In the Development Tribunal
Held at: Brisbane

Appeal No. 25-021

Between:	**MARK AND JULIEANNE GRUNSKE**	Appellants
And:	**FRASER COAST REGIONAL COUNCIL**	Respondent

RESPONDENT'S WRITTEN SUBMISSIONS

Part A – Introduction

1. The appeal to the Development Tribunal ("*the Tribunal*") is against infrastructure charges notice[1] dated 21 February 2025 ("*the ICN*")[2] given by the Respondent in relation to a development approval[3] ("*Development Approval*") for the reconfiguration of a lot (1 lot into 5 lots), in respect of land situated at Wilkinson Road, Tuan[4] ("*the Land*").

2. It is noted that the Development Approval is the subject of an appeal by the Appellants to the Planning and Environment Court about development conditions.[5] Notwithstanding the existence of that appeal to the Planning and Environment Court and the fact it is presently unresolved, that does not affect this appeal to the Tribunal or its outcome.

3. The Appellants assert that the ICN is flawed and should be withdrawn for the reason that the Respondent "*...failed to undertake the necessary assessment*

[1] No 5138178
[2] A copy of which is attached to the Appellants' "*Submission*"
[3] RAL 21/0138.
[4] Lot 51 on MCH 567
[5] Grunske v Fraser Coast Regional Council (P&E Appeal No D29 of 2025), Maroochydore

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required by section 120(1) of PA16 [the Planning Act 2016] to determine if extra demand on existing trunk infrastructure actually existed and thereby required for the issuing of the ICN"[6]. 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* ("*the Charges Resolution*")[7] for the application of an adopted charge[8].

4. For the reasons that will be developed below, the appeal is misguided, the Appellants have failed to discharge their onus in the appeal and the Respondent's decision to give the ICN should be confirmed.

Part B – The ICN and the Levied Charge

5. The ICN was given for the Development Approval. "*Annexure A*" to these submissions is a copy of the Development Approval. As mentioned above, the appeal to the Planning and Environment Court is about development conditions and that appeal does not impact on questions in the appeal to the Tribunal.

6. The ICN levied the adopted charge applying under the Respondent's Charges Resolution for a reconfiguration of a lot in the "*Maryborough, Howard, Torbanlea, Tiaro and Rural townships areas*", being $19,000 per lot[9] but, relevantly, the ICN applied credits to the levied charge for[10]:

   (a) the percentage of the adopted charge that the Charges Resolution apportions to the water supply and sewerage trunk infrastructure networks, being a

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[6] "*Proposed Finding*" on page 13 of the Appellants' "*Submission*"
[7] A copy of which is attached to the Appellants' "*Submission*"
[8] "*Position 1*" on page 10 of the Appellants' "*Submission*" and the discussion on pages 7 to 10 that preceded it
[9] Schedule 1, table A of the Charges Resolution
[10] See the "*Basis Of Credit*" note at the foot of the first page of the ICN

combined 28%[11], which reduced the amount of the levied charge from $19,000 per lot to $13,680 per lot; and

(b) the existing entitlement to use the Land for one residential dwelling.

7. The application of those credits resulted in a total levied charge of $54,720[12].

Part C – Relevant Statutory Provisions and Legal Principles

Tribunal's Jurisdiction to Hear Appeal

8. Like the Planning and Environment Court, the Tribunal has a jurisdiction conferred by statute.

9. Here, a appeal to the Tribunal against the giving of an infrastructure charges notice, is limited to one or more of the grounds set out in schedule 1, table 1, items 4(a) to (c) of the Planning Act, which are extracted below:

"4. Infrastructure charges notices

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; or

Examples of errors in applying an adopted charge—

- *the incorrect application of gross floor area for a non-residential development*

[11] Section 2.3(b) of the Charges Resolution
[12] $13,680 for each of the four additional lots

- *applying an incorrect 'use category', under a regulation, to the development*

(ii) the working out of extra demand, for section 120; or

(iii) an offset or refund; or

(b) there was no decision about an offset or refund; or

(c) if the infrastructure charges notice states a refund will be given—the timing for giving the refund".

