

Extra Demand

GROUND 3

Application of Extra Demand

Introductory Framework

1. Your Honour, the concept of “extra demand” sits within a structured statutory and regulatory framework as follows:

A local government that wishes to levy an adopted charge must first adopt a Minister compliant Local Government Infrastructure Plan (LGIP). [s111 PA16]

In doing so, the [Minister’s Guidelines and Rules](#) require the local government undertake a transparent, evidence-based analysis of projected **future demand** on *trunk infrastructure* arising from population growth, employment growth, and any anticipated changes to service standards.¹

That process produces a baseline projection of **future demand** on their *trunk infrastructure*.

This includes both

- the “**projected extra demand**” and
- the extent of any existing “**spare capacity**”² —

against which the local government planning, sequencing, and funding of its trunk infrastructure network is based.

Those projections are to be derived from objective investigation and modelling, so as to form the foundation of the adopted charges framework.

Statutory Framework

2. **PA16 s 120**

(1) A levied charge may be only for extra demand placed on trunk infrastructure that the development will generate.

The statute is simple:

extra demand must originate from the *use* generated by that *development*.³

¹ MGR [31.2; 31.3; 32.1; 32.9; 33.1; 34.3; 36.1; 36.4] [\[Link\]](#)

² MGR 34.3

³ *It is the end use of the premises that places demand on trunk infrastructure, not one type of development in isolation.* — Kefford @ 37-Douglas Construction & Engineering Pty Ltd v Logan City Council [2023] QPEC 28 [\[Link\]](#)

3. Working out Extra Demand 120(2)

*(2) When working out extra demand, the demand on trunk infrastructure generated by the following **must not be included**—*

*(a) an **existing use** on the premises if*

- (i.) the use is lawful and*
- (ii.) already taking place on the premises;*

*(b) a **previous use** that is no longer taking place on the premises if the use was lawful at the time the use was carried out;*

*(c) **other development on the premises** if the development may be lawfully carried out without the need for a further development permit.*

This is the statutory anchor.

4. Section 120(2) provides guidance as to the performance of that duty.

It identifies what must not be included when determining extra demand, and therefore informs the content of the assessment manager's obligation under s 120(1).

It does not impose any obligation on an applicant, nor does it authorise reliance on a development type or presumption.

5. The Tribunal of its own volition cited as a source of information⁴

Extracts from the Fraser Coast Planning Scheme 2014

and at 25 the Respondents paraphrased s120 PA16

A levied charge under an infrastructure charges notice for a development approval may be for extra demand placed on trunk infrastructure that will be generated by the development the subject of the approval.-omitting the word "only" that qualifies the "extra demand". And

at 38

As section 120 of the Planning Act makes clear, in working out extra demand, the demand on trunk infrastructure generated by a "prescribed development" (defined to include "development that may be carried out on the premises without a development permit") may also be included.

*In this case, upon reconfiguration of the subject land, the **new lots may be used for a variety of uses as "accepted development"** under the Council's Planning Scheme.9. And at*

at 40

⁴ DVD25 [9(a)(v)]

For the reasons developed above, and having regard to the nature of the approved development (an increase from 1 lot to 5 lots) the Tribunal is also satisfied that the approved development will place some extra demand on the relevant trunk infrastructure. The Tribunal finds that the second pre-condition is satisfied

6. These are important statements by the Tribunal, raising 2 Issues

Firstly, it acknowledges the **existence** and **relevance** of an entity called “*prescribed development*”.

This matter was the subject of **Ground 1**.

Next the adopting of the position that ‘a *prescribed development* is defined to include future *accepted development* that may be carried out on the premises, is relevant in the process of determining *extra demand* for purposes of issuing ICN25’ — This demands attention.

7. Section 120(1) PA16 imposes a substantive conditional statutory requirement — the consideration of *extra demand*. Which may be generated, only as a consequence of the *use*, as a consequence of *the development*, — the **subject of approval**.

