge—

(a) under this chapter in relation to providing trunk infrastructure for development; or

(b) under the SEQ Water Act in relation to providing trunk infrastructure.

(2) The Minister may, by gazette notice, change the amount of a maximum adopted charge.

(3) Any increase under subsection (2) in a maximum adopted charge over a financial year must not be more than an amount equal to the amount of the maximum adopted charge at the start of the financial year multiplied by the 3-year moving average annual percentage increase in the PPI index for the period of 3 years ending at the start of the financial year.

(4) The SPRP (adopted charges) may also—

(a) provide for the charges breakup; and

(b) state development for which there may be an adopted charge under this chapter or land uses for which there may be an adopted charge under the SEQ Water Act for trunk infrastructure; and

(c) provide for the parameters mentioned in section 633(2).

(5) In this section—

maximum adopted charge means the maximum for an adopted charge imposed under an SPRP (adopted charges) as mentioned in subsection (1) as the amount of that maximum is changed, from time to time, under subsection (2).

SPRP (adopted charges) means a State planning regulatory provision that imposes a maximum for each adopted charge under this chapter.

630 Power to adopt charges by resolution

(1) A local government may, by resolution (a charges resolution), adopt charges (each an adopted charge) for providing trunk infrastructure for development.

(2) However—

(a) a charges resolution does not, of itself, levy an infrastructure charge; and

(b) the making of a charges resolution is subject to this subdivision and subdivision 2; and

(c) an adopted charge must not be for—

(i) work or use of land authorised under the Greenhouse Gas Storage Act 2009, the Mineral Resources Act 1989, the Petroleum Act 1923 or the Petroleum and Gas (Production and Safety) Act 2004; or

(ii) development in a priority development area under the Economic Development Act 2012.

(3) A charges resolution must state the day when an adopted charge under the resolution is to take effect.

Note—

See section 634(2).

631 Contents—general

(1) An adopted charge may be made only if it is—

(a) permitted under the SPRP (adopted charges); and

(b) no more than the maximum adopted charge for providing trunk infrastructure for development.

Note—

See also section 632(5).

(2) There may be different adopted charges for developments in different parts of the local government's area.…

…

635 When charge may be levied and recovered

(1) This section applies if—

(a) a development approval has been given; and

(b) an adopted charge applies for providing the trunk infrastructure for the development; and

(c) section 205 does not apply to the development.

(2) The local government must give the applicant an infrastructure charges notice.

Note—

Under section 364, a local government may give a new infrastructure charges notice for a negotiated decision notice.

…

636 Limitation of levied charge

(1) **A levied charge may be only for additional demand placed upon trunk infrastructure that will be generated by the development**.

(2) In working out additional demand, the demand on trunk infrastructure generated by the following must not be included—

(a) an existing use on the premises if the use is lawful and already taking place on the premises;

(b) a previous use that is no longer taking place on the premises if the use was lawful at the time it was carried out;

(c) other development on the premises if the development may be lawfully carried out without the need for a further development permit.

(3) However, the demand generated by a use or development mentioned in subsection (2) may be included if an infrastructure requirement that applies or applied to the use or development has not been complied with.

(3A) Also, the demand generated by development mentioned in subsection (2)(c) may be included if—

(a) an infrastructure requirement applies to the land on which the development will be carried out; and

(b) the infrastructure requirement was imposed on the basis of development of a lower scale or intensity being carried out on the land." (emphasis added)

[11] Pursuant to s 47 of the *Planning and Environment Court Act* 2016 (Qld), the court can, in respect of proceedings such as this, confirm, change or set aside the decision under appeal. The court also has the power to make a decision replacing the decision under appeal or to return the decision to the Council with, where appropriate, directions the court considers appropriate.

[12] While it would be incorrect to describe s 635 and s 636 of the SPA as penal or taxation provisions, they do provide for the imposition of monetary charges or liability when certain circumstances are met. When interpreting such provisions, the words of Isaacs J in *Scott v Cawsey*[4] seem apt. His Honour observed that the consequences for both sides of the equation need to be considered and that in

4 (1907) 5 CLR 132, 154-155.

construing such provisions care needs to be taken "*not to weaken them in favour of private persons to the detriment of the public welfare, nor enlarging them as against the individuals towards whom they care directed…"*.

[13] More recently, the Federal Court of Australia[5] cited from the judgment of Gibbs J (as he then was) in *Western Australian Trustee Executor and Agency Co Ltd v Commissioner of State Taxation of the State of Western Australia*:[6]

> "The established rule that no tax can be imposed on a subject by an Act of Parliament without words which clearly show an intention to lay that burden upon him does not mean that the court will strive to find loop holes where none are apparent; the words of the Act must be given a fair and reasonable construction without leaning one way or the other. However…if the terms of the Act plainly impose the tax they should be given effect, equally if they do not reveal a clear intention to do so the liability should not be inferred from ambiguous words. If the words in question are words of exception of exemption the same rules of construction should be applied."

[14] While clearly concerned with the imposition of taxation, I respectfully consider His Honour's observations to be appropriate to the circumstances of this case. The relevant provisions of the SPA should be given "*a fair and reasonable construction without leaning one way or the other.*" And, where the legislature makes it clear that the levying of infrastructure charges is appropriate, then the legislation should be given that effect. On the other hand, the liability to meet an infrastructure charge must be stated in clear language and liability should not be inferred from "*ambiguous words*".

[15] Of course the fundamental starting point in any exercise of statutory construction is to recognise that it is the duty of the court to give the words of a statutory provision the meaning that the legislature is taken to have indented then to have.[7] As Gibbs CJ said in *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation,*[8] "*it is an elementary and fundamental principle that the object of the court, in interpreting a statute, 'is to see what is the intention expressed by the words used'*."

[16] After referring to s 478 and s 636 of the SPA it is said on behalf of the appellants:[9]

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5 *Liwszyc v Commissioner of Taxation* (2014) 218 FCR 334, 346 at [47].
6 (1980) 147 CLR 119, 126-127.
7 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355.
8 (1981) 147 CLR 297, 304.
9 Appellant's written submissions, para 19.

> "Broadly, the appellant's appeal on the following grounds:
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> (a) that the charges in the ICNs are so unreasonable that no reasonable relevant local government could have imposed those charges: SPA, s 478(2)(a);
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> (b) Council's decision to give each ICN involved an error relating to the application of the relevant adopted charge: SPA, s 478(2)(b)(i); and
>
> (c) Council's decision to give each ICN involved an error relating to the working out, for SPA, s 636, of additional demand: SPA, s 478(2)(c)(ii)."

[17] It is then asserted that pursuant to s 636 of the SPA, there are two preconditions that must be satisfied before a local authority can issue an infrastructure charge notice (ICN). First, there must be relevant trunk infrastructure. Second, there must be additional demand placed on that trunk infrastructure. In respect of the first, it is submitted that "*a-fortiori*, *if there is no trunk infrastructure that is impacted by development then no infrastructure charge notice can issue*".[10] In respect of the second so called precondition it is said:[11]

> "As noted above, the Charges Resolutions do not of themselves levy infrastructure charges. Rather, Council must decide to give an applicant for relevant development an ICN. The amount stated in that ICN is subject to SPA, s 636.
>
> Critically, there is a limitation on levying charges mandated by SPA, s 636(1), namely that a levied charge may be only for **additional demand** placed upon **trunk infrastructure** that will be **generated by the development**. SPA, ss 636(2),(3) and (3A) also refer to the **demand generated** by development. Moreover, SPA requires that additional demand to be 'worked out' by Council…." (Original emphasis but footnotes deleted).

