PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION:	*Douglas Construction & Engineering Pty Ltd v Logan City Council* [2023] QPEC 28
PARTIES:	**DOUGLAS CONSTRUCTION & ENGINEERING PTY LTD (ACN 082 412 011)** (Appellant) v **LOGAN CITY COUNCIL** (Respondent)
FILE NO/S:	1195 of 2022
DIVISION:	Planning and Environment
PROCEEDING:	Appeal
ORIGINATING COURT:	Planning and Environment Court, Brisbane
DELIVERED ON:	16 June 2023
DELIVERED AT:	Brisbane
HEARING DATE:	4 August 2022
JUDGE:	Kefford DCJ
ORDER:	**The appeal is dismissed**
CATCHWORDS:	PLANNING AND ENVIRONMENT – APPEAL – APPEAL AGAINST INFRASTRUCTURE CHARGES NOTICE – where the appellant was issued an infrastructure charges notice under s 119 of the *Planning Act 2016* – where the appellant appealed against the infrastructure charges notice – whether the infrastructure charges notice involved an error relating to the working out of extra demand for section 120 of the *Planning Act 2016* – whether the making of a material change of use on the subject land for a warehouse and ancillary office is "*other development*" – whether the warehouse and ancillary office use can lawfully start without the need for a "*further development permit*" – whether the extra demand equals the adopted charge such that the levied charge should be nil
LEGISLATION:	*Planning Act 2016* (Qld), ss 112, 113, 114, 119, 120, 121, 122, 229, 246, 265, sch 1, sch 2 *Planning and Environment Court Act 2016* (Qld), ss 43, 45, 47 *Planning Regulation 2017* (Qld) ss 52, 70, 71, sch 16, sch 22,

	sch 23
CASES:	*Dwyer v Calco Timbers Pty Ltd* [2008] HCA 13; (2008) 234 CLR 124, considered
	Kostas v HIA Insurance Services Pty Ltd [2010] HCA 32; (2010) 241 CLR 390, considered
	Lacey v Attorney-General (Qld) [2011] HCA 10; (2011) 242 CLR 573, considered
	Southern Downs Regional Council v Homeworthy Inspection Services (as Agents for Robert and Cheryl Newman) [2020] QPEC 61; [2021] QPELR 1085, approved
	SZTAL v Minister for Immigration and Border Protection & Anor [2017] HCA 34; (2017) 262 CLR 362, applied
COUNSEL:	K Wylie for the Appellant M Batty and J Bowness for the Respondent
SOLICITORS:	Mullins Lawyers for the Appellant Minter Ellison Gold Coast for the Respondent

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Introduction

[1] On 10 January 2022, a private building certifier gave the Appellant, Douglas Construction & Engineering Pty Ltd, a development permit for building work. The development permit authorised "*New Construction of Warehouse (Building 1 & New Construction of Attached Office*" ("*the building work approval*") with respect to land located at 46 Burchill Street, Loganholme, more particularly described as Lot 70 on SP 181448 ("*the subject land*").[1]

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[1] Appeal Book pp 96 and 114.

[2] On 2 February 2022, Logan City Council ("*the Council*") gave the Appellant an infrastructure charges notice ("*the infrastructure charges notice*").[2]

[3] During the appeal period for the infrastructure charges notice, the Appellant made representations to the Council about it. By letter dated 17 May 2022, the Council gave notice that it had considered the representations and did not agree with them, and that it would therefore not issue a negotiated infrastructure charges notice.[3]

[4] On 23 May 2022, the Appellant commenced this appeal against the infrastructure charges notice. It seeks an order that the infrastructure charges notice be set aside and replaced with, or changed to, a decision that the levied charge be "*nil*".

What is the nature of the appeal?

[5] The relevant right of appeal is conferred by s 229(1) and sch 1, s 1(1) and table 1, item 4 of the *Planning Act 2016* (Qld). It states:

> "4. Infrastructure charges notices
>
> **An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds**—
>
> (a) **the notice involved an error relating to**—
>
> (i) the application of the relevant adopted charge; or
>
> *Examples of errors in applying an adopted charge—*
>
> • the incorrect application of gross floor area for a non-residential development
>
> • applying an incorrect 'use category', under a regulation, to the development
>
> (ii) **the working out of extra demand, for section 120**; or
>
> (iii) an offset or refund; or
>
> (b) there was no decision about an offset or refund; or
>
> (c) if the infrastructure charges notice states a refund will be given—the timing for giving the refund; or
>
> (d) for an appeal to the P&E Court—the amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount."
>
> (emphasis added)

[6] The right to appeal is conferred on the person given the infrastructure charges notices, namely the Appellant. It instituted the appeal 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*.

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2 Appeal Book pp 12-9.
3 Appeal Book pp 20-1.

[7] The Appellant must establish that the appeal should be upheld.[4]

[8] The Appellant submits that the appeal is by way of a hearing anew. It cites s 43 of the *Planning and Environment Court Act 2016* in support of its submission. That provision states:

> "**43 Nature of appeal in general**
>
> Subject to any relevant enabling Act, an appeal to the P&E Court is by way of hearing anew."

[9] The Appellant's submission overlooks that whether an appeal is by way of hearing anew is "*subject to any relevant enabling Act*".

[10] The nature of the burden assumed by the Appellant and the proper function of this Court on appeal requires consideration of the language of the statute.[5] In *Lacey v Attorney-General (Qld)*,[6] French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ observed:

> "[57] Appeals being creatures of statute, no taxonomy is likely to be exhaustive.[7] Subject to that caveat, relevant classes of appeal for present purposes are:
>
> 1. Appeal in the strict sense — in which the court has jurisdiction to determine whether the decision under appeal was or was not erroneous on the evidence and the law as it stood when the original decision was given.[8] Unless the matter is remitted for rehearing, a court hearing an appeal in the strict sense can only give the decision which should have been given at first instance.[9]
>
> 2. Appeal de novo — where the court hears the matter afresh, may hear it on fresh material and may overturn the decision appealed from regardless of error.[10]
>
> 3. Appeal by way of rehearing — where the court conducts a rehearing on the materials before the primary judge in which it is authorised to determine whether the order that is the subject of the appeal is the

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4 *Planning and Environment Court Act 2016* (Qld) s 45(1)(c).

