

# Charge Resolution

As your honour knows the prime responsibility for the production of the Charge Resolution sits squarely with the Council.

The document is not a statutory document in the sense that its statutory form provided for under an Act but is the responsibility of the Council to draft the document in accordance with appropriate legislative drafting standards in the particular case of this document the standards of performance set out for a document that forms a function under the Planning Act 2016.

This appeal, as you your honour understands is against the decision of the Development Tribunal in relation to the issuing of a document which in part resulted as a consequence of the application of Council's Charge Resolution

In this appeal the appellant has raised the issues of sections 3 and 5 of the planning act as being the matter for consideration by the court in that regard

As your honour would also know section 3 is the provision of the Act which provides for the aspirational objectives of parliament to be achieved by the use of the act

Section 5 of the act however places a mandatory obligation on all those who are utilising the facility of the Act to do so in a way that delivers on the aspirations of section 3.

The appellant in this appeal are of the view that even though development tribunal was not responsible for the drafting of the document or its application in the issuing of the notices of the subject of this appeal the appellant holds the view that the tribunal in reviewing the outcome of the application of the document is required to exercise the discretion placed on entities that are involved with the outcome from administration of the act

This appeal condition invites the court to have a look at the construction of the document and its application to determine if its met the principles required by those two pieces of legislation

## GROUND 2

### Charges Resolution Compliance

#### STATUTORY NON-COMPLIANCE

#### The Charges Resolution is the Operative Instrument

1. Fraser Coast Regional Council's [Charges Resolution \(2025\)](#) is the document relevant to the issuing of ICN25 (*Charges Resolution*)
  - ICN25 stands or falls on the validity of the *Charges Resolution*.
  - If the Resolution is non-compliant with PA16 or PR17, ICN25 cannot lawfully stand.

## The Statutory Pathway Is Mandatory

2. *Prescribed development* is defined in paragraph 10 and 11 above:  
The *Charges Resolution* must operate within this structure.  
Clause 1.6 cites s 112 and s 52.  
But it omits the mandatory requirement to identify a **Schedule 16 Use**.  
This omission is fatal.  
A charges resolution cannot override or bypass the statutory scheme.

## DRAFTING INCOHERENCE

### Clause 1.6 claims global application

3. Clause 1.6 of the *Charges Resolution* claim's global application
- “*This resolution applies to all of Council's local government area.*”
- This is not true.

### Schedule 1 contradicts clause 1.6

4. Table A and Table B use **geographic** descriptors in Column 1.
- These descriptors do not apply over the entire local government area.
  - Therefore, the Resolution does not apply globally.

## The Resolution fails to declare exclusions under s 114(3)

5. PA16 s 114(3)(a) requires Council to **declare** where no adopted charge applies.
- Council did not make this declaration.
  - Instead, it silently restricts application through its tables.
  - This is misinformative and non-compliant.

## Column headings are inconsistent and misleading

6. Table A *Column 1* is labelled *Use Category*;
- This column only contains reference to **localities** and **zones**
  - **localities** and **zones** are not *Use Category*;
- Table A *Column 2* is labelled *Reconfigure a Lot Use*
- There is no “**Lot Use**” defined in this column

These inconsistencies obscure the statutory requirement to identify a Schedule 16 Use.

## UNDEFINED TERMS

### “New lot with development entitlement”

7. Appears in Table A Column 2.

The term is:

- not a **Schedule 16 Use**.
- not **defined** anywhere.
- ambiguous and meaningless as a statutory term.

### “Rural townships”

8. The term *Rural townships* appears in **Table A, Column 1** under *Use Category*;

- The term *Rural townships* is not defined in:
  - o the Charges Resolution
  - o the Planning Scheme
  - o PA16
  - o PR17
  - o the LGIP
  - o the Minister’s Guidelines and Rules

Without a definition, the scope of application is uncertain.

This uncertainty is fatal.

### “Use Category”

9. Appears in Table A and Table B.

- The term *Use Category* is not defined in:
  - o PR17
  - o Schedule 16
  - o the Planning Scheme
  - o the LGIP
  - o the MGR

It is a Council created term with no statutory anchor.