[18] Both observations are plainly correct. It is trite to say that absent any infrastructure there could be no reasonable basis for imposing an infrastructure charge. As to the second observation, that is also, with respect, a statement of the obvious. In *Fraser Coast Regional Council v Walter Elliott Holdings Pty Ltd,*[12] McMurdo P (with whom Atkinson J agreed) said:

> "Once the Council approved the development, it was required under s 635 *Sustainable Planning Act* to give the respondent an infrastructure charge notice which, under s 636(1) *Sustainable Planning Act* may be made **only for additional demand placed upon trunk infrastructure that will be generated by the development**." (Emphasis added)

[19] Morrison JA whilst in the minority made similar observations:[13]

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10 Appellant's written submissions, para 51.
11 Appellant's written submissions, paras 52-53.
12 [2017] 1 Qd R 13, 33 at [46].
13 Ibid, 43 at [97].

> "In my view, the development application proposed, and the Council's Decision Notice, was conditioned upon the requirement that the future homes on the development site would be two bedroom and not three bedroom. **The Council's power under s 635 and s 636 of the *Sustainable Planning Act 2009* (Qld), to set the infrastructure charge, was to impose a charge responding to the increased demand on trunk infrastructure. That demand should have been calculated, as a condition warranted, on the basis of two bedroom homes.** It follows that the Council's imposition of an infrastructure charge based on three bedrooms was beyond power…." (Emphasis added)

The stormwater infrastructure charges

[20] In respect of all subject appeals, it is the Council's position that Westbrook Creek is trunk stormwater management infrastructure for the purposes of s 4.6.2 of the Council's planning scheme. According to the Council, "*the relevant trunk infrastructure in this instance is Westbrook Creek itself. It is irrelevant, despite much being made of the point by Wagner, that Westbrook Creek does not run on the subject land itself.*"[14]

[21] It can be accepted that the fact that Westbrook Creek does not lie within the boundaries of the subject land does not of itself mean that it could not be properly described as being trunk infrastructure. Section 4.6.2 of the Council's planning scheme relevantly provides that "*table 4.6.1* ***broadly*** *outlines the trunk infrastructure networks, systems and items covered by the PIP.*"[15] Of particular significance according to the Council is that for stormwater management (quantity), items included as forming part of the trunk infrastructure network are natural formed and unformed waterways.[16]

[22] It can be accepted that Westbrook Creek is a natural waterway for the purposes of s 4.6.1 and s 4.6.2 of the planning scheme. That of course is not the end of the matter, as it does not necessarily follow that simply because it is a natural waterway (formed or unformed) that it is then necessarily stormwater trunk infrastructure.

[23] Pursuant to s 627 of the SPA, trunk infrastructure for a provision about a local government, means all of the following:

(i) Development infrastructure identified in the LGIP as trunk infrastructure;[17]

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14 Respondent's written submissions, para 102.
15 Exhibit 11, p 28 (PIP means Priority Infrastructure Plan).
16 Exhibit 11, p 28.
17 LGIP means Local Government Infrastructure Plan.

(ii) Development infrastructure that, because of a conversation application becomes trunk infrastructure;
(iii) Development infrastructure that is required to be provided under a condition imposed under s 647(2).

[24] "Development infrastructure" is defined to mean:

(a) Land or works, or both land and works, for:
(i) Water cycle management infrastructure, including infrastructure for…collecting water, treating water, stream managing, disposing of waters and floor mitigation…
(ii) Transport infrastructure including roads, vehicle way-bys, traffic control devices, dedicated public transport corridors, public parking facilities….
(iii) ….

[25] Pursuant to s 7 of the SPA, "development" is defined to include any of the following:

(i) Carrying out building work;
(ii) Carrying out plumbing or drainage work;
(iii) Carrying out operational works;
(iv) Reconfiguring a lot;
(v) Making a material change of use of premises.

[26] Section 4.6.3 of the planning scheme is also concerned with plans for trunk infrastructure and relevantly provides;[18]

(a) "Plans identifying the existing and future trunk infrastructure, as well as the service catchments for each infrastructure network are shown in PIP-Plans for trunk infrastructure mapping and include;
(i) …
(ii) …
(iii) stormwater infrastructure;
(iv) transport infrastructure;
(v) …."

[27] While some stormwater trunk infrastructure is situated in Westbrook Creek and in the Charlton Wellcamp Enterprise Area, it is uncontroversial that none of that infrastructure is located downstream of the subject development. More importantly, it is also uncontroversial that Westbrook Creek is not specifically identified in either the PIP[19] or the LGIP as trunk infrastructure. That situation can be contrasted with that of Dry Creek to the south, which is specifically identified within the Council's PIP (Stormwater – Plans for Trunk Infrastructure).[20] Insofar as Westbrook Creek is concerned, the existing infrastructure located upstream primarily comprises of

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18 Exhibit 11, p 29.
19 PIP means Priority Infrastructure Plan.
20 Exhibit 12, volume 3, p 688.

works (asset types) concerned with detention basins, formed channels, formed lakes and wetland areas.[21]

[28] That Westbrook Creek is not identified as trunk infrastructure in either the PIP or the subsequent LGIP is, according to the Council, of no consequence because of the references to natural, formed and unformed waterways referred to above. It is said in respect of Westbrook Creek not being identified within the Council's infrastructure mapping that:[22]

> "However, there was no specific requirement for trunk infrastructure to be shown on the relevant maps and plans or that it be located on the land the subject of the charge. The *SPA*, pursuant to s 627, only requires that trunk infrastructure be identified in the *LGIP* (or in this case, the *PIP*). That has occurred in this case, and accordingly, Westbrook Creek (and the natural and formed waterways into which it flows) is trunk infrastructure."

[29] The construction contended for by the Council cannot be maintained. It fails to take into account the fact that table 4.6.1of the planning scheme is not meant to be definitive but to provide a "*broad outline*" of the trunk infrastructure network systems covered by the PIP and now the LGIP. It also fails to take into account the wording of s 4.6.1 and s 4.6.3 of the planning scheme. When those words are given their natural and ordinary meaning, it becomes tolerably clear that both existing and proposed trunk infrastructure networks are those identified in the Plans For Trunk Infrastructure (PFTI).[23] An examination of those plans shows that no part of Westbrook Creek in the vicinity of the subject land is part of the stormwater trunk infrastructure.[24]

[30] An additional difficulty facing the Council on this point is that, if accepted, it would virtually render s 4.6.1 and s 4.6.3 of its planning scheme of little, if any, effect. That consequence would offend fundamental principles of construction. In *Zappala Family Co Pty Ltd v Brisbane City Council & Ors*[25] it was held that the same principles that apply to statutory construction apply to the construction of planning documents consistent with the approach expressed by the High Court in *Project*

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21 For example see Exhibit 11, pp 81-85.
22 Respondent's written submissions, para 110.
23 Exhibit 11, p 29.
24 For example see Exhibit 12, volume 3, pp 688-707.
25 [2014] QCA 147.

Blue Sky Inc v Australian Broadcasting Authority.[26] In *Zappala,* Morrison JA (with McMurdo P and Douglas J agreeing) said:[27]

> "The correct approach to statutory interpretation must begin and end with the text itself. At the same time it must be borne in mind that the
>
> > 'modern approach to statutory interpretation … (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses "context" in its widest sense ...'
>
> The fact that planning documents are to be construed precisely in the same way as statutes still allows for the expressed view that such documents need to be read in a way which is practical, **and read as a whole and as intending to achieve balance between outcomes**.
>
> As was said by Chesterman JA in *AAD Design*:
>
> > 'Planning schemes, and the definitions found in them, often lack clarity, contain ambiguities and sometimes appear contradictory. The attempt to make sense of them gives rise, on occasions, to expressions of judicial exasperation….'
> >
> > > 'To arrive at the so-called proper construction of such provisions involves a good deal of guess-work. In the end courts endeavour to give some meaning to such provisions and endeavour to adopt a commonsense approach, or the approach which seems to make the most sense out of provisions which may be contradictory as well as obscure ….'
>
> **However, the essential approach must be the same, that is start and end with the text, seen in its context in the way suggested in *Project Blue Sky*….**" (Emphasis added)

[31] At a more practical level, the approach contended for by the Council would seem to permit that the entire length of Westbrook Creek would fall within the description of stormwater trunk infrastructure. Indeed, as was pointed out on behalf of the appellants, it would not be limited to Westbrook Creek, but to all natural formed and unformed waterways within the relevant local government area irrespective of their designation within the Council's Plans for Trunk Infrastructure (PFTI).[28]

[32] Finally on this topic, the approach contended for by the Council would lead to the somewhat bizarre result that Westbrook Creek would be stormwater trunk infrastructure in circumstances where, as was accepted by Dr Johnson,[29] it is uncontroversial that no trunk infrastructure for stormwater is provided or is planned to be provided for the subject developments.

