SUPREME COURT OF QUEENSLAND

CITATION:	*Whiting v Somerset Regional Council* [2010] QSC 200
PARTIES:	**MERVYN ROBERT WHITING** Applicant **v** **SOMERSET REGIONAL COUNCIL** Respondent
FILE NO/S:	BS 9015 of 2008
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	9 June 2010
DELIVERED AT:	Brisbane
HEARING DATE:	11 March 2010
JUDGE:	McMurdo J
ORDER:	**It is declared that the council's resolution of 25 June 2005 by which it resolved to levy a special charge on lots 41, 42 and 43 on RP 14964 is invalid and of no effect.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – REVIEW OF PARTICULAR DECISIONS – where the respondent carried out works which improved the access to land owned by the applicant – where the respondent subsequently resolved to impose a special charge on the applicant's land under s 971 of the *Local Government Act 1993* (Qld) – whether the respondent's resolution is valid. *Judicial Review Act 1991* (Qld) Pt 3 *Local Government Act 1993* (Qld) s 971 *Local Government Act 1936* (Qld) s 21 *Local Government and Other Legislation Amendment Act 1999* (Qld) s 79(3) *Australand Land and Housing No 5 (Hope Island) Pty Ltd v Gold Coast City Council* [2008] 1 Qd R 1 *The Council of the City of Parramatta v Pestell* (1972) 128 CLR 305 *Project Blue Sky Inc v Australian Broadcasting* Authority (1998) 194 CLR 355 *Shanvale Pty Ltd v Council of the Shire of Livingstone* (1999) 105 LGERA 380

COUNSEL: B G Cronin for the applicant
S P Fynes-Clinton for the respondent

SOLICITORS: Andrew P Abaza for the applicant
King & Company for the respondent

[1] The applicant, Mr Whiting, owns several properties in the town of Moore within the area governed by the Somerset Regional Council. In June 2008, the Council resolved to impose a special charge on three of these lots, each in the amount of $1,200, for road works which the Council had undertaken. By these proceedings Mr Whiting challenges the validity of that resolution and seeks to have it set aside. He claims that for several reasons the Council's decision should be judicially reviewed under Pt 3 of the *Judicial Review Act 1991* (Qld). Ultimately, what is in issue is Mr Whiting's liability for amounts totalling $3,600. But, as I will discuss, the outcome depends upon an issue of general importance, involving the proper construction of s 971 of the *Local Government Act 1993* (Qld) ("the LGA").

The facts

[2] Mr Whiting owns lots 41, 42 and 43 on RP 14964, which are adjoining lots each accessible by the road in question. It is described on maps which were in evidence as "#4512 road". He also owns lot 36 on RP 14964 which is to the rear of lot 43 and which has its street frontage to Ruisdael Way. There was no resolution in respect of lot 36. However, the Council issued the one rate notice for both lot 43 and lot 36, which included the special charge resolved to be imposed upon lot 43. On its face, the rate notice is invalid because lot 36 should be unaffected and in this hearing, the Council agreed to withdraw that notice.

[3] When Mr Whiting acquired the three lots in question in 2000, they were unimproved land. He has since constructed a house upon each lot, the most recent building being the house on lot 43 which was built in about late 2007. Each house is rented by Mr Whiting and was so by the time of the performance of the relevant road works. Until then there was no constructed road outside lots 41 to 43. There was a constructed road only to a point about 60 metres from the beginning of the frontage of lot 41. Lots 41 to 43, together with lot 40 which adjoins lot 41, had frontages which could be reached only by driving on tracks which vehicles had made on the ground.

[4] The relevant works undertaken by the Council involved the construction of a gravel road over the 60 to 65 metres between Ruisdael Way and the beginning of lot 41, extending a further 60 metres across the frontages of lots 41 to 43. The area was formed and compacted before gravel was spread and a drain and bank were constructed to divert water from the surface. The construction ended at the far end of lot 43. Although maps show this road as continuing beyond that point to an intersection with a street called Railway Terrace, in fact the road was used only as far as lot 43 and there was effectively a cul-de-sac at that point.

