

VILLA WORLD APPEALS 178, 179, 180 AND 181 OF 2015 (A1764789)

Objective Reference: A1765373
Reports and Attachments (Archives)

Attachment: [Villa World Appeal](#)

Authorising Officer:

Louise Rusan
General Manager Community and Customer Services

Responsible Officer:

David Jeanes
Group Manager City Planning and Assessment

Report Authors:

Giles Tyler
Principal Advisor Infrastructure Planning and Charging
Claire Lovejoy
Senior Solicitor

PURPOSE

This matter relates to appeals against Council's refusals of Requests for Negotiated Infrastructure Charges Notices for:

- Standard Format - 1 into 37 lots (Stage 4).
- Standard Format - 1 into 32 lots (Stage 5).
- Standard Format - 1 into 32 lots (Stage 6).
- Standard Format - 1 into 33 lots (Stage 7).

At Lot 801 SP 207237 401-451 Redland Bay Road Capalaba QLD 4157

In February 2007 the Planning & Environment Court granted the ERA estate a development permit for a Material Change of Use (from Rural Non-Urban to Residential A) and Reconfiguration over Stage 1. It further ordered a preliminary approval for a Material Change of Use over the balance of the land subject to various conditions and an agreed master plan.

Stages 1 to 3 were subsequently undertaken with conditions for former planning scheme policy headworks charges.

In June 2014 Council granted Reconfiguring a Lot approvals for stages 4 to 7 of the estate. As part of these approvals, Adopted Infrastructure Charges Notices (AICN) were issued.

The figures are based on [redacted] per additional lot, being the rate for each additional lot in accordance with Council's Adopted Infrastructure Charges Resolution (AICR), also being the maximum allowed in accordance with the State Planning Regulatory Provision (SPRP) (adopted charges).

In June 2014 the applicant made submissions to Council requesting to negotiate these charges in accordance with Section 641 of the *Sustainable Planning Act 2009*. On 10 December 2014 Council resolved to refuse these requests. Further detail regarding this assessment is included under the Issues heading of this report.

Appeals were subsequently lodged by the applicant with the Court relating to Council's refusal for each of the stages.

