

# PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Allen-Co Holdings Pty Ltd v Gympie Regional Council (No. 2)* [2021] QPEC 72

PARTIES: **ALLEN-CO HOLDINGS PTY LTD**  
(applicant/appellant)

**v**

**GYMPIE REGIONAL COUNCIL**  
(respondent)

FILE NO/S: 1504 of 2020

DIVISION: Planning and Environment

PROCEEDING: Application in pending proceeding

ORIGINATING COURT: Planning and Environment Court, Brisbane

DELIVERED ON: 9 November 2021, *ex tempore*

DELIVERED AT: Brisbane

HEARING DATE: 9 November 2021

JUDGE: Rackemann DCJ

ORDER: **The application for disclosure is dismissed.**

CATCHWORDS: PLANNING AND ENVIRONMENT – PRACTICE AND PROCEDURE – DISCLOSURE – where the applicant seeks orders for disclosure of the report or reports considered by the Council, or Committee of Council, to support its adoption of the infrastructure charges resolution on 22 November 2017 – where the appellant contends in the substantive hearing that the rate in the resolution should be discounted on the basis that the development will generate extra demand on some networks but not others – where the applicant seeks documents that identify how the rate can be apportioned to different networks – whether the duty of disclosure has been complied with – whether the interests of justice and the existence of special circumstances require production of the documents

COUNSEL: N Loos for the applicant/appellant  
K Wylie for the respondent

SOLICITORS: Connor O’Meara Solicitors for the applicant/appellant  
McInnes Wilson Lawyers for the respondent

- [1] This is an application for disclosure of certain documents. In particular, the appellant seeks disclosure of the report or reports considered by the Council, or a Committee of Council, in support of the resolution to adopt its infrastructure charges resolution on 22 November of 2017. The proceeding is one in which the appellant appeals against an infrastructure charges notice in relation to a reconfiguration of the lot. The parties are agreed that the notice was in error in its calculation of the charge. The debate is as to the terms of the replacement notice, which should be ordered to issue. That, in turn, requires a consideration of the infrastructure charges resolution.
- [2] The adopted charge rate for a reconfiguration of a lot is dealt with in section 3.1. That section of the resolution identifies the relevant charge by reference to what the charge would be if table 2, which otherwise applies to material change of use for residential development, applied. Relevantly, that results in a charge of \$13,330 per lot. The resolution sets out, in that part which deals with a material change of use, a table which has a proportional split of network costs between five different networks, and there is a provision which affords a discount for the charge for a material change of use where development is to be serviced by water, but not sewer, or where it is not to be serviced by water or sewer. The discounts are approximate but are not exactly the same as the proportional network split in table 1. Section 3.1 of the policy, which refers to the reconfiguration of a lot, does not refer, expressly, to table 1 or to any discount.
- [3] The appellant's development will, it is common ground, generate extra demand on trunk infrastructure for only two of the five networks referred to in the charges resolution. The central contention of the appellant is that the resolution should be so construed or applied as to afford it a discount in accordance with either the proportional network split in table 1 or, at least, in accordance with the discount which would apply if it were development for a material change of use for residential development. Since otherwise, it contends, it would be levied a charge for demand placed on all five networks. It says that would be contrary to section 120 of the *Planning Act 2016* (Qld).
- [4] In the course of argument, when the substantive matter came on for hearing, counsel for the appellant accepted my proposition that the appellant's argument depended upon the figure of \$13,330 per lot reflecting a charge for all five networks in accordance with the proportional split that the appellant was contending for. Counsel for the appellant submitted that that must be the case on the basis of the resolution, construed on its face. I questioned that proposition and indicated that I would give the appellant some time to consider and, if it wished, investigate that matter. On the day, counsel for the respondent took instructions and informed the Court to the effect that there was no direct correlation between the figure and the separate networks and that the Council had no document which identified if or how the figure could be apportioned.

- [5] Following the adjourned hearing, the appellant corresponded with the respondent, seeking a rather broad array of documents before ultimately amending its application for disclosure to confine it to the documents to which I have already referred. In response, the Council filed an affidavit by its Manager of Planning, which was to the effect that having carried out searches, there were, to her knowledge, no documents that:

*(a) identified the type, category or item of trunk infrastructure that informed the adoption of the relevant amount; or*

*(b) identified whether or how the relevant amount may be divided into proportions or portions by reference to different types of trunk infrastructure; or*

*(c) identified that the relevant amount has been calculated to refer to, or respond to, extra demand on all of the trunk infrastructure networks identified in parts 1.2(a)(i)-(v) of the resolution.*

- [6] On the hearing of the disclosure application, she was called to confirm that searches included reviewing the documents sought by way of disclosure. In cross-examination, her evidence was that the document which went to the Council for consideration in adopting the resolution contained options, but no methodology.
- [7] In the circumstances, it seems to me that there is no objective likelihood that the duty of disclosure has not been complied with. Nor do I think that there are any special circumstances which combine with interests of justice to require the production of the documents which the appellant now seeks.
- [8] It was suggested that the documents could be used as extrinsic evidence, to assist the interpretation of the resolution, but it seems clear that there are no documents which would assist in establishing the matter which was identified in the course of argument. Whilst the appellant suggested that the respondent should have nothing to hide in relation to the documents in question, I can understand that it does not want to facilitate a fishing expedition which might result in an attempt to find some different basis of challenge to the infrastructure charges notice. In the circumstances, the application for disclosure is dismissed.