## GERGRAPHICAL AREA OF APPLICATION

### Column 1 uses geographic descriptors

10. Table A Column 1 *Use Category* comprise these geographic location descriptions

- “Maryborough”
- “Howard”
- “Torbanlea”
- “Tiaro”
- “Rural townships”

These are **locations**, not Uses.

### Geography cannot substitute for a Schedule 16 Use

11. PA16 and PR17 require charges to be applied by **Use**, not by **locality**.

Council substituted geography for Use.

This is a fundamental error.

## FAILURE TO IDENTIFY SCHEDULE 16 USES

### Table A identifies no Schedule 16 Use

12. **Table A** Column 1: **geographic descriptors**

**Table A** Column 2: “**Reconfiguring a Lot Use**”

Neither is a **Schedule 16 Use**

**ICN25** was issued under **Table A**.

Therefore, ICN25 has no **Schedule 16 Use** to anchor it to an *adopted charge*

### A charges resolution must identify the Use to which the adopted charge applies

13. This is required by:

- PA16
- PR17
- Schedule 16
- the MGR
- the LGIP

The **Table A** of *Charges Resolution* does not **identify** a **Schedule 16 Use**.

Therefore, it cannot lawfully support ICN25.

## MISUNDERSTANDING OF THE STATUTORY SCHEME

### Council substituted development type for Use

14. Council substituted **development type** for **Use**  
Council treated “*reconfiguring a lot*” as **sufficient**.  
It is not.  
A **development type** is not a **Use**.

### Council substituted development type for Use

15. Council substituted **geography** for **Use**  
**Localities** were used as “*Use Category*”.  
This is conceptually incorrect  
.

### Council substituted geography for Use

16. Council used **Localities** as “*Use Category*”.  
This is conceptually incorrect.  
.

### Council substituted zoning for Use

17. Zones were treated as if they were a component of *Use Category*  
They are not.

## TRIBUNAL ERRORS

### The Tribunal acknowledged ambiguity

18. The Tribunal accepted that the absence of a definition for “Rural townships” created *ambiguity*.  
The Tribunal resolved the *ambiguity* by adopted a “*catch all*” solution.  
This interpretation
- is not supported by the plain reading of document.
  - does not resolve the clear locality intention of Column 1 of Table A

This was an error of interpretation.

## CONCEPTUAL MISUNDERSTANDING BY COUNCIL

### Council misunderstood the statutory framework

19. Council:
- thought **development type** was enough
  - never applied **Schedule 16 Uses**
  - never applied **planning scheme Use definitions**
  - substituted **locality** for **Use**
  - substituted **geography** for *Activity Group*
  - substituted **zone** for statutory *Use Category*

This is not a drafting error — it is a conceptual misunderstanding of the entire statutory scheme.

## CONCLUSION

- 20.
- The Charges Resolution is non-compliant with PA16 and PR17.
  - It is internally:
    - **inconsistent,**
    - **ambiguous,** and
    - **conceptually flawed.**
  - It **fails** to identify any Schedule 16 Use for RAL21.
  - It **cannot** lawfully support the issue of ICN25.
  - **Ground 2 is independently dispositive**

21. Paragraphs [43 to 46 above](#)-clearly display the error of the conclusion.

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25. The *Charges Resolution* at **1.6**

- provides that "*This resolution applies to all of Council's local government area.*"; and
- adopts charges for **3 development types**

26. This claim, in the *Charges Resolution*, is not supported by the document.

Not because there is no lawful authority for a *Charges Resolution* to apply to the whole of the local government area, it is incorrect because Fraser Coast Regional Council (Council) has chosen, by the drafting of its resolution, to effectively exercise its rights under s 114(3) of PA16 to restrict its **application**, in **some instances**, to just parts of its local government area.

My I note though it was **NOT** so declared in the document.

#### Let me explain

27. The *Charges Resolution* in *Schedule 1* provides **Tables A** and **B**

**Tables A** and **B** are constructed using 4 columns

In **Table A** the 4 columns have the following headings:

- *Column 1* is *Use Category*;
- *Column 2* is *Reconfigure a Lot Use*;
- *Column 3* is *Charge Category*;
- *Column 4* is *Adopted Charge*.