5 *Kostas v HIA Insurance Services Pty Ltd* [2010] HCA 32; (2010) 241 CLR 390, 418 [89]; *Dwyer v Calco Timbers Pty Ltd* [2008] HCA 13; (2008) 234 CLR 124, 128-9 [2].

6 [2011] HCA 10; (2011) 242 CLR 573.

7 A useful list of processes loosely designated "appeals" appeared in *Turnbull v Medical Board (NSW)* [1976] 2 NSWLR 281 at 297-298 per Glass JA and was cited in *Walsh v Law Society (NSW)* (1999) 198 CLR 73 at 90 n 51 per McHugh, Kirby and Callinan JJ.

8 *Victorian Stevedoring & General Contracting Co Pty Ltd v Dignan* (1931) 46 CLR 73 at 107 per Dixon J; *Builders Licensing Board v Sperway Constructions (Syd) Pty Ltd* (1976) 135 CLR 616 at 619 per Mason J (Barwick CJ and Stephen J agreeing).

9 *Allesch v Maunz* (2000) 203 CLR 172 at 181 [23] per Gaudron, McHugh, Gummow and Hayne JJ.

10 *Allesch v Maunz* (2000) 203 CLR 172 at 180-181 [23] per Gaudron, McHugh, Gummow and Hayne JJ; *Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission* (2000) 203 CLR 194 at 203 [13] per Gleeson CJ, Gaudron and Hayne JJ.

> result of some legal, factual or discretionary error.[11] In some cases in an appeal by way of rehearing there will be a power to receive additional evidence.[12] In some cases there will be a statutory indication that the powers may be exercised whether or not there was error at first instance.[13]"[14]

(original footnotes)

[11] In this case, the nature of the appeal is to be construed in the context that the right of appeal is limited. The "*enabling Act*", i.e., the *Planning Act 2016*, confers judicial power to examine the infrastructure charges notice to ascertain whether the alleged error has been established. The appeal is not a hearing anew, or appeal de novo, in the sense that the Court hears the matter afresh on fresh material and may overturn the decision appealed from regardless of error. Rather, the focus of the appeal is whether the infrastructure charges notice involves a legal, factual or discretionary error.

[12] Section 47 of the *Planning and Environment Court Act 2016* outlines the powers of the Court in the appeal. It states:

> "**47 Appeal Decision**
>
> (1) In deciding a Planning Act appeal, the P&E Court must decide to do 1 of the following (the ***appeal decision***) for the decision appealed against–
>
> (a) confirm it;
>
> (b) change it;
>
> (c) set it aside and–
>
> (i) make a decision replacing it; or
>
> (ii) return the matter to the entity that made the decision appealed against with directions the P&E Court considers appropriate.
>
> (2) The appeal decision may also include other orders, declarations or directions the P&E Court considers appropriate.
>
> (3) The appeal decision (other than one to confirm the decision appealed against or to set it aside and return the matter) is taken, for the Planning Act (other than chapter 6), to have been made by the entity that made the decision appealed against."

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11 *Allesch v Maunz* (2000) 203 CLR 172 at 180 [23] per Gaudron, McHugh, Gummow and Hayne JJ.
12 *CDJ v VAJ* (1998) 197 CLR 172 at 202 [111] per McHugh, Gummow and Callinan JJ.
13 *Re Coldham; Ex parte Brideson [No 2]* (1990) 170 CLR 267; see *Allesch v Maunz* (2000) 203 CLR 172 at 180-181 [23] per Gaudron, McHugh, Gummow and Hayne JJ.
14 *Lacey v Attorney-General (Qld)* [2011] HCA 10; (2011) 242 CLR 573, 596-7 [57].

[13] As I observed in *Southern Downs Regional Council v Homeworthy Inspection Services (as Agents for Robert and Cheryl Newman)*,[15] in exercising the powers under s 47 of the *Planning and Environment Court Act 2016*, the Court must be careful not to exceed the express limitation on jurisdiction found in the enabling Act.

What are the issues that require determination?

[14] The Appellant appeals against the infrastructure charges notice on one ground only, namely:

> "13. The Charges Notice involved an error relating to the working out of extra demand for Section 120 of the *Planning Act 2016* (Qld), the particulars of which are:
>
> ***Particulars***
>
> (a) the Charges Notice was given as a result of the Development Approval being given;
>
> (b) the Development Approval was a development approval for building work;
>
> (c) the levied charge the subject of the Charges Notice was calculated by reference to the extra demand placed on trunk infrastructure that the building works on the Subject Land would generate;
>
> (d) other development on the Subject Land that may be lawfully carried out without the need for a further development permit is the use of the Subject Land as a warehouse and ancillary office;
>
> (e) when working out extra demand, the demand on trunk infrastructure generated by other development on the premises should not be included if the development may be lawfully carried out without the need for a further development permit, in accordance with 120(2)(c) of the *Planning Act 2016* (Qld);
>
> (f) in calculating the extra demand, the Respondent has failed to properly apply section 120(2)(c) of the *Planning Act 2016* (Qld), as it has failed to not include the demand on trunk infrastructure generated by the use of the Subject Land as a warehouse and ancillary office, being other development on the Subject Land that may be lawfully carried out without the need for a further development permit."[16]

[15] The Council denies that the infrastructure charges notice involves an error. It disputes the particulars provided in paragraphs 13(d) and (f) of the Notice of Appeal.

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15 [2020] QPEC 61; [2021] QPELR 1085, 1104 [74].

16 Appeal Book p 4 [13].

[16] The Council contends that, for the purpose of s 120 of the *Planning Act 2016* and ss 3.6, 6.1 and 6.2(a) of the *Logan Charges Resolution (No. 9) 2021*:

(a) the warehouse and ancillary office are not "*other development on the premises*" but is the same development for which the charge was levied;

(b) even if the material change of use is "*other development*", the start of the new warehouse and ancillary office may not be lawfully carried out without the need for a further development permit for building work and operational work; and

(c) the infrastructure charges notice does not involve an error relating to the working out of extra demand for s 120 of the *Planning Act 2016*.[17]

[17] The Appellant disputes these contentions.

[18] In the circumstances, there are three questions that require determination:

1. Is the making of a material change of use of the subject land for a warehouse and ancillary office "*other development*" on the subject land?

