Speaking Notes

Your honour this this appeal involves the consideration of 3 aspects

1. the interpretation of law
2. the interpretation of the application of that law; and
3. the viability of precedent set by the courts

In relation to 1 and 2 it is Chapter 4 of the Planning Act 2016 (PA16)

As your honour would see from the **Notice of Appeal** the case is in relation to a decision made by the Development Tribunal about the issuing of Infrastructure Charge Notice No. 5138178 (ICN25) by Fraser Coast Regional Council as a consequence of approval of development RAL21-0138 (RAL21)

I spent last weekend reviewing the submission of the respondent's WRITTEN OUTLINE (Outline) it occurred to , when preparing my response to that submission, that the material I was preparing to provide, is the material I would be, as the appellant, presenting today as our submission.

So, I thought, for efficiency, I will combine both tasks - If your honour is comfortable with that.

[await advice]

To assist me with my oral presentation today your honour, because of my ageing circumstances I have developed speaking notes to help me with that task as they contain references to legislation and cited cases.

I have produced copy of my notes for the court and the Respondent counsel.

If your honour feels they could be of assistance to your honour and counsel I could hand up those copies now. [await advice]

After reading the respondents Outline, I see the respondent outline revolves around the **3 Grounds of Appeal** in the **Notice of Appeal** filed in the registry in 1 December 2025.

Before addressing the 3 Grounds

I note that the respondent has raised an issue **@ 6** concerning the appellant not filed or serving any 'written submission' pursuant to paragraph 3 of the orders made by your honour on of 30 January 2026. rather the appellant filed a document titled 'Submissions of Issues'

I am unsure as to the reason for the inclusion of item 6 or whether it needs to be resolved before we proceed any further. [await advice]

Ground 1

1. The respondent in his summary in their summary makes the following observation

Ground 1, it was not within the jurisdiction of the Development Tribunal to consider "the matter set out on page 4 of the DTD under the heading Position 1". The matter under the heading "Position 1" was about an adopted charge and an appeal against an infrastructure charges notice cannot be about the adopted charge itself.6 6 PA, s.229(6)(a). No error of law or jurisdictional error has been established;

2. The first ground of appeal is stated in the Notice of Appeal as follows:

> "The Development Tribunal (Tribunal) failed, in making their decision (DTD) to consider – or to provide reasons for failing to consider, all the matter raised by the Appellant in Appeal 25-021 (Appeal), specifically the matter set out on page 4 of the DTD under the heading Position 1."

This **Ground** addresses two issues

1. That **broad** issues the Tribunal failed in making their decision to consider or provide reasons for failing to consider all the matters raised by the appellant in their submission for the appeal; and
2. **specifically**, the matter is set out on page 4 of the **DECISION** of the Tribunal under the heading **Position 1**

3. The appellant is of the opinion that this is relatively wide scope as it covers **all matters raised** by the appellant in the Appeal of which **Position 1** is but a **subset**.

The appellant has reviewed the issues raised by the respondent's submission regarding the **'Submissions of Issues'** document and cannot identify any issues that are not caught under the umbrella of that least one of those **3 Grounds of Appeal.**

As the respondent has focused on **Position 1,** I shall deal with that first.

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4. jurisdiction of the Development Tribunal to consider "the matter set out on page 4

5. The responded noted in their submission – that the decision from the Tribunal for Appeal 25-021 contained no mention as to Position 1

With their apparent explanation being that Position 1 *'was not within the jurisdiction of the Development Tribunal to consider'* and siting section s.229(6)(a) as the authority for that **conclusion**

s229(6)(a) provides - *To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about— (a)* ***the adopted charge itself;***

6. The appellant submits, the significance of term being " **itself**", in the statement ***the adopted charge itself*** refers to the **quantum** of the charge **itself**.

