

PLANNING AND ENVIRONMENT COURT

JUDGE ROBIN QC

P & E Appeal No 1036 of 2012

IPSWICH CITY COUNCIL

Applicant

and

BREMER WATERS PTY LTD  
and ANOTHER

Respondents

BRISBANE

..DATE 07/12/2012

ORDER

CATCHWORDS

"Notice of withdrawal in part of Council application seeking declarations of its entitlements under development conditions regarding infrastructure charges - respondent now seeks contrary declaration and indemnity costs on short notice - matters adjourned."

HIS HONOUR: The court will adjourn, for mention on the 14th of December 2012, both the council's originating application, 1036 of 2012 and the cross-application, which Bremer Waters Pty Limited has filed today, 4793 of 2012.

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The court has heard evidence and argument in 1036 of 2012 respecting charges for infrastructure in various categories, which the Council seeks to extract from Bremer Waters pursuant to conditions in a development approval which is now about 10 years old.

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It was thought by the parties that if the court could pronounce on the validity of the Council's claims for charges, in principle the parties would be well placed to agree how other issues in the proceeding should be resolved.

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Notwithstanding the presumably earnest efforts of the parties, that resolution has not occurred. Worse than that, the situation has been complicated, at least from Bremer Waters' point of view, by the Council's filing a notice of withdrawal of so much of its originating application as concerns condition 24. That leaves issues which the court hasn't yet got onto regarding condition 26.

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This situation is unsatisfactory to Bremer Waters, which wants an answer one way or the other to the question, whether the Council's infrastructure charges claims are valid. The picture is complicated by problems which may well affect the validity of the policies under which the Council seeks to charge.

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The court was asked not to make any determination pursuant to the hearing that already occurred when issues as to the validity of the processes leading to adoption of policies emerged. My appreciation is that the Council has made no concessions in this regard. Its notice of withdrawal creates no res judicata between the parties. Today was a scheduled mention date.

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The Council has had, effectively, no notice of the applications by Bremer Waters, one of which is the cross-application mentioned seeking declarations of invalidity of planning scheme policies about infrastructure. The other application in the pending proceeding seeks, among other things, costs on the indemnity basis in relation to the issues within the notice of withdrawal.

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Directions are sought in the interests of preserving the utility of hearings to date regarding the use of the evidence taken and supplementing of that evidence.

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Mr Fynes-Clinton didn't expect the final resolution of anything today, but sought directions which would require supplementary evidence, if the Council wants to adduce any, and its response, within defined times.

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Mr Ure objects to that. It's a difficult time of the year from the point of view of evidence being marshalled, or even instructions being sought and given, which is why he sought a

period of a week to permit the Council team to gather their thoughts. That's preferable, I think, to proceeding on the basis that I had been contemplating, which would have allowed the Council until the end of January next year, rather than only two weeks from today proposed by Bremer Waters, to produce further material.

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My inclination was to allow the Council that longer time, and the 2 weeks for Bremer Waters' response, which was suggested was feasible. Mr Ure says it may be possible for the Council to meet that longer time, which could be allowed without jeopardising the prospects of a hearing for one or two days in March next year, which fairly obviously ought to be before me.

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I'll leave the draft order proffered by Mr Fynes-Clinton on the file as a record of what was in contemplation by me, however, I'm not signing it. The order is the one indicated already, adjourning both matters for mention next Friday.

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