10. The appeal may not be about the adopted charge itself[13].

11. Whilst the Appellants' submissions are unclear and not drafted with precision, the only potential grounds of appeal that it raises are items 4(a)(i) and (ii) of schedule 1, Table 1 of the Planning Act (underlined above).

12. The Tribunal must hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (i.e., the Respondent)[14].

13. The Appellants have the onus of establishing that the appeal should be upheld[15].

14. The Tribunal is required to decide the appeal by doing one of the following things in relation to the Respondent's decision to give the ICN[16]:

(a) confirming the decision;

(b) changing the decision;

[13] Section 229(6) of the Planning Act
[14] Section 253(4) of the Planning Act
[15] Section 253(2) of the Planning Act
[16] Section 254(2) of the Planning Act

(c) replacing the decision with another decision; or

(d) setting the decision aside and ordering the Respondent to remake the decision by a stated time.

Respondent's Power to Give ICN

15. Section 119 of the Planning Act requires the Respondent to give an ICN where:

(a) a development approval been given; and

(b) an adopted charge applies to providing trunk infrastructure for the development.

16. However, pursuant to section 120 of the Planning Act, the levied charge under the ICN may only be for extra demand placed on trunk infrastructure that the development will generate[17].

17. What compliance with section 120 of the Planning Act requires, is that[18]:

a. there is relevant trunk infrastructure for the development; and

b. there is additional demand placed on that trunk infrastructure by the development.

18. If these requirements are satisfied, the adopted charge for the appropriate development category in the Charges Resolution is applied to calculate the levied charge. There is no requirement to calculate the levied charge by reference to actual additional demand generated by the development[19].

[17] Section 119(12)(a) and section 120(1) of the Planning Act
[18] *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]
[19] Ibid

19. All that is required for the levying of the adopted charge is that there will be some additional demand placed on the trunk infrastructure network as a consequence of the development. The adopted charge in the Charges Resolution is, for the purposes of the appeal, immutable[20] and beyond challenge.

20. It is irrelevant that, in a technical sense, the mere reconfiguration (as opposed to the further use of the lots so created) does not give rise to additional demand. It is enough if the further use of the lots so created gives rise to the additional demand, in order for section 120 to be satisfied[21]. As the Court of Appeal observed:

> *"It was not to the point that, technically, the mere reconfiguration of a lot did not result in any change to the demand on infrastructure networks (as observed by the primary judge at [98] of the reasons). What was relevant was that the reconfiguration of a lot is one of the trigger points for the issuing of an ICN in relation to that development."*

Part D – Application to the Present Case

21. As identified above, if a development approval has been given and an adopted charge applies to that development, the Respondent is required to give an infrastructure charges notice, which levies that adopted charge, subject to the limitation, inter alia, that the levied charge may only be for extra demand placed on trunk infrastructure that the development will generate.

22. Whilst unclear and not articulated with precision, the Appellants' submissions raises only two potential grounds of appeal:

    a. under item 4(a)(i) of schedule 1, table 1 of the Planning Act (i.e., that the ICN involved an error relating to the application of the relevant adopted

[20] *Allen-Co Holdings Pty Ltd v Gympie Regional Council* (supra) at [4]

charge), on the basis that no adopted charge applied to the development because the Land is not a "*rural township*"; and

b. under item 4(a)(ii) of schedule 1, table 1 of the Planning Act (i.e., that the ICN involved an error relating to the working out of extra demand for section 120 of the Planning Act), on the basis that the Respondent "*…failed to undertake the necessary assessment required by section 120(1) of PA16 to determine if extra demand on existing trunk infrastructure actually existed"*.

Error Relating to Application of the Relevant Adopted Charge

23. It is common ground that a development approval was given to the Appellants, being that which is attached as "*Annexure A*" to these submissions. That development approval approved a reconfiguration of a lot (1 lot into 5 lots) on the Land.

24. The Charges Resolution applies an adopted charge to such development[22], with different adopted charges applying dependent upon where in the Respondent's local government area the development occurs[23] and, in particular, the Charges Resolution applies an adopted charge of:

a. $32,000 per lot within Hervey Bay (including Burrum Heads, Toogoom, Booral and River Heads); and

b. $19,000 per lot within Maryborough, Howard, Torbanlea, Tiaro and Rural Townships.