2. Can the warehouse and ancillary office use lawfully start without the need for a "*further development permit*"?

3. Should the infrastructure charges notice be set aside and replaced with, or changed to, a decision that the levied charge be nil?

[19] To succeed, the Appellant must demonstrate that the answer to all three questions is "*yes*".

[20] These questions call for consideration of the terms "*other development*" and "*further development permit*" in s 120(2)(c) of the *Planning Act 2016*.

[21] In *SZTAL v Minister for Immigration and Border Protection & Anor*[18] (2017) 262 CLR 362, Kiefel CJ, Nettle and Gordon JJ explained:

> "The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst, at the same time, regard is had to its context and purpose. Context should be regarded at this first stage and not at some later stage and it should be regarded in its widest sense. This is not to deny the importance of the natural and ordinary meaning of a word, namely how it is ordinarily understood in discourse, to the process of construction. Considerations of context and purpose simply recognise that, understood in its statutory, historical or other context, some other meaning of a word may be suggested, and so too, if its ordinary meaning is not consistent with the statutory purpose, that meaning must be rejected."[19]

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17 Appeal Book pp 9-10 [12]-[14].

18 [2017] HCA 34; (2017) 262 CLR 362.

19 *SZTAL v Minister for Immigration and Border Protection & Anor* [2017] HCA 34; (2017) 262 CLR 362, 368 [14] (footnotes omitted).

[22] As such, before addressing the questions that require determination, it is convenient to:

(a) consider the provisions of the legislative regime that regulate the levying of infrastructure charges and the giving of infrastructure charges notices that provide important context; and

(b) identify contextual facts that are not in dispute that inform the giving of the infrastructure notice in this case.

What is the applicable legislative regime with respect to infrastructure charges?

[23] Chapter 4, pt 2 of the *Planning Act 2016* authorises local governments to adopt, by resolution, charges for development infrastructure and to levy adopted charges. Given the arguments advanced by the parties in this case, it is helpful to set out several provisions from that chapter. They provide important context for the construction of s 120 of the *Planning Act 2016*.

[24] Section 113(1) of the *Planning Act 2016* provides:

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

[25] The making of a charges resolution is subject to chp 4, pt 2, division 2, subdivisions 1 and 2 of the *Planning Act 2016*.[20] Within subdivision 2, s 114 relevantly states:

> "**114 Contents—general**
>
> (1) **An adopted charge may be made for development if the charge is**—
>
> (a) **prescribed by regulation for the development**; and
>
> (b) **no more than the maximum adopted charge for providing trunk infrastructure for the development**.
>
> (2) There may be different adopted charges for development in different parts of the local government's area.
>
> …"
>
> (emphasis added)

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20 *Planning Act 2016* s 113(5).

[26] Section 112 of the *Planning Act 2016* outlines the matters that a regulation may prescribe. It states:

> "**112 Regulation prescribing charges**
>
> (1) **A regulation may prescribe a maximum amount** (the ***prescribed amount***) **for each adopted charge**—
>
> (a) under this chapter **for providing trunk infrastructure in relation to development**; or
>
> (b) under the SEQ Water Act in relation to providing trunk infrastructure.
>
> (2) A ***maximum adopted charge***, for a financial year, for trunk infrastructure, is—
>
> (a) for the 2017–2018 financial year—the prescribed amount for an adopted charge for the infrastructure; or
>
> (b) otherwise—the sum of—
>
> (i) the prescribed amount for an adopted charge for the infrastructure in force at the start of the financial year; and
>
> (ii) an amount equal to the amount mentioned in subparagraph (i) multiplied by the sum of the percentage increases for each financial quarter since the amount was last prescribed or amended.
>
> (3) **The regulation may also prescribe**—
>
> (a) the charges breakup; and
>
> (b) **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.
>
> (4) In this section—
>
> ***percentage increase*** means the 3-yearly moving average quarterly percentage increase in the PPI."

(emphasis added)

[27] The terms "*development*", "*development infrastructure*" and "*trunk infrastructure*" are defined in sch 2 of the *Planning Act 2016* as:

> "***development*** means–
>
> (a) carrying out–
>
> (i) building work; or
>
> (ii) plumbing or drainage work; or

(iii) operational work; or

(b) reconfiguring a lot; or

(c) making a material change of use of premises.

…

development infrastructure means–

(a) land or works, or both land and works, for–

(i) water cycle management infrastructure, including infrastructure for water supply, sewerage, collecting water, treating water, stream managing, disposing of waters and flood mitigation, but not water cycle management infrastructure that is State infrastructure; or

(ii) transport infrastructure, including roads, vehicle lay-bys, traffic control devices, dedicated public transport corridors, public parking facilities predominantly serving a local area, cycleways, pathways and ferry terminals; or

(iii) public parks infrastructure, including playground equipment, playing fields, courts and picnic facilities; or

(b) land, and works that ensure the land is suitable for development, for local community facilities, like—

(i) community halls or centres; or

(ii) public recreation centres; or

(iii) public libraries.

…

trunk infrastructure for a local government, means—

(a) development infrastructure identified in a LGIP as trunk infrastructure; or

(b) development infrastructure that, because of a conversion application, becomes trunk infrastructure; or

(c) development infrastructure that is required to be provided under a condition under section 128(3)."

[28] The *Planning Regulation 2017* (Qld) contains the relevant prescribed matters. Relevantly, s 52 states:

"**52 Adopted charges—Act, s 112**

(1) **For section 112(1) of the Act, schedule 16, column 2 states the prescribed amount for each adopted charge under chapter 4 of the Act** and the SEQ Water

Act **for providing trunk infrastructure for the use stated in schedule 16, column 1.**

(2) For section 112(3)(a) of the Act, the charges breakup as between Ipswich City Council and Queensland Urban Utilities is the proportion that applied to each of those entities under Ipswich City Council's adopted infrastructure charges resolution as in force at the commencement.

(3) **For section 112(3)(b) of the Act**—

(a) **if development is a material change of use, reconfiguring a lot or building work and is for a use stated in schedule 16, column 1—a local government may have an adopted charge for trunk infrastructure for the development** under chapter 4 of the Act; and

(b) if a connection under the SEQ Water Act is for a use stated in schedule 16, column 1—a distributor-retailer may have an adopted charge under that Act for trunk infrastructure for the connection."

