Attachment F

Development Tribunal – Decision Notice

***Planning Act 2016*, section 255**

Appeal Number:	**25-021**
Appellant:	Mark and Julieanne Grunske
Respondent:	Fraser Coast Regional Council
Site Address:	Wilkinson Road, Tuan Qld 4650 and described as Lot 51 on MCH 567

Appeal

Appeal under section 229 and schedule 1, table 1, item 4(a) of the *Planning Act 2016* against an infrastructure charges notice given by the Fraser Coast Regional Council on the grounds the notice involved an error relating to the application of the relevant adopted charge or the working out of extra demand.

Date and time of hearing:	19 August 2025 at 10:00am
Place of hearing:	Online via video
Tribunal:	Travis Schmitt – Chair Stewart Somers – Member

Decision:

The Development Tribunal, in accordance with section 254(2)(a) of the *Planning Act 2016*, confirms the decision of the Council to give the infrastructure charges notice in the amount of $54,720.

Background

1. The Appellants made a development application to the Fraser Coast Regional Council (**the Council**) for the reconfiguration of a lot (1 lot into 5 lots) at a property at Wilkinson Road, Tuan.

2. That application was approved, and an infrastructure charges notice was issued by the Council on 21 February 2025 (**the ICN**).

3. The ICN detailed the infrastructure charge applicable to the approved development as follows:

NET CHARGE				**$54,720.00**
Residential Charge Calculation - Transport, Stormwater, Community Facilities & Parks				
	Qty		**Rate**	**Charge Amount**
Residential ROL with single detached dwelling entitlement	5	@	13,680.00	$68,400.00
			Total Charge	**$68,400.00**
Charge Calculation - Credits				
	Qty		**Rate**	**Credit Amount**
Residential ROL with single detached dwelling entitlement	1	@	13,680.00	$13,680.00
			Total Credits	**$13,680.00**
Charge Calculation - Offsets				
				Offset Amount
Water, Sewer, Transport, Parks & Stormwater				$0.00
			Total Offsets	**$0.00**

4. That charge was purportedly calculated pursuant to the Council's *Infrastructure Charges Resolution January 2025* (**the Charges Resolution**).

5. On or about 9 April 2025, the Appellants made representations to the Council concerning the ICN. The Council did not agree with those representations and issued a notice about its decision to confirm the ICN on 17 June 2025.

6. In this appeal the Appellants argue that in levying the charge the Council has failed to comply with section 120 of the *Planning Act*, insofar as it only permits a charge for "extra demand placed on trunk infrastructure that will be generated by the development the subject of the approval." The Appellants also argue that the ICN involves an error as to the application of the relevant adopted charge.

7. The Council opposes the relief sought and says the ICN should be confirmed.

Conduct of appeal

8. The Tribunal convened to hear the appeal via video link on 19 August 2025. The Appellants appeared and were represented by Warren Bolton. The Council was represented by its officer James Cockburn.

9. The Tribunal has considered the following material in determining the appeal:

   (a) Form 10 – Notice of Appeal and attachments:

      (i) Appellants' submissions dated 12 July 2025

      (ii) Decision Notice for Infrastructure Charges Notice Representations dated 11 June 2025 (and covering email serving that notice on the Appellants on 17 June 2025)

      (iii) Infrastructure Charges Notice dated 21 February 2025

      (iv) Representations prepared by Mr Bolton dated 9 April 2025

      (v) Extracts from the *Fraser Coast Planning Scheme 2014*

      (vi) *Toowoomba Regional Council v Wagner Investments Pty Ltd* [2020] QCA 191

      (vii) *Wagner Investments Pty Ltd v Toowoomba Regional Council* [2019] QPEC 24

(b) *Infrastructure Charges Resolution January 2025*

(c) Appellants' supplementary written submissions dated 17 August 2025

(d) Council's written submissions provided 19 August 2025 and attachments:

(i) Decision Notice for Reconfiguring a Lot RAL21/0138

(ii) *Toowoomba Regional Council v Wagner Investments Pty Ltd* [2020] QCA 191

(iii) *Allen-Co Holdings Pty Ltd v Gympie Regional Council* [2021] QPEC 64

(e) Appellants' final written submissions dated 25 August 2025

The parties' contentions

The Appellants

10. The Appellants have filed with the Tribunal three sets of written submissions. Those submissions are lengthy and detailed. In its written submissions, the Council offered the following summary of the Appellants' arguments:

> The Appellants assert that the ICN is flawed and should be withdrawn for the reason that the Respondent "*…failed to undertake the necessary assessment 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*". 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*") for the application of an adopted charge.
>
> …
>
> 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 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"*.