This “future” *accepted development* concept was the bases for the appeal in *Douglas Construction & Engineering Pty Ltd v Logan City Council [2023] QPEC 28*

Judge Kefford @37 had this to say, relevant to the ‘bases for determining extra demand’”

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.

And, @78 considered the term *further* used in 120(2)(c) — advising:

I do not accept that the ordinary meaning of the word “further” includes a future connotation.

The consequences of which, if accepted, is that the exclusion provisions of 120(2) when determining if extra demand occurs as a consequence of the use generated by a future development, remains as stated in PA16.

Thus, confirming that future *accepted development* cannot be a component, in the consideration of the *extra demand* aspect for the approved development.

Planning Scheme 2014

8. The Tribunal raised the matter of:

In this case, upon reconfiguration of the subject land, the new lots may be used for a variety of uses as “accepted development” under the Council’s Planning Scheme.9.

Schedule 3 of PR 17 lists 92 prescribed uses that are available to be regulated by a planning scheme

Schedule 16 of PR 17 lists 83 prescribed uses applicable in determining *prescribed development* for any one of those uses.

The only mechanism for determining which of those uses would comprise *accepted development* is by determination at that point which use was intended to commence by consulting the planning scheme for the particular zone, possibly the overlay, and the type of development that will result in the use, whether or not the scheme assigns the assessment category as *accepted*.

This clearly is not what is intended by the legislation as a mechanism, in the issuing of an ICN for an adopted charge, at the point of development approval.

9. Further in order for the **concept** applied by the Tribunal to be applicable, there would first need to be building or structures on the land, at the time of the assessment of RAL21 for *extra demand*, that could be the subject of an *accepted development* for *material change of use*. —There were none present on the lot when the development permit for RAL21 was issued.

And even if the “future” of the lots could be taken into consideration at the time of determining *extra demand* (which it cannot) then any future buildings erected that could be the beneficiary of *accepted development* for a *material change of use* to which such buildings would be put, would be the subject of the determination for *extra demand* on *trunk infrastructure* at that time.

10. The s 120 PA16 requirement operates as a limitation on the exercise of the charging power in s 119 PA16.

Because the assessment manager is the party exercising that statutory power, it falls to the assessment manager to perform the statutory function honestly, reasonably, and on a proper evidentiary foundation, in the determination of the *extra demand* aspect of s120.

Assumption or speculation is inconsistent with the lawful performance of that task.

11. What remains unresolved by legislation is:

- A. What actually is *extra demand?* and
- B. What is the **base line** upon which *demand* is *extra*.

Is it:

- the **current** demand on the trunk infrastructure network at the time of development approval; or
- The **demand capacity** of the trunk infrastructure determined by the application of a **LGIP** design horizon, relevant to the subject approved development.

The Act does not identify which baseline applies, and no authority resolves this question.

12. What also is not defined in the Planning Act, the Planning Regulation, or clarified in material from the department of the chief executive for the legislation or in any decision of this Court is, how is *extra demand* is to actually be determined.
13. The courts have already confirmed that, determination of the **quantum** of *extra demand* is not required for it to have application, only whether the identified demand actually constitutes *extra demand* and is present, for it to have application.

But no authority has determined what *extra demand* actually means, nor the process required to identify it.
14. What similarly remains unresolved is the process required to determine:
 - What **uses** are capable of automatically generates *extra demand*? And or
 - whether a demand identified by a *Use*, can by reason of existing *spare capacity*, identified in the LGIP, be accommodated in the existing network — would still constitute *extra demand* for s 120(1)?

Interpretation of “Extra Demand” Under s 120(1)

15. **Division 2** of Part 2 of Chapter 4 PA16 establishes the statutory framework for - **Charges for trunk infrastructure**.