[5] Apart from Mr Whiting's land, there were three lots which have some frontage to the road where the construction occurred. There is lot 40 as mentioned already. Next to it is lot 38 which has a frontage also to Ruisdael Way. Lots 40 and 38 have a common ownership and apparently have been used as effectively one property enjoying access to Ruisdael Way. And there is lot 47 on RP 14964, which is a rural property comprising over 50 hectares and used in conjunction with an adjoining rural property of almost the same area. This property has other road frontages,

including to the D'Aguilar Highway, and its frontage to the subject road is not used. The evidence also refers to two lots, being the so-called "Grill" and "Ball" properties, each of which has street access from Railway Terrace, but which has a side boundary along the still unconstructed part of #4512 road, beyond lot 43. But as I have said, this part of the road has never been used as such.

[6] There was correspondence between Mr Whiting and the Council as far back as 2002 about the possible construction of a road to lots 41 to 43. At a meeting of the Council's predecessor, the Esk Shire Council, held on 7 August 2002, it was noted that Mr Whiting had requested an "upgrade" of this road in order "to service his properties that he is proposing to build cottages on" and it was resolved that the Council should carry out "basic formation and gravelling to the unmade road … at an estimated cost of $3,000 subject to Mr Merv Whiting making a contribution of $1,000". Mr Whiting's response was to say that before agreeing to make that payment, he would like to know if he would be liable "in any way in the case of an accident or for any payment of future road works". The Council responded to the effect that the Council and not Mr Whiting would be in all respects responsible for the condition of the road and that the requested contribution was to be a "one off financial commitment only". Nevertheless, Mr Whiting did not agree to make this contribution.

[7] In a letter of 21 June 2004 to the Council, Mr Whiting complained that the "road still remains unmade". The Council responded by saying that, as almost two years had passed since its offer to Mr Whiting, it would be necessary for the Council to reconsider the matter and he was asked whether he would be willing to make any contribution and if so in what amount. It seems that Mr Whiting did not respond, at least directly.

[8] By 2008, Mr Whiting had constructed the houses on the three lots. At a meeting of the Esk Council on 9 January 2008, it was resolved that the Council should procure a report as to the likely cost of forming a gravel road to those three houses. A report dated 23 January 2008 from the Council's Works, Health & Environment Committee contained the following:

> Ruisdael Way is a gravel road for part of its length. However, the three (3) parcels of land that Mr Whiting owns upon which he has now constructed cottages for retirees is an unconstructed length of road. The current estimate to form and gravel this section of roadway to link in with the existing gravel section is $5,600. It is considered that Council, if it constructs the section of road, which would service the three (3) properties owned by Mr Whiting and another property owned by Mr Westecot, should attempt to recover some costs.

[9] That other property, said to be owned by Mr Westecot, appears to have been that comprising lots 38 and 40 or perhaps only lot 40 which itself had no road frontage to Ruisdael Way.

[10] The minutes of a meeting of the (Esk) Council held on 27 February 2008 include the following:

> Contribution towards road maintenance
>
> Cr Lord moved that the remainder of his unspent conference allocation for 2008, in the sum of $3,804 be directed towards the following roadworks:

1. $2,000 towards Ruisdael Road;
2. $1,804 towards Richters Road;

Decision: …

That the remainder of Cr Lord's unspent conference allocation for 2008 in the sum of $3,804 be directed towards the following roadworks:

1. $2,000 towards Ruisdael Road;
2. $1,804 towards Richters Road.

It can be seen that this is the explanation for the total amount of $3,600 which the Council has purported to charge Mr Whiting: it is the then estimated cost of the relevant works less $2,000 from funds which Cr Lord had not spent on some allowance.

[11] In March 2008, the Esk Shire Council was merged into the Somerset Regional Council. The construction of the gravel road from Ruisdael Way to the subject properties was completed over a week commencing 14 April 2008. According to evidence of Mr Jacobs, the Manager Operations of the Council, another employee of the Council has calculated the actual cost of these works at $7,061.03 which Mr Jacobs considers to be "a fair and reasonable estimate". He says that the difference between this and the amount of $5,600, which had been estimated in the January report to the Council, was due to the construction of a small bank for drainage purposes.

[12] The Council resolved to make and levy the charges now in question at its budget meeting held on 25 June 2008. It is necessary to set out the record of that resolution in full:

That Council levy a special charge under s 971 of the Local Government Act 1993, to be known as the Ruisdael Way Road Special Charge, (the 'special charge') as follows:-

(1) Council make and levy a special charge on the rateable land described as Lots 41, 42 and 43 on RP14964 to fund the cost of road construction linking Ruisdael Way, Moore to these properties.