11. At the hearing of the appeal on 19 August 2025, the Appellants generally accepted that summary as being accurate. In their final written submissions dated 25 August 2025, the Appellants, in response to the above portion of the Council's summary, also submitted:

> While I cannot comment on the clarity and articulation of the Submission that supported the Appeal I would have thought that the 3 Premises identified and highlighted in green in that document and the 2 Position highlighted in Supplementary, clearly go to the ground to be considered in the appeal.
>
> They are repeated here for convenience.

Premise 1. In order to levy an infrastructure charge for a particular development, the assessment manager must establish that the development will generate extra demand upon trunk infrastructure.

Premise 2. LGIP are essential in managing infrastructure decisions.

Premise 3. A development for Reconfiguring a lot does not of itself generating a demand on infrastructure.

And the supplementary

Position 1. 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.

Position 2.

The Appellant contention is that:

1.-A particular development in order to attract the facility of being the subject of infrastructure charge must be one that delivers a USE as defined within the parameters of those prescribed in Schedule 16 Column 1

RAL21-0138 is not a USE development and, of itself, does not indicate a USE defined within Schedule 16 of PR17.

There is no argument that in the future that lots, the consequence of the subdivision may attract a development with a USE prescribed within the regulations but the Appellants other contention is that the legislation does not provide the facility for an assessment manager to 'guess the future' and this is exactly what an assessment manager would be required to do in order to apply a USE as prescribed by the regulations to RAL21-0138.

The other contention is that:

2.-The circumstance that would also need to be overcome, in order to apply a charge to RAL21-0138 is that the charge itself would need to be a charge provided for by the regulations which sets the **maximum** for that particular charge, based on use.

There is no use within Schedule 16 that can correctly be applied to RAL21-0138

The final contention is that:

3.-A zone under planning scheme of itself does not constitute a USE under the terms of Schedule 16 of the regulations and accordingly relying on a permitted zone use in a planning context. For a zone is clearly not the mechanism chosen by the legislator for applying infrastructure charges to a USE for a particular development application.

This opinion is supported by the construction of the documents that provide for assessment, calculation, and application of infrastructure charges, where the charges are required to directly relate to the resources that are required to be provided by the developer to address specific extra demands placed on trunk infrastructure by a particular development approval, as is demonstrated in Schedule 16 by the prescribed amounts relevant to a defined USE

OUTCOME Accordingly, under the correct interpretation of the legislation, RAL21-0138 is not lawfully subjected to the imposition of an Infrastructure Charge Notice and if that is not the case, then the imposition of infrastructure charges would offend the Purpose of PA16.

12. Having considered the Appellants' written submissions in full, the Tribunal accepts the above summaries as an accurate representation of the Appellants' contentions.

The Council

13. The Council submits that the Tribunal has limited jurisdiction and that the appeal, properly construed, 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".[1] The Council also submits the appeal may not be about the adopted charge itself.[2]

14. In regard to the Council's power to give the ICN, the Council submits:[3]

> 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.
>
> 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.
>
> What compliance with section 120 of the Planning Act requires, is that:
>
> a. there is relevant trunk infrastructure for the development; and
>
> b. there is additional demand placed on that trunk infrastructure by the development.
>
> 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.
>
> 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 and beyond challenge.
>
> 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. 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."

15. The Council submits that the Charges Resolution applied an adopted charge to the development the subject of the reconfiguration approval. In particular, the Charges Resolution applied an adopted charge of $19,000 per lot within "Rural Townships" and $32,000 per lot within Hervey Bay.

16. To the point the Appellants argue that the subject land may not be within a Rural Township, the Council says the Charges Resolution applies to the whole of its local

---

[1] *Planning Act 2016,* Schedule 1, Table 1, Items (4)(a)(i) and (ii).

[2] *Planning Act 2016,* s.229(6).

[3] Footnotes omitted. The Tribunal notes the Council's references to *Allen-Co Holdings Pty Ltd v Gympie Regional Council* [2021] QPEC 64 and *Toowoomba Regional Council v Wagner Investments & Anor* [2020] QCA 191.

government area and, therefore, one of the two adopted charges described above must apply. The Appellants have been charged the lesser of the two possible charges. In that premise, the Council says there is no error in the application of the adopted charge.

17. In response to the Appellants' arguments relating to the working out of extra demand for section 120 of the *Planning Act*, the Council submits that all that is required for compliance with that section is that there is relevant trunk infrastructure for the development, and there is additional demand placed on that trunk infrastructure by the development. The Council submits, in reference to the Court of Appeal's decision in *Toowoomba Regional Council v Wagner Investments & Anor* [2020] QCA 191, that:

> 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.
>
> …
>
> 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.

