SUPREME COURT OF QUEENSLAND

CITATION:	*Leagrove Pty Ltd & Ors v Gold Coast City Council* [2009] QSC 343
PARTIES:	**LEAGROVE Pty Ltd (ACN 203 669 405)** **MARK FRANCIS STAFFORD** **MARGARET STAFFORD AND** **KATHRYN MARGARET STAFFORD** (applicants) **v** **GOLD COAST CITY COUNCIL** (respondent) 8678/08 AND **NERANG PASTORAL CO PTY LTD (ACN 010 119 990)** (first applicant) **PETER NEUMANN AND BRUCE NEUMANN** (second applicant) **v** **GOLD COAST CITY COUNCIL** (respondent) 8930/08 AND **ROTHMONT PROJECTS PTY LTD (ACN 098 994 453)** **HOPE ISLAND PROJECTS PTY LTD (ACN 099 595 016)** **FALCONREST PTY LTD (ACN 098 954 968)** **FISH DEVELOPMENTS (HOPE ISLAND) PTY LTD (ACN 102 320 214)** (first applicants) **EPWY COTTONWOOD PTY LTD (ACN 102 875 552)** **STEVEN WANG & GOLD CONNECTIONS AUST PTY LTD (ACN 099 013 920)** (second applicants) **v** **GOLD COAST CITY COUNCIL** (respondent) 8929/08
FILE NO:	8678 of 2008; 8930 of 2008; 8929 of 2008
DIVISION:	Trial Division
PROCEEDING:	Application

ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	4 November 2009
DELIVERED AT:	Brisbane
HEARING DATE:	17 April 2009
JUDGE:	Daubney J
ORDERS:	**(a) That the respondent shall file and serve an affidavit made by an officer of the Council with personal knowledge of the matters in question deposing to the fact (as the case may be) that documents relevant to the non-inclusion in the PCP and the PIP of the costs covered by the Recreation Charge do not exist and never have existed;** **(b) An order for disclosure of the instructions to and communications between the respondent and Cardno Lawson Treloar, John Wood Consultancy Services and CB Richard Ellis.**
CATCHWORDS:	PROCEDURE – DISCOVERY AND INTERROGATORIES – DISCOVERY AND INSPECTION OF DOCUMENTS – PRODUCTION AND INSPECTION – GENERALLY – OF WHAT PARTICULAR DOCUMENTS – where in the principal proceedings the applicants sought judicial review of a decision of the respondent to levy special charges in respect of a canal – where in the present interlocutory dispute the applicants sought disclosure of documents from the respondent – where the applicants sought documents relevant to the non-inclusion in the Planning Scheme Policy (PSP) and Priority Infrastructure Plan (PIP) of costs the subject of the Recreation Charge – where the applicants contended that the respondent ought to disclose documents proving or disproving the allegation that the costs in relation to the development of a park were not included in the PSP or PIP even though the park itself was contained within each of those documents – where the respondent asserted that the costs covered by the Recreation Charge were not included in either the PSP or the PIP and there were no documents relevant to the fact these costs were not included in the PSP or the PIP – whether documents relevant to the non-inclusion in the PCP or the PIP of the costs covered by the Recreation Charge existed. PROCEDURE – DISCOVERY AND INTERROGATORIES – DISCOVERY AND INSPECTION OF DOCUMENTS – PRODUCTION AND INSPECTION – GENERALLY – OF WHAT PARTICULAR DOCUMENTS – where respondent

had regard to experts' reports when reaching its decision – where applicant sought disclosure of the instructions to and other communications with each of the experts – where applicant argued that such instructions would be disclosable as a matter of course – where the respondent resisted disclosure of the instructions on the basis that the applicant did not plead a case alleging that the reports were relied on by the respondent in making its decision – whether this was a correct interpretation of the case sought to be made out in the grounds of claim – whether it was appropriate for there to be disclosure of the instructions to and other communications with the relevant experts by the respondent.