   In other words, for equivalent of the "$" figure, that appears in Column 2 - **Prescribed Amount** column in Schedule 16 that $ amount in the **Adopted Charge** in **Column 3** of **Councils Charge** resolution - **that cannot be appealed against.**

7. The respondent then went on to cite @ 17 extracts from the decision notice of the Tribunal @ 20 and @ 21.

   The relevant component I believe are:

   S20

   - *As the Council has correctly submitted, the Tribunal has a limited jurisdiction.*
   - *this appeal may only be about an error in the ICN relating to "the application of the relevant adopted charge" or*
   - *"the working out of extra demand, for section 120".*

   S21

   - *The Tribunal also accepts that the appeal may not be about the* ***adopted charge itself.***
   - *To the extent the Appellants' submissions have been construed as challenging the adopted charge, the Tribunal has not considered those matters in determination of the appeal.*

   The reference to ***may not*** *be about the* ***adopted charge itself*** is clearly the **amount** of an ***adopted charge*** in a **charge resolution**

8. The Tribunal acknowledge that an appeal **may** be about - *the application of the relevant adopted charge*

   And then went on to say

   > *To the extent the Appellants' submissions have been construed as challenging the *adopted charge, the Tribunal has not considered those matters in determination of the appeal."*

   ***Note** the "**itself"** is now missing from the term *adopted charge*.

9. This is **not** deciding that **Position 1** has offended the prohibition of s229(6)(a). This is simply the Tribunal making a statement about the **scope** of their authority

In fact, the Tribunal **did not identify in their decision any part of the appeal lodged by the appellant that the Tribunal felt offended this provision.**

Nor did the Tribunal identify in their decision, if in fact they had ***construed*** that the appellants Position 1 was beyond their jurisdiction, the **reasons** for this finding in a clear unambiguous statement.

10. The only thing that was identified was the caveat that **if** any part of the appeal addressed a "adopted charge **itself**" - the Tribunal would consider that this would be **outside their jurisdiction**

So, the participants in the appeal were left having to deduce from the statements in the Decision Notice at 20 and 21 that the Tribunal had determined that the mere mention of *adopted charge* in **Position 1** disqualified it under the provisions of s229(6)(a).

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11. **The legitimacy to sustain the appeal set out as in position one**

12. The appropriate section of legislation in relation to an appeal against an infrastructure charge notice, in PA16 is **Schedule 1 Table 1 s4. Infrastructure charges notices**

Which states:

> **An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds—(a) the notice involved an error relating to—(i) the application of the relevant adopted charge;**

Position 1 was exactly an appeal against the **application of a relevant** *adopted charge*

13. What is of interest also is that in the respondent's submission to the Tribunal on the 19 August 25 in relation to DTA21 referenced @ 17 - **2 court cases**

Allen-Co Holdings Pty Ltd v Gympie Regional Council [2021] QPEC 64 at [6];

Toowoomba Regional Council v Wagner Investments & Anor [2020] QCA 191 at [78] to [79]

I have read both this judgement of the Planning and Environment Court and they both were in relation to **the application of an *adopted charge.***

14. What is also of further interest is that the Tribunal itself, cited in their decision @ 34 the *Allen* case as a reference in support of for their determination for Position 1 that *To the*

extent the Appellant challenges the adopted charge itself, that part of the Appellants submission ***are outside the tribunal's jurisdiction***

15. This demonstrates the Tribunal may not have read the **Allen** case before using at it as an authority for the decision to this **Position 1** component of DTA21, because:

Allen

> *[3] This appeal is on the ground that there was an **error in the calculation** of the charge (engaging grounds (a)(i) and/or (ii)). It is common ground that there was an error, such that the ICN should be set aside and replaced. The debate is as to the terms of the replacement ICN.* [*Allen-Co Holdings Pty Ltd v Gympie Regional Council [2021] QPEC*]

which was **not** about the **application** of **Position 1 [s 112 PA16 –> s52 of PR17-> Schedule 16]** requirement for the development to be of a **prescribed development**

16. Plus, in any event the court did not determine in the **first instance** that the appeal was barred because it was **outside its jurisdiction** under the provisions of s229(6)(a) the court heard the appeal and make a determination.

17. **Position 1 clearly was not outside the Tribunal's jurisdiction**

18. The respondent deals with **Position 1** in their submission from 32 to 42

I cannot see any material in those section that could challenge the proposition that **Position 1 clearly was appealable.**

19. **This is an error of jurisdiction**

20. If the court was to determine that this is correct - that Position 1 is appealable, it may be useful to look at the **prospects** for Position 1 being upheld.