(emphasis added)

[29] In accordance with s 52(1) of the *Planning Regulation 2017*, the prescribed amounts in sch 16 relate to various types of use, not the individual types of development that might require a permit for such use to proceed lawfully. This is apparent when one reads the whole of sch 16.

[30] From 28 September 2020 to 27 May 2021,[21] schedule 16 of the *Planning Regulation 2017* relevantly provided:

"**Schedule 16 Prescribed amount**

Table 1–Prescribed amount	
Column 1	**Column 2**
Use	**Prescribed amount**
Other industry	
1 Low impact industry 2 Medium impact industry 3 Research and technology industry 4 Rural industry 5 **Warehouse** 6 Marine industry	**1 $54.00 for each square metre of gross floor area** **2 $10.80 for each square metre impervious to stormwater**

(emphasis added)

[21] Since 27 May 2021, sch 16 has been amended. The amendments only relate to the monetary maximum prescribed.

[31] Chapter 4, pt 2, division 2, subdivision 3 of the *Planning Act 2016* deals with levying charges. Section 119 of the *Planning Act 2016* deals with when a charge may be levied and recovered. It, relevantly, states:

> "**119 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 to providing trunk infrastructure for the development**.
>
> (2) **The local government must give a notice (an *infrastructure charges notice*) to the applicant.**
>
> *Notes*—
>
> 1 For when a local government may give a replacement infrastructure charges notice for a negotiated decision notice, see section 76(6).
>
> 2 For the giving of an infrastructure charges notice for a development approval that was a PDA development approval, see also the *Economic Development Act 2012*, section 51AQ.
>
> (3) **The local government must give the infrastructure charges notice**—
>
> (a) if the local government is the assessment manager—at the same time as, or as soon as practicable after, the development approval is given; or
>
> (b) if the local government is a referral agency—within 10 business days after the local government receives a copy of the development approval; or
>
> (c) if the development approval is a deemed approval for which a decision notice has not been given—within 20 business days after the local government receives a copy of the deemed approval notice; or
>
> (d) **if paragraphs (a) to (c) do not apply—within 20 business days after the local government receives a copy of the development approval**.
>
> …
>
> (12) **A charge (a *levied charge*) under an infrastructure charges notice**—
>
> (a) **is subject to sections 120** and 129; and
>
> (b) is payable by the applicant; and
>
> (c) attaches to the premises; and

(d) becomes payable as provided for under subdivision 4; and

(e) is subject to an agreement under section 123(1)."

(emphasis added)

[32] Section 120 of the *Planning Act 2016* contains limitations for levied charges and is the focus of the dispute in this proceeding. It states:

"**120 Limitation of levied charge**

(1) **A levied charge may be only for extra demand placed on trunk infrastructure that the development will generate**.

(2) **When working out extra 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 the use 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—

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

(b) the demand generated by development stated in subsection (2)(c) may be included if—

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

(ii) the infrastructure requirement was imposed on the basis of development of a lower scale or intensity being carried out on the premises.

(4) In this section—

charges notice means—

(a) an infrastructure charges notice; or

(b) a notice stated in section 125(3).

infrastructure requirement means a charges notice, or a condition of a development approval, that requires infrastructure or a payment in relation to demand on trunk infrastructure."

(emphasis added)

[33] The requirements of an infrastructure charges notice are set out in s 121 of the *Planning Act 2016*, which states:

"**121 Requirements for infrastructure charges notice**

(1) An infrastructure charges notice must state all of the following for the levied charge—

(a) the current amount of the charge;

(b) how the charge has been worked out;

(c) the premises;

(d) when the charge will be payable under section 122;

(e) if an automatic increase provision applies—

(i) that the charge is subject to automatic increases; and

(ii) how the increases are worked out under the provision;

(f) whether an offset or refund under this part applies and, if so, information about the offset or refund, including when the refund will be given.

(2) However, the infrastructure charges notice need not include the information stated in subsection (1)(f) if the person who is to receive the notice has advised, in writing (including in any approved form), that the information need not be included in the notice.

(3) The infrastructure charges notice must—

(a) state the date of the notice; and

(b) state any appeal rights the recipient of the notice has in relation to the notice; and

(c) include or be accompanied by any other information prescribed by regulation."

[34] When a levied charge becomes payable is prescribed by s 122 of the *Planning Act 2016*. It states:

> "**122 Payment triggers generally**
>
> (1) A levied charge becomes payable—
>
> (a) if the charge applies for reconfiguring a lot—when the local government that levied the charge approves a plan for the reconfiguration that, under the Land Title Act, is required to be given to the local government for approval; or
>
> (b) if the charge applies for building work—when the final inspection certificate for the building work, or the certificate of occupancy for the building, is given under the Building Act; or
>
> (c) if the charge applies for a material change of use—when the change happens; or
>
> (d) if the charge applies for other development—on the day stated in the infrastructure charges notice under which the charge is levied.
>
> (2) This section is subject to section 123."

[35] There are two observations that can be made about the context provided by reading the above provisions together.

[36] First, the chapter's purpose is, relevantly, to authorise local governments to levy charges in relation to the demand placed on trunk infrastructure generated by "*the development*".

[37] Second, while there are several types of "*development*", such as carrying out building work, carrying out operational work and making a material change of use, references to "*the development*" encapsulates all types of development that, in combination, facilitate the end use of the premises. It is the end use of the premises that places demand on trunk infrastructure, not one type of development in isolation. Where the focus of the provision is on an individual type of development, the type is specifically referenced.[22]

[38] This construction of "*the development*" is supported when chp 4 is read in the context of the whole *Planning Act 2016*. The broader consideration of the statutory regime reveals that a development permit for each type of development will not always be required to use premises for a purpose identified in sch 16 of the *Planning Regulation 2017*. A categorising instrument, such as a planning scheme, can categorise development as assessable development (for which a development approval is required) or accepted development (for which a development approval is not required).[23]

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22 See, for example, s 122 of the *Planning Act 2016* and s 52(3) of the *Planning Regulation 2017*.

23 *Planning Act 2016* s 45.

[39] The significance of this for demand on infrastructure and its relevance to the infrastructure charging regime in chp 4 of the *Planning Act 2016* can be explained by the following examples.

