

Between: **WAGNER INVESTMENTS PTY LTD**  
**ACN 011 055 271**

Appellant

And: **TOOWOOMBA REGIONAL COUNCIL**

Respondent

**AMENDED STATEMENT OF FACTS, MATTERS AND CONTENTIONS**

**PREPARED ON BEHALF OF THE RESPONDENT**

1. On 1 December 2016, the Respondent approved, subject to conditions, a development permit for a material change of use of land described as part of Lot 172 on Survey Plan 269293, situated at 1215 Toowoomba Cecil Plains Road, Wellcamp ("*the Land*").
2. The Respondent's decision to grant the development permit for the Land was communicated by way of a Negotiated Decision Notice dated 1 December 2016 ("*the Negotiated Decision Notice*").
3. The Negotiated Decision Notice comprises two development permits granted subject to conditions, namely a material change of use approval for a Warehouse (Schedule 1) and a reconfiguration of a lot approval (1 into 2 lots) (Schedule 2).
4. On 4 November 2013, the Respondent's ~~delegate decided~~ ~~resolved~~ to issue an Infrastructure Charges Notice for the development approved by the original Decision Notice dated 1 November 2013 ("*the ICN*").
5. The ICN was issued pursuant to the Respondent's Adopted Charges Resolution which was in effect at the date it was issued.

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**THE RESPONDENT'S AMENDED  
STATEMENT OF FACTS MATTERS  
AND CONTENTIONS**

Filed on behalf of the Respondent

Form PEC-1

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6. On 2 December 2013, the Appellant through its town planning consultant elected to suspend its appeal period with respect to the ICN.
7. On 20 December 2013, the Appellant through its town planning consultant made representations to the Respondent with respect to the ICN.
8. On 14 December 2016, the Respondent's delegate decided ~~resolved~~ to issue a Negotiated Infrastructure Charges Notice ("*the Negotiated ICN*").
9. The Negotiated ICN was issued pursuant to the Respondent's Charges Resolution No.2, which had effect on and from 5 December 2016 ("*CR No.2*")

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10. For the purposes of CR No.2, the Land:
  - (a) is included in the Urban charge area; and
  - (b) is treated as being serviced by two trunk infrastructure networks, namely the transport network and the storm water quantity network.
11. The ICN states that the current amount of the Total Levied Charge is \$68,000 ("*the levied Charge*").
12. In calculating the levied Charge, the Respondent's delegate determined that:
  - (a) for the purpose of s.3.2(b) of CR No.2, the Land and the lot to be created pursuant to the Negotiated Decision Notice would be included in a zone other than a residential zone for a non-residential purpose;
  - (b) for the purpose of s.3.2(b)(i) of CR No.2, the adopted charge was calculated as having a maximum gross floor area of 2,000m<sup>2</sup> at the rate applicable to 'Industry' in Table 3 being \$50/m<sup>2</sup>;
  - (c) for the purpose of section 3.3(f) of CR No.2, the development approved by the Decision Notice:
    - (i) involved non-residential development located in the Urban charge area; and
    - (ii) was not planned to be serviced by the water supply or sewage trunk infrastructure network; and

- (d) the adopted charge for the land use component of the development was to be reduced by 66% given the matters pleaded in paragraph 12(c).
13. Further, the Respondent's delegate in the exercise of ~~its~~ the discretion to issue the ICN correctly held that there was no requirement to reduce the levied Charge as a consequence of:
- (a) a credit calculated, or identified, in accordance with s.4 of CR No.2;
  - (b) an offset under section 6.2 of CR No.2; and
  - (c) a refund under section 6.3 of CR No.2.
14. In the premises, the ~~Respondent's delegate's~~ decision to issue the ICN including the levied Charge is a decision that is correct having regard to the proper interpretation of CR No.2 and, further, is a reasonable decision for the purposes of s.478(2)(a) of SPA.
15. On 19 January 2017, the Appellant commenced this appeal against the levied Charge.
16. With respect to paragraphs 9, 10 and 11 of the Appellant's Notice of Appeal, the Respondent denies the allegations made therein, in particular, it denies that the levied Charge is so unreasonable that no reasonable Local Government could have imposed it.
17. Further, or in the alternative, the Respondent is unable to respond directly to the allegations made in paragraphs 9, 10 and 11 of the Appellant's Notice of Appeal as the matters alleged therein are assertions are not supported by relevant particulars to which the Respondent can properly plead.
18. In the premises, the Appeal ought be dismissed.

*Corrs Chambers Westgarth*  
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**Corrs Chambers Westgarth**  
**Solicitors for the Respondent**  
**6 July 10 April 2017**