21. I ask your honour is it appropriate that I should continue to do that, or does your honour think that first this court should make that determination - before we consider the merits of that component of the appeal. [Pause for advice]

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22. **Position 1**

23. **Position 1** was included in the **Supplementary** submission filed with the Development Tribunal (Tribunal) in relation to Appeal 25-021 (DTA21)

Your honour has copy in the Affidavit of Warren Bolton (Affidavit A) filed also on 1 December 2025. - The document is **Attachment B**

The Submission was provided to the Tribunal on 17 August 2025 - two days before the hearing

24. **Position 1** is stated here for convenience:

> *If a development does not generate a **USE**, prescribed in Column 1 of Schedule 16, it is not a **development prescribed** under Section 112 of PA16 as being a development to which an adopted charge can be levied by a local authority, even if the development is responsible for generating extra demand on trunk infrastructure.*

25. **Position 1** was supported by the material in the section of that Submission on **pages 1 to 3,** under the heading **Process,** which provides the background, which was, that there is a statutory process provided for under **Section 112** of the PLANNING ACT 2016 (PA16) and **Section 52** of the PLANNING REGULATIONS 2017 (PR17) for determining a **development** by their intend ***USE*** for which there may be, under Chapter 4, an ***adopted charge*****.**

26. It was as a consequence of consideration the **Infrastructure Charge Notice** (ICN25), given when issuing to the development approval for RAL21-0138 (RAL21) that triggered a review of the relevant legislation - the conclusion was that RAL21 did not satisfy the statutory requirements for a **prescribed development**

This was conveyed to the Tribunal.

27. Overview

Your honour section 112 subsection (3) paragraph (b) of Chapter 4 of the planning act 2016 provides that

> (3) A *regulation may prescribe* … a *development for which there may be an adopted charge, under this chapter.* That is - for infrastructure- [***trunk infrastructure***]

I think that meaning is clear and should be undisputed

28. Section 52 subsection 3 of the Planning regulations 2017 provides

> *For section 112 subsection (3) paragraph (b) of the act*

*if a development is a ……reconfiguring a lot ……and is for a **USE** stated in schedule 16 column1 - a local government may have and adopted charge for trunk infrastructure for the development under chapter 4 of the act*

I do not see how anybody could interpret this to say anything else

29. But what plainly is the implication of these 3 pieces of legislation is that, for there to be an ***adopted charge*** for the development RAL21-0138 [*reconfiguring a lot*] **RAL21-0138 must be a development for which the there is a USE listed in Column 1 of schedule 16 of those regulations**

30. Your honour for the purposes of my presentation today I have created a term for the consequence of the application of those portions of legislation – the outcome of which I call a ***prescribed development***

I am sure your honour would agree that is a reasonable label

31. **If development RAL 21 – 0138 is not a prescribed development in terms of the above legislation then it clearly in accordance with the provisions of section 114 is not a development to which an infrastructure charge notice can be applied**

32. **The legislative base is set out below**

Prescribed Development

GROUND 1

Position 1 - Application of Prescribed Development

The Nature of RAL21

1. RAL21 is a *development* for *reconfiguring a lot* (RAL).

A RAL is a process for rearranges boundaries on titles.

- A "*lot*" is a cadastral concept under the *Land Titles Act.*
- A "*premises*" is not a "*lot*"
- A RAL does not intensify or change the **scale** of, or *use* of, a *premises*.
- A RAL does not authorise a *Use,*

That is not my interpretation — it is based on the reasoning of **Everson DCJ** in *Johnston v Cassowary Coast Regional Council*, [2008] QPEC 102 @ [**7, 9 & 10**] where his Honour determined the application of a RAL as distinct from being a development *Use*.; AND

Jones DCJ in Wagner Investments Pty Ltd & Anor v Toowoomba Regional Council [2019] QPEC 24 **@ 98** who cited **Everson**

- Nor is a RAL listed as a *Use* in **Column 1 Schedule 16 of PR17**

These are crucial.

Statistical Framework — PA16 s 112 - Prescribed Developments

2. Section 112 (1) PA16 provides

- a regulation may *prescribe a maximum amount* for **each** *adopted charge*; and

Section 112 (3)(b)

- a regulation may define *development* for which there may be an adopted charge.

Statutory Framework — PR17 Section 52 — Prescribe Development

3. **Section 52(3)(a) PR17** provides

- a local government may *adopt a charge* for *trunk infrastructure* for development that is:
  - *a material change of use;*
  - *reconfiguring a lot;*
  - *building work;*

WHEN

- **it is** for a Use stated in Schedule 16, column 1.[1]

[***Prescribed Development***]

These **two** limbs are **co-determinant**.

