In the Planning and Environment Court No

Held at: **MAROOCHYDORE**

Between: **Mark and Julianne Grunske** Appellant

And: **Fraser Coast Regional Council** Respondent

NOTICE OF APPEAL

Filed on	1 December 2025.
Filed by:	Warren Bolton [Agent]
Service address:	558 Mooloo Road MOOLOO Q 4570
Phone:	04 293949 04
Email:	me@warrenbolton.com

We, Mark and Julieanne Grunske of 29 Col Kitching Drive Karumba Queensland 4891, appeal to the Planning and Environment Court at Maroochydore against the decision of the Development Tribunal in Appeal No 25-021 and seek the following orders:

(a) That the decision from the Appeal be set aside; and

(b) The Infrastructure Contribution Notice No 5138178 (ICN) issued on 22 January 2025 be declared void; and

(c) Any further or other orders the Court considers appropriate.

The Grounds of Appeal:

1. 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.**

2. The Tribunal failed to give sufficient weight to the overarching responsibilities of Sections 3 and 5 of the Planning Act 2016 (PA16) when accepting that Fraser Coast Regional Council (Council) *Infrastructure Charges Resolution (January 2025)* (Resolution) [1] omitted a definition of a crucial term used to determine infrastructure contributions.
3. The Tribunal erred in finding that the law provided circumstances that supported Council's power, under section 119 of the Planning Act, to issue the ICN.[2]

Background

4. The circumstances set out in the DTD [3] provides a broad overview of the nature and circumstances of the Appeal.
5. **Position 1** challenged the lawful authority, of the Resolution to authorise the issue of the ICN in respect of Development Approval RAL21/0138.
6. The DTD addresses only two circumstances in the consideration of the Appeal:
    a. Extra Demand; and
    b. Rate of Charge

    The Tribunal was satisfied that the Notice had authority under existing law, but failed to address the broader questions of lawful authority raised under Position 1.[4]

Legislation

7. **Planning Act 2016 (PA16)** provides in **Chapter 4 Infrastructure:**

    (a.) Section 110(1)(c)

        (i.) Confirms that *Part 2 of Chapter 4* provides the head of power for regulations to govern adopted charges for trunk infrastructure.

[1] For a eCopy-See - https://tuanqld.site/dt/docs/fcrcres2025.pdf
[2] For a eCopy of ICN -See - https://tuanqld.site/dt/docs/icn.pdf
[3] For a eCopy-See - https://tuanqld.site/dt/Decision.pdf
[4] For a eCopy-See - https://tuanqld.site/dt/Final.pdf - page2

(b.) Section 112(1)

(i.) Provides that a regulation may prescribe a *maximum amount* (the "prescribed amount") for each adopted charge.

(ii.) 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 .[5]

(c.) Section 112(3)(b)

(i.) Provides that the regulation **may also** prescribe development for which there may be an adopted charge

(d.) Section 113(1)

(i.) Authorises councils to adopt charges by resolution (a "charges resolution") which is not a mere policy but a formal legislative instrument at the local level.

(ii.) *Clause 113 enables a local government to set an adopted charge, **if the charge is provided under the Regulation,** and at any amount less than or equal to the prescribed maximum adopted charge for the development.*[6]

(e.) Section 114(1)(a),

(i.) Limits the scope of making 'adopted charges' for developments, to the that prescribed by regulation for that development.

(f.) Section 119(2)

(i.) Provides councils with the power to issue an infrastructure charge notice to the applicant for certain developments - if the 'adopted charge' satisfies the lawful requirement of the Chapter.

Chapter1 Preliminary

(g.) Section 3

(i.) Sets out the overarching purpose of PA16 -and in part is:

[5] Planning Bill 2015 - Explanatory Notes - Subdivision 2 - Charges resolutions - Contents—general (p108)
[6] Planning Bill 2015 - Explanatory Notes - Subdivision 2 - Charges resolutions - Contents—general (p108)

*To establish a system of planning and development assessment that is efficient, effective, **transparent**, integrated, coordinated, and **accountable**.*

(h.)Section 5

(ii.) An entity that performs a function under PA16 must perform the function in a way that advances the purpose of this Act.

8. **Planning Regulation 2017 (PR17)**

(a.) Schedule 16,

(i.) Lists prescribed amounts for different *uses* (column 1 = use; column 2 = prescribed amount).

(ii.) It explicitly references **Section 52 of PR17** as its enabling provision.