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26 (1998) 194 CLR 355.
27 *Zappala Family Co Pty Ltd v Brisbane City Council & Ors* [2014] QCA 147, [55]-[58].
28 Appellant's written submissions, para 147.
29 See T5-64 ll 41-46; T5-68 ll 1-3; T6-10 ll 45-46; T6-13 ll 12-25.

[33] For the above reasons, I have concluded that Westbrook Creek, insofar as it has any relationship with the subject land, is not stormwater trunk infrastructure for the purposes of either the planning scheme itself or the SPA.

[34] This conclusion is sufficient to dispose of this aspect of the appeals insofar as it is concerned with the stormwater infrastructure charges levied against the appellants. However, for the sake of completeness, it is appropriate to deal with the appellant's alternative argument.

The alternative argument

[35] As identified above, s 636 of the SPA limits infrastructure charges by reference to the additional demand placed upon trunk infrastructure that would be generated by the development. In this context, in the joint expert report of the engineers relied on by the parties of Dr Newton and Dr Johnson, it was agreed:[30]

> "It is agreed that the conditions of approval for the project require the preparation of Site Based Stormwater Management Plans to demonstrate that development will not increase peak flow rates or flood levels external to the site and will meet State Planning Policy water quality objectives for storm water run off from the site. It is agreed that Council has approved the Stormwater Plans which have been provided by Wagner's consultants and considers the works proposed therein to be acceptable in terms of meeting the required stormwater management objectives and achieving non-worsening.
>
> …
>
> It is agreed that the PIP identifies some stormwater trunk infrastructure in the Westbrook Creek catchment and in the Charlton Priority Infrastructure Area, in which the Wellcamp Airport is located. It is agreed that none of this infrastructure is located downstream of the Wellcamp Airport site and that discharge from the Wellcamp Airport will therefore have no effect on it. It is further agreed that, based on its located and characteristics, the stormwater trunk infrastructure identified in the PIP does not appear to have been conceived for the purpose of ameliorating any actual or potential stormwater impacts of the Wellcamp Airport."

[36] In both the joint expert report and in his oral evidence, Dr Johnson spoke of potential impacts and potential demands that could be placed on the trunk stormwater drainage network. In the joint expert report, he said "*in my opinion, the Wellcamp development will generate additional demands on the trunk stormwater drainage work, and the imposition of adopted infrastructure charges is therefore supportable.*"[31] Dr Newton strongly disagreed. The difficulty with Dr Johnson's

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30 Exhibit 14, paras 13 and 16.
31 Exhibit 14, para 22(a).

evidence on this topic is that he was unable to provide any meaningful quantification of the "*potential impacts*" and/or "*additional demand*". Indeed in this context, he accepted that the potential impacts generated by the subject developments are in fact being adequately managed.[32] At the end of the day, it appeared that Dr Johnson's concerns were about the potential for future unidentified risks that might or might not eventuate.[33]

[37] There are numerous other issues raised on behalf of the appellant in its alternative argument.[34] However, given my findings in respect of Westbrook Creek and the evidence contained in the stormwater joint expert report and the evidence of Dr Johnson dealt with above, it is unnecessary to deal with those matters in my view. Put shortly, I am satisfied that no additional demand placed upon trunk infrastructure that would be generated by the developments has been identified. Accordingly, the Council had no lawful warrant to impose the stormwater infrastructure charges that it has.

Should the stormwater charges be set aside?

[38] It is submitted on behalf of the appellants that it would be inappropriate to refer the issue of stormwater infrastructure charges back to the Council for further consideration. Instead it is submitted that they should be set aside. I agree. Section 635 of the SPA relevantly provides:

> "**635 When charge may be levied and recovered**
>
> (1) This section applies if—
>
> (a) a development approval has been given; and
>
> (b) an adopted charge applies for providing the trunk infrastructure for the development; and …
>
> …
>
> (6) If the infrastructure charges notice levies on the applicant an amount for a charge worked out by applying the adopted charge (a levied charge), the following apply for the levied charge—
>
> (a) its amount is subject to sections 636 and 649; …"

[39] It is uncontroversial that a development approval has been given, however, for the reasons set out above, no stormwater trunk infrastructure exists for the purposes of s 636 and, even if it did exist, no additional demand placed upon it is able to be

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32 T5-55 ll 29- 34; T5-57 l 25.
33 T5-82 ll 1-11; T6-13 ll 5-11.
34 Appellant's written submissions, paras 164-181.

identified in any meaningful way. Section 649 is not relevant to this proceeding as it deals with offsets and refunds.

[40] On balance, I have reached the conclusion that the only sensible outcome is that the stormwater infrastructure charges be set aside.

The transport infrastructure charges

[41] In respect of the transport infrastructure charges, the appellants, quite reasonably, do not contend that there would be no additional demand placed on transport trunk infrastructure and, that it would not be appropriate for the Council to levy an appropriate charge. However, they do contend that the charges imposed have no rational or reasonable basis and that they should be set aside and the Council be required to reconsider and issue new charges.

[42] According to Mr Healey, the traffic engineer retained by the Council, airport passenger numbers are forecasted to reach one million passengers per annum by 2024. That figure is approximately seven times the number of passengers currently utilising the airport.[35] At maximum capacity, there will be approximately 2,200 car parks provided for.[36] Of course, not only will traffic numbers increase over time in respect of the airport, but there will also be additional traffic created as the Wellcamp Business Park evolves. According to Mr Healey, the combination of existing approved and completed developments (including the airport and the business park), could result in the total daily traffic generation reaching between 7,000 and 10,000 vehicles per day. That "*scale of traffic demand is equivalent to a residential development of approximately 700 to 1,000 dwellings and would consume the equivalent of two traffic lanes if all carried by one single road*."[37]

[43] According to the Council, there are five issues that need to be resolved insofar as the transport trunk infrastructure charges are concerned. They are:[38]

(i) Were the transport components of the charges imposed on Wagner reasonable;
(ii) Has there been an error in the application of the adopted charge;
(iii) Was the levied charge in fact for additional demand;

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35 Exhibit 25, para 7.7.
36 Exhibit 12, volume 13, p 2869.
37 Exhibit 25, para 7.9.
38 Respondent's written submissions, para 150.

(iv) Had there been an error for the purposes of s 636 of SPA in working out additional demand; and

(v) Did the charges imposed in respect of transport comply with the Charges Resolutions.

[44] There is of course a degree of overlap between each of those issues. For example, if there was a material error made in the application of the adopted charge, that would be likely to impact on whether the charge itself was reasonable or not. Another example would be if the charges had no regard to the additional demand on trunk infrastructure.