[40] Consider a vacant premises in an industrial zone. While the premises sits idle, it places little demand on development infrastructure. The demand increases when a person seeks to put such premises to use, for example, for a warehouse. To facilitate such a use of vacant premises, development on the premises will likely entail building work to construct the warehouse, operational work to provide necessary carparks and landscaping and the making of a material change of use. Whether a development permit is required for each of those types of development will depend on the categorisation of the various types of development for the relevant premises in the relevant categorising instrument.

[41] A local government may elect not to categorise the making of a material change of use (from vacant to warehouse) as assessable development because:

(a) such a use is inherently acceptable in the industrial zone; and

(b) potential adverse impacts, such as those associated with insufficient setbacks or insufficient car parking, will be appropriately considered when development applications for building work and operational work are assessed.

[42] Alternatively, consider a premises that may already be improved by a building that a person wishes to use for a different purpose, for example a hotel rather than a multiple dwelling. In that situation, a development permit may not be required for building work but there may be a need to obtain a development permit to authorise the making of a material change of use.

[43] In both those scenarios, the demand on infrastructure is generated by the ultimate end use, which is lawfully achieved by obtaining the necessary development permits for those types of development that are assessable development.

[44] As such, the broader context of the *Planning Act 2016* supports a construction of "*the development*" that encapsulates all types of development that, in combination, facilitate the end use of the premises, regardless of whether the type of development requires a development approval. It is the combined undertaking of all the types of development that generates the demand on trunk infrastructure. The need to obtain a development approval for one or more of the relevant types of development merely provides the opportunity to levy a charge and a trigger for payment of the levied charge.

What facts are not in dispute?

[45] There is no dispute about the contextual matters that inform the giving of the infrastructure charges notice.[24]

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[24] See the Notice of Appeal, Respondent's Amended Statement of Facts, Matters and Contentions and the Appellant's Response to the Respondent's Statement of Facts, Matters and Contentions: Appeal Book pp 1-11.

[46] On 10 January 2022, the Appellant obtained the building work approval authorising "*New Construction of Warehouse (Building 1) & New Construction of Attached Office*".[25] The approved plans that formed part of the building work approval identify that the proposed warehouse and ancillary office have a combined gross floor area of 2,489.46 square metres.[26]

[47] At the time that the building work approval was obtained, Logan Charges Resolution (No. 9) 2021 was in effect.[27] It is a resolution made by the Council under s 113 of the *Planning Act 2016*. It contains adopted charges that apply to the entire Logan City Council local government area.[28]

[48] Section 3.2 of the Logan Charges Resolution (No. 9) 2021 states:

> "The levied charge may be levied for the following development if a development approval, a change approval, or an extension approval is given for:
>
> (a) reconfiguring a lot;
>
> (b) material change of use; and
>
> (c) carrying out building work."[29]

[49] Section 5 of the Logan Charges Resolution (No. 9) 2021 states:

> "**5. Adopted charge**
>
> 5.1 For the purpose of section 113 of the Planning Act, this section 5 of this resolution adopts charges for providing trunk infrastructure for development.
>
> 5.2 The adopted charge is for the Council's trunk water supply, sewerage, stormwater quantity, movement and parks and land for community infrastructure networks.
>
> 5.3 The adopted charge is the lesser of the following or the maximum adopted charge:
>
> (a) **for material change of use–the adopted charge amount** in Schedule 3, Table 2, Column 2 of this resolution **for the use referred to** in Schedule 3, Table 2, Column 1 of this resolution;
>
> (b) **for building work–the adopted charge amount** in Schedule 3, Table 2, Column 2 of this resolution **for the use referred to** in Schedule 3, Table 2, Column 1 of this resolution; and

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25 Appeal Book pp 96-161
26 Appeal Book p 114.
27 Appeal Book p 22.
28 Appeal Book p 51.
29 Appeal Book pp 51-2.

(c) **for reconfiguring a lot–the adopted charge amount** in Schedule 3, Table 1, Column 2 of this resolution **for the use referred to** in Schedule 3, Table 1, Column 1 of this resolution."

(emphasis added)

[50] Schedule 3 contains a table that, in large measure,[30] mirrors the entire sch 16 of the *Planning Regulation* in terms of the listed uses. Relevantly, it states:

"**Schedule 3 Adopted charges**

Table 2: Material change of use and building work

Column 1 – Use	**Column 2 – Adopted charge**
Other industry	
1 Low impact industry 2 Medium impact industry 3 Research and technology industry 4 Rural industry 5 **Warehouse**	**1 $54.00 for each square metre of gross floor area** **2 $10.80 for each square metre impervious to stormwater**

(emphasis added)

[51] On 2 February 2022, the Council gave the Appellant the infrastructure charges notice. It was required to do so under s 119(2) of the *Planning Act 2016* as:

(a) the building work approval was a development approval for s 119(1)(a) of the *Planning Act 2016*; and

(b) for the purpose of s 119(1)(b) of the *Planning Act 2016*, the Logan Charges Resolution (No. 9) 2021 applied an adopted charge to providing trunk infrastructure for the development.

[52] The infrastructure charges notice was given in accordance with s 119(3)(d) of the *Planning Act 2016*.

[53] At the time that the building work approval was obtained, and the infrastructure charges notice was given, the subject land was vacant.

[54] The levied charge under the infrastructure charges notice totalled $104,507.10. It was calculated based on:

(a) the charging category "*Other industry*", for which there was an adopted charge of:

(i) $54 for each square metre of gross floor area; and

(ii) $10.80 for each square metre impervious to stormwater;

(b) the warehouse and ancillary office having a gross floor area of 2,489.46 square metres;

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30 The differences are not material to this case.

(c) a reduction of $10.80 for each square metre impervious to stormwater as the subject land was outside the stormwater quantity area; and

(d) a discount being applied for the existing serviced, vacant lot of $30,226.[31]

[55] Prior to obtaining the building work approval, the Appellant obtained:

(a) a development permit for operational work dated 24 March 2021 (OW/29/2021) in relation to stormwater, water infrastructure, earthworks, sewerage infrastructure, sediment and erosion control management;

(b) a development permit for operational work dated 24 March 2021 (OW/5/2021) in relation to earthworks, stormwater management and roadworks (footpath); and

(c) a development permit for operational work dated 26 March 2021 (OW/21/2021) in relation to stormwater,

which are collectively referred to as "*the operational works permits*" herein.

