Precedent

GROUND 4

The Tribunal decision that ICN25 was lawfully authorised by precedent law.

OVERVIEW

1. PA16- Section 120-**Limitation of levied charge**[1]

2. Even if Grounds 1–3 are not accepted, the Tribunal's decision must be set aside because it misinterpreted

- *Wagner Investments Pty Ltd v Toowoomba Regional Council [2019] QPEC 24* (**Wagner 1**) and
- *Toowoomba Regional Council v Wagner Investments Pty Ltd [2020] QCA 191* (**Wagner 2**), and incorrectly interpreted the application of
- *Allen-Co Holdings Pty Ltd v Gympie Regional Council [2021] QPEC* 64 (**Allen**). and failed to consult
- *Johnston v Cassowary Coast Regional Council* [2008] QPEC 102 (**Johnson**)

thereby consequently misapplied s 120 of the PA16.

The Appellants Position Placed Before the Tribunal

3. The Appellant provides the following to the Tribunal

Submission

Premise 1

1. *Does a development, simply by type (i.e. Subdivision of land) constitute sufficient grounds to determine that an extra demand will arrive as consequence of its approval;*

Final Submission

- ***Premise 3.*** *A development for Reconfiguring a lot does not of itself generating a demand on infrastructure.*

[1] *Douglas Construction & Engineering Pty Ltd v Logan City Council [2023] QPEC 28 @* [6]-*"… on the basis that the infrastructure charge notice involved an error relating to the working out of extra demand for s 120 of the Planning Act 2016".*

The Respondents Position Placed Before the Tribunal

4. The Respondent's Submission at [17]; [18] and [20] referenced **Allen** as authority relevant to DTA21 for:

- compliances with s 120 PA16.
- requirement to calculate levied charges relative to *additional demand*
- *adopted charge* in a charge resolution being *immutable*

5. *Allen* concerned a challenge to an error in the **calculation** of an infrastructure charge[2]. It did not involve, and expressly excluded, any challenge to the validity of the **application** of an *adopted charge* or the legality of that *charges resolution*.

It also did not address the question of:

- what constitutes a *prescribed development*; and
- the requirement for a **Schedule 16** Use

6. This is because *Allen* applied to provisions of the *Sustainable Planning Act 2009* (SPA09), including ss 478 and 663, and described a charging framework consistent with SPA09 rather than the PA16.

As the statutory charging regime under the PA16 is different, *Allen* could not provide assistance to the Tribunal in determining this appeal.

7. The Respondent's Submission at [17];[18];[29];[32] and [33] referenced **Wagner 2** as authority relevant to DTA21 as to:

- Scope for compliance with S 120; and
- *··· that it is irrelevant that, in a technical sense, the mere reconfiguration of land (as opposed to the **use** that results from it) **does not give rise** to **additional demand.** It is enough for section 120 to be satisfied if the **further use** of the lots so created **gives rise to additional demand.*** and
- *··· it is not necessary that the development generate demand "over and above" the capacity of **currently existing trunk infrastructure**.* and
- *The **capacity** of the **existing trunk infrastructure** to accommodate that additional demand is entirely **irrelevant** to that question·····*

The Tribunals response to the Respondents material.

8. The Tribunal treated *Wagner 2* as authority for the proposition that an adopted charge *must apply* to an approved development for **Reconfiguring a lot**, on the basis - *that it is irrelevant that, in a technical sense, the mere reconfiguration **does not give rise** to additional demand*[3].

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[2] Allen-Co Holdings Pty Ltd v Gympie Regional Council [2021] QPEC 64 [3]

[3] DTD25 @ 37

***Wagner 2* does not support that proposition**.

The decision in *Wagner 2* **(Appeal 186/17)** concerned a combined development approval for **reconfiguration** and **material change of use** development application for a defined Schedule 16 use, in which the existence of *extra demand* and the applicability of the *adopted charge* - were not in dispute.[4]

9. The Tribunal erred in law by concluding that RAL21 0138 generated *extra demand* on *trunk infrastructure* for the purposes of s 120(1) of PA16.[5]

10. ICN25 was therefore issued without statutory authority.

11. This ground is independently sufficient to dispose of Appeal 129/25.

Statutory Framework

The Legal Position: A RAL is Not a Use and therefore Cannot Generate Demand

Johnson (2008)

12. In *Johnson*[6], the Planning and Environment Court held that:

- A "*premises*" is not a "*lot*".
- A "*lot*" is a cadastral concept under the *Land Titles Act*.
- A RAL does not start a new use of *premises*.
- A RAL does not **intensify** or **change the scale** of *use*.
- A RAL simply rearranges boundaries on titles.

13. *Johnson* remains the only authority directly addressing standalone RALs.

It has never been overturned or challenged when applied to a development application of a single development for *Reconfiguring a lot*.

Wagner 1 (QPEC)

14. In *Wagner 1*, the primary judge

at [98] held that:

- *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***

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[4] Wagner 2 [113 to 115]
[5] DTD25 [14 &17&40]
[6] Johnson @ 9 and 10

premises *rather than the use to which those premises may be put.111*[7] *A distinction identified by Everson DCJ in Johnson v Cassowary Coast Regional Council.* And

at [99]

- *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.*
- The *additional demand* in Wagner 1 arose from the accompanying MCU[8], for the *premises* not the RAL[9]

15. *Wagner 1* confirms — and does not disturb — the *Johnson* principle that a RAL is not a *use* and thereby cannot generate demand on *trunk infrastructure*.