[45] In respect to the test of "*reasonableness*", both parties referred me to the often cited judgment in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation.*[39] According to the appellants, one of the central issues for determination is whether the infrastructure charges were "*unreasonable in the Wednesbury sense*."[40] According to the Council, "*a Wednesbury-type contention involves a high bar."*[41]

[46] In *Wednesbury,* Lord Green MR said:[42]

> "…The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters.
>
> There have been in the cases expressions used relating to the sort of things that authorities must not do, not merely in cases under the *Cinematograph Act* but, generally speaking, under other cases where the powers of local authorities came to be considered…. Bad faith, dishonesty — those of course, stand by themselves — unreasonableness, attention given to extraneous circumstances, disregard of public policy and things like that have all been referred to, according to the facts of individual cases, as being matters which are relevant to the question. If they cannot all be confined under one head, they at any rate, I think, overlap to a very great extent. For instance, we have heard in this case a great deal about the meaning of the word 'unreasonable.'

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39 [1948] 1 KB 223.

40 Appellant's written submissions, para 95.

41 Respondent's written submissions, para 40.

42 *Associated Provincial Picture Houses Pty Ltd v Wednesdbury Corporation* [1948] 1 KB 223, 228-229.

> It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably.' Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority…."

[47] Not surprisingly, over the years those statements by Lord Green MR have been considered on numerous occasions. In the High Court decision of *Minister for Immigration and Citizenship v Li & Anor,* it was said:[43]

> "As to the inferences that may be drawn by an appellate court, it was said in *House v The King* that an appellate court may infer that in some way there has been a failure properly to exercise the discretion 'if upon the facts [the result] is unreasonable or plainly unjust'. The same reasoning might apply to the review of the exercise of a statutory discretion, where unreasonableness is an inference drawn from the facts and from the matters falling for consideration in the exercise of the statutory power. **Even where some reasons have been provided, as is the case here, it may nevertheless not be possible for a court to comprehend how the decision was arrived at. Unreasonableness is a conclusion which may be applied to a decision which lacks an evident and intelligible justification**." (Emphasis added)

[48] Other indicators of unreasonableness might be that the decision was arbitrary, without common sense and whether the decision fell within a range of possible acceptable outcomes which are defensible in respect of the facts and the law.[44]

[49] In *Minister for Immigration and Border Protection v Eden,*[45] a number of principles concerning reasonableness in the legal text were identified. First, the concept of legal unreasonableness concerns the lawful exercise of power. Legal reasonableness or an absence of legal unreasonableness, is an essential element in the lawfulness of decision making.[46]

[50] Second, the court's task in determining whether a decision is vitiated for legal unreasonableness is strictly supervisory. It does not involve the court reviewing the merits of the decision under the guise of an evaluation of the decision's

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43 (2013) 249 CLR 332, 367 at [76].
44 *Minister for Immigration and Border Protection v Singh & Anor* (2014) 231 FCR 437, 446 at [45].
45 (2016) 240 FCR 158, 171-172.
46 Ibid, 171 at [58].

reasonableness, or the court substituting its own view as to how the decision should be exercised for that of the decision maker.[47]

[51] Third, there are two contexts in which the concept of legal unreasonableness may be employed. The first involves a conclusion after the identification of a recognised species of jurisdictional error in the decision making process, such as failing to have regard to a mandatory consideration or having regard to an irrelevant consideration.[48]

[52] Fourth, in assessing whether a particular outcome is unreasonable, it is necessary to bear in mind that within the boundaries of power there is an area of "decisional freedom", within which a decision-maker has a genuinely free discretion. And, within that area, reasonable minds might differ as to which decision or outcome is the correct one. But that is not the test. If a decision falls within the range of possible lawful outcomes of the exercise of the power, generally speaking it will not be interfered with.[49]

[53] Fifth, in order to identify or define the width and boundaries of this area of decisional freedom and the bounds of legal reasonableness, it is necessary to construe the relevant statute. The task of determining whether a decision is legally reasonable or unreasonable involves the evaluation of the nature and quality of the decision by reference to the subject matter, scope and purpose of the relevant statutory power, together with the attendant principles and values of the common law concerning reasonableness in decision making.[50]

[54] Sixth, where reasons for the decision are available, the reasons are likely to provide the focus for the evaluation of whether the decision is legally unreasonable. Where the reasons provide an evident and intelligible justification for the decision, it is unlikely that the decision could be considered to be legally unreasonable. However, an inference or conclusion of legal unreasonableness may be drawn even if no error in the reasons can be identified. In such a case, the court may not be able to comprehend from the reasons how the decision was arrived at, or the justification in the reasons may not be sufficient to outweigh the inference that the decision is

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47 Ibid, 171 at [59].
48 Ibid, 171 at [60].
49 *Minister for Immigration and Border Protection v Eden* (2016) 240 FCR 158, 171 at [62].
50 Ibid, 171 at [63].

otherwise outside the bounds of legal reasonableness or outside the range of possible lawful outcomes.[51]

[55] Finally, the evaluation of what is legally unreasonable should not be approached by way of the application of particular definitions, fixed formulae, categorisations or verbal descriptions. The concept of legal unreasonableness is not amenable to rigidly define categorisation or precise textural formality. It is to be emphasised, however, that the task is not an a-priori definitional exercise. Nor does it involve a 'checklist' exercise. Rather, it involves the court evaluating the decision with a view to determining whether, having regard to the terms, scope and purpose of the relevant statutory power, the decision possesses one or more of those sorts of qualities such that it falls outside the reigns of lawful outcomes.[52]

[56] On the Council's part, I was also referred to a number of decisions of this court. Reference was made to *Birkdale Flowers Pty Ltd v Redlands City Council & Anor*,[53] where it was said that the appropriate test in a "*Wednesbury type argument*" is whether the decision reached at first instance was an irrational one or one devoid of plausible justification. In this context, in *Bon Accord v Brisbane City Council & Ors,*[54] Rackemann DCJ said:

> "The applicant relies on what is commonly referred to as '*Wednesbury* unreasonableness'. The test has been described as 'stringent' and 'extremely confined'. It is not sufficient to establish that, as a matter of merit, a different decision ought to have been preferred. What must be established is that no decision maker, acting reasonably, could have made that decision. In applying that standard, a court must proceed with caution, lest it exceed its supervisory role, by reviewing a decision on the merits. Whilst this court is often charged with the responsibility of reviewing a planning authority's decision on the merits in the context of an appeal, that is not its role in proceedings of this kind…."[55] (footnotes deleted)

Application of the "*Wednesbury test*"

[57] The starting point is to identify how, and on what basis, the charges were calculated. In their joint expert report, the traffic engineers, Mr Trevilyan for the appellants and Mr Healey for the Council, agreed that all of the subject land uses were likely to

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51 Ibid, 172 at [64].
52 Ibid, 172 at [65].
53 [2016] QPELR 231.
54 [2010] QPELR 23, 48 at [112].
55 Similar observations can be made in other decisions of this court e.g. *Como Glass House Pty Ltd v Noosa Shire Council* [2017] QPEC 75; *MC Property Investments v Unity Water* [2017] QPEC 74 at [20]-[23].

create a transport demand on the Council's trunk road and transport infrastructure. And, accordingly, it would be appropriate for the Council to impose transport trunk infrastructure charges.[56] Where they part company is in respect of the reasonableness of the method of calculating the charges.