ISSUES

Representations prior to the appeal

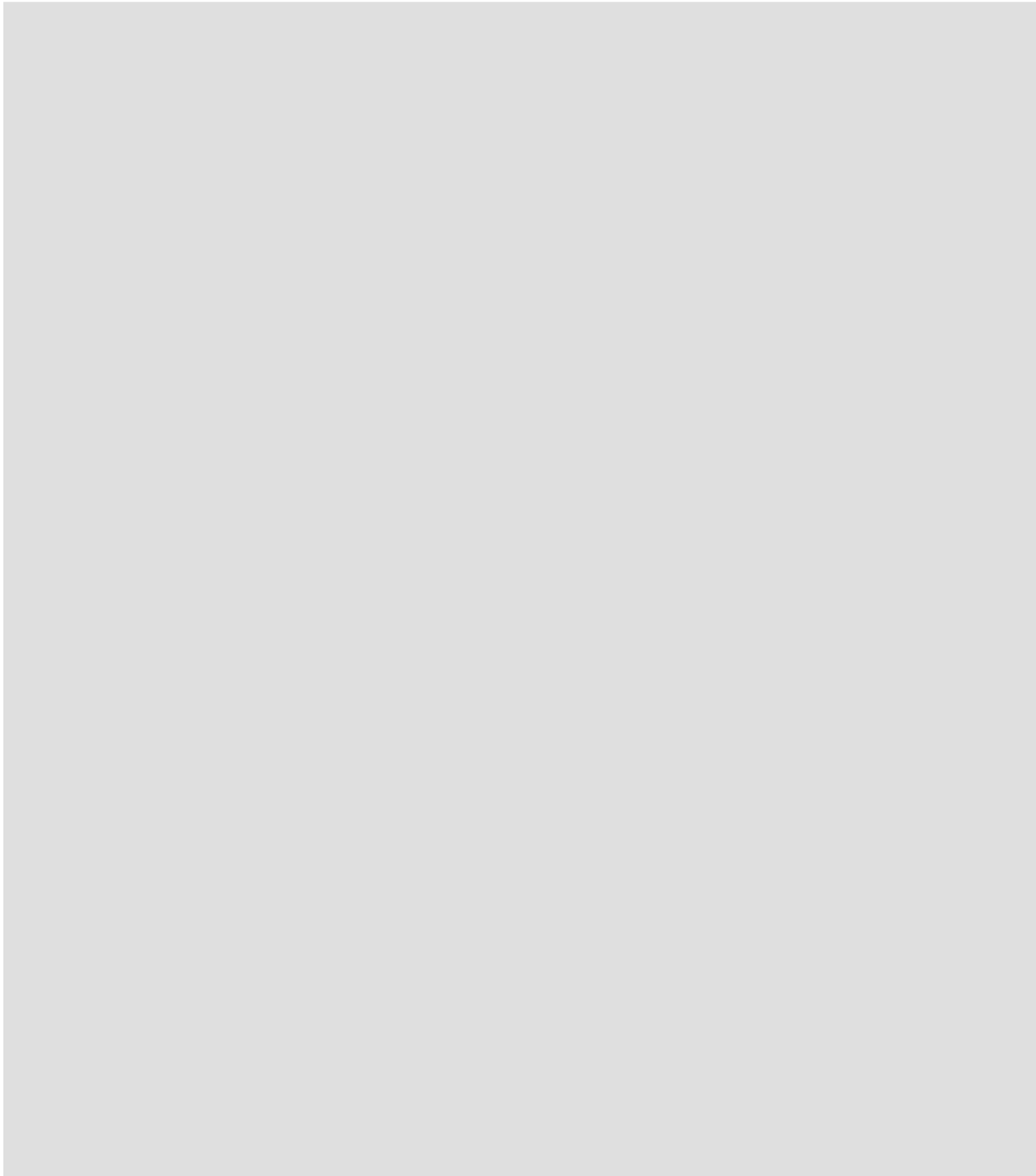
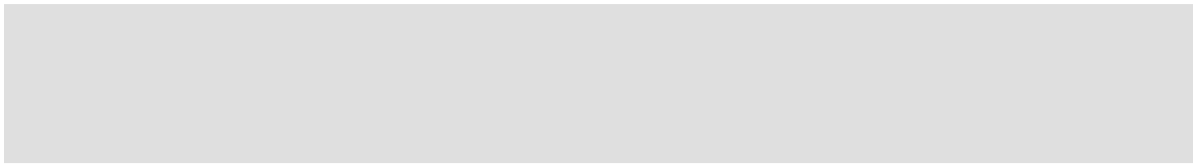
The applicant made representations about the abovementioned AICNs in accordance with the *Sustainable Planning Act 2009* Chapter 8 Part 4.

In their letter dated 31 July 2014, the applicant sought a reduction to the infrastructure charges for stormwater, open space and sewerage. This is represented in the following table.

Council decision on the request

Council unanimously resolved on 10 December 2014 to reject the applicant's representations regarding reducing the charges. The applicant appealed that decision on 16 January 2015.

Since that time, Council's legal team have been working with a Queens Counsel, a junior Barrister and several experts to put together a defence of the decision.



STRATEGIC IMPLICATIONS

Legislative Requirements

The appeal was made pursuant to the *Sustainable Planning Act 2009*.

Risk Management

As always in litigation, there is a risk that Council could lose all or part of the argument that it presents in Court. A loss could also mean a costs order which would mean paying some of the appellant's legal costs as well as the costs Council incurred.

Financial

People

Not applicable. There are no implications for staff.

Environmental

Not applicable.

Social

Not applicable.

Alignment with Council's Policy and Plans

The recommendation would remove uncertainty about the amount of charges Council will be recovering for stages 4 to 7 of the development, and what costs it might incur in Court over the matter. It reduces risk to Council which is in line with Council's Corporate Plan.

Settlement of the appeal on the recommended terms will uphold the way in which Council reasonably applies infrastructure charges to its various networks through its adopted charging policy instruments.

CONSULTATION

The city planning and assessment team have consulted with the General Counsel Group regarding this matter.

OPTIONS

1. That Council resolves to:
 1. Settle the appeal and issue replacement Infrastructure Charges Notices and delegate to the Chief Executive Officer (under s.257(1)(b) of the *Local Government Act 2009*) to sign all relevant documentation for same; and
 2. Issue Negotiated Infrastructure Charges Notices, subject to different charge amounts.
2. That Council resolves to refuse the request and proceed to a hearing.

OFFICER'S RECOMMENDATION

That Council as follows:

- 1. To adopt Option 1 presented in this report; and**
- 2. That the report and attachment remain confidential.**