In **Table B** Columns 1 and 3 retain the same headings, with Columns 2 and 4, effecting the following changes:

- *Column 2* substituting the term *Reconfigure a Lot Use* with the single term *Use*
- *Column 4* removing the word *Adopted* from the term *Adopted Charge* leaving the single word *Charge*

28. Council, in adopting this 4 column formats, determined that the **application** of the *adopted charges* provided for in *Schedule 1* of the *Charges Resolution* would only be to the **localities** identified in *Column 1* for both tables.

For some **uses** these **localities** do not comprise the [entire local government area](#) and are simply a subset of the area, therefore the statement at **1.6** is inaccurate and missing declaration required by s114(3)(a) to 'declare there is no adopted charge for those parts of the local government's area outside the localities defined'

This constitutes misinformative.

29. Finally, under section s 113 (3) the adopted charge cannot be applied in specific **works** and **development** that occur within the local government area. So no universal blanket application.

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### The Respondent's Position Placed Before the Tribunal

30. The Respondent in their [submission](#) to the Tribunal:

acknowledge at 3 that

- *...the Appellants also appear to raise a concern that the Land may not be located within an area identified by the Infrastructure Charges Resolution January 2025. And*

advised at 22 that

- *...the Appellants' submissions raises only two potential grounds of appeal:*

One being

- *...that the ICN involved an error relating to the application of the relevant adopted) on the basis that no adopted charge applied to the development because the Land is not a "rural township". And*

31. acknowledge at 25 that

- *The Appellants' contention is that **the Land may not be located** within a "Rural Township", with the apparent consequence that an adopted charge does not apply to development that is reconfiguring a lot on the Land. And*

advised at 26 that

- *This is incorrect. [The claim in 25] The proper construction of the Charges Resolution is that the areas identified in subparagraphs **22(a) and (b)** above apply to the entirety of the Respondent's local government area.*
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### The Appellants Position Placed Before the Tribunal

32. The Appellant in their [Final Submission](#) [p7] made the statement

- *In the absence of the definition of what constitutes a Rural township it is possible that every locality identified above, 'named' [\[in excess of 100\]](#) could, theoretically, constitute a Rural township and for all zones.*

And

- *The absence of a definition for Rural townships makes the application of the Charge Resolution unworkable and therefore defective as a document to achieve compliance with the statutory provision of the PA16.*

### The Undefined Term "Rural Townships"

33. The term *Rural townships* is not defined in the *Charges Resolution*.

34. The Tribunal accepted that:

*the absence of a definition does introduce some ambiguity as to the application of Schedule 1, Table A<sup>1</sup>*

but did not resolve the *ambiguity*, instead, adopting the interpretation that the term was a *catch all* for any locality, based solely on the argument by the Respondent that the *Charges Resolution*

*makes clear that it applies to all the Council's local government area<sup>2</sup>*

and accepted:

*Council's submission that there is no indication anywhere in the Charges Resolution that it is intended to exclude any part of the local government area from the application of the adopted charges.<sup>3</sup>*

35. Paragraphs [43 to 46 above](#)-clearly display the error of the conclusion.
36. Without a definition for, *Rural townships*, there is no clear **certainty** about [which areas are applicable](#) and for which the **Tribunal** or the **public** can clearly determine are within the scope of application of the document, to *reconfiguring a lot* as to:
- the **extent** of the 100 plus **areas**, that may constitutes a *Rural townships* – and said intended to be captured in the *catchall*?
  - **whether** the subject land (Lot 51 MCH567) falls within such an area?
  - **whereby** an *adopted charge* could lawfully be applied?