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[21] *Toowoomba Regional Council v Wagner Investments & Anor* (supra) at [115]
[22] Table A of Schedule 1 of the Charges Resolution
[23] As the Respondent was permitted to do, pursuant to section 114(2) of the Planning Act

25. 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.

26. This is incorrect. 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. That is so because:

    a. the Charges Resolution expressly states that it applies to all of the Respondent's local government area[24];

    b. the Charges Resolution adopts the same division into two of the Respondent's local government area for development that is a material change of use of premises and for building works[25], which are the only other types of development in respect of which the Charge Resolution applies adopted charges; and

    c. 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 adopted charges.

27. Consequently, it is the case that one of the two adopted charge categories identified in subparagraphs 22(a) and (b) above must apply to the approved development and it is further the case that the Respondent has applied the lower of the two categories.

28. In the premises, the Appellants have failed to discharge their onus that there was an error in the application of the adopted charge.

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[24] Section 1.6(a) of the Charges Resolution
[25] Table B of Schedule 1 of the Charges Resolution

Error Relating to the Working out of Extra Demand for Section 120

29. As identified above, all that is required for compliance with section 120 is that[26]:

    a. there is relevant trunk infrastructure for the development; and

    b. there is additional demand placed on that trunk infrastructure by the development.

30. The basis upon which the Appellants allege section 120 of the Planning Act has not been complied with are:

    a. *"development for reconfiguring a lot does not of itself generate demand on infrastructure"*[27]; and

    b. the Respondent did not undertake the process required by section 120 to *"arrive at a determination that a development actually is responsible for 'extra demand' over and above that which is within the capability of current existing trunk infrastructure"*.

31. Both of those grounds reflect a fundamental misunderstanding of the law as it applies to section 120 of the Planning Act.

32. Firstly, and as identified above, the Court of Appeal has made it clear that it is irrelevant that, in a technical sense, the mere reconfiguration of land (as opposed to the use that results from it) does not give rise to additional demand. It is enough for section 120 to be satisfied if the further use of the lots so created gives rise to additional demand[28]. The extracts from the *Toowoomba Regional Council v Wagner Investments & Anor* case (both at first instance and on appeal) that have

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[26] *Allen-Co Holdings Pty Ltd v Gympie Regional Council* (supra) at [6]; *Toowoomba Regional Council v Wagner Investments & Anor* (supra) at [78] to [79]
[27] "*Premise 3*" on page 10 of the Appellants' "*Submission*"
[28] *Toowoomba Regional Council v Wagner Investments & Anor* (supra) at [115]

been included on pages 10 and 11 of the Appellants' Submission that suggest that a reconfiguration of a lot is not capable of generating a demand on infrastructure, are the findings of the judge at first instance, which were overturned on appeal to the Court of Appeal.

33. Secondly, it is not necessary that the development generate demand "*over and above*" the capacity of currently existing trunk infrastructure. All that is required to satisfy section 120, is that the development generate some additional demand on relevant trunk infrastructure networks. The capacity of the existing trunk infrastructure to accommodate that additional demand is entirely irrelevant to that question, as is the extent of the additional demand generated[29].

34. In the present case, given that the ICN applied credits for the proportion of the adopted charge apportioned to the water supply and sewerage trunk infrastructure networks, in order for the Appellants to be successful in the appeal, they must demonstrate that the approved development (i.e., the five lot reconfiguration) did not give rise to any additional demand on the Respondent's stormwater, transport or parks and land for community facilities trunk infrastructure networks.

35. The Appellants, being the parties with the onus in the proceeding, have not demonstrated this.

Part E – Conclusion

36. In the premises, the Appellants have failed to discharge their onus in the appeal and Tribunal should confirm the Respondent's decision to give the ICN.

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[29] *Allen-Co Holdings Pty Ltd v Gympie Regional Council* (supra) at [6]; *Toowoomba Regional Council v Wagner Investments & Anor* (supra) at [78] to [79]