[56] The making of a material change of use of the subject land for a warehouse and ancillary office is categorised in the Council's planning scheme as "*accepted development subject to requirements*".[32]

[57] With those undisputed facts in mind, I now turn to the three questions that require determination.

Is the making of a material change of use of the subject land for a warehouse and ancillary office "*other development*" on the subject land?

[58] As I have noted in paragraph [32] above, s 120 of the *Planning Act 2016* states:

> "**120 Limitation of levied charge**
>
> (1) A levied charge may be only for extra demand placed on trunk infrastructure that the development will generate.
>
> (2) When working out extra demand, the demand on trunk infrastructure generated by the following must not be included—
>
> …
>
> (c) **other development on the premises if the development may be lawfully carried out without the need for a further development permit**."

(emphasis added)

[59] The Appellant submits that "*other development*" is any type of development other than that which triggered the giving of the infrastructure charges notice, which in

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31 Appeal Book pp 6-7 [6] and p 11 [1(a)].

32 Appeal Book p 3 [2], p 10 [13(b)] and p 11 [1(a)].

this instance is development in the nature of building work. It submits that such a construction pays appropriate regard to the following five matters.

[60] First, s 119(1)(a) of the *Planning Act 2016*, which provides that the section applies to the giving of a "*development approval*". In this instance, the relevant development approval was the building work approval.

[61] Second, s 119(1)(b) of the *Planning Act 2016*, which provides that the section applies when an adopted charge applies to providing trunk infrastructure "*for the development*". The Appellant says that, in this instance, "*the development*" is the proposed building work and the Logan Charges Resolution No. 9 2021 applied to the provision of trunk infrastructure for building work.

[62] Third, s 120(1) of the *Planning Act 2016* identifies that the levied charge "*may only be for extra demand placed on trunk infrastructure that the development will generate*". The Appellant says that this must be taken to be a reference to the building work authorised by the building work approval, not other development in the form of a material change of use (or operational work or reconfiguring a lot) that could potentially occur after the completion of that building work.

[63] Fourth, ss 120(2)(a) and (b) of the *Planning Act 2016* relate to "*existing uses*" and "*previous uses*" while s 120(2)(c) relates to "*other development*", and s 120(3)(a) refers to "*demand generated by a use or development*". The Appellant submits that this demonstrates a clear intention to differentiate between "*uses*" in the generic sense and "*development*" as that term is defined and utilised in the *Planning Act 2016*.

[64] Fifth, s 122(2)(b) of the *Planning Act 2016* requires payment of the infrastructure charges notice when the final inspection certificate for the building work, or the certificate of occupancy for the building, is given. This is independent of the commencement of any uses in the constructed building.

[65] Having regard to that context, the Appellant submits that the "*other development*" referred to in s 120(1)(c) of the *Planning Act 2016* is sufficiently broad to include development in the form of making a material change of use.

[66] The Appellant relies on the fact that it may carry out development in the form of making a material change of use for warehouse and ancillary office on the premises without the need for further development permits, such that the demand associated with the making of that material change of use must be accounted for when working out extra demand for the purpose of s 120 of the *Planning Act 2016*.

[67] The Appellant says that, upon accepting the above contentions, it logically follows that the amount levied under the infrastructure charges notice must be zero given that, under the Logan Charges Resolution No. 9 2021:

(a) part 3 identifies how a levied charge is calculated;

(b) s 3.6 states:

> "If there is demand which is not to be included as extra demand, reduce the adopted charge by the amount identified in section 6.1 of this resolution."[33]

(c) s 6.1(a) identifies that the amount to be credited for extra demand is to be calculated in the same way that an adopted charge is determined pursuant to ss 3.4 to 3.8 of the resolution, as if the calculation of the levied charges is the credit; and

(d) the adopted charge for material change of use for warehouse would be calculated in the identical manner to the adopted charge for building work for warehouse, such that they would entirely negate one another.

[68] The Council submits that there are two reasons that the making of a material change of use for warehouse and ancillary office cannot be "*other*" development for the purposes of s 120(2)(c), and that the appeal must fail.

[69] First, the Council submits that the reference to "*the development*" in s 120(1) of the *Planning Act 2016* is to all aspects of the development and the use sought to be facilitated by the development. It says that demand on infrastructure cannot be separately attributed to the different types of development, such as the making of a material change of use, reconfiguration of a lot, the carrying out of operational work or the carrying out of building work. Rather, "*the development*" as a whole with all its constituent types will generate demand on trunk infrastructure.

[70] The Council submits that construction is consistent with the legislative scheme for infrastructure charging, which is concerned with the demand that the use generates. It says that different aspects or types of development for the purpose of that use simply provide the occasion for levying the charge for the use. It says this is apparent from the combined operation of s 112(3)(b) of the *Planning Act 2016* and s 52(3)(a) of the *Planning Regulation 2017*, which require adopted charges to be for development for a use.

[71] In that context, the Council submits that "*other development*" refers to development other than "*the development*". It says that this meaning is confirmed by the explanatory note to s 119 of the *Planning Act 2016*, which speaks of "*a development*" and rights to "*develop a site*". The Explanatory Notes, Planning Bill 2015 (Qld) relevantly states:

> "**Limitation of levied charge**
>
> *Clause 119* ensures that a levied charge is only levied for additional demand placed on trunk infrastructure **by a development**.
>
> The clause prevents the existing lawful use of a site or the existing rights to **develop a site** from being considered additional demand, unless an infrastructure requirement that applies or applied to the use or development has not been complied with.

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33 Appeal Book p 52.

> The existing lawful use of a site or the existing rights to **develop a site** may be recognised by a local government through a discounted infrastructure charge, commonly known as a credit."[34]
>
> (emphasis added)

[72] The second reason advanced by the Council is that the mere fact that a development permit is not required to make a material change of use for a warehouse and ancillary office does not mean that "*development*" has occurred. Development means "*making a material change of use of premises*" (emphasis added).[35] At the time of the building work approval, the subject land was vacant. No material change of use had been made. As such, there is no "*development*" or "*other development*" on the premises that could be considered as creating extra demand for s 120(2)(c) of the *Planning Act 2016*.

[73] For the reasons provided in paragraphs [23] to [44] above, I reject the Appellant's submissions, and accept the Council's submissions, about the proper construction of "*the development*" and "*other development*".[36] On that basis alone, the Appellant's appeal must fail.

