



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-054
Appellants:	SR Bridgeman & DJ Bridgeman
Respondent:	Lockyer Valley Regional Council
Site Address:	3 Beckey Road, Plainland described as Lot 2 RP25672

Appeal

Appeal under section 229 and Schedule 1, Table 1, Item 4 of the *Planning Act 2016* against an infrastructure charges notice given by Lockyer Valley Regional Council, on the grounds the notice involved an error in the application of the relevant adopted charge or an error relating to the working out of extra demand for section 120.

Date of decision:	1 March 2023
Date and time of hearing:	On the papers
Tribunal:	Michelle Pennicott Chair Warren Rowe Member

Decision:

The appeal is allowed and the decision to give Infrastructure Charges Notice ICN(RL2022/0026) dated 26 July 2022 is replaced with a decision to not give an amended infrastructure charges notice in response to the minor change approval dated 26 July 2022 (RL2022/0026).

Background

1. The appeal is against the Council's infrastructure charges notice, Infrastructure Charges Notice ICN(RL2022/0026) dated 26 July 2022 ('26 July 2022 Infrastructure Charges Notice').
2. The 26 July 2022 Infrastructure Charges Notice was issued following an approval issued on that same date for a minor change to a development permit for reconfiguring a lot (1 lot into 40 lots). The original development permit was issued in 2015.
3. The Appellants made representations to the Council about the infrastructure charges notice. On 4 October 2022, the Council gave a decision notice advising that it did not agree with the representations and the 26 July 2022 Infrastructure Charges Notice remained unchanged.

Appeal

4. On 18 October 2022, the Appellants brought this appeal against the 26 July 2022 Infrastructure Charges Notice on the grounds that it involved an error relating to the application of the relevant adopted charge or an error relating to the working out of extra demand for section 120.
5. The appeal is within the jurisdiction of the Tribunal. Section 229 and Schedule 1, Table 1, section 4 of the *Planning Act 2016*, allows an appeal to be brought against an infrastructure charges notice on grounds which include the notice involved an error relating to the application of the relevant adopted charge or the notice involved an error relating to the working out of extra demand for section 120.
6. The appeal is by way of a reconsideration of the evidence that was before the person who made the decision appealed against, subject to leave being given for any fresh evidence.¹
7. The Appellants must establish the appeal should be upheld.²
8. The Development Tribunal must decide the appeal by:
 - (a) confirming the decision; or
 - (b) changing the decision; or
 - (c) replacing the decision with another decision; or
 - (d) setting the decision aside, and ordering the person who made the decision to remake the decision by a stated time.³

¹ *Planning Act 2016* s253(4) and s253(5) (Conduct of appeals)

² *Planning Act 2016* s253(3) (Conduct of appeals)

³ *Planning Act 2016* s254(2) (Deciding appeals to tribunal)

Amended infrastructure charges notice for change approval

9. Section 119(6) of the *Planning Act 2016* enables a local government to give an amended infrastructure charge notice if an approval is given for a change application:
 - (6) If an approval is given for a change application or extension application related to a development approval for which an infrastructure charges notice has been given, the local government may give an amended infrastructure charges notice to the applicant.
10. However, that power is constrained by section 119(7) of the *Planning Act 2016* which provides that the original infrastructure charges notice may only be amended if the amendment relates to the change to the development approval:
 - (7) However, an infrastructure charges notice may be given or amended under subsection (5) or (6) only if the notice or amendment relates to the change to, or extension of, the development approval.
11. An amended charge under an amended infrastructure charges notices is subject to the same statutory limitations as the original infrastructure charges notice. So, for example, under section 120 of the *Planning Act 2016* the amended charge can only be for the extra demand placed on the trunk infrastructure that the change will generate.
12. On 25 January 2023, the Council provided the evidence relied on by the decision maker in issuing the 26 July 2022 Infrastructure Charges Notice.
13. On 26 January 2023, the Appellants notified that they would seek to rely on various provisions and evidence in response to the material provided by the Council.
14. The appeal was scheduled for hearing on 17 February 2023.
15. On 15 February 2023, the Council informed the Tribunal and the Appellants that they had taken advice and would not resist the appeal being allowed and the 26 July 2022 Infrastructure Charges Notice set aside on the basis that the Council was not satisfied the requirements of section 119(7) were met:

“As the Development Approval issued on 26 July 2022 does not result in an increase in the scale of the development, or result in the creation of any additional lots for the development, Council had no power to issue the Amended ICN given the restraint contained in section 119(7) of the Act for giving an amended infrastructure charges notice following the approval of a change to a development approval”.
16. On 16 February 2023, in response to a request from the Tribunal for further clarification, the Council confirmed that an earlier infrastructure charges notice dated 8 July 2021 was also now considered to have not met the preconditions under section 119(7) of the *Planning Act 2016*.

17. The Tribunal is grateful for the Council taking advice and the concessions made to enable the resolution of this appeal.
18. The 4 March 2015 infrastructure charges notice, 'ICN(ROL2014/0007) LVRC', is for a total of 40 lots, with an existing 1 lot credit, at \$12,500 per lot, totalling \$487,500 and subject to indexation. The 4 March 2015 infrastructure charges notice states that it is levied in accordance with *Lockyer Valley Regional Council's Adopted Infrastructure Charges Resolution July 2011*.
19. The 26 July 2022 Infrastructure Charges Notice is for a total of 40 lots on a staged basis, with a net 1 lot credit, at \$13,297.13 per lot, totalling \$518,588.07 and subject to indexation. The 26 July 2022 Infrastructure Charges Notice states it is levied in accordance with *Lockyer Valley Regional Council's Adopted Infrastructure Charges Resolution (No. 6) 2022*.
20. The Tribunal notes that both the 2011 and 2022 Adopted Infrastructure Charges Resolutions provide for reconfiguring a lot to be charged on a per lot basis.
21. The original 2015 development permit for reconfiguring a lot was for 40 lots. The minor change approval remains for 40 lots.
22. As the Council has now correctly identified, the pre-condition under section 119(7) of the *Planning Act 2016* for the giving of an amended infrastructure charges is not met as the minor change approval of 26 July 2022 does not give rise to any change to the original infrastructure charges notice dated 4 March 2015.
23. Therefore, the appeal is allowed and the decision to give Infrastructure Charges Notice ICN(RL2022/0026) dated 26 July 2022 is replaced with a decision to not give an amended infrastructure charges notice in response to the minor change approval dated 26 July 2022 (RL2022/0026).

Michelle Pennicott
Development Tribunal Chairperson

Date: 1 March 2023

Appeal Rights

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

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