(2) The overall plan for the carrying out of the works be identified as follows:-

(a) The rateable land to which the plan applies is Lots 41, 42 and 43 on RP14964.
(b) The land is used for residential purposes.
(c) The service facility or activity for which the plan is made is the construction of a gravel road linking Ruisdael Way and the properties.
(d) The time for implementing the overall plan is a nominal 1 year term, ending on 30 June 2009.
(e) The work was carried out during the 2007/2008 financial year.
(f) The estimated cost of implementing the overall plan is $5,600 over its nominal 1 year term. 2008/2009 represents the 1st year of the overall plan. That cost is allocated indicatively as follows:-

(i) 100% - road construction

(g) The special charge in each year is intended to raise 65% of the funds necessary to carry out the overall plan. The Council will fund the other 35% of the cost of the works from other sources.

(3) The annual implementation plan for implementation of the overall plan in 2008/2009 comprises:-

(a) carrying out particular work covered by the overall plan; and
(b) to the extent that funds raised by the special charge are not expended or fully expended under paragraph (a), carrying forward the unexpended amount to be used to fund works under the overall plan in future years.

(4) The Council is of the opinion that the use made of the rateable land proposed to be levied with the special charge specially contributes to the need for the works described above because the properties involved require constructed road access that would not be the case if the properties were not developed for residential purposes.

(5) The following special charge is hereby made and levied for the year 2008/2009:

Ruisdael Way Road Special Charge on Lot 41 on RP14964: $1,200.
Ruisdael Way Road Special Charge on Lot 42 on RP14964: $1,200.
Ruisdael Way Road Special Charge on Lot 43 on RP14964: $1,200.

The Council's power

[13] Section 971 of the LGA at relevant times has been and is as follows:

971 Special rates and charges

(1) A local government may make and levy a special rate or charge on rateable land if-

(a) the rate or charge is for a service, facility or activity; and

(b) in the local government's opinion-

(i) the land, or the occupier of the land, has or will specially benefit from, or has or will have special access to, the service, facility or activity; or

(ii) the occupier of the land, or the use made or to be made of the land, has, or will, specially contribute to the need for the service, facility or activity.

(2) The special rate or charge may be made and levied on the bases the local government considers appropriate.

(2A) The local government may fix a minimum amount of a special rate.

(3) Without limiting subsection (2), the amount of the special rate or charge may vary according to the extent to which, in the local government's opinion-

(a) the land, or the occupier of the land, has or will specially benefit from, or has or will have special access to, the service, facility or activity; or

(b) the occupier of the land, or the use made or to be made of the land, has, or will, specially contribute to the need for the service, facility or activity.

(4) The local government's resolution making the special rate or charge must identify-

(a) the rateable land to which the rate or charge applies; and

(b) the overall plan for the supply of the service, facility or activity.

(4A) The overall plan must-

(a) be adopted by the local government by resolution either before, or at the same time as, the local government first makes the special rate or charge; and

(b) identify the rateable land to which the rate or charge applies; and

(c) describe the service, facility or activity; and

(d) state the estimated cost of implementing the overall plan; and

(e) state the estimated time for implementing the overall plan.

(4B) Under an overall plan, a special rate or charge may be made and levied for 1 or more years before any of the funds received by the local government from the special rate or charge are expended in implementing the plan.

(4C) If an overall plan will not be implemented within 1 year, the local government must, at or before the budge meeting for each year of the period for implementing the overall plan, by resolution, adopt an annual implementation plan for the year.

(4D) The local government may, by resolution, at any time, amend an overall plan or an annual implementation plan.

(5) The local government may identify parcels of rateable land to which the rate or charge applies in any way it considers appropriate.

(6) Subsection (1) is taken to have been complied with if the special rate or charge is made and levied on-

(a) all rateable land that, at the time of making and levying the rate or charge, could reasonably be identified as land on which the rate or charge may be made and levied; or

(b) all rateable land on which the rate or charge may be made and levied, other than land accidentally omitted.

(7) To remove any doubt, it is declared that a local government may make and levy a special rate or charge under subsection (1) for a service, facility or activity whether or not supplied or undertaken by the local government itself, including a service, facility or activity supplied or undertaken by another local government-

(a) in the other local government's area; and

(b) under arrangements entered into, under section 59, by the local governments.