[74] If I am wrong about that, the Appellant's appeal must nevertheless fail for the reasons outlined in the Council's submissions referred to in paragraph [72] above, which I accept.

Can the warehouse and ancillary office use lawfully start without the need for a "*further development permit*"?

[75] Given my findings above, it is unnecessary for me to answer this question. It is sufficient to record that I have reservations about the Appellant's position on this issue and I make the following three observations about the submissions.

[76] First, the term "*further*" is defined:

(a) in the Macquarie Dictionary as:

> "**1.** At or to a greater distance; farther. **2.** at or to a more advanced point; to a greater extent; farther. **3. In addition**; moreover. **4.** More distant or remote; farther. **5.** More extended. **6.** additional; more; *I've got two further points to make.* **7.** To look forward (a work, undertaking cause, etc); promote; advance; forward."
>
> (emphasis added)

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34 Explanatory Notes, Planning Bill 2015 (Qld) 112.
35 *Planning Act 2016* sch 2.
36 Its submissions are set out in paragraphs [68] to [71] above.

(b) in the Shorter Oxford English Dictionary as:

> "**1** To or at a more advanced point in space or time. **2** Beyond the point reached, to a greater extent, more. **3 In addition, additionally**; moreover (esp. used when introducing a fresh consideration in an argument). **4** To or at a greater distance."
>
> (emphasis added)

[77] The Appellant submits that the reference in s 120(2)(c) of the *Planning Act 2016* to "*without the need for a further development permit*" should be properly construed as a reference to additional development permits beyond those currently in existence. It says that the ordinary meaning of "*further*" include a temporal connotation of future. The Appellant also says that the temporal connotation is supported by ss 246, 260 and 275R of the *Planning Act 2016*, s 49 of the *Building and Group Titles Act 1980* (Qld) and s 142ZR *Liquor Act 2016* (Qld). The Appellant submits that, in those provisions, the term "*further*" is used in an "*in futuro sense*" and that this supports the construction for which it contends.

[78] I do not consider the Appellant's submissions persuasive. I do not accept that the ordinary meaning of the word "*further*" includes a future connotation. In addition, the Appellant provided no authority to support its proposition that, in construing s 120(2)(c) of the *Planning Act 2016*, it is appropriate to have regard to context provided by provision in the *Building and Group Titles Act 1980* and the *Liquor Act 2016*. The Appellant's submissions are also unpersuasive because in each of the provisions cited by the Appellant, the future context is conveyed by words other than "*further*". For example, in s 246 of the *Planning Act 2016*, the term "*further*" appears in the heading "*Further material for tribunal proceedings*" and the provision goes on to require the provision of material "*after the registrar asks for the information*". By way of contrast, s 120(2)(c) refers to demand "*generated*" by other development "*on the premises*", not demand that "*could be generated*".

[79] Second, the Appellant also submits that the concept of premises should be considered ambulatory in nature. It says that buildings, structures and the nature of land changes from time to time due, in part, to development in the form of reconfiguring a lot, building work and operational work that may be undertaken. The Appellant says that to approach the construction as including development permits that already exist would require an investigation of whether other, previously obtained, development permits are relevant to the lawfulness of the "*other development*". The Appellant says that this ignores the ambulatory nature of premises and would require a detailed investigation of all development approvals ever given for a parcel of land and their potential nexus with the "*other development*". The Appellant submits that this may diminish the effectiveness of the provision in circumstances where nearly all premises are subject to historic development approvals.

[80] I have difficulty accepting this submission. It overlooks that similar enquiries are required under ss 120(2)(a) and (b) of the *Planning Act 2016*. Ascertaining historical development approvals that attach to premises is not an unduly onerous task. Pursuant to s 265 of the *Planning Act 2016* and ss 70 and 71, sch 22 and sch 23 of the *Planning Regulation 2017*, the Council is obliged to retain such

information, and provide it in a standard planning and development certificate if requested.

[81] Third, there is force to the Council's submissions on this question. It submits:

> "47. Read in context, the focus of the enquiry under section 120(2)(c) is whether any further development permits are needed to develop a site.[37] The Appellant here required further development permits to carry out the Warehouse and Ancillary Office use and therefore cannot be said to have had an existing right to develop the site, just because the material change of use was accepted development subject to requirements.
>
> 48. Such an interpretation is consistent with the fact that a development approval for building work is explicitly anticipated as being capable of triggering a levied charge in the PA. In particular, section 122(1)(b) of the PA provides for when a levied charge becomes payable and relevantly includes:
>
> > "*if the charge applies for building work – when the final inspection certificate for the building work, or the certificate of occupancy for the building, is given under the Building Act…*"
>
> 49. Were the Appellant's contended construction preferred, it would result in building work never resulting in a levied charge because at the time of building work approval which gives rise to additional demand, the use the subject of the building approval may be carried out without the need for a further development permit. That is because by operation of section 83(1) of the *Building Act 1975* (Qld), a building work approval can only be granted once all other necessary development permits are effective.
>
> 50. That would leave 122(1)(b) of the PA with no work to do, a result the Council submits should be avoided in circumstances where it is expressly anticipated that building work is capable of triggering a levied charge.
>
> 51. Read in context, section 120(2)(c) is most likely directed at ensuring infrastructure charges are not paid again where there is already an accrued or approved existing right to develop a site in the sense that it ***already*** has a development permit such there is no further occasion for it be levied. Such an interpretation gives the word 'further' in the expression "a ***further*** development permit" work to do. It also sits harmoniously with sub-section 120(3)(a) which requires that existing right to be disregarded if the charges for it (necessarily requiring an earlier permit) have not yet been paid. At its simplest, section 120(2) requires an existing use, previous use or approved use to be brought to account where

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[37] A meaning confirmed by the explanatory notes to the *Planning Bill 2015* at 112.

> the demand for it has already been paid or contributed and the new development of the site will take its place."[38]
>
> (original footnotes)

[82] While it is ultimately unnecessary for me to decide this issue, having regard to the matters referred to above, the Appellant has not persuaded me that:

(a) if "*other development*" is properly construed as including the making of a material change of use in the building the subject of the levied charge; then

(b) the term "*further development permit*" should be attributed the meaning contended by the Appellant.

Should the infrastructure charges notice be set aside and replaced with, or changed to, a decision that the levied charge be nil?