Judicial Review Act 1991 (Qld)
Local Government Act 1993 (Qld)
Uniform Civil Procedure Rules 1999 (Qld)

Logue v Shoalhaven Shire Council [1979] 1 NSWLR 537, cited

COUNSEL:

Leagrove Pty Ltd & Ors v Gold Coast City Council:

D.R. Gore QC with B.G Cronin for the applicant
M Hinson S.C. for the respondent

Nerang Pastoral Co Pty Ltd & Ors v Gold Coast City Council:

C Johnstone for the applicant
M Hinson S.C. for the respondent

Rothmont Projects Pty Ltd & Ors v Gold Coast City Council:

C Johnstone for the applicant
M Hinson S.C. for the respondent

SOLICITORS:

Leagrove Pty Ltd & Ors v Gold Coast City Council:

Hopgood Ganim for the applicant
King & Company Solicitors for the respondent

Nerang Pastoral Co Pty Ltd & Ors v Gold Coast City Council:

Hickey Lawyers for the applicant
King & Company Solicitors for the respondent

Rothmont Projects Pty Ltd & Ors v Gold Coast City Council:

Hickey Lawyers for the applicant
King & Company Solicitors for the respondent

[1] Three sets of proceedings have been brought against the respondent, Gold Coast City Council ("the Council") under the *Judicial Review Act* 1991 (*JRA*) by which the applicants in each proceeding seek the same, or similar, relief against the Council, namely a review of the Council's decision on 19 June 2008 to levy special charges under s 971 of the *Local Government Act* 1993 in respect of the Hope Island Canal.

[2] The present interlocutory dispute consists of applications by the applicants in each proceeding for further disclosure of documents by the Council. Each of the principal proceedings and the present applications is so similar that it is convenient, and sufficient, to determine the present interlocutory applications by reference only to one, namely *Leagrove Pty Ltd & Ors v Gold Coast City Council* (BS 8678 of 2008).

[3] In the Leagrove Pty Ltd application, as filed, the further disclosure sought was of documents relevant to four areas of disputed allegations. In general terms, these were identified as documents relevant to:

- paragraph 7 of the amended points of defence
- paragraphs 9(b), 11(c), 15(b) and 17(c) of the amended points of defence
- paragraphs 9(c) and 15(c) of the amended points of defence
- certain instructions to and communications with named experts by the Council.

[4] The grounds for the principal application for relief under the *JRA* relevantly recite:

> "1. Section 971(1) of the *Local Government Act* 1993 relevantly provides:
>
> *"A local government may make and levy a special ... charge on rateable land if –*
>
> *(a) the ... 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 ..."

2. On 19 June 2008, in purported reliance upon section 971, the Respondent resolved to make and levy special charges on rateable land described in the decision -

"(a) ... to defray the cost of establishing Sickle Park, by funding the repayment of a loan, interest and associated expenses, and reimbursement of incidental expenditure from Council's own funds", and

"(b) ... to defray the cost of establishing Section A of the Hope Island Canal, by funding the repayment of a loan, interest and associated expenses, and reimbursement of incidental expenditure from Council's own funds.", and

"(c) ... to defray the cost of establishing the lot 186 works of the Hope Island Canal, by funding the repayment of a loan, interest and associated expenses, and reimbursement of incidental expenditure from Council's own funds."

3. In making that decision, the Respondent purported to form the following opinions:

(a) In respect of the Recreation Charge:

"(5) The Council is of the opinion that the occupiers of the rateable land received a special benefit from the facility because:

(a) Hope Island Sickle Park performs a local park function;

(b) the occupiers of the land receive a benefit from the amenity (recreational, social, health and visual) provided by Sickle Park;

(c) access to Sickle Park from the land is convenient;

(d) the land is in close proximity to Sickle Park – the majority of it is within 500m or approximately 10 minutes walking time, and in the case of the identified land at the eastern end of Grant Avenue, Sickle Park will provide the primary local park function, because it is the closest local park that is easily accessible from this locality;

(e) for these reasons, and the reasons set out in paragraph 2.4.5 of the report of John Wood Consultancy Services dated 11 February 2008, which the Council has considered and adopted as its own opinion, the rateable land is the land

primarily and particularly serviced by the local park function of Hope Island Sickle Park.

(6) For those reasons, the Council is also of the opinion that the occupiers of the rateable land have or will have special access to Hope Island Sickle Park as a local park.

