

In the Planning and Environment Court
Held at: Brisbane

Appeal of 2017

Between: **Wagner Investments Pty Ltd**
ACN 011 055 271

Appellant

And: **Toowoomba Regional Council**

Respondent

NOTICE OF APPEAL

Filed on: 19/1/2017

Filed by: **QuDA**
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Wagner Investments Pty Ltd ACN 011 055 271 of 1511 Toowoomba-Cecil Plains Road, Wellcamp in the State of Queensland, appeals to the Planning and Environment Court at Brisbane against the decision of the respondent made on 14 December 2016 to levy an infrastructure charge of \$159,764.00 in relation to a development permit ("development permit") for a material change of use – mixed use industrial facility (including low impact industry, medium impact industry, transport depot and warehouse uses) ("development") for land at Toowoomba Cecil Plains Road, Wellcamp in the State of Queensland and more particularly described as lot 172 SP269293 ("land the subject of the development permit") bearing the respondent's application reference MCUC/2016/1844 and seeks the following orders or judgment:

- 1 the appeal be allowed
- 2 the negotiated infrastructure charges notice is set aside
- 3 such further or other order as this Honourable Court may require

NOTICE OF APPEAL

Filed on behalf of the Appellant

Form PEC-1

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The grounds of appeal are:

- 1 The development application for the development permit was made on 12 April 2016.
- 2 The development permit was given on 30 June 2016.
- 3 The development permit includes the following conditions:

STORMWATER DRAINAGE

24. All stormwater drainage works must be constructed generally in accordance with the Approved Plans listed within this Development Approval including the following:

24.1 Stormwater run-off from roof and developed surface areas, and any run-off onto the site from adjacent areas, is to be collected internally and directed to existing gully pit 1;

24.2 Provide litter baskets within stormwater pits as shown on the Approved Plans; and

24.3 The site must be connected to Detention Basin 3 via piped reticulation and swales.

Note: This condition is imposed pursuant to Section 665 of the Sustainable Planning Act 2009.

25. All private stormwater quality devices installed within the site as part of the development must be maintained for the life of the development, in accordance with the manufacturer's guidelines and to best management practice, to ensure continuing level of performance for water quality for stormwater discharged from the subject site.

26. All land adjoining the development must be protected from ponding or nuisance from stormwater resulting from the proposed development for the duration of the development works.

27. Prior to the commencement of any works on site, an Operational Works application must be submitted to and be approved by Council for the internal stormwater infrastructure. The design and the construction of the works must be certified by a RPEQ - Civil as follows:

27.1 A Design Certificate must be submitted with the application; and

27.2 A Construction Supervision certificate must be submitted at the completion of the approved works.

- 4 The land the subject of the development permit is within the stormwater catchment of the Brisbane West Wellcamp Airport (airport).
- 5 Development permits have been given for the airport.
- 6 Development permits for the airport include conditions dealing with the receipt and treatment of stormwater including the following condition in the respondent's development permit reference MCUC/2013/3965:

STORMWATER QUALITY AND FLOW MANAGEMENT

18. Prepare and submit to Council for endorsement, a Site Based Stormwater Management Plan in accordance with the relevant standards in PSP No. 2 - Engineering Standards - Roads and Drainage Infrastructure and SPP 4/10 Healthy Waters, demonstrating the following:

18.1 The collection and direction internally of stormwater run-off from roof and developed surface areas, and any run-off onto the site from adjacent areas, to a lawful point of discharge;

18.2 The achievement of water quality objectives determined and adopted in accordance with the relevant standards and processes in PSP No. 2 - Engineering Standards - Roads and Drainage Infrastructure, and SPP 4/10-Healthy Waters;

18.3 No increase in peak flow rates downstream from the site for storm events with an ARI of 2 years, up to and including 100 years;

18.4 Flood levels for the major design storm and the adequate provision of freeboard to the terminal building and internal roads;

18.5 No increase in flood levels external to the site;

18.6 No increase in duration of inundation external to the site that could cause loss or damage; and

18.7 Appropriate inspection and maintenance of stormwater quality control infrastructure in accordance with a program.

19. All internal and external stormwater drainage works must be completed generally in accordance with the:

19.1 Approved Site Based Stormwater Management Plan referred to in Condition 18 and

19.2 Relevant standards and processes in PSP No. 2 - Engineering Standards - Roads and Drainage Infrastructure, and SPP 4/10 Healthy Waters, other than where varied by the approved Site Based Stormwater Management Plan.

20. The design and the construction of the internal and external stormwater drainage works must be certified by a Registered Professional Engineer Queensland - Civil as follows:

20.1 A design certificate must be submitted to the Council with the application for endorsement of the Site Based Stormwater Management Plan referred to in Condition 18;

20.2 A design certificate must be submitted to Council with the application for operational works for internal and external drainage works; and

20.3 A construction supervision certificate must be submitted to Council at the completion of the approved works.

7 There is constructed at the airport, in accordance with those conditions, works for receiving and treating stormwater in the catchment.

8 The works are the subject of easements for drainage purposes in favour of the respondent.

9 The works function as if the works are trunk infrastructure.

10 No stormwater trunk infrastructure is provided, or is planned to be provided, for the land the subject of the development permit.

11 The development permit did not include any necessary infrastructure condition.

- 12 The development will not generate additional demand on stormwater trunk infrastructure.
- 13 An adopted infrastructure charges notice for the development was given on 30 June 2016.
- 14 The appeal period for the adopted infrastructure charges notice was suspended on 4 July 2016.
- 15 A request for a negotiated infrastructure charges notice was given on 1 August 2016.
- 16 A negotiated infrastructure charges notice was given on 14 December 2016.
- 17 The negotiated infrastructure charges notice levied stormwater infrastructure charges.
- 18 Infrastructure charges for stormwater ought not be levied because:
- (a) no stormwater trunk infrastructure is provided, or is planned to be provided, to the land the subject of the development permit
 - (b) despite (a), the respondent did not impose in the development permit any necessary infrastructure condition
 - (c) conditions in development permits given for the airport, including conditions 18, 19 and 20 of development permit reference MCUC/2013/3965, have been imposed
 - (d) there is constructed at the airport, in accordance with those conditions, works for receiving and treating stormwater in the catchment
 - (e) the works function as if the works are trunk infrastructure
 - (f) the circumstances in (a), (b), (c), (d) and (e) support the conclusion that the charge in the negotiated infrastructure charges notice is so unreasonable that no reasonable local government could have imposed it.
- 19 Further, the infrastructure charges for land use ought not be levied because the charge in the negotiated infrastructure charges notice is so unreasonable that no reasonable local government could have imposed it.
- 20 The appellant seeks an Order that:
- (a) the appeal be allowed
 - (b) the negotiated infrastructure charges notice is set aside

QuDA

QuDA
Solicitors for the Appellant
Dated 19 January 2017

If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

- (a) within 10 days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and**
- (b) serve a copy of the Entry of Appearance on each other party.**

The Entry of Appearance should be in Form PEC – 5 for the Planning and Environment Court.

If you are entitled to elect to be a party to this appeal and you wish to be heard in this appeal you must:

- (a) within 10 business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this notice of appeal was filed or where the court file is kept; and**
- (b) serve a copy of the Notice of Election on each other party.**

The Notice of Election should be in Form PEC – 6 for the Planning and Environment Court.