[58] None of the transport infrastructure charge notices identify exactly what infrastructure would have additional demand placed on it. However, Mr Healey's evidence was to the effect that it would exclude State controlled roads and lower order access roads, but typically would include higher order roads (sub-arterial-arterial roads) within the TRC road network.[57]

[59] Evidence was given about how the subject infrastructure charges were calculated by Ms Plumbe, the Principle Planner (appeals management and major projects) of the Council. In her affidavit[58] she stated:

> "In terms of the charges resolution development category for 'specialised uses', which applies in relation to the 'air services' appeals, being appeals 179, 181, 182 and 185 of 2017, I note the following:
>
> a. By the time I came to properly consider the delegated reports associated with the requested negotiated charges notices in each of the appeals, I had the benefit of many technical discussions informed by Court experts and associated legal professionals associated with a former appeal on the site (Appeal 1888 of 2014).
>
> b. That prior input reaffirmed my understanding that Council had selected and determined to apply the most appropriate adopted charge category from CR2 based both on potential impacts and also general characteristics of a use.
>
> c. **I have always been of the view that the "Industry" development category for Appeals 179 and 181 and "Essential Services" development category for Appeals 182 and 185 is a reasonable approach to take in terms of the uses on the basis that, in my opinion, the charges associated with "Industry" and "Essential Services", are some of the more reasonable charges that could be applied**.
>
> d. **The decision to apply the "Industry" and "Essential Services" charges as the most appropriate adopted charges has, especially since the institution of the original appeal (Appeal 1888 of 2014), been considered by senior staff of the Planning and Development Group and Council generally**.
>
> e. **It seemed obvious (at least to me) that the intent under the charges resolution for "Specialised Use" was to identify an appropriate use category given the infrastructure charging system in place throughout Queensland, the nature of the developments**

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56 Exhibit 15, paras 1 - 2.
57 T6-45 ll 37-46; T6-46 ll 1-33.
58 Exhibit 22, para 53.

> **involved in this proceeding and the terms of the applicable Council documents**." (Emphasis added)

[60] As a consequence of that reasoning, the charges in respect of each of those developments were calculated by reference to their gross floor area (GFA). Without going through each and every appeal but using appeals 179, 181, 182 and 185 as examples, the infrastructure charges are calculated in the following way. In respect of appeals 179 and 181 being, categorised as industry, the applicable dollar rate was $\$17/m^2$.[59] As to appeals 182 and 185, being categorised as essential services, the GFA rate was $\$47m^2$.[60]

[61] Mr Healey in his individual report,[61] conveniently tabled the GFA's and uses the subject of the appeals.

Development category	**Land Use Demand Unit (GFA)**	**Traffic Generating Potential**
Appeal 179 – Air Services (Hangers)	3,840sq.m	The operation predominantly comprise storage of aircraft and equipment. The land use is likely to generate traffic demands associated with employee movements and freight/delivery of associated equipment and supplies.
Appeal 181 – Air Services (Fuel Storage Facility)	584sq.m	The operation is predominantly storage of aviation fuel. This land use would generate traffic demands associated with employee movements and fuel deliveries.
Appals 182 and 185 – Air Services (Terminal)	26,869sq.m	The airport terminal will generate passenger movements to and from aircraft servicing the Wellcamp Airport. Traffic demands will primarily be linked to passenger movement numbers but will include aircraft passengers, employees and freight movements.
Appeal 183 – Transport Depot and Medium Impact Industry (Schlumberger	4,157sq.m	This land use is a typical industrial land use for which the traffic demand can be derived from a floor area unit. The traffic demands will be

59 For example see Exhibit 12, volume 12, p 2685 (representing a 2/3 discount of the Council's adopted infrastructure charge of $\$50m^2$) – see also Exhibit 12, volume 3, p 598.
60 Being a 66 per cent discount of the adopted charge rate of $141.55.
61 Exhibit 25, p 8.

Depot)		dependant upon the specifics of the particular operation however a typical unit rate is regularly adopted from published data sources. The traffic demands will be primarily generated by employee movements and freight/deliveries.
Appeal 184 – Mixed Use Industry	4,262sq.m	This land use is a typical industrial land use for which the traffic demand can be derived from a floor area unit. The traffic demands will be dependant upon the specifics of the particular operation however a typical unit rate is regularly adopted from published data sources. The traffic demands will be primarily generated by employee movements and freight/ deliveries.
Appeal 178 and 675 – Warehouses	1,534sq.m	This land use is a typical industrial land use for which the traffic demand can be derived from a floor area unit. The traffic demands will be dependant upon the specifics of the particular operation however a typical unit rate is regularly adopted from published data sources. The traffic demands will be primarily generated by employee movements and freight/deliveries.
Appeals 186 and 189 – Reconfiguration (Container Park)	4,162sq.m	This land use is a typical industrial land use for which the traffic demand can be derived from a floor area unit. The traffic demands are likely to be relatively low associated with the movement of storage equipment.

[62] In Mr Healey's court report, he summarised his opinions as follows:[62]

> "The proposed developments on the Airport and Business Park have the potential to generate a significant traffic demand and will create additional demands on the TRC trunk road network.
>
> The approach to infrastructure charges has advanced with the mechanism adopted by the State removing the reliance upon transport modelling for the purposes of identifying a transport infrastructure charge to be levied on development.
>
> The mechanism defined by the State Government and applied by TRC via the ICR seeks to provide a consistent charge upon development demand units. This provides a standardised transparent approach which can be applied by the local government."

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62 Exhibit 25, para 9.

[63] According to the appellants, that approach ignores the fact that a number of the proposed developments would clearly fall within the definition of "*air services*" for the purposes of the planning scheme, and accordingly, would constitute a "*specialised use*" for the purposes of the Council's adopted infrastructure charges. It is said on behalf of the appellants:[63]

> "Unlike the position with stormwater, where there is no relevant infrastructure at all, it can be accepted that the Developments have some potential to generate demand that will be placed upon transport trunk infrastructure. However, the charges which have been levied have impermissibly involved a blind application of GFA (even applying incorrect areas in some instances) to a $/m^2$ rate in the Charges Resolutions **without any (or at least any proper) consideration of a range of very relevant matters**". (Emphasis added)

[64] At the heart of what constitutes "*very relevant matters*" is the traffic that would, in fact, be likely to be generated from the developments.

[65] During final submissions, Mr Bain QC accepted that the approach adopted by the Council concerning the transport trunk infrastructure charges was a "*broad brush approach*". However, he went on to say why such an approach was appropriate:[64]

> "MR BAIN: Precisely. Precisely. And you will recall, with respect, the – because you have to do it to maintain some semblance of expertise and also commonsensicality – that immediately the appellants witnesses assumed the idea that it had to be done in all circumstances, simply to force that (sic) the relevant subject was within the category, Air Services.
>
> But get nothing which was either definition or, in any other way, described other than something which had got the flags on, something which you have a look at, and so on, we should be putting out the scheme.
>
> Now, put that slightly differently, if that approach by the appellants witnesses can be advanced as respectable – and we don't accept that per se – but if that is able to be seen as respectable, well so to is the width of the flexibilities, which **I've described. So that, having looked at all these things, you could as readily satisfy, and also overcome the quite real, expensive, protracted and time and resource consuming exercise of the micro economic analysis, as your Honour said.**
>
> **By you simply say well, I've looked at this. I've looked at what the burden is. I've looked at what is to be entertained as a matter of fairness. And the expedient way to do this, but a perfectly respectable way – an assessment – I emphasise that, rather than a measurement or an empirical calculation, a micro economic thing – that the outset of this was, we made an assessment**.
>
> It is simply wrong for the appellants to think that anything short of micro economic analysis, or something like it ad hoc, is all that can satisfy the Specialised Uses category.

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63 Appellant's written submissions, para 194.

64 T9-13 ll 5-36.

> HIS HONOUR: And Mr Trevilyan, I think you made the point somewhere, whilst criticising the approach adopted and saying it resulted in an inequitable consequence, didn't identify any alternative middle ground approach. **It was all for or nothing**.
>
> MR BAIN: Yes, quite." (Emphasis added)

[66] In respect of the last part of that exchange, as will be addressed below, it was not an all or nothing situation. Mr Trevilyan did in fact suggest that an alternative approach, less exhaustive and expensive than detailed traffic modelling but more sophisticated than the simplistic application of GFA, was available.