(b.) Section 52(3)(a),

(i.) Provides that, for the purposes of **s112(3)(b) of PA16**, if development involves:

1. a *material change of use*,
2. *reconfiguring a lot*, or
3. *building work*,

AND

the development is for a **USE** listed in **Schedule 16, column 1**, then a local government **may** adopt a charge for trunk infrastructure under Chapter 4 of PA16.

Implication for local governments

9. The combination of the provisions of PA16 and PR17 is that:

(a.) Local governments **cannot invent their own categories of "use"** for infrastructure charges.

(b.) An adopted charges policy must correspond directly to the 'uses' listed in Schedule 16 and may not prescribe charges for abstract 'types of development' (e.g. reconfiguring a lot) unless linked to a prescribed 'use' in Schedule 16.

(c.) If a council's Charge Resolution fails to identify those prescribed uses, then it lacks the statutory authority to issue, with a developments permit, an infrastructure charge notice for that development.

(d.) The Regulation does not prescribe charges for "types of development" in the abstract (e.g. "reconfiguring a lot") unless that development is linked to a **use** listed in Schedule 16

10. Therefore, only "uses" called up by the regulations attract the authority to levy charges—This is consistent with the **principle of legality**:

    (a.) A local government can only statutorily act within the powers expressly conferred by legislation.

    (b.) Since PA16 delegates authority to the Regulation, and the Regulation limits charges to Schedule 16 "uses", any departure by a council's *Charge Resolution,* risks being **ultra vires**.

11. Council's *Charge Resolution* document, by failing to identify those "uses" in Table A of Schedule 1, was a **procedural flaw,** by failing to align with the enabling regulation — **Only 'uses' listed in the Regulation can lawfully attract adopted charges.**

Fraser Coast Regional Council – Charge Resolution

12. Council's Resolution document, in **Schedule 1 - Table A – Reconfigure a Base Charge Rate**, provides:

    (a.) Column 1 ("Use Category") lists a range of 'localities' and called up zoning requirements — but did not cite any 'uses' defined in Schedule 16; and

    (b.) Column 2 ('**Reconfigure a Lot Use')** listed '*New lot with development entitlement'* as the criterion — but did not cite any associated 'uses' defined in Schedule 16;

13. The *Notes* to Schedule 1, states at **Item 1** that:

    (a.) *The categories shown in Column 1 below are included only for convenience, and to* ***align*** *with schedule 16 of the Planning Reg*.

    (b.) Nothing listed in Column 1 of Table A, ***aligns*** with Schedule 16 of PA17.

14. The problem with Council's Resolution in Schedule 1 Table A is that it only referred to the 'type' of development ("reconfiguring a lot") without identifying the 'use' prescribed in Schedule 16,

Undefined Terms

15. On page 8 of the DTD the Tribunal address the part of the Submission by the Appellant in the Appeal regarding the absence of a statutory definition in the Resolution for the term "Rural townships" used in Column 1 Row 2 of Table A. in Schedule 1.

16. Part 6 of the Resolution deals with 'Definitions'. Section 6.1 provides defined terms. Section 6.2 provides that:

> *A term that is used but not defined in this resolution will, unless the context otherwise requires, have the meaning give to it by (in the following order):*
> *(a) the Planning Act;*
> *(b) the Planning Reg;*
> *(c) the Planning Scheme;*
> *(d) the Acts Interpretation Act 1954 (Qld); or*
> *(e) its ordinary meaning.*

'Rural townships' is not defined in Section 6.1 or the documents listed (a) to (d)

17. An internet searches for the term 'Legal definition of Rural townships" reveal no settled legal definition. Results range from American place names [Link] [7] to general descriptions across English-speaking countries. The *ordinary meaning* of 'Rural townships' is therefore diffuse and indeterminate.

18. An internet searches for the term 'Rural townships" did however return a link to a document within the Moreton Bay Regional Council's website. [Link] [8]

19. The '*ordinary meaning*' of the term '*Rural townships*' has a very wide application.

20. The Tribunal acknowledged that the term '*Rural townships*' was not defined in the Resolution and this caused 'ambiguity' to some degree [9].