**This cannot be cured by administrative interpretation:**

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#### Schedule 1 Table A and Schedule 16 PR17

37. **Notes to Schedule 1** of the *Charges Resolution* advise:
- (1) The categories shown in Column 1 below are included only for **convenience**, and to align with **schedule 16** of the Planning Reg.;* and
- (2) Table A identifies the **Adopted Charge rate for development** that is reconfiguring a lot.*
38. **Table A, Column 1 - Use Categories** contains expressed geographic localities (e.g., “*Maryborough*”, “*Howard*”, “*Torbanlea*”, “*Tiaro*” “*Rural townships*”,) for *All Zones*.
39. These localities do not *align with schedule 16 Use*. - They are geographic descriptors.
40. If these localities are intended to give application to s 114 (2 or 3) PA16 this is not indicated in the *Charges Resolution* and their inclusion in *Column 1* in both **Table A**

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<sup>1</sup> DTD25 [43] [{Link}](#)

<sup>2</sup> DTD25 [44] [{Link}](#)

<sup>3</sup> See Footnote29

and **Table B** labelled as *Use Categories* and within **Table A** the addition of the *All zones* only compounds the confusion.

41. **Table A Column 2** provides under the heading *Reconfiguring a lot Use* the *Use New lot with development entitlement*.

42. This is not Schedule 16 *Use*. – Plus, putting aside that legality, this information is ambiguous and confusing. What is a *New lot with development entitlement*?

Every lot created or modified by *reconfiguring a lot* will inherit or retain the current zoning of that land and it would be rare for a zone not to imbue *development entitlements*. Even if only for a development for a *material change of use*.

**This drafting is confusion and unacceptable as a statutory document statement.**

43. **Table A** provides no Schedule 16 *Use*.

44. **Note (2)** clearly demonstrates that the *Adopted Charge* in the *Charge Resolution* is to be levied based on a *development for reconfiguring a lot*.

This is contrary to s 112 PA16 and s 52 PR17

Justice Kefford, when considering the interaction between ss 112, 119, 120, 121 122 PA16 and s52 PR17, determined<sup>4</sup>

*First, the chapter's purpose is, relevantly, to authorise local governments to levy charges in relation to the demand placed on trunk infrastructure generated by "the development".*

*Second, while there are several types of "development", such as carrying out building work, carrying out operational work and making a material change of use, references to "the development" encapsulates all types of development that, in combination, facilitate the end use of the premises.*

*It is the end use of the premises that places demand on trunk infrastructure, not one type of development in isolation.*

*Where the focus of the provision is on an individual type of development, the type is specifically referenced.*<sup>5</sup>

It is a *demand on trunk infrastructure* as a consequence of the *use* that is required in the first place, in order to have an *adopted charges* at all.

45. **Table A** does not identify anywhere, in any column, a *Use* provided in Column 1 of Schedule 16 PR17.

46. *Development types, locations and zonings* are not a Schedule 16 *Use*.

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<sup>4</sup> *Douglas Construction & Engineering Pty Ltd v Logan City Council [2023] QPEC 28 [23 to 38]*

<sup>5</sup> See, for example, s 122 of the *Planning Act 2016* and s 52(3) of the *Planning Regulation 2017*.

These cannot operate as a proxy for a Schedule 16 Use.

47. A *charges resolution* must:
- identify the Use in a regulation to which the *adopted charge* applies;
  - apply charges consistently with that Use in Schedule 16;
  - operate within the statutory framework of Chapter 4 -PA16 and PR17.
48. A *charges resolution* cannot:
- **create new Use categories**, not authorised by the regulation;
  - **substitute** *development type, zoning or locality* for a PR17 Schedule 16 Use;
  - **apply globally** where the document itself behaves differently;
  - **override** the requirement to identify a Schedule 16 Use.
49. The *Charges Resolution* in **Table A: - Reconfigure a Base Charge Rate**
- does not identify a Use in accordance with **Schedule 16**;
  - employs development types, geographic and zone-based categories instead of Use -based categories;
  - contains undefined and ambiguous locality descriptors (e.g., “*Rural townships*”);
  - is stated to apply globally across the whole local government area in a manner inconsistent with the function of its Schedule 1;
  - fails to provide the **transparency, accountability, and certainty** required by ss 3 and 5 PA16.
50. A local government resolution cannot expand, modify, or contradict the statutory scheme. If the *Charges Resolution* is noncompliant with PA16, it cannot lawfully support the issuing of any ICN, including ICN25.