[67] In the Council's written submissions it was submitted that the transport charges were calculated by "*a method which is easy to follow, clear and transparent consistently with the State-based methodology used to calculate infrastructure charges.*"[65] Then, after identifying 14 uses ranging from air services, crematoriums, nature based tourism and utility installations, all of which might fall under the general heading of "*specialised uses*", it is then said "*if the approach taken by Wagner to the charges resolutions were correct it would mean that a tailored approach to the assessment of charges could be required in the case of each of these 14 uses whenever such a use is applied for in the local government area".*[66] That, according to Mr Healey, might require extensive road network modelling to understand the extent of consumption and infrastructure requirements for the broader Toowoomba Regional Council road network.[67]

[68] It is also pointed out on behalf of the Council that Mr Trevilyan accepted that the application of GFA is regularly used to assess transport infrastructure charges and that such a methodology represented a simple approach.[68] However, what that fails to recognise is that it was Mr Trevilyan's opinion that the application of that approach in the circumstances of this case led to a number of manifestly inequitable consequences.[69] Also, the reference to the requirement for detailed road modelling fails to take into account what Mr Trevilyan described as a middle ground approach.

[69] In the joint expert report, while Mr Trevilyan acknowledged that detailed traffic modelling could be utilised, there was another alternative involving the

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65 Respondent's written submissions, para 157.
66 Respondent's written submissions, para 162.
67 Respondent's written submissions, para 162; Exhibit 15, para 7.
68 Respondent's written submissions, para 158.
69 Exhibit 15, para 10.

determination of net external traffic generally and a unit cost of demand which he considered would be likely to be sufficient to quantify the level of demand placed on a road network.[70] In his court report,[71] Mr Trevilyan, while again recognising that in traffic engineering GFA is commonly used to estimate the volume of traffic generated by land uses, went on to opine that that approach was dependent upon there being a sufficient correlation between GFA and the volume of traffic actually generated. According to him, "*if a reasonable relationship can be established between GFA and the dependant variable being measured (such as vehicle trips generated), then a unit rate can be enumerated.*"[72] However, after dealing with each of the appeals in issue, he reached the conclusion that, in the circumstances of these appeals, there was little or no correlation between GFA and the local traffic that would be generated. In his cross-examination, Mr Trevilyan expressed the opinion that there was "*a disconnect between the level of demand which is inferred by the charge as opposed to the actual level of demand*".[73] For the reasons given below, in respect of many of the subject appeals his opinion is well founded and correct.

[70] In respect of Mr Trevilyan's "middle of the road" approach to assessing traffic generation, during cross-examination the following exchange took place:[74]

> "Mr Bain: When you say in the third – last line, you acknowledge that extensive network modelling could be utilised. However, you consider determination etc would be likely to be sufficient to quantify the level. That is, do you agree something less than extensive modelling.
>
> A: I haven't precluded extensive network modelling from being the case and I've specifically acknowledged that it could be done in that way and I remain of that view, as I noted earlier. But I've identified and this is perhaps the first point you were making in your multipronged question earlier… **that there is, for want of a better phrase, happy middle ground that perhaps a method could be determined which allows this determination of use of the network to be undertaken in the – in the fashion that I have described on those last two lines. The tricky bit being determining the unit cost of the demand. Contained within that, we would need to understand origins and destinations and cost of infrastructure and proportionate level of use of that infrastructure. So it is effectively a midpoint between a full strategic transport model approach as compared to a pick-a-box type approach and I advocate that either of the middle ground approaches or the full strategic transport model approach could be used.** …" (Emphasis added)

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70 Exhibit 15, para 7.
71 Exhibit 18.
72 Exhibit 18, para 10.
73 T6-24 ll 42-43.
74 T6-24 ll 1-19.

[71] His evidence on this matter was not seriously challenged and I accept it. Accordingly, I am satisfied that a more detailed traffic analysis of many of the subject developments would not have the draconian economic consequences expressed on behalf of the Council.

[72] Before returning to the methodology involved in the calculation of the infrastructure charges, it is appropriate to deal with a number of other matters beforehand. In the sixth of the matters discussed in *Eden*[75], reference was made to the fact that the reasons given for the decision might provide a focus for the evaluation of whether the decision was legally unreasonable. It was said that "*where the reasons provide an evident and intelligible justification for the decision, it is unlikely that the decision could be considered to be legally unreasonable. However, an inference or conclusion of legal unreasonableness may be drawn even if no error in the reasons can be identified.*"[76] In the information notices associated with the infrastructure charge notices, it is simply said:[77]

> "In accordance with s 637(2) of the *Sustainable Planning Act* 2009, the following is the information notice about the Council's decision to give this infrastructure charge notice.
>
> *A development approval has been given in relation to the land the subject of this infrastructure charges notice, for which an adopted charge applies for providing the trunk infrastructure for the development. Council is entitled to levy a charge and has decided to do so here as there will be additional demand placed upon the trunk infrastructure that will be generated by the development.*"

[73] That in my view is hardly information that could be described as being proper, adequate and intelligible.[78] Things did not get any clearer when the appellants sought some particulars about this aspect of the proceeding. The response, insofar as it addressed the trunk infrastructure in issue, said "*...the trunk infrastructure for transport (is) the entire transport network in the Toowoomba Regional Council Area".* As the appellants point out, that proposition is simply untenable if, for no other reason than by reference to the evidence of Mr Healey, about what would constitute traffic trunk infrastructure.[79] In this context, Mr Healey also candidly conceded in cross-examination that at "*this stage*" he was not able to quantify what

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75 *Minister for Immigration and Border Protection v Eden* (2016) 240 FCR 158.
76 Ibid at [64].
77 For example see Exhibit 12, volume 12, p 2557.
78 *Westminster City Council v Great Portland Estates plc* [1985] AC 661, 673 per Lord Scarman, cited with approval in *Cypressvale Pty Ltd v Retail Shop Lease Tribunal* [1996] 2 Qd R 462, 482.
79 T6-45 ll 40-46.

the additional demands on the Council's trunk infrastructure might result or be the consequence of the subject developments.[80] Finally on this topic, the infrastructure plans to which I have already referred when dealing with the issue of stormwater, insofar as this aspect of the proceeding is concerned, make it clear that transport trunk infrastructure clearly does not include "*the entire transport network in Toowoomba Regional Council Area*".

[74] Overall, the evidence has left me in the situation where I am satisfied that in a number of instances there are fundamental and insurmountable difficulties with the approach adopted by the Council. First, in failing to identify what trunk infrastructure might be impacted upon, it is difficult to find any rational connection between the likely additional demand placed upon trunk infrastructure that would be generated by a number of the proposed developments for the purposes of s 636 of the SPA. Second, notwithstanding that there will undoubtedly be additional traffic movements generated by the subject developments, the evidence of Mr Trevilyan, which was really unchallenged on this topic, establishes that in respect of a number of the developments the subject of these appeals, the methodology adopted by the Council has resulted in estimations of likely traffic generation outcomes that bear no legitimate or reasonable correlation with what is likely to actually occur.

[75] In many instances this has led to an unjustifiable imposition of excessive infrastructure charges. That this has occurred is as a direct consequence of the methodology adopted by the Council identified by Ms Plumbe. That methodology in many instances fails to have sufficient regard to not only the use to which many of the developments are being put, but also the relevant planning and associated infrastructure policies.

[76] While "specialised uses" is not a defined term within the planning scheme, "air services" is. Not surprisingly, air services includes the use of premises for any of the following:[81]

- The arrival and departure of aircraft;
- The housing, servicing maintenance and repair of aircraft;
- The assembly and dispersal of passengers or goods on or from an aircraft;

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80 T6-69 ll 17-20.