18. The Council concludes by submitting that the Appellants have failed to discharge their onus in the appeal and that the Tribunal should confirm the Council's decision to give the ICN.

Jurisdiction

19. The Tribunal finds that the appeal was made within the appeal period prescribed by sections 125(7) and 229(3)(e) of the *Planning Act*.

20. As the Council has correctly submitted, the Tribunal has a limited jurisdiction. The Tribunal accepts, having had regard to the issues raised by the parties' contentions, that 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".

21. 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.

22. In the premises above and having had regard to the material and the parties' submissions, the Tribunal finds it has jurisdiction to hear the appeal pursuant to section 229 of the *Planning Act*.[4]

23. The appeal is by way of a reconsideration of the evidence that was before the Council.[5] It is for the Appellants to establish that the appeal should be upheld.[6]

24. The Tribunal acknowledges that there is currently an appeal before the Planning and Environment Court concerning development conditions of the reconfiguration approval. The Tribunal is satisfied that the appeal to the Planning and Environment Court does not affect this appeal to the Tribunal or its outcome.

---

[4] *Planning Act 2016,* Schedule 1, Table 1, Item 4(a).

[5] *Planning Act 2016,* s.253(4).

[6] *Planning Act 2016,* s.253(5).

Findings and reasons

25. Pursuant to section 119 of the *Planning Act* a local government must give an infrastructure charges notice to the applicant if a development approval has been given and an adopted charge applies to providing trunk infrastructure for the development. The levied charge is subject to section 120,[7] which relevantly provides that "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."

Approval and adopted charge

26. It is common ground between the parties that a development approval (RAL21/0138) has been given to the Appellant.

27. Similarly, it is uncontroversial that the Council has adopted charges for providing trunk infrastructure for development by the Charges Resolution. That resolution took effect on 1 January 2025 and applied at the material time.

28. Paragraph 1.6 provides that the Charges Resolution applies to all the Council's local government area and states that it adopts charges for providing trunk infrastructure for development, including reconfiguring a lot.

29. Paragraph 2.1 then provides that "The adopted charge for development is the applicable Infrastructure Charge for the development calculated on the approved use, in accordance with section 3**,** and at the time the decision is made."

30. Paragraph 3.1 supplies the formula to be used in calculating the levied charge. Relevantly, the "Adopted Charge Rate" is that applicable to the development in Schedule 1, column 4 of the Charges Resolution.

31. Schedule 1, Table A applies to "Reconfigure a Base Charge Rate" [sic]:

Table A – Reconfigure a Base Charge Rate

Column 1 Use Category	Column 2 Reconfigure a Lot Use	Column 3 (U) Charge Category	Column 3 (AC) Adopted Charge
Hervey Bay (inc. Burrum Heads, Toogoom, Booral and River Heads) - All Zones	New lot with development entitlement	$ per lot	$32,000
Maryborough, Howard, Torbanlea, Tiaro and Rural townships - All zones	New lot with development entitlement	$ per lot	$19,000

32. The Appellants say the locality descriptions in Column 1 are imprecise. In particular, the Appellants submit that "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 [*Planning Act*]". This argument is addressed by the Tribunal under the heading "Rate of Charge" below.

[7] *Planning Act 2016,* s.119(12)(a).

33. Having considered those provisions of the Charges Resolution, and for reasons further developed below, the Tribunal is satisfied that an adopted charge applies in respect of the approved development. In that premise, the Tribunal finds the Council was empowered by section 119 of the *Planning Act* to give the ICN.

34. To the extent the Appellant challenges the adopted charge itself, such matters are outside this Tribunal's jurisdiction. As the Planning and Environment Court has considered, the adopted charge is immutable.[8] The Tribunal accepts the Council's submissions in that regard.

Extra demand

35. The levied charge under the ICN is subject to section 120 of the *Planning Act*. As was considered in *Toowoomba Regional Council v Wagner Investments Pty Ltd & Anor* [2020] QCA 191, a levied charge must satisfy two requirements:

    (a) There must be demand on relevant trunk infrastructure as a consequence of the proposed development; and

    (b) That demand must be over and above what the current uses of the subject land generate.

36. If those "pre-conditions" are satisfied, the amount of the charge must then be calculated by applying the methodology in the relevant charges resolution.

37. The Tribunal accepts the Council's submissions that there is no requirement to calculate the levied charge by reference to actual additional demand generated by the development. Moreover, the Tribunal accepts that it is irrelevant that, in a technical sense, the mere reconfiguration does not give rise to additional demand. In that regard, the Tribunal refers to the Court of Appeal's reasons at [115].