(7) The Council is further of the opinion that:

(a) the special benefit provided by the facility is enjoyed similarly by all of the occupiers of land proposed to be levied;

(b) the special access to the facility is enjoyed similarly by the occupiers of those lands;

(c) the most appropriate basis of apportioning the total cost of implementation of the overall plan among the identified parcels of rateable land is on a pro rata unimproved capital valuation basis (decided under the Valuation of Land Act 1944), using the valuation effective 30 June 2008. For lots in a community title scheme, the UCV is determined in accordance with sections 193 and 194 of the Body Corporate and Community Management Act 1997.", and

(b) In respect of the Section A Charge:

"(4) The Council is of the opinion that the occupiers of the rateable land receive a special benefit from the facility because:

(a) Section A provides a 100 year ARI flood reduction benefit to the land identified in Figure 3a of the report of Cardno (Qld) Pty Ltd dated 28 May 2008. That flood reduction benefit results in lower levels of fill being required for development carried out after December 2004, as shown on Figure 4 to that report (read with Figure 5).

(b) Section A provides a water quality benefit to the land identified in Figure 7 of the report of Cardno (Qld) Pty Ltd dated 28 May 2008, in terms of removing the requirement for there to be a water quality management system in the canal.

(c) Section A permits the land adjacent to the Hope Island Canal (depicted in Figure 6 of the report of Cardno (Qld) Pty Ltd dated 28 May 2008 the ability to obtain direct navigational access to the Coomera River.

(d) for these reasons and the reasons set out in sections 3 and 4 of the report of Cardno (Qld) Pty Ltd dated 28 May 2008, which the Council has considered and adopted as its own opinion, the rateable land is the land primarily and particularly benefiting from the construction of Section A of the Hope Island Canal.

(5) The Council is further of the opinion that:

(a) the methodology recommended in the report of Cardno (Qld) Pty Ltd dated 28 May 2008 for comparatively determining the special benefit flowing form the three forms of special benefit is sound;

(b) the basis of apportioning the total cost of implementation of the overall plan among the identified parcels of rateable land recommended in the report of Cardno (Qld) Pty Ltd dated 28 May 2008 is a reasonable and appropriate basis to adopt (noting that, in the case of a lot within a Community Titles Scheme, that part of the apportionment methodology which involved UCV used the UCV for the lot determined in accordance with sections 193 and 194 of the Body Corporate and Community Management Act 1997).", and

(c) In respect of the Lot 186 Charge:

"(4) The Council is of the opinion that the occupiers of the rateable land receive a special benefit from the facility because:

(a) The Lot 186 works provide a 100 year ARI flood reduction benefit to the land identified in Figure 3b of the report of Cardno (Qld) Pty Ltd dated 28 May 2008. that flood reduction benefit results in lower levels of fill being required for development carried out after December 2004, as shown on Figure 4 to that report (read with Figure 5).

(b) The Lot 186 works provide a water quality benefit to the land identified in Figure 7 of the report of Cardno (Qld) Pty Ltd dated 28 May 2008, in terms of removing the requirement for there to be a water quality management system in the canal.

(c) The Lot 186 works permit the land adjacent to the Hope Island Canal (depicted in Figure 6 of the report of Cardno (Qld) Pty Ltd dated 28 May 2008) the ability to obtain direct navigational access to the Coomera River.

> *(d) For these reasons and the reasons set out in sections 3 and 4 of the report of Cardno (Qld) Pty Ltd dated 28 May 2008, which the Council has considered and adopted as its own opinion, the rateable land is the land primarily and particularly benefiting from the construction of the Lot 186 works of the Hope Island Canal.*
>
> *(5) The Council is further of the opinion that:*
>
> *(a) the methodology recommended in the report of Cardno (Qld) Pty Ltd dated 28 May 2008 for comparatively determining the special benefit flowing from the three forms of special benefit is sound;*
>
> *(b) the basis of apportioning the total cost of implementation of the overall plan among the identified parcels of rateable land recommended in the report of Cardno (Qld) Pty Ltd dated 28 May 2008 is a reasonable and appropriate basis to adopt (noting that, in the case of a lot within a Community Titles Scheme, that part of the apportionment methodology which involves UCV uses the UCV for the lot determined in accordance with sections 193 and 194 of the Body Corporate and Community management Act 1997);*
>
> *(c) after considering the advice from its consultant engineer and valuer, the reduction of nuisance flooding as a result of the construction of the facility is not an appropriate criterion for determining special benefit to land."*

[5] The grounds then refer to specific attachments and tabular summaries to the Council's decision which describe the infrastructure works.

[6] Paragraph 5 of the grounds of claim then asserts the respects in which it is alleged that the Council failed to take relevant considerations into account in forming the opinions referred to in paragraph 3 of the grounds.