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## THE UNDEFINED TERM “USE CATEGORY”

51. (a) The *Charges Resolution* uses the term *Use Category* in **Tables A and B**.
- (b) That term *Use Category* does not exist anywhere in [Schedule I Definitions](#) of the Respondent’s [Planning Scheme](#) (Scheme) or **Section 6** of the *Charges Resolution*.
- (c) The Scheme does however define in **Schedule I - SC1.2 Activity Groups** which comprise groups of uses derived from the *Use Definitions* in **SC1.1**.
52. The Scheme’s **use** structure is:
- *Use Definitions* (SC1.1)
  - *Activity Groups* (SC1.2)

These *Activity Groups* are expressly stated to be “*the defined activity groups for the purpose of the planning scheme.*”

53. They are

Index of defined activity groups		
A. Residential activities	D. Industry activities	G. Rural activities
B. Business activities	E. Community activities	H. Other activities
C. Entertainment activities	F. Recreation activities	

54. (a) The *Activity Groups* are the **only lawful grouping mechanism** for uses under the Scheme.
- (b) **Table A** Column 1 *Use Categories* are not *Activity Groups*— they are **geographic** localities.
- (c) **Table B** Column 1 *Use Categories* are an amalgam of what appear to be, as ‘Use’ category headings from **Schedule 16** and **geographic** localities.
- (d) **Tables A** and **B** *Use Categories* do not engage with any lawful planning scheme terms or the **Use** in Column 1 of Schedule 16.

See [EXAMPLE Sheet](#)

55. Under PA16 and PR17, the *adopted charge* must be allocated by reference to:

- a **Schedule 16 use** (statutory requirement), and
- Under [Minister's Guidelines and Rules V3](#) (MGR) -32.3 the

*The relationship between the uses under the planning scheme and the LGIP development types must be stated in the **Planning Assumptions** section.*

**Table 4.2.1** in [Council's LGIP](#) list

*development category*: - These do not correspond with *Activity Groups* in the **Schedule 1** of the Scheme and have no definitions elsewhere in the Scheme

*development types* - these do not correspond with definitions in the **Scheme** or **Schedule 16** of PR17 and appear unique to the *development type* column of the LGIP and undefined.

*uses* - these mainly **conform** to the definitions in Schedule 16 and the *Use* terms in **Table SC1.1.1 of Schedule 1** of the Scheme.

Many of the *Use* terms in the **Table** are present in **Tables B** of **Schedule 1** of the *Charges Resolution* but none are present in **Table A**. Instead, **Table A** introduces a new and foreign term *Use Categories*.

56. **There is no *Use Category* defined in the Scheme.**

The term *Use Category* appears nowhere in:

- PR17
- Schedule 16
- The LGIP
- The Minister's Guidelines and Rules

**But**

- Appears once, in PA16. Page 397 in Table 1 **Appeals to the P&E Court and, for certain matters, to a tribunal** in relation to *Examples of errors in applying an adopted charge— applying an incorrect ‘use category’, under a regulation, to the development* [but with **no statutory definition**]
- Appears 10 times in the *Charges Resolution* 9 times as page header to Schedule 1 Column 1 and in a note on page 20 for “**Other Uses**

*“ The maximum adopted charge is the charge (\*in column 3(A) and 3(B)) for a **use category** (in column 2) that appropriately reflects the use at the time of assessment”*

There are no columns “*3(A) and 3(B)*” in the **Table**, only “*3U and 3AC*”. And *Column 2* in **Table B** is the “**Use**” (not *use category*) column and in **Table A** *column 2* is labelled the “*Reconfigure a Lot Use*”

57. In the **Table A** the *Use Category* are actually **localities**:

- Hervey Bay (inc Burrum Heads, Toogoom, Booral, River Heads)
- Maryborough
- Howard
- Torbanlea
- Tiaro
- *Rural townships*

These are **geographic descriptors**, not:

- A use,
- use definitions,
- activity groups,
- or Schedule 16 uses.

**This is a category definition error of the highest order.**

58. **Table A and B** invent a new undefined term *Use Category*

It is a Council-created term with no statutory or scheme anchor.