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]

39. In that premise, the Tribunal is satisfied that there will be some demand on the relevant trunk infrastructure as a consequence of the approved development. The Tribunal finds that the first pre-condition is satisfied.

40. 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.

41. The Tribunal accepts the Council's submissions in that regard.

Rate of charge

42. As noted above, the Appellants contend that the locality descriptions in Column 1 of Schedule 1, Table A are imprecise, having the effect that the application of the Charges

[8] *Allen-Co Holdings Pty Ltd v Gympie Regional Council* [2021] QPEC 64 at [4].
[9] See *Fraser Coast Planning Scheme,* Part 5 Tables of Assessment, Table 5.5.1 Low Density Residential zone.

Resolution is unworkable. In this regard, the Appellants' challenge is to the Council's treatment of the subject land as being within the "Rural townships" described in row 2 of Table A. The Tribunal has considered the Appellants' detailed and lengthy submissions on this point in full.[10]

43. The Tribunal acknowledges that the phrase "Rural townships" is not defined in the Charges Resolution. The Tribunal therefore accepts that the absence of a definition does introduce some ambiguity as to the application of Schedule 1, Table A.

44. However, the Charges Resolution makes clear that it applies to all the Council's local government area, and that it adopts charges for development that is reconfiguring a lot. The Tribunal also accepts the 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. In that premise, the Tribunal is satisfied that the Charges Resolution applied to the approved development on the subject land.

45. It has not been argued by either party that the subject land falls within the localities described in row 1 of Table A. Similarly, it has not been argued by either party that the subject land falls within Maryborough, Howard, Tornanlea or Tiaro, as listed in row 2 of Table A. In circumstances where the Charges Resolution applies to the whole of the local government area and where the subject land is not contained in the localities otherwise described in Table A, the Tribunal is satisfied that "Rural townships" acts as a catchall to capture the other areas in the Council's local government area.

46. It follows that the Tribunal is satisfied that the subject land should be treated as being in a "Rural township" for the purposes of Schedule 1, Table A. In that premise, the Tribunal finds that the applicable adopted charge is $19,000 per lot.

47. For completeness, the Tribunal observes that paragraph 3.6 of the Charges Resolution refers to the Poona and Maaroom townships. That paragraph contemplates some discounting to the adopted charge for certain development in those townships. Plainly, the Charges Resolution applies to Poona and Maaroom. However, those townships are not otherwise referred to in the Charges Resolution, particularly in Schedule 1. That the Charges Resolution applies to development in those townships, notwithstanding that they are not referred to Schedule 1, supports the Tribunal's above reasoning.

Calculation of charge

48. Being satisfied that the two "pre-conditions" have been satisfied, the amount of the infrastructure charge to be levied on the approved development must then be calculated by applying the methodology in the Charges Resolution.

49. In calculating the charge, the Council applied credits for the percentage of the adopted charge that the Charges Resolution apportions to the water supply and sewerage trunk infrastructure networks, being a combined 28%, which reduced the amount of the levied charge from $19,000 per lot to $13,680 per lot. That was done in circumstances where those networks do not service the subject land and having regard to paragraphs 2.3 of the Charges Resolution, which provides a notional proportional breakup of the adopted charge between the various trunk networks. No challenge was made by the Appellants to that credit.

50. The Council also applied a credit for the existing entitlement to use the subject land for one residential dwelling. That credit was adjusted in the same way the Council adjusted the adopted rate to account for the fact that the subject land is not serviced by all trunk

[10] In particular, Appellants' final written submissions dated 25 August 2025, pages 4 to 7.

networks. The credit applied by the Council was $13,680. Again, no challenge was made by the Appellants to that credit.

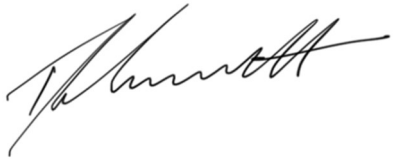
51. For the reasons developed above, the Tribunal calculates the infrastructure charge as $54,720. That charge has been calculated using the formula at paragraph 3.1 of the Charges Resolution:

$54,720 = [($13,680 x 5) - $13,680] x 1

Disposition

52. The Appellants have not satisfied the Tribunal that the appeal should be allowed.

53. The decision of the Council to give the ICN in the amount of $54,720 is confirmed.



Travis Schmitt
Development Tribunal Chair
Date: 3 November 2025

Appeal rights

Schedule 1, table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

(a) an error or mistake in law on the part of the Tribunal; or
(b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.
http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane Qld 4001

Telephone 1800 804 833
Email: registrar@epw.qld.gov.au