4. RAL21 **is not a** *prescribed development*.

Authority — (Kefford DCJ) - Douglas

5. A *prescribed development* is required in order to attract an *adopted charge*.

[s 114(1)(a)]

6. Justice Kefford, in *Douglas Construction & Engineering Pty Ltd v Logan City Council [2023] QPEC* 28 when considering the interaction between ss 112, PA16 and s52 PR17, determined at [29]

> *It In accordance with s* ***52(1)*** *.... the prescribed amounts in sch 16 relate* ***to various types of use****,* *not the individual types of development that might*

[1] Kefford DCJ - *Douglas Construction & Engineering Pty Ltd v Logan City Council [2023] QPEC 28* @ [29] {Link}

require a permit for such use to proceed lawfully. This is apparent when one reads the whole of sch 16.

And at [37]

*Where the **focus** of the provision is on an **individual type of development**, the type is specifically referenced.*

7.
- A RAL is not a **prescribed** Use in **Column 1 of Schedule 16 PR17**. It is a process for altering a land title; and
- **A RAL does not generate a USE of *premises***

Schedule 16 — The Mandatory "Use" Test

8. Schedule 16 Column 1 lists *premises Use,* such as:

- Dwelling house
- Multiple dwelling
- Short term accommodation
- Garden centre
- Shop — etc.

These are a **Use**, for a *premises* not **development types.**

Without a prescribed **Use**, identified for the development there is no authority to issue an ICN

Consequence for RAL21

9. The statutory scheme requires the *assessment manager* to identify the Column 1 Schedule 16 Use associated with a *development* RAL21 to which the *adopted charge* applies, in order to issue ICN25. – [The *prescribed development*]

Not only is it the lawful process for establishing if the subject development is a *prescribed development* but also because the *adopted charge* of s 113 has a relationship with the relevant Use and corresponding *Prescribed amounts* in Column 2 of Schedule 16 for— for the purpose that an applicant's and the community ability to check at any time to ensure the *adopted charge* in a ICN does not exceed the **maximum** (Prescribed) amount permitted by s 112 (1) PA16.

10. **This gateway requirement was not satisfied when the Council issues ICN25.**

Tribunal Error

11. The Appellants submission before the Tribunal clearly raised this threshold issue.[2]

[2] Appellants Supplementary Submission @ P1 {Link} and Final Submission @ P2 Position 1{Link}

The Tribunal acknowledged the concept of *prescribed development* [3] but did not determine whether RAL21 involved an associated Schedule 16 *Use*

Instead, the Tribunal focused on the **mechanics** of the levy calculation.[4]

That bypassed the statutory precondition.

The Tribunal therefore misapplied the statutory scheme.

That is an ERROR of process

Relationship between Development and issuing an ICN

12. AN EXAMPLE,

Your honour, I would like to provide an example - not as **evidence** but as **extrinsic material** that I think would support the courts understanding of the importance of the determination of a *prescribed development*

This example is drawn from Council's own publicly issued administrative documents and is used solely to illustrate a point about the statutory operations of PA16.

On **5 April 2024** Fraser Coast Regional Council (Council) issued a Concurrence Agency Response CAR24/0021 to Universal Home Improvements for a **Shed** (Class 10a) on L51 MCH567 - the same land that is the subject of ICN25 in this appeal.

On **11 April 2024** Private Building Certifier Ross Scott (A1072632) lodged with Council Form 20 for Development Approval R24231.

The construction and subsequent use of the Shed would plainly generate *extra demand* on the *trunk infrastructure* for the *Transport Network* both during construction and ongoing use.

No ICN was issued for this development approval for ***Building Works***

The only coherent explanation for this outcome is that the development was not a *prescribed development* under PA16 because

- it was not for a Use prescribed in Column 1 of Schedule 16 - so could not lawfully attract the issue of a ICN
- regardless of being:
    - a development for **building work** identified in section 52 of PR 17 and
    - a development which is cited in schedule 1 Table B Council's Infrastructure Charge Resolution of 2025 and
    - a development that generation of *extra demand* on the *trunk infrastructure.*

The statutory threshold is clear:

This example demonstrates that development must first be a *prescribed development*.