Wagner 2 - Court of Appeal (CoA)

16. *Wagner 2* dealt with and Appeal against 11 Appeals in the P&E court regarding the infrastructure charging system under the *Sustainable Planning Act* 2009 (SPA) and like *Allen* reviewed a system reformed by PA16

17. The CoA did not dismiss or even consider the primary judge's determination at [98] regarding if a RAL can generate a use necessary to determine demand.

See para 126

The only **RAL** in *Wagner2* (Appeal 186/17) was accompanied by an MCU, (Appeal 184/17) for the same *premises* and within the period of the overall development of the new airport and where demand on the lots, the subject of DA-RAL/2012/6226 arose from the MCU, DA-MCUC/2016/1844[10].

18. The Court of Appeal's observations concerning *trigger points*[11] were directed to the operation of the *assessment manager's Charges Resolution* under the SPA

Those provisions are not identical in PA16 or the PR17.

19. The Tribunal's reasons do not disclose any analysis of the statutory text of PA16 or PR17, nor any examination of their structure beyond those in the submission advanced by the Respondent.

The conclusion reached is difficult to reconcile with the statutory scheme of PA16 and PR17, because the process mandated by PA16 and PR17 does not support the outcome adopted.

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[7] *Sustainable Planning Act 2009 (Qld) s 7, s 10 definition of "lot", "material change of use" and reconfiguring a lot"*
[8] Wagner Appeal 186/17
[9] Wagner Appeal 186/17
[10] Appellant *Final Submission* (Page 1 - Response to Respondents Submission [20])
[11] Wagner 2 @ [115]

In circumstances where the Tribunal's reasoning aligns with the Respondent's mischaracterisation of Wagner 2 and the charging framework of SPA and did not engaged with the statutory preconditions in PA16 and PR17, the Tribunal has fallen into an error of law.

20. The *Court of Appeal* did not over turn the primary judge's determination regarding the facility of a development for *Reconfiguring a lot* to generate demand on *trunk infrastructure*[12]

Application to RAL21-0138

21. The current state of the precedent law, as reflected in *Johnson* and *Wagner 1* is that *Reconfiguring a lot* (RAL) is not a *use* of *premises* and in that, it cannot, of itself, generate *extra demand* on *trunk infrastructure*.

22. Development approval RAL21 0138 is a standalone RAL development, not an integrated development approval (IDAS) containing any additional development for a *material change of use* (MCU), or *building works* and therefore of itself, incapable, of generating *extra demand* relevant to s 120(1) PA16.

23. RAL21 0138 as a consequence:

- contained no information in the material submitted with the development application[13] that could establish any use of the *premises* as a consequence of development approval;
- was not an Integrated Development and Assessment System (IDAS) application - accompanied by other developments;
- did not identify any Schedule 16 use;
- did not seek to authorise any use of land.

24. Under precedent law RAL21 is incapable of generating demand on *trunk infrastructure*.

25. Section 120(1) PA16 requires that the development, the subject of the approval, actually generate *extra demand*.

RAL21 produces no *extra demand*.

26. Section 120(2)(c) PA16 expressly excludes future *accepted development* from the assessment of *extra demand*.

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[12] Wagner 2 @ [ORDERS No 1]
[13] https://tuanqld.com/dt/docs/dap21.pdf

The Tribunal's reliance on hypothetical **future** *accepted development* for MCU use[14] contravenes s 120(2)(c), which expressly excludes such development from the assessment, and was not only erroneous speculation but an unlawful interpretation.

27. Section 119 PA16 authorises the issuing of an ICN for a development that attracts an *adopted charge* only if S120(1) is satisfies in relation to *extra demand.*

The Tribunal's Error

28. The Tribunal:

- did not apply *Johnson*; and
- did not apply *Wagner1*; and
- misapplied *Wagner2*; and
- treated *Allan* as relevant when it was not; and
- treated RAL21 0138 as if it were a *use*; and
- relied on hypothetical possible future *accepted* development as evidence of *extra demand* generated by RAL21 0138
- did not give effect to the exclusion in s 120(2)(c) for *accepted* development; and
- treated speculative future for any use of the 5 *lots* as evidence of *extra demand*:
- failed to correctly interpret the exclusions authority of s 120(2)(c).

In doing so, the Tribunal failed to recognise that RAL21-0138 cannot generate demand as a matter of law and cannot therefore attract a ICN

29. This constitutes an interpretative error of law and a constructive failure to perform the required statutory task.

CONCLUSION

30. During the Tribunal consideration of DTA21, the Respondent characterised the Appellant's written submissions as "*unclear*" and "*not articulated with precision*" and advised the Tribunal that the Appellants' submissions *raises only two potential grounds of appeal*.[15]

(a) the *Rural townships* issue; and

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[14] DTD25 [38]
[15] Respondents' submission [22] {Link}

(b) an alleged failure to undertake a mandatory assessment to determine *extra demand*

31. The Appellant did not accept that characterisation and addressed that in the *Final Submission* filed with the Tribunal[16].

32. As set out above, the Appellant submissions before the Tribunal[17]. presented a structured statutory pathway comprising three Premises and two legal Positions, each clearly identified and forming the basis of the Appellant's argument in DTA21

33. RAL21 0138 does not generate the *extra demand* required by s 120(1).

34. ICN25 was issued without statutory authority and must be set aside.

35. This ground is independently sufficient to dispose of Appeal 129/25.

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[16] Appellants Final Submission – Page 2
[17] Appellants Final Submission – Page 2