

In the Planning and Environment
Court

Appeal No. 129 of 2025

Held at: Maroochydore

Between: **MARK AND JULIANNE GRUNSKÉ** Appellants

And: **FRASER COAST REGIONAL COUNCIL** Respondent

RESPONDENT'S SUBMISSIONS AS TO COSTS

Material relied upon

1. The Respondent relies on the following material:

Court Doc. No.	Document	Date Filed
1.	Notice of Appeal	01.12.25
	Reasons for Judgment	05.0.26
	Application in Pending Proceeding (Application for costs)	05.05.26

Introduction

2. This is an application for costs by the Respondent, following the Court's dismissal of the Appellants' appeal.
3. The reasons for judgment (*Grunské v Fraser Coast Regional Council (No.2) [2026] QPEC 16*) ("RFJ") set out the relevant features of the appeal and the issues in dispute and those matters will not be repeated here, save to note that:
 - (a) the appeal was against the decision of the Development Tribunal ("Tribunal") to dismiss the Appellants' appeal to it against an infrastructure charges notice ("ICN") given to the Appellants by the Respondent for a development approval for a one lot into 5 lot reconfiguration;
 - (b) the initial appeal to the Tribunal was limited in nature and could only be on the

grounds that¹:

- (i) the ICN involved an error relating to the application of the relevant adopted charge;
 - (ii) the ICN involved an error relating to the working out of extra demand for the purposes of section 120 of the *Planning Act 2016* (“PA”); or
 - (iii) errors were made in relation to offsets or refunds (which the Appellants did not allege in the appeal); and
- (c) the appeal to this Court against the Tribunal’s decision, may only be on the grounds of “*error or mistake of law on the part of the tribunal*” or “*jurisdictional error*”². Consequently, the appeal to this Court could not involve any review of the merits of the Tribunal’s decision and was limited to an examination of the decision of the Tribunal for legal or jurisdictional error; and
- (d) whilst the notice of appeal failed to disclose any valid ground of appeal, it was possible (albeit with considerable difficulty) during the hearing to discern three grounds of appeal, namely, whether the Tribunal erred in law by:
- (i) treating the adopted charge as applying to the development the subject of the approval (“*Adopted Charge Ground*”);
 - (ii) concluding that the land the subject of the development application was within a “*rural township*” as that term is used in the Respondent’s Infrastructure Charges Resolution 2025 (“*Rural Township Ground*”); and
 - (iii) concluding that the development will generate extra demand on trunk infrastructure such as to engage section 120 of the PA (“*Extra Demand Ground*”).

Basis to award costs

4. The power to award costs is created by statute. In the present case, the Respondent seeks costs pursuant to section 60(1)(b), (f) and (i) of the *Planning and Environment Court Act 2016* (Qld) (“PECA”), which along with section 59 state:

¹ PA, schedule 1, table 1, item 4

² PA, schedule 1, table 2, item 1

59 General costs provision

Subject to sections 60 and 61, each party to a P&E Court proceeding must bear the party's own costs for the proceeding.

60 Orders for costs

(1) The P&E Court may make an order for costs for a P&E Court proceeding as it considers appropriate if a party has incurred costs in 1 or more of the following circumstances—

...

(b) the P&E Court considers the proceeding to have been frivolous or vexatious;

Example—

The P&E Court considers a proceeding was started or conducted without reasonable prospects of success.

...

(f) a party has defaulted in the P&E Court's procedural requirements;

...

(i) an applicant, submitter, assessment manager, referral agency or local government does not properly discharge its responsibilities in the proceeding.

...

5. If any one of the pre-conditions in section 60(1)(b), (f) or (i) is satisfied, the Court has an unfettered discretion to award costs.

Section 60(1)(b) – frivolous or vexatious

6. The relevant principles in relation to section 60(1)(b) were set out by Judge Williamson KC in *Sincere International Group Pty Ltd v Council of the City of Gold Coast (No. 2)* [2019] QPEC 9; QPELR 662 at [25]-[30]:

Section 60(1) of PECA is similar to s.7.6(1A) of the repealed Local Government (Planning & Environment) Act 1990. The latter was held to reflect a legislative intent to give the Court a power to award costs to compensate a party disadvantaged by 'unmeritorious conduct' of another party. The unmeritorious conduct that may be

compensated for is particularised in the subsections of the provision. One type of unmeritorious conduct common to both s.7.6(1A) of the repealed legislation, and s.60(1)(b) of PECA, is where a proceeding is considered to be 'frivolous or vexatious'...

*...The phrase 'frivolous or vexatious' as it appears in s.60(1)(b) of PECA is not defined. It is, as a consequence, to be given its ordinary meaning. Williams JA in *Mudie v Gainriver Pty Ltd (No.2)* 2 Qd R [2003] 271 at [59] held that the words 'frivolous or vexatious' in s.7.6(1A) of the repealed Local Government (Planning & Environment) Court Act 1990 were used in everyday language, and there was little doubt as to their ordinary meaning. His Honour held that frivolous meant 'of little or no value or importance, paltry'; 'having no reasonable grounds', and 'lacking seriousness or sense, silly'. McMurdo P and Atkinson J in the same decision held that the ordinary meaning of 'frivolous' was 'of little or no weight, worth or importance', and 'not worthy of serious notice'*

The onus of proving frivolity lies with the applicant for costs. It is a high standard to be met, and will turn on matters of fact and degree, including public policy considerations and the interests of justice. Relevantly, something much more than lack of success needs to be shown to engage s.60(1)(b) of PECA.