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[3] DTD [38]
[4] DTD [26 to 34]

If it is not, there is no authority to lawfully issue an ICN, even if a development ticks **ALL the other boxes**

13. The Tribunal, in their decision at 38, acknowledged the existence of an entity such as a *prescribed development*[5].

14. The Tribunal, in their decision at 25, disposed of this argument, without considering the matter raised in the appellant's **Position 1**[6]

The Respondent's Position Placed Before the Tribunal

15. The Respondent's submissions in DTA25 did not identify a **Schedule 16 use** for RAL21. Instead, the Respondent:

- relied on:
  - **geographic application** of the *Charges Resolution*;[7]
  - the **method** of calculating the applied charge; and[8]
- asserted that:
  - Upon **approval** of a **development** (Apparently any development) the Respondent was required, subject **only** to the *extra demand* criterion, to issue an ICN;[9] and
  - The Appellant had **only two** potential grounds of appeal[10]
    - The *Rural Township* definition problem; and
    - The Councils failure to undertake the necessary assessment required to determine that *extra demand* had been established
- treated the existence of a *development type* cited within the *Charges Resolution* **solely** as sufficient authority that the statutory preconditions for levying a charge, was met[11].

16. None of these matters satisfy the statutory requirement for the existence of a Schedule 16 Use. The paramount the issuing of an ICN

17. The Tribunal, in their decision at 25, accepted the Respondent's approach without addressing the **threshold question** of statutory precondition of identifying a Schedule 16 Use in order to issues an ICN25[12]. And

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[5] DTD25 @ 38 {Link}
[6] DTD25 @ 25 {Link}
[7] Respondents Submission @26.{Link}
[8] Respondents Submission @6; 24; 27.
[9] Respondents Submission @21.
[10] Respondents Submission @22
[11] Respondents Submission @24
[12] DTD25 @ 25 {Link}

18. The Tribunal did not determine whether RAL21 comprised a Schedule 16 Use necessary to be a *prescribed development* under s 112 PA16 and s 52 PR17.

These were threshold issues - The Tribunal was required to address.

Consequence of Non-Compliance

19. If a development is not for a Schedule 16 Use it is not a *prescribed development* under s 112 PA16 and s 52 PR17, and a local government has no authority to levy an *adopted charge* on that development.

20. Section 119 PA16 can only authorise the issuing of an ICN for a *prescribed development*. which results in *extra demand* on the *trunk infrastructure* required by s 120 PA16.

21. The issuing of ICN25 under the conditions set out in paragraph 1 to 7 above was beyond Councils statutory powers.

The Tribunal's Failure to Address the Threshold Question

22. The Appellants' *Final Submissions* before the Tribunal clearly confirmed the issues that

- RAL21 was not a *prescribed development* because it did not involve a Schedule 16 Use[13]; and
- RAL21 was not capable of generating a Use of the lots as a consequence of it execution

23. The Tribunal acknowledged the existence of such an entity as a *prescribed development*[14] but did not address its implication to the issuing of ICN25

24. The Tribunal accepted the Appellants' summary on this contention[15] set out above but then did not go on to determine:

- whether RAL21 was a *prescribed development* under s 112 PA16;
- whether s 52 PR17 was satisfied; or
- whether any Schedule 16 Use applied.

[13] Appellants Final Submission (Page 2 Position 1) {Link}and Supplementary (Page 2) {Link}
[14] DTD25 @ 38 {Link}
[15] DTD25 @ 11 {Link}

25. Instead, the Tribunal focused on the mechanics of the levy calculation rather than the **threshold question** of identifying the **Use** to which the *adopted charge* applied[16].

26. The Tribunal's reasoning bypassed the statutory requirement that a Schedule 16 **Use** must be identified in order to support the issuing of an *adopted charge.*

27. The Tribunal erroneously determined that Position 1 because it mentioned an *adopted charge* sat outside its jurisdiction.

28. This ground is independently sufficient to dispose of Appeal 129/25.

29. If the Court accepts Ground 1, it need not consider Grounds 2 and 3

GO TO GROUND 2 DOCUMENT

Link

GO TO GROUND 3 DOCUMENT

Link

[16] DTD25 [13 to 18 and 28 to 34] {Link}