[7] Paragraph 5(a)(iii) alleges that, in respect of the Recreation Charge, the Council failed to take the following into account:

> "The respondent has included Sickle Park as infrastructure under Planning Scheme Policy 16 and the Priority Infrastructure Plan under its Gold Coast Planning Scheme in respect of which the respondent imposes contributions by way of conditions on development applications and/or will impose infrastructure charges under the *Integrated Planning Act* 1997 and has collected contributions which the applicants cannot particularise until after disclosure."

[8] In its points of defence, the Council joins issue with this allegation by contending as follows:

> "7. As to paragraph 5(a)(iii) of the Application, the Respondent:
>
> (a) admits that Sickle Park was included as infrastructure under Planning Scheme Policy 16 and the Priority Infrastructure Plan under the planning scheme;
>
> (b) denies that the Respondent imposes, or will impose, contributions by way of conditions on development applications because, at the time of its resolution of 19 June 2008, Planning Scheme Policy 16 was no longer in force;
>
> (c) says that Planning Scheme Policy 16 had not been in force since 8 January 2007 when the Priority Infrastructure Plan in the Respondent's planning scheme came into force;
>
> (d) says that the costs the subject of the Recreation special charge were not included in Planning Scheme Policy 16 or the Priority Infrastructure Plan as costs sought to be recovered under those documents; and
>
> (e) says that if it has imposed conditions on development approvals under Planning Scheme Policy 16 or the Priority Infrastructure Plan, such conditions do not include costs the subject of the Recreation Special Charge."

[9] Insofar as it is thereby contended that the costs the subject of the Recreation Charge were not included in either Planning Scheme Policy 16 ("PSP") or the Priority Infrastructure Plan ("PIP") as costs sought to be recovered under those documents, the applicants seek disclosure of documents relevant to that allegation. The applicants argued that if the works the subject of the Recreation Charge are liable to be recovered by an alternative statutory means, that is relevant to the validity of the Council's decision to levy the special Recreation Charge. Thus, it was contended, the Council ought disclose documents which prove or disprove the allegation that

the costs relating to the development of Sickle Park were not included in the PSP or are not included in the PIP, even though the park itself is contained within each of those documents.

[10] In response to a request in that regard, the Council provided the following Further and Better Particulars of paragraph 7(d) of the points of defence:

> "(a) the facts, matters and circumstances by which it is said that the costs the subject of the Recreation Special Charge were not included in Planning Scheme Policy 16 or the Priority Infrastructure Plan as costs sought to be recovered under these documents, having regard to the Respondent's acknowledgment in paragraph 7(a) of the Points of Defence that Sickle Park was included as infrastructure under Planning Scheme Policy 16, are:
>
> (i) the Recreation Special Charge relates to the costs of the works the subject of that special charge;
>
> (ii) Planning Scheme Policy 16 did not include and did not seek recovery of the cost of the works the subject of that special charge; and
>
> (iii) the Priority Infrastructure Plan does not include and does not seek recovery of the costs of the works the subject of that special charge.
>
> (b) the request for the Respondent to identify those parts of the text of Planning Scheme Policy 16 and the Priority Infrastructure Plan that are relied upon as supporting the contention that the costs, the subject of the Recreation Special Charge, were not included in Planning Scheme Policy 16 or the Priority Infrastructure Plan is not a proper request for particulars. It is the absence from those documents of the costs the subject of the Recreation Special Charge upon which the Respondent relies."

[11] On 11 March 2009, the applicants' solicitors wrote to the Council's solicitors complaining about disclosure, including:

> "As to paragraph 7 of the Amended Points of Defence, your client has failed to disclose:
>
> - Documents related to your client's allegation that costs the subject of the Recreation charge were not included in Planning Scheme Policy 16 including, without limitation, internal memoranda, Council minutes and reports;
>
> - Documents related to your client's allegation that costs the subject of the Recreation charge were not included in the Priority Infrastructure

> Plan including, without limitation, internal memoranda, Council minutes and reports;
>
> - Documents related to recovery of the cost of the Recreation charge including, without limitation, internal memoranda, Council minutes and reports."

[12] The Council's solicitors responded on 12 March 2009 as follows:

> "5. As to your request in relation to paragraph 7 of our client's Amended Points of Defence, our client has no additional documents within its possession or control of the nature sought that are directly relevant to an issue in dispute. The request amounts to a fishing expedition. Please identify the relevant issue in dispute to which, in your assertion, the documents, or class of documents, that you seek relates."