[14] It can be seen that a special charge may be levied for a service, facility or activity. The term "facility" is defined to include "work".[1] As appears to be common ground, these road works would constitute a facility for present purposes.

[15] According to the minutes of the meeting of 25 June 2008, when the Council resolved to levy this special charge, it was of the opinion that the use made of lots 41 to 43 specially contributed to the need for those road works. It is upon this basis, it is argued for the Council, that the power under s 971 was exercised.[2] It is not part of the Council's case that Mr Whiting's land, or any occupier of that land, will specially benefit or will have special access to the facility.[3]

[16] The minutes of that meeting (25 June 2008) refer to a so-called "plan", no doubt with a view to s 971(4) and (4A). But of course by this stage the works had been completed and there was no proposal to do any further works which were relevant. The fact that no further works were planned made the task of complying with s 971(4A) awkward to say the least. The resolution accurately records the fact that the work "was carried out during the 2007/2008 financial year". But it also provided that "[t]he time for implementing the overall plan is a nominal 1 year term, ending on 30 June 2009". And apparently with regard to s 971(4C), the resolution purported to adopt "an annual implementation plan" for 2008/2009 which would

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1 Schedule 2 to the LGA.
2 s 971(1)(b)(ii).
3 s 971(1)(b)(i).

comprise "carrying out particular work covered by the overall plan" and the expenditure of funds in doing so. Apart from this resolution, there is nothing which is said to have been an adoption of an overall plan for the purposes of s 971.

Mr Whiting's arguments

[17] Mr Whiting argues that the Council has unlawfully discriminated against him, firstly because there are other properties which will benefit from these road works. He points to lots 38 and 40 as well as to the Grill property and the Ball property. There is evidence[4] that the Grill and Ball properties have effectively no access to Railway Terrace so that they would benefit from these road works. His argument cites *The Council of the City of Parramatta v Pestell*,[5] where it was held that under a similar power to levy a rate for executing work which in the opinion of a Council would be of special benefit to the rated land, such a rate could not be levied if there was other land, not subject to the rate, which would also specially benefit from the work. Gibbs J said that work is of special benefit in this sense "if the lands comprising that portion derive from the work a benefit which is not shared by other lands or a benefit which is additional to, or greater than, that which is derived by other lands …".[6] To the same effect, Menzies J said that the section did not "authorise a council to pick and choose among lands that would be specially benefited".[7] This case has been applied to s 971 of the LGA in, for example, *Australand Land and Housing No 5 (Hope Island) Pty Ltd v Gold Coast City Council*[8] and to its predecessor[9] in *Shanvale Pty Ltd v Council of the Shire of Livingstone*.[10]

[18] Section 971 is engaged where the Council forms an opinion of the kind in s 971(1)(b)(i) or (ii). A Court will not interfere with a decision made on the basis of such an opinion simply because the Court disagrees with that opinion. It will interfere where there is no rational basis for the opinion or where the Council has taken into account irrelevant matters or otherwise made an error which would provide a ground for judicial review.[11] The short answer to Mr Whiting's argument that there are other properties which will also specially benefit from these road works is that this is not the limb of s 971(1)(b) upon which the Council has acted. Its resolution records its opinion, not as to a special benefit, but as to a special contribution to the *need* for the work from the use made of Mr Whiting's three lots.

[19] As to the question of a special need for these works from the use of his land, Mr Whiting argues that again the Council has improperly ignored the circumstances of other properties. He says that the likely use of other lots, which have frontages to the road where the works have been performed, is for houses to be constructed on those lands so that there is no special need created by the use of the three lots belonging to him. In my view however, that would not preclude the formation of a valid opinion that there was *at that time* a special need for the works from the use which was then being made of Mr Whiting's lots.

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4 In an affidavit by Mr Whiting.
5 (1972) 128 CLR 305.
6 Ibid, 327.
7 Ibid, 323.
8 [2008] 1 Qd R 1.
9 *Local Government Act 1936* (Qld) s 21
10 (1999) 105 LGERA 380.
11 *The Council of the City of Parramatta v Pestell* (1972) 128 CLR 305, 327.