Subdivision 3 of the Division establishes the statutory framework **Levying charges**

Section 119 confers the authority to levy and recover an adopted charge where a development approval is given and an adopted charge applies to the provision of trunk infrastructure required to service that development.

Section 120 imposes a substantive limitation on the power of s 119.

Relevantly, s 120(1) provides that an adopted charge *may only be levied for extra demand placed on the trunk infrastructure by the development*.

The term “extra demand” is not defined in the Act or the Regulation.
16. **Subdivision 1** of the same Division - **Adopting charges**, sets out the mechanism by which a local government may implement an adopted charge for which s 119 provides the authority to issue.

Section 112 provides that a regulation may prescribe the
 - maximum amount for each adopted charge and
 - **development type** for which an adopted charge may be levied.

Section 52 of the PR17 gives effect to s 112 by prescribing, in Schedule 16, the maximum adopted charge for providing trunk infrastructure for each **Use** listed in Column 1.

The statutory scheme therefore ties the adopted charge to the **Use** prescribed in Schedule 16, rather than to the broader **development type**⁵.

17. It follows that the assessment required by s 120(1) must also be anchored to the **Use** that will occur as a consequence of the development approval.

In the absence of a statutory definition, the ordinary meaning of “extra” connotes something additional or beyond what is existing or necessary.

When read with “demand”, the phrase “*extra demand*” naturally refers to demand that exceeds a defined level or capacity.

18. This interpretation is consistent with the structure and purpose of the charging framework, which is directed to recovering the cost of providing trunk infrastructure required to service development beyond the designed **capacity of the existing network**.

19. Accordingly, the determination required by s 120(1) is whether the **Use** authorised by the approved development will place demand on the relevant trunk infrastructure that is *extra to, and beyond, the existing capacity of that infrastructure at the time the approval is given*.

That determination should be objective and evidence-based assessment

Only when such an assessment demonstrates that the **Use** resulting from the approved development will generate demand that is *extra* to the current capacity of the trunk infrastructure and an adopted charge be lawfully levied under s 119.

20. RAL21 0138 is *development* for *reconfiguring a lot* (RAL21)

21. The development application material that supported RAL21 did not identify any **use** associated that development.

22. The Appellant in their [Submission](#) to the Tribunal outlines the position, based on Council LGIP documents, regarding the trunk infrastructure circumstances for Tuan indicating that no projected demand was identified for this PIA⁶

23. PR17 Schedule 16

- Column 1 does not define a RAL as a **Use**.
- Column 2 **charges** are tied to **Use**, not development type

⁵ Supported by Judge Kefford in *Douglas Construction & Engineering Pty Ltd v Logan City Council* [2023] QPEC 28 @ 37

⁶ Appellants Submission Page 11 – 12.

An RAL is not a land-use in the planning sense, but it is identified in s 52 of the Planning Regulation 2017 for charging purposes, where it is supported by a Schedule 16, Column 1 Use.

The enquiry as to which Schedule 16 Use is engaged, and whether that Use attracts an adopted charge, is an obligation of the assessment manager when assessing the applicability of issuing an Infrastructure Charges Notice

The only evidence which supports the position that the Respondent relied on for the issue of ICN25 is the **development type**⁷..

CONCLUSION

24. Your Honour, in response to the [Appellants Representation](#) of 9 April 2025 the Council did not counter the issues canvassed or deliver any evidence of undertaking an assessment to:

- identify the relevant **Use**
- assess **existing capacity**
- assess **demand** generated by the **Use**

25. A copy of the Appellants Representation was made available to the Tribunal⁸.

26. There is no legislative support for treating RAL21 as a **Use** that would generate demand that was **extra** to the capacity *trunk infrastructure* in the area in which that development is located.

27. In the absence of compliance with the statutory precondition, the levied charge **ICN25** cannot stand.

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

28. **If the Court accepts Ground 3, it need not consider Grounds 4**

⁷ ICN25 page 2

⁸ Appellants Submission Page 1 – Background.