[13] In argument, Mr Hinson S.C. for the Council took me to the relevant part of the PIP to make good the contention that the costs sought to be recovered under the Recreation Charge were not included in the PIP (it being uncontentious that the PCP is now redundant).

[14] Mr Gore Q.C. for the applicants said in submissions, in effect, that it was difficult to believe that although the park is mentioned in the PIP (which it undoubtedly is), costs associated with establishing the park (which are the costs contained within the Recreation Charge) are not taken up under the PIP. He argued that it would be "extremely surprising if there wasn't some document which showed precisely what costs were in the Priority Infrastructure Plan".

[15] The Council's categorical assertion, which appears to be borne out by reference to the terms of the PIP itself, is simply that the costs covered by the Recreation Charge were not included in either the PSP or the PIP, and that there are no documents to be disclosed which are relevant to the fact that these costs are not included in the PSP or the PIP.

[16] In all the circumstances it seems to me, as was effectively conceded by counsel for each of the parties, that the appropriate resolution to this aspect of the application is to make an order pursuant to *UCPR* r 223(2)(a) requiring an appropriately responsible officer of the Council with personal knowledge of the matters in question to depose to the fact (as the case may be) that documents relevant to the non-inclusion in the PCP or the PIP of the costs covered by the Recreation Charge do not exist and never have existed.

[17] In preparing, and being prepared to swear to, the contents of such an affidavit, that Council officer will undoubtedly have firmly in mind the fact that the Courts expect local authorities to conduct themselves as model litigants.[1]

[18] The second and third areas in the disclosure application dealt with what was described in argument as the navigable waterway issue. This issue arose out of matters alleged in paragraphs 5(b)(ii), 5(b)(iv), 5(c)(ii) and 5(c)(iv) of the grounds of claim, which were traversed, or answered, in paragraphs 9(b), 11(c), 15(b), 17(c), 9(c) and 15(c) of the Points of Defence. In the course of argument, counsel for the applicants properly conceded that the grounds of claim (and particulars thereof) as they stood at that date required amendment in order to specifically invoke the parts of the PIP which the applicants contend impose restrictions on navigational access to the Coomera River. The applicants were given leave to file further particulars of the navigable waterway issue, with the Council then to advise of its attitude to further disclosure. As events transpired after the hearing, the applicants (that is, the applicants in each of the principal proceedings) filed both amended applications under the *JRA* and amended responses to the Council's request for particulars, by

which the applicants further particularised the navigable waterway issue. The Council's solicitors after considering the amendments, advised (quite properly, in my view) that "the applicants' amendments in each matter are such that they will give rise to further disclosure". It is therefore now unnecessary for me to determine these parts of the application for disclosure.

[19] The remaining area of dispute concerns documents relating to experts.

[20] Paragraph 5A of the grounds of claim asserts:

> "5A. Further or alternatively, in forming the opinions referred to in paragraph 3 hereof, the respondent misconstrued s 971 of the *Local Government Act* 1993:
>
> (a) as to the recreation charge, in deciding that Sickle Park was a "facility" "for" which a charge under s 971(1) may be made, because (as appears from the information provided in attachment 2, set out in paragraph 4 hereof) the charge was for the replacement of parkland lost due to the construction of the Hope Island Canal;
>
> (b) as to the Section A charge, in deciding that Section A was a "facility" "for" which a charge under s 971(1) may be made, because:
>
> (i) considered in isolation, Section A does not involve anything or works which would give rise to a special benefit to any land, or the occupiers of any land;
>
> (ii) it is impossible to form a view that Section A gives rise to any of the suggested flood reduction or water quality benefits, or direct navigational access benefit, referred to in the resolution without taking into account the balance of the Hope Island Canal and the benefits of the same character resulting form the construction of the entire canal;
>
> (iii) in the result, at best for the respondent, Section A is part only of a "facility", being part only of the Hope Island Canal;
>
> (c) as to the Lot 186 Charge, in deciding that the Lot 186 works was a "facility" "for" which a charge under s 971(1) may be made, because:

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[1] In that regard, it is sufficient to refer to the observations of Mahoney JA in *Logue v Shoalhaven Shire Council* [1979] 1 NSWLR 537 at 558-559.