81 For example see Council Resolution No 2 in Exhibit 12, volume 3, p 593 and Exhibit 11, p 33.

- Any ancillary activities directly serving the needs of passengers and visitors to the use;
- Associated training and education facilities; and
- Aviation facilities.

[77] Pursuant to the subject Charge Resolutions, types of developments defined in the planning scheme are allocated a particular *"Adopted Charge Infrastructure Category"*. The defined use of "*Air Services*" under the planning scheme is categorised as a "*specialised use*".[82]

[78] Table 3 of the Charge Resolutions is concerned with charges to be "adopted" for non-residential uses. Relevantly for "Specialised Uses", the adopted charge *"...is the charge that Council determines should apply for the use at the time of assessment based on an assessment of use and demand*."[83]

[79] The approach advanced by Ms Plumbe and adopted by the Council involves a number of fundamental errors. First, it effectively ignores the fact that the uses of Industry, Essential Services and Specialised Uses are placed into separate and specific categories for the purposes of the Council's adopted infrastructure charge regime. Second, it impermissibly "re-categorised" aspects of what are clearly specialised uses (air services) into either essential services or industry categories for the purposes of deciding the infrastructure charge methodology to be adopted. As a consequence, the clearly intended distinction between the methodology to be adopted for assessing charges for uses such as industry or essential services and that prescribed for specialised uses has been ignored.

[80] Quite clearly, the fuel storage facility (Appeal 181), the airport terminal (Appeal 185), the airport terminal services development (Appeal 182) and the hangers (Appeal 179) fall within the definition of "*Air Services*" for the purposes of the planning scheme.[84] Further in this context, to categorise the airport terminal and the airport terminal services developments (Appeals 182 and 185) as "*Essential Services*" bears no resemblance to the type of uses intended to be captured by that term under the "Council's Planning Scheme Use Category". "*Essential Services*"

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82 For example see Exhibit 12, volume 3, table 1, pp 592-593.
83 Exhibit 9, p 12, Table 3.
84 Exhibit 11, p 33.

are therein described to include "*correctional facility, emergency services, health care services, hospital, residential care facility and veterinary services.*"[85]

[81] The categorisation of the hangers and the fuel storage facility (Appeals 179 and 181) suffer the same difficulty. That is, while quite clearly falling comfortably within the uses contemplated under the heading "*Air Services*", they do not sit at all comfortably within the broader heading of "*Industry*" under the planning scheme use categorisation adopted by the Council. Uses contemplated under "*Industry*" include "*low impact industry, medium impact industry, research and technology industry, rural industry, warehouse, waterfront and marine industry*."[86] Clearly, the intended uses of these developments do not fall within the uses contemplated under high impact industry or high impact rural uses.[87] While for the purposes of the planning scheme they might broadly fall within the meaning of "*low impact industry*" or "*medium impact industry*" in that the intended uses contemplate industrial type activities,[88] the uses clearly sit far more comfortably within the definition of "*Air Services*".[89]

[82] It follows that each of the above mentioned appeals ought to have been dealt with as "*Specialised Uses*" for the purposes of assessing the appropriate infrastructure charges. This required a meaningful attempt to calculate or estimate the demand on transport trunk infrastructure each of those uses might generate,[90] rather than the adoption of the broad brush GFA approach adopted by the Council.

[83] In respect of appeals 179, 181 and 182, the evidence of the traffic engineers makes it quite clear that the methodology adopted by the Council is likely to result in a gross overestimation of the likely traffic generation outcomes. Insofar as appeal 185 is concerned, the evidence of the traffic engineers does not make it clear whether there would be a material over-estimation or under estimation. However, what is clear is that there is no relationship between GFA and likely traffic outcomes. To use Mr Trevilyan's words, there is no "meaningful correlation".[91]

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85 For example Exhibit 12, volume 3, p 593.
86 Exhibit 12, Volume 3, p 592.
87 Ibid.
88 Exhibit 11, pp 39 - 40.
89 Exhibit 11, p 33.
90 For example Exhibit 12, volume 3, p 598.
91 Exhibit 18, para 37; T6-47 ll 1-9.

[84] In *Buck v Bovone*[92] Gibbs J (as he then was) said:

> "In all such cases the authority must act in good faith; it cannot act merely arbitrarily or capriciously. Moreover, a person affected will obtain relief from the courts if he can show that the authority had misdirected itself in law or that it **failed to consider matters that it was required to consider** or has taken irrelevant matters into account. Even if none of these things can be established, the courts will interfere if the decision reached by the authority **appears so unreasonable that no reasonable authority could properly have arrived at it. However, where the matter of which the authority is required to be satisfied is a matter for opinion or policy or taste it may be very difficult to show that it has erred in one of those ways or that its decision could not reasonably have been reached**." (Emphasis added)

[85] In these proceedings, insofar as the transport infrastructure charges are concerned, the approach adopted by the Council does not involve "*matters of opinion or taste*". It does however involve the application of policy. However, for the reasons set out above, it is sufficiently clear that the Council has failed to consider what it should have, namely the likely use of and demand for trunk infrastructure resulting from the development of those specialised uses. It is also clear that the failure to consider those relevant matters was the direct consequence of the Council's failure to properly take into account its own policies concerning the determination of appropriate infrastructure charges.

[86] Finally, on this topic. I would note that the consideration of use and demand was not only a relevant consideration for the decision making process but was, by virtue of the Council's own policies concerning infrastructure charges, one it was bound to take into account.[93]

[87] Accordingly, I am satisfied that that approach adopted by the Council in respect of these appeals was not a lawfully reasonable approach in the sense that it would result in outcomes that would be unlikely to bear any legitimate relationship between these developments and any additional demand placed upon trunk infrastructure for the purposes of s 636 of the SPA. And, accordingly would fall outside the "*range of possible legal outcomes*".

[88] In respect of appeals 183, 184 and 189 however, I am not sufficiently satisfied that the approach adopted by the Council was an unreasonable one. Those appeals

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92 (1976) 135 CLR 110, 118-119; See also *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611, 660 at [162] per Gummow J.

93 A distinction referred to by Weinberg J in *Australian Retailers Association v RBA* (2005) 228 ALR 28.

involve uses that are not reasonably within the contemplation of those that fall within the categorisation of air services or specialised uses under the planning scheme or the Adopted Infrastructure Charge Resolutions. On the other hand, they involve uses of the type envisaged within the broad description of "*Industry*" be it medium or low impact industry.[94]

[89] In the agreed Summary of Appeals,[95] appeal 183 is described as involving "*Transport Depot and Medium Impact Industry*", appeal 184 as "*Mixed Use Industrial Facility…Transport Depot and Warehouse uses*" and appeal 189 as "*…Warehouse (Container Park)*." It may well be that, as Mr Trevilyan stated, to identify in any precise way what the actual traffic consequences might be would likely involve more detailed investigation,[96] but that is not determinative. In this context, the evidence of Mr Perkins, the town planner relied on by the Council, is also relevant. His evidence in respect of these types of industrial approvals was to the effect that while occupancies and uses might change over time, the Council has only one opportunity to levy infrastructure charges.[97]

[90] In reaching the conclusion that I have in respect of these appeals, I am mindful of the fact that no specific piece of trunk infrastructure has been identified as being impacted upon. That said, the evidence of the traffic engineer is that the developments the subject of these appeals will "*create a demand for….trunk road and transport infrastructure.*"[98] Also, while Mr Trevilyan clearly took issue with the broad brush approach adopted by the Council in respect of the "*Air Services"* uses, he seemed to be less concerned with other less specialised uses, save for transport depot type uses.[99]

[91] Turning then to appeals 178 and 675, at first blush, the use being described as "*warehouse*" would suggest that the approach adopted by the Council was not an unreasonable one. However, by reference to the actual use of the developments, it is submitted on behalf of the appellants that the application of GFA methodology has resulted in an unlawful outcome.