7. In relation to the example which follows section 60(1)(b), Judge Williamson KC said:

The phrase 'without reasonable prospects of success' has been held to equate its meaning with 'so lacking in merit or substance as to be not fairly arguable'. A case which is not fairly arguable is one that is regarded as 'bound to fail'. This is a concept that falls appreciably short of 'likely to succeed'. A lack of success does not mean that a proceeding had no reasonable prospects, or lacked merit.

8. The Respondent submits that the entirety of the proceeding was frivolous in the necessary sense, as:

- (a) the notice of appeal failed to disclose any valid basis of appeal that was capable of being considered by this Court, given the limited nature of appeals of this kind³; and

³ RFJ at [11] to [14]

- (b) even though it was possible, with considerable difficulty, during the hearing of the appeal to discern three grounds of appeal for the Appellants, each of those grounds was “*so lacking in merit or substance as to be not fairly arguable*” and was “*bound to fail*” and in particular:
- (i) the Adopted Charge Ground was inconsistent with, and ignored, the language of the relevant statutory provision, being regulation 52 of the *Planning Regulation 2016*⁴ and had no prospects of success, when regard is had to the language of that provision;
 - (ii) as to the Rural Township Ground, there was no reasonable basis to argue that the subject land was not within a “*rural township*” within the Respondent’s Infrastructure Charges Resolution 2015 and the reasons for this being so were “*obvious*”⁵. In those circumstances, this ground had no prospects of success; and
 - (iii) the Extra Demand Ground was inconsistent with, and ignored, the language of the relevant statutory provision, being section 120 of the PA and relied on challenging a finding of the Tribunal that was “*undoubtedly correct*” and was in any event a finding of fact that could not be challenged in the appeal⁶. In those circumstances, this ground had no prospects of success.

Section 60(1)(f) – default in the Court’s procedural requirements

9. The Court’s relevant procedural requirements here included the requirement in section 230(1)(b) of the PA, that the Appellants’ notice of appeal “*succinctly states the grounds of appeal*”.
10. The Appellants defaulted in this procedural requirement as, apart from the fact that the notice of appeal failed to actually identify any valid ground of appeal (as discussed above), the grounds in the notice of appeal were “*circumlocutious*”, characterized by “*vagueness*” and were “*at the same time verbose but without real meaning*”⁷. In no sense could it be said that the notice of appeal succinctly stated the grounds of appeal, as was required by section 230(1)(b) of the PA.

⁴ RFJ at [53] and [54]

⁵ RFJ at [59] to [61]

⁶ RFJ at [63] to [65]

⁷ RFJ at [12]

Section 60(1)(i) – Failure to properly discharge responsibilities in the proceeding

11. The “*responsibilities*” for the purpose of this pre-condition, means those imposed on a party by the Acts that govern the proceeding, which here will include the PA and PECA⁸.
12. In the present case, those responsibilities included:
 - (a) the obligation imposed on parties by section 10(2) of the PECA to proceed in an expeditious way, which has been held to include proceeding in a way which involves the litigation of only the real issues in dispute, without undue delay, expense and technicality and will require a party to properly assess the merits of its case and properly acknowledge and address shortcomings in its case⁹; and
 - (b) the obligation imposed on an appellant by section 230(1)(b) of the PA, to succinctly state the grounds of appeal in its notice of appeal.
13. The Appellants failed to discharge their responsibility imposed by section 10(2) of the PECA, by:
 - (a) raising grounds of appeal in the notice of appeal that could not be raised in proceedings of this type;
 - (b) by filing material including affidavits and written submissions and handing up material during the trial, which were lengthy, confusing and of little or no assistance to the Court or the Respondent in understanding the nature of the case that was being run by the Appellants; and
 - (c) by failing, at any stage, to acknowledge and address the many and various shortcomings in their case.
14. The Appellants failed to discharge their responsibility in section 230(1)(b) of the PA to succinctly state the grounds of the appeal in the notice of appeal, for the reasons discussed in relation to section 60(1)(f) above.

Discretion

15. For the reasons set out above, the preconditions in each of sections 60(1)(b), (f) and (i) of the PECA (the satisfaction of only one of which is required) has been satisfied,

⁸ Sincere (*supra*) at [92]

⁹ Sincere (*supra*) at [102] and [103]

enlivening the Court's unfettered discretion to award costs.

16. The Respondent submits that it is appropriate in this case that the Court exercise its discretion to award costs against the Appellants, as:
- (a) the proceeding was entirely without merit;
 - (b) the serious deficiencies in the Appellants' articulation of its case significantly hindered the Respondent in its preparation for the case, resulting in additional time and expense and is likely to have also hindered the Court's ability to exercise its jurisdiction;
 - (c) as identified in the RFJ¹⁰, it is no excuse that the Appellants chose to be represented by an agent who is not a lawyer; and
 - (d) the Respondent is a public, tax payer funded entity which was to put to significant expense to defend the (unmeritorious) appeal in circumstances where the amount of infrastructure charges in dispute was only \$54,720 and is not appropriate that the taxpayer be required to shoulder those costs.
17. In the premises, the Court ought order that the Appellants pay the Respondent's costs of and incidental to the appeal, on a standard basis.

Connor O'Meara

Solicitors for the Respondent

4 May 2026

¹⁰ RFJ at [16]