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[7] [If this document does not link with the internet see- https://mapcarta.com/22162292
[8] See- https://www.moretonbay.qld.gov.au/files/assets/public/v/2/services/building-development/mbrc-plan/psp/v7/township_character.pdf
[9] Tribunal Decision (DTD) - S43 (p9)

21. However, concluded that while there was 'some ambiguity' about whether or not, the property, the subject of the ICN, did or did not fall within any of the 'place names' listed in Column 1 of Table A, it was of no consequence, for the issues of the ICN, because s1.6 of the Resolution stated '*The Resolution applies to the whole local government area'*.

    Therefore, any locality outside those specifically described (e.g. Tiaro) in Column 1 must fall within the catchall location of - the rest of the local government area, under the term '*Rural townships*' [10].

22. The issue to be resolved is 'does all of the Resolution apply to every parcel of land in the local governments area', as conclude by the Tribunal?

23. While Table A applies only to one type of development (Reconfigure a lot), it also demonstrates, in the instruction rows 1 and 2 of Column 1, descriptions of localities.

    A reasonable assumption for the two rows can be drawn from Column 3U, of the table, which shows different (per lot) infrastructure charges for each of the defined localities.

24. If Table A had application to the whole of the local government area, the simpler way to achieve that outcome would have been to have one row contain the description of localities for one charge and the other row simply proclaim the 'Remainder of the local government area' for the second charge.

25. Why would this not be the correct solution. - If Table A applied to the whole of the local government area?

26. The correct answer is that it is the intention of Council, expressed by the part of the Resolution document, that for developments, for 'Reconfigure a lot' the application of Table A be confined to 'identified geographical locations only'. –

    No other conclusion is supported by reason and drafting of the document.

27. Table B supports this conclusion.

    In part of Column 1 of the table, the Resolution provides 'identified geographical locations' [Localities] (as it does for Table A) BUT part of the same column also applies to 'described infrastructure' (e.g.-Education Facilities) [Infrastructure].

[10] Tribunal Decision S44 (p9)

Further, it is noted that Column 2 (USE), in Table B, unlike Table A, actually prescribes defined 'uses' for both these circumstances [Localities and Infrastructure] that actually align with some of the 'uses and terminology' in Schedule 16 of PR17.

28. If this reasoning (Table A does not apply to the whole of the local government area) is supported, then the conclusion of the Tribunal that, based on Section 1.6 of the Resolution, there is no need for a functioning definition for 'Rural Townships', - then that conclusion is flawed, because Table A of the Resolution, does not, and reasonably was never intended to apply to all land within the area of that local government.

    It only applies to the 'geographical locations' identified in rows 1 and 2 of Column 1 of Table A

Why a definition is then paramount

29. The fallback to 'ordinary meaning' for Rural townships is problematic also, for several reasons:

30. **Ambiguity**: The term 'Rural townships' lack a settled meaning. It could denote population size, zoning, infrastructure, or historical designation, to cite but a few.[11] Without a definition, developers and landowners cannot ascertain **with certainty** whether or not, their proposal for their land falls within the scope of the resolution.[12]

31. **No statutory or regulatory anchor**: The term 'Rural townships' is undefined in the Planning Act, Planning Regulation, Planning Scheme Schedule 1 Definitions, or Acts Interpretation Act. This leaves it floating in interpretive limbo - a term without a statutory or regulatory anchor, creating at its best - interpretive ambiguity; and at its worst- uncertainty.

32. **Delegated legislation must be precise:** A charge resolution is a form of delegated legislation (*statutory instrument*) [13]. Courts have traditionally held that such instruments must be clear, certain, and within power. – Vague and ambiguous terms also undermine transparency and accountability, contrary to the Purpose of PA16.

[11] See Morton Bay Regional Council document for an example of the complexity - Link in Reference 8
[12] Planning Bill 2015 - Explanatory Notes - Subdivision 2 - Charges resolutions - Contents—general (p108)
[13] Statutory Instruments Act 1992 - s7 (p6)

33. **Fails the test of procedural fairness:** If a developer cannot ascertain whether their land will attract an Infrastructure Charge Notice, before making a development application, the resolution fails to provide fair notice.[14]

    This breach of procedural fairness also contravenes the principle of **administrative process** implied by s3 and s5 of PA16.

Signed: _____

Warren Bolton

Agent for the Appellants

Date: 1 December 2025

If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

(a) within 10 business days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this notice of appeal was filed or where the court file is kept; and

(b) serve a copy of the Entry of Appearance on each other party.

[14] See 7(b)(ii) of this 'Notice of Appeal' for the 'Explanatory Notes' support