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94 See Exhibit 12, volume 3, p 592; Exhibit 11, pp 39-40; See also, Exhibit 1, "*Proposed Development*" uses.
95 Exhibit 1.
96 Exhibit 18, pp 8-10 and p 12.
97 T7-41 ll 32-45; T7-42 ll 43-47.
98 Exhibit 15, para 1.
99 T6-38 ll 1-15; Exhibit 18, paras 14-17.

[92] In the summary of appeals,[100] appeal 178 is described as involving a "*material change of use warehouse (freight)*", and in respect of appeal 675, "*material change of use warehouse*." The evidence concerning each of those uses was dealt with by both traffic engineers. According to Mr Healey both of those uses could be described in the following terms:[101]

> "This land use is a typical industrial land use for which the traffic demand can be derived from a floor area unit. The traffic demands will be dependent upon the specifics of the particular operation however a typical unit rate is regularly adopted from published data sources. The traffic demands will be primarily generated by employee movements and freight/deliveries."

[93] On the other hand, Mr Trevilyan clearly saw the uses to which these warehouses were put as being closely linked to, or associated with, the other uses more directly associated with the airport.[102] To use the terminology under the definition of "*Air Services"* in the planning scheme, the predominate use of these warehouses was for the "*dispersal of goods on or from an aircraft*." Mr Healey also saw a clear difference in the uses associated with these warehouses when compared to more typical warehouse uses. Indeed, in this context, he agreed that the traffic generated in respect of these warehouses could be in the order of half of what might ordinarily be expected.[103] Finally in respect of these appeals, having regard to the proximity of both of these developments to the runway, any use other than those directly associated with the operation of the airport are unlikely. This was a matter conceded by Mr Perkins.[104]

[94] Given this evidence, I am satisfied that these two warehouses ought to be dealt with in the same manner as those appeals which I have already determined ought to have been assessed as "*Specialised Uses*". To use the terminology adopted above, the application of the GFA methodology adopted by the Council has resulted in charges that could not sensibly be said to fall within the range of possible lawful outcomes.

[95] Turning then to the last remaining appeal (appeal 186), according to Mr Trevilyan the only matter that is relevant from a traffic engineering perspective is "*that it is the use of a lot, rather than the creation of a lot, that can generate a demand on the*

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100 Exhibit 1.
101 Exhibit 25, p 8, para 7.4.
102 Exhibit 18, p 11; T6-40 ll 22-25.
103 T6-47 ll 18-47; T6-48 ll 1-25.
104 T7-43 ll 12-29.

local road network."[105] As I understand, the evidence in respect of this appeal for the transport trunk infrastructure charge was based on a capped GFA of 2,000m^2 resulting in a levy in the sum of $68,000. Apart from that evidence already referred to, neither of the traffic engineers attempted to reconcile just how the creation of a new lot by way of subdivision would result in extra demand on the transport trunk infrastructure. Mr Trevilyan's evidence is to the effect that it is the use made of the land rather than the creation of a separate parcel of land that is relevant to the assessment of transport infrastructure impacts. On the other hand, Mr Healey seems to have treated the reconfiguration of the lot (appeal 186) and the use to be made of the land (appeal 189) as involving the one transaction. Insofar as the application of trunk infrastructure charges is concerned, that was in fact not the case. Separate charges were levied in respect of both appeals.[106]

[96] Mr Schomburgk, the town planner relied on by the appellants, expressed an opinion consistent with that of Mr Trevilyan, namely that "*the mere creating or changing of allotment boundaries does not place any additional demand on infrastructure.*"[107] On the other hand, Mr Perkins, the town planner relied on by the Council, stated that it was his experience that it was established practice to apply infrastructure charges on the creation of a new lot on the basis that "*...in most cases there will be development that may occur on the new lot that may impose a demand on infrastructure networks but for which no further development approvals are required*…."[108]

[97] While Mr Schomburgk was not expressly cross-examined on his opinion concerning appeal 186, Mr Perkins was. Based primarily on the above mentioned evidence of Mr Perkins, it was submitted on behalf of the Council that no error has been made or revealed in the Council's approach in assessing the transport infrastructure charge. That submission however, in my opinion, fails to take into account the number of concessions made by Mr Perkins in cross-examination which was to the effect that the adoption of a capped GFA of 2,000m^2 bore no reasonable resemblance to the use to be made of that land.[109]

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105 Exhibit 18, p 12, para 58.
106 For example see Exhibit 1.
107 Exhibit 19, p 7, para 25.
108 Exhibit 23, p 13, para 56.
109 T7-30 ll 1-46; T7-31 ll 1-28.

[98] While under the SPA the term "development" includes "reconfiguring a lot",[110] it does not follow that that form of development would be capable of generating a demand on infrastructure. The reconfiguration of a lot of itself does not involve the carrying out of work on land, nor does it involve a material change in use of premises. Instead, it is concerned with the re-arrangement of boundaries of premises rather than the use to which those premises may be put.[111] A distinction identified by Everson DCJ in *Johnson v Cassowary Coast Regional Council*.[112]

[99] While the evidence concerning this particular appeal is not entirely satisfactory, the evidence, such as it is, is sufficient to satisfy me that there is no rational link between the reconfiguration of the land to create the subject lot and the estimated additional demand the Council considers will be placed on the transport trunk infrastructure network. To put it perhaps another way and adopting the language of s 636 of the SPA, I am satisfied that the levied infrastructure charge could not sensibly be said to be based on a reasonable estimate of likely additional demand placed upon trunk infrastructure that would be generated by this approval.

[100] While both parties relied on the evidence of town planners, apart from that evidence given by them referred to above, I do not consider it necessary to deal with their evidence in any further detail to dispose of this proceeding. That observation should in no way be seen as a criticism of either of the town planners, both of whom are respected experts who often appear in this jurisdiction. It is simply as a consequence of, as both town planners accepted, the substantive issues for determination involved matters beyond their areas of expertise.

[101] For the reasons given, the conclusions that I have reached are: first, the appeals insofar as they are concerned with the stormwater infrastructure charges ought be allowed in full and that those charges be set aside. Second, insofar as the traffic infrastructure charges are concerned the appeals 183/17, 184/17 and 189/17 ought be dismissed. Third, in respect of appeals 178/17, 179/17, 181/17, 182/17, 185/17, 186/17 and 675/17 these appeals ought be allowed and those infrastructure charges be referred back to the Council for reconsideration. In respect of all but appeal 186/17 they ought be assessed on the basis of each of the uses being specialised

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110 *Sustainable Planning Act* 2009 (Qld) s 7.

111 Ibid, s 10 definition of "lot", "material change of use" and "reconfiguring a lot".

112 (2008) QPEC 102, [10], a judgment concerned with the construction of provisions in the IPA in the same terms as those contained in the SPA.

uses (air services) for the purposes of the Council's development categories and adopted infrastructure charges.

[102] For the reasons given, the orders of the court are:

1. Insofar as they are concerned with stormwater infrastructure charges appeals 179/17, 181/17, 185/17, 182/17, 183/17, 184/17, 178/17, 675/17 and 189/17 are allowed;
2. Each of the stormwater charges associated with the above mentioned appeals are set aside;
3. Appeals 183/17, 184/17 and 189/17, insofar as they are concerned with traffic trunk infrastructure charges, are dismissed;
4. Appeals 178/17, 179/17, 181/17, 182/17, 185/17, 186/17 and 675/17, insofar as they are concerned with traffic trunk infrastructure charges, are allowed;
5. Appeals 178/17, 179/17, 181/17, 182/17, 185/17, 186/17 and 675/17 concerning the traffic trunk infrastructure charges should be returned back to the respondent for further consideration and assessment;
6. I will hear further from the parties before making any further final orders concerning those appeals.