59. The fact that **Table A and B** used **localities** as *Use Category* instead of *Activity Groups* proves the Council misunderstood the statutory scheme.

This is consistent with other aspects of drafting of the *Charge Resolution*:

Council:

- thought “**development type**” was enough.
- never applied Schedule 16 *uses*.
- never applied planning scheme *use* definitions.
- substituted **locality** for *use*.
- substituted **geography** for *Activity Group*.
- substituted **zone** for statutory *use* category.

This is not a drafting error — it is a conceptual misunderstanding of the entire statutory framework.

60. Section 110 PA16 provides for a **regulation** to govern local government *adopted charges*<sup>6</sup>

Section 113 PA16 authorises a local government to adopt a *charges resolution* - subject to Subdivision 2 of Division 2 of Part 2 of Chapter 4 PA16<sup>7</sup>.

Section 114 (Subdivision 2) PA16 limits that authority to:

- charges for a development, *prescribed by regulation*; and
  - *adopted charges* that do not exceed the maximum *prescribed by regulation*;
- 

## Performance of the Charge Resolution

61. The *Charges Resolution* at **1.6** provides at:

*(b) As set out in section 2, this resolution adopts charges for providing trunk infrastructure for development, which are no more than the applicable maximum adopted charge, for development that is:*

- i. reconfiguring a lot;*
- ii. a material change of use; or*
- iii. building work. ”*

62. The *Charges Resolution* at **1.6** also provides as:

*Editor’s note – Section 112(3)(b) of the Planning Act 2016, in combination with section 52(3)(a) of the Planning Regulation 2017, allows Council to have an*

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<sup>6</sup> PA16-s110 (1)(c)

<sup>7</sup> PA16-s113 (5)

*adopted charge for trunk infrastructure for development that is a material change of use, reconfiguring a lot, or building work.*

63. The *Editor's note* cites:

- PA16 s 112(3)(b)
- PR17 s 52(3)(a)

This is the correct gateway and demonstrates the relationship between the Act and the Regulation — but **not all** of it - **Schedule 16** is missing.

The full statutory pathway is:

- s 112(3)(b) PA16 → adopted charge for *prescribed development*
- s 52(3)(a) PR17 → *prescribed development* must be:
  - a. MCU
  - b. RAL
  - c. BW

**AND**

- the development must be for a **USE** listed in Column 1, Schedule 16.

That final “AND” is the crucial legal mechanism.

**The Council's *Editor's note* stops at step 2. It did not mention step 3.**

64. Together, these two circumstances form a paired collapse:

- Council **understood** the statutory trigger for an adopted charge (s 52 PR17 and Schedule 16 use). [*Editor's note*] **BUT**
- Council **misapplied** geography and zoning as the criterion for the application of an *adopted charge*, without the mandatory Schedule 16 *Use*.

### The Tribunal and the Charges Resolution's Globally Application.

65. The Tribunal conclusion, that the *Charges Resolution* **applies to every parcel of land** in the local government area, is inconsistent with application of the document.<sup>8</sup>

- Only development on land **locations** defined by *Column 1* of *Charges Resolution* are subject to application of the document.
- The absence of **localities** in some *Column 1* sections of **Table B** leave the end user having to speculate that the 'absence of a locality' means global application.
- The interpretation of the *Charges Resolution's* **global** application disregards it's designed function.

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<sup>8</sup> DTD25 [42-45]

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## CONCLUSION

66. *Adopting charges by resolution*

*A charges resolution is a resolution to adopt charges for providing infrastructure for all or part of the local government area; it does not in itself levy an infrastructure charge. A charges resolution is intended to provide detail particularly for applicants and industry about the infrastructure costs they would be liable for when undertaking a project.* [The Explanatory Notes, Planning Bill 2015 (Qld) P108]

67. The drafting of the *Charges Resolution* failed to comply with the ss 3 and 5 of PA16 requiring **transparency** and **accountability** in design and application thereby removing its authority to issue ICN25

68. The Charges Resolution is **unlawful**.

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

70. **If the Court accepts Ground 2, it need not consider Grounds 3.**

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