(i) considered in isolation, the Lot 186 works do not involve anything or works which would give rise to a special benefit to any land, or the occupiers of any land;

(ii) it is impossible to form a view that Section A gives rise to any of the suggested flood reduction or water quality benefits, or direct navigational access benefit, referred to in the resolution without taking into account the balance of the Hope Island Canal and the benefits of the same character resulting form the construction of the entire canal;

(iii) in the result, at best for the respondent, Section A is part only of a "facility", being part only of the Hope Island Canal."

[21] That is responded to in the points of defence by the following plea:

"20. As to paragraph 5A of the Application, the Respondent denies that it misconstrued section 971 in the respects pleaded, because on the proper construction of section 971:

(a) each of Sickle Park, the Section A works and the Lot 186 works were a facility for which a special charge may be made;

(b) whether or not Sickle Park replaced parkland lost due to the construction of the Hope Island canal is irrelevant to its characterisation as a facility for the purpose of section 971;

(c) it is wrong to consider a facility in isolation from the environment into which the facility is placed;

(d) it is necessary, when considering whether there is a special benefit from a facility, to identify the situation before the facility was established and the situation after the facility was established;

(e) it is wrong to treat the situation existing before the facility was established as being part of the facility itself, as the Applicants do in paragraphs 5A(b)(iii) and 5A(c)(iii) of the Application."

[22] It is apparent from paragraph 3 of the grounds for claim (which I have quoted at length above) that there were a number of experts' reports considered by the Council when forming the opinions referred to in paragraph 3, and that the Council, in the respects alleged in that paragraph 3, "considered and adopted as its own" particular aspects of those experts' opinions. The expert opinions expressly referred

to in that paragraph are those of Cardno (Qld) Pty Ltd ("Cardno Lawson Treloar") and John Wood Consulting Services. There is a further expert's report not expressly mentioned in the pleading, being a report by the valuer CB Richard Ellis Pty Ltd which forms part of the Cardno Lawson Treloar report and to which Cardno Lawson Treloar had reference in quantifying the cost benefits accruing to different lots as a consequence of, inter alia, navigational access improvement for lots which it is said would have direct boating access to the Coomera River.

[23] Disclosure is sought of the instructions to and other communications with each of those experts. The applicants argued that, in "orthodox" litigation, such instructions would be disclosable as a matter of course.

[24] The Council resisted giving disclosure of these instructions, however, on the basis that the issue to which the documents are said by the applicants to be relevant is the alleged misconstruction of s 971 in connection with the decisions that the Section A works are a "facility" and the Lot 186 works are a "facility". It was argued that the applicants do not plead a case that alleges that the Council, in making those decisions, relied on or adopted the methodology of the engineers nor other experts.

[25] I think that is far too narrow a reading of the case sought to be made out in the grounds of claim. True it is that paragraph 5A of the grounds of claim attacks, inter alia, the notion that each of the Section A works and the Lot 186 works was a "facility". It is, of course, clear on the face of s 971 (quoted above in paragraph 1 of the grounds of claim) that the Council's discretion to levy the special charge can only be exercised in respect of, relevantly, a "facility". The contention, obviously, is that the Council erred in forming an opinion that each of the Section A works and

the Lot 186 works was a "facility", and the Council's purported exercise of power under s 971 was therefore invalid.

[26] It is, in my view, more than tolerably clear on the face of the grounds of claim that each of the applicants contend that opinions formed by the Council (as recited in paragraph 3 of the grounds of claim) necessarily involved an assumption that, relevantly, each of the Section A works and the Lot 186 works was a "facility". It is further clear that the expert reports to which reference is made, containing opinions which the Council apparently adopted as its own, underpinned or contributed to the existence of that assumption. To that extent, then, it appears to me that it is appropriate for there to be disclosure of the instructions to and other communications with the relevant experts by the Council. These documents are relevant to the basis, or part of the basis, for the Council's assumption that each of these works was a "facility", and are therefore relevant to the challenge to that assumption directly made in paragraph 5A of the Grounds of Claim.

[27] In summary, then, there will be orders in each matter to the following effect:

(a) That the respondent shall file and serve an affidavit made by an officer of the Council with personal knowledge of the matters in question deposing to the fact (as the case may be) that documents relevant to the non-inclusion in the PCP and the PIP of the costs covered by the Recreation Charge do not exist and never have existed;

(b) An order for disclosure of the instructions to and communications between the respondent and Cardno Lawson Treloar, John Wood Consultancy Services and CB Richard Ellis.

[28] I will hear the parties as to appropriate forms of orders and with respect to costs.