[83] For completeness, I note that, even if the Appellant had persuaded me of its construction of s 120 of the *Planning Act 2016*, it has not discharged the onus in this case. It has not persuaded me that there is an error in working out extra demand for s 120 of the *Planning Act 2016* such that the levied charge should be nil.

[84] With respect to that issue, in the Notice of Appeal the Appellant alleges:

> "2. The use of the Subject Land as a warehouse and ancillary office is accepted development.
>
> …
>
> 13. The Charges Notice involved an error relating to the working out of extra demand for Section 120 of the *Planning Act 2016* (Qld), the particulars of which are:
>
> ***Particulars***
>
> …
>
> (d) other development on the Subject Land that may be lawfully carried out without the need for a further development permit is the use of the Subject Land as a warehouse and ancillary office;
>
> …
>
> (f) in calculating the extra demand, the Respondent has failed to properly apply section 120(2)(c) of the *Planning Act 2016* (Qld), as it has failed to not include the demand on trunk infrastructure generated by the use

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[38] The explanatory note to the right of appeal in the repealed *Sustainable Planning Act 2009* s478 in similar terms to Schedule 1, Table 1, Item 4 of Schedule 1 supports this interpretation, "*Subsection (2)(b)(ii) allows appeals about the working out, for section 636, of additional demand. This might include matters such as … where there is a development approval for a site however the development approval has not been acted on and a new development approval is issued for the site, in working out the infrastructure charge it must be assumed that the development the subject of the original approval is existing on the site*": *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014* Explanatory Notes, pg14.

of the Subject Land as a warehouse and ancillary office, being other development on the Subject Land that may be lawfully carried out without the need for a further development permit."

14. If the error relating to the working out of the extra demand for Section 120 of the *Planning Act 2016* (Qld) had not been made, the levied charge would have been "nil".

15. In the circumstances described herein, the Appellant seeks the following orders:

    (a) the appeal be allowed;

    (b) the Charges Notice be set aside and replaced with, or changed to a decision that the levied charge be "nil"; and

    (c) such further orders the Court considers necessary and appropriate."[39]

[85] In relation to those allegations, the Respondent's Amended Statement of Facts, Matters and Contentions says:

"12. For the purpose of section 120 of the *Planning Act 2016* and sections 3.6, 6.1 and 6.2(a) of the *Logan Charges Resolution (No. 9) 2021*:

    (a) the Warehouse and ancillary Office is not '*other development on the premises*' but is the same development for which the charge was levied;

    (b) even if the material change of use is 'other development', the start of the new Warehouse and ancillary Office may not be lawfully carried out without the need for a further development permit for building work and operational work, as described in paragraph 7 above.[40]

…

13. In respect of the Grounds of appeal in the Notice of Appeal, the Respondent:

…

    (b) admits the allegation in paragraph 2 that the use of the Subject Land as a Warehouse and ancillary office is accepted development, but further says that it is accepted development subject to requirements;

…

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39 Appeal Book pp 2-5.

40 Paragraph 7 described the operational works permits referred to in paragraphs [55] above.

(d) denies paragraphs 9(d), 13(d) and 13(f) on the basis that the Warehouse and ancillary office was not development on the Land that may have been lawfully carried out without the need for a further development permit, such that there was no error in working out the extra demand for the levied charge in the Infrastructure Charges Notice, for the reasons pleaded herein.

14. In respect of the relief sought in paragraphs 14 and 15 of the Notice of Appeal, the respondent denies the Appellant is entitled to the relief sought for the reasons pleaded herein."[41]

[86] Relevant to those matters, the Appellant's Response to Respondent's Statement of Facts, Matters and Contentions states:

"1. In respect of the Respondent's Statement of Facts, Matters and Contentions filed on 1 July 2022, court document number 6:

a. the Appellant admits paragraphs 1, 2, 3, 4, 5, 6, 8, 9, 10, 11 and 13(b);

b. as to paragraph 7, the Appellant:

i. admits the existence of the development permits described therein; but

ii. denies the development permits are for a specific purpose or use, as the development permits for operational work do not prescribe any particular use;

c. The Appellant joins issue with the matters set out in paragraphs 12, 13(d) and 14."[42]

[87] It is apparent from the paragraphs of the court documents set out above that:

(a) it is not disputed that the ability to make a material change of use for warehouse and ancillary office is "*accepted development subject to requirements*"; but

(b) there is a dispute about whether:

(i) further development permits for building work and operational works are needed to lawfully carry out the making of a material change of use; and, if so

(ii) whether the operational work permits are for a specific purpose or use such that they meet that requirement.

[88] The only evidence about this issue to which the Appellant directed my attention was a letter from the Council to Mullins Lawyers dated 17 May 2022, which states:

"Council acknowledges the Warehouse and ancillary Office development did not require a development permit for Material

41 Appeal Book pp 6-10.
42 Appeal Book p 11.

> Change of Use. Notwithstanding, a development permit for Building work was required as outlined in the application's Decision Notice dated 10 January 2022.
>
> …
>
> Council also acknowledges the representations made that pursuant to section 6.2(a)(iii) of the Resolution a credit should be given for the extra demand for the *"…other development on the premises that may be carried out without the need for a further development permit…"*. It is important to note that the Warehouse use ***did*** require further development permits, namely for Operational Work (Council reference: OW/21/2021 and OW/29/2021). Accordingly, section 6.2(a)(iii) is not applicable in this instance."[43]

[89] There is no evidence before me about:

(a) the nature of the "*requirements*" that must be satisfied for the making of a material change of use of the subject land for warehouse and ancillary office to be accepted development; and

(b) whether those "*requirements*" are satisfied by the building work approval and the operational works permits in circumstances where the Appellant denies the operational works permits are for a specific purpose or use as they do not prescribe any particular use.

[90] In those circumstances, the Appellant has not persuaded me that:

(a) the making of a material change of use for a warehouse with the same gross floor area and the same extent of area impervious to stormwater as that which is the subject of the building work approval could occur as accepted development; and

(b) even if the Appellant is correct about the proper construction of s 120 of the *Planning Act 2016*, the extra demand calculated in accordance with Logan Charges Resolution No. 9 2021 equals the adopted charge for the development the subject of the building work approval such that the levied charge should be nil.

Conclusion

[91] The Appellant has failed to discharge the onus.

[92] The appeal is dismissed.

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43 Appeal Book p 20.