[20] I do not accept the submission for the Council that the reasoning from *Parramatta Council v Pestell* is inapplicable where a charge is levied on the basis of a special need, as distinct from a special benefit. The word "specially" has been used in s 971(1)(b)(ii) with the apparent intention that it will have a like meaning with the same word or the word "special" as they are used in s 971(1)(b)(i). I accept that the required opinion as to the need for the facility must be one which does not pick and choose between lots which make a like contribution to the relevant need. However, there was a factual basis upon which the Council could have considered that the actual use made of Mr Whiting's properties was sufficiently different from the potential use to be made of these other properties. In the case of no other property was there use then being made of the then unformed section of the road for access to an existing house.

[21] It is further submitted for Mr Whiting that, in truth, the Council did not form an opinion corresponding with s 971(1)(b)(ii). It is said that the Council did not consider that there was a need for the road works. The principal basis for this submission is a letter from the Council's Chief Executive Officer to Mr Whiting of 5 August 2008, written in response to Mr Whiting's letter of the previous day seeking further information in respect of the Council's resolution. The letter from the CEO included the following:

> 1. The special charges that relate to your three properties to be levied this financial year total $3,600 out of a total project cost of $5,600. You are therefore to contribute only a portion of the total cost of construction reflecting the proportionate benefit to you as opposed to other property owners on the road.
> 2. Council is not applying any special charge to other property owners who were not requesting Council to construct the road.
> 3. Council was under no legal or any other obligation to construct the road and would not have constructed the road were it not for your requests to do so and the ability to apply special charges to you to ensure a contribution towards this construction.
> 4. The Esk Shire Planning Scheme requires for owners of properties on unconstructed roads to construct road access prior to developing residential dwellings there. Evidently not all private building certifiers may be aware of this planning scheme requirement. The historical subdivision and satellite navigation matters raised in your letter have no bearing on Council's planning schemes.
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> …
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> 8. Council also constructs assets where there is a priority need. Council expended $5,600 constructing this road, not because of priority need but because of requests from you to do so. Recovering a portion of the costs from you via a special charge is appropriate and suitable in the circumstances.

[22] In several respects, this letter is inconsistent with the minutes of the Council resolutions to which I have referred. Firstly, the CEO wrote that the amount of $3,600 had been imposed to reflect the "proportionate benefit to [Mr Whiting] as opposed to other property owners on the road". According to the other evidence, the figure of $3,600 was derived by deducting from the estimated cost of $5,600 the

sum of $2,000 which remained unspent from a Councillor's allowance. And there had been no resolution in terms of any particular *benefit* to either Mr Whiting or to other property owners. More significantly, the letter suggests that the Council had resolved to levy the special charge, not because of some special need from the use of Mr Whiting's land, but because for many years Mr Whiting had been calling upon the Council to perform the work and no other property owners had done the same. It also seems to have been relevant, according to the CEO, that ordinarily owners had been required to construct road access prior to building houses upon their lands.

[23] I am not persuaded to find that this letter from the Council's CEO accurately explains the Council's decision-making. As I have said, it is plainly inconsistent with other evidence as to the derivation of the figure of $3,600. And it is inconsistent with other evidence which is to the effect that Council did form the opinion that the use made of Mr Whiting's lands especially contributed to the need for the works. The fact that there was ample basis for the formation of the required opinion contributes to the likelihood that in fact it was held. The CEO is not a Councillor. Perhaps his letter was in these terms because he believed that they would constitute the most compelling answer to Mr Whiting's longstanding complaints. In my view, this letter does not displace the other evidence, particularly that of the minutes of the Council's resolution of 25 June 2008, as to the formation of the requisite opinion under s 971.

[24] Before going to the arguments concerning the need for the approval of a plan for the works, it is convenient to mention another argument for Mr Whiting, which is that there was no rational basis for quantifying the special charges in the total of $3,600. This was said to be because the actual cost of the works, so the Court should find, was $3,076.52. It is unnecessary to discuss the evidence by which that submission was made. The validity of this decision does not depend upon the accuracy of the estimate of the cost of works as reported to and accepted by the Council.

[25] The prospect that too much would be charged because of an over-estimate is met by s 971A(4) of the LGA, which provides that if there are funds received from a special rate or charge remaining after an overall plan is implemented, the local government is to repay the remaining funds to the owners of the land on which the special rate or charge was levied. I find that the estimate of $5,600 was a genuine estimate which in truth was accepted as such by the Council.

The need for a plan

[26] It is argued for Mr Whiting that a special rate or charge cannot be levied for work which has already been carried out: it must be for proposed work. The argument refers particularly to the requirement within s 971(4A) that the "overall plan … state the estimated cost of [and] … the estimated time for implementing" that plan. It is said that in each case the requirement is expressed in prospective terms, indicating that the work for which the rate or charge is to be levied must be prospective work.

[27] For the Council, it is argued that there is no such restriction within s 971. Its argument emphasises that s 971(1)(b)(i) refers to an opinion of a special benefit or special access which the land or an occupier *has* or will have from the service, facility or activity. The section therefore permits the relevant opinion to be formed in a circumstance where there is already a benefit from the facility, so that necessarily the power is not limited to a time before the provision of that facility.

[28] That argument for the Council should be accepted. The "special benefit" limb may be engaged where there is an existing rather than an expected benefit. That this is not inconsistent with the requirement for an "overall plan" may be explained as follows.

[29] Section 971(4) requires a local government to identify the overall plan in resolving to make the special rate or charge. And by s 971(4A)(a), the overall plan must be adopted by a resolution either before or at the same time as the time at which the local government first makes the special rate or charge. It is the essence of a plan that it is prospective. Accordingly, the estimated cost of implementing the plan must be an estimate of future costs and the estimated time for implementation must be for the prospective provision of the relevant service, facility or activity.

[30] Section 971 requires the adoption of an overall plan *by* the time of the resolution for the making of the special rate or charge. But it does not require the plan to be adopted *at* that time. It expressly contemplates the possibility that the plan will be adopted at a time before the relevant resolution for the rate or charge. There is no expressed impediment to the making of that resolution in the circumstance where the service, facility or activity has been provided, or has begun to be provided, in the interim period between the adoption of the plan and that resolution. Rather, it may be thought that s 971(1)(b)(i) anticipates cases of that kind because they will provide the circumstances of a special benefit from or access to the service, facility or activity which exists at the time of the making of the special rate or charge. In short, there is no express qualification to the power under s 971 to the effect that it cannot be exercised to recover the cost of work which has been performed or commenced, and nor is there a basis for implying such a qualification. In most cases at least, it is to be expected that a Council will wish to recover the cost of work involved in the provision of the relevant service, facility or activity in advance of the performance of that work. But that is not to require the power to be confined to that circumstance.

[31] Nevertheless, there is the requirement for an adopted plan by the time of the making of the special rate or charge. The difficulty in the present case comes not from the fact that the work was performed before the charge was made. Rather, it comes from the fact that the work was performed without an adopted plan. In consequence, when the Council came to resolve to make these charges, it was impossible for the Council to then adopt a plan as required by s 971 (4) and (4A), because it was impossible to plan for that which had been already performed. That is illustrated by the terms of the Council's resolution. That resolution was internally inconsistent because although it disclosed that the work had been carried out, it also referred to the work prospectively. To do so the Council adopted a notion of a "nominal 1 year term" and adopted the fiction that the financial year about to commence "represents the 1st year of the overall plan". In truth, no plan was adopted because no plan could have been then adopted. It follows that the resolution to make the special charges did not comply with s 971(4) and (4A).

[32] Although the Council did not argue that its resolution could stand if there was a failure to observe these requirements, it is necessary to consider whether it was the purpose of this statute that a rate or charge imposed without compliance with these requirements should be invalid: *Project Blue Sky Inc v Australian Broadcasting Authority*.[12] Subsections (4) to (4D) of s 971 were inserted by amendments to the

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12 (1998) 194 CLR 355, 390.

LGA in 1999.[13] It was by those amendments that this requirement for an overall plan was introduced. The intention of the amendments, according to the explanatory note, was to:

- provide transparency and accountability commensurate with the broadened taxation powers introduced by these amendments; and
- articulate the basis/information on which the Council has formed its opinion under sub-section (1)(b) concerning the benefit, access or contribution.

Having regard to that intention, and the broader purpose of s 971 to limit the levy of a special rate or charge according to a transparent correlation with certain work at a certain cost, the adoption of an overall plan in accordance with s 971 must be seen as a prerequisite to the validity of the rate or charge.

[33] It follows that the Council's resolution to make these charges upon Mr Whiting's land was invalid and he is entitled to some relief. It will be declared that the Council's resolution of 25 June 2005 by which it resolved to levy a special charge on lots 41, 42 and 43 on RP 14964 is invalid and of no effect. I will hear the parties as to any other orders including costs.

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13 *Local Government and Other Legislation Amendment Act 1999* (Qld) s 79(3).