Presentation Notes

WEB

The following color scheme is adopted to assist readability

- Source- Legislation
- Source-Respondent
- Source-Appellant
- Source-Tribunal
- Source-other

Opening

Good morning your honour

1. This is an appeal from the decision of the Development Tribunal (Tribunal) (DTD25) in Appeal 25-021 (DTA21) which affirmed the lawful issuing of Infrastructure Charges Notice No. 5138178 (ICN25) in respect of Development Approval RAL21-0138 (RAL21) issued by the Respondent on 21 February 2025 for the subdivision of Lot 51 MCH567 into 5 lots.

2. Offer to hand up copy of my **Presentation Notes** to assist the court [Pause & Wait]

3. The Appellant's understanding is that this court is restricted, in considering this matter, to the material that was available to the Tribunal during the process of considering and deciding DTA21 unless an enabling Act provides otherwise.[1]

I could not locate such 'otherwise' provisions in PA16.

4. The Appellant will submit that, in reaching its determination, the Tribunal:

a. incorrectly interpreted and applied the relevant legislative framework provided for in the *Planning Act 2016* (PA16) and *Planning Regulations 2017* (PR17); and

b. failed to properly engage with the Appellant's submissions;

c. failed to critically examine the Respondent's submissions.

Thereby arriving at the wrong decision.

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[1] *Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission (2000) 203 CLR 194, 203–204; Fox v Percy (2003) 214 CLR 118, 125–126; Creek v Raine & Horne Real Estate Mossman [2011] QCATA 226, [15]–[17]. Douglas Construction & Engineering Pty Ltd v Logan City Council [2023] QPEC 28 @* [8-13]-"*…the Court must be careful not to exceed the express limitation on jurisdiction found in the enabling Act.".*

5. I will start by taking your honour the to the affidavit filed by Warren Bolton (Affidavit A) on 1 December 2025.

Affidavit A contains:

- a concise history of this matter; and
- copies of relevant documents; and
- a URL reference to a designated web site from which all electronic copies of documents, considered relevant to DTA21, by the Appellant, could be downloaded by the Tribunal.
  That website remains live under https://tuanqld.com/dt/dt.html

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Can I now take your honour to Attachment F Para [10 -12] of Affidavit A. [Pause & Wait]

Your honour will see at [11] the substance of the Appellants submissions to the Tribunal for DTA21, prior to the hearing on **19 August 2025.** [Pause & Wait]

The Appellants full submission are Attachments A. B and C of Affidavit A representing the issues presented to the Tribunal by the Appellant together with the electronic documents available for down load for the website.

6. I submit the material described in para 5 above was the Appellants submissions to the Tribunal and relevant to the issuing of ICN25 and fall within the requirements of PA16, Schedule 1, 1 (1) Specifically Table 1, items 4(a) (i) and (ii)

namely errors in:

A - **application** of the relevant **adopted charge**; and

B - **working out** of **extra demand**, for section 120 (1) of PA16

7. I believe the issues placed before the Tribunal and described in para 5 above can be boxed into these Grounds:

1. Application of Prescribed Development;
2. Charge Resolution Compliance; and
3. Application of Extra Demand: and
4. Tribunal Interpretation and application of Precedents

8. The material presented today in Grounds 1 to 4 was identified to the Respondent within the in **Grounds of Appeal** in the Notice of Appeal 129/25 filed **1 December 2025** and again reiterated in the Submission of Issues filed **20 February 2026.**

[Pause & Wait]

May I proceed your honour to **Ground 1**

Prescribed Development

GROUND 1

Application of Prescribed Development

STATUTORY FRAMEWORK

9. RAL21 0138 is *development* for *reconfiguring a lot* (RAL). A RAL is a process for rearranges boundaries on titles.

- A "*lot*" is a cadastral concept under the *Land Titles Act.*
- A "*premises*" is not a "*lot*"
- A RAL does not intensify or change the **scale** of, or *use* of, a *premises*.
- A RAL does not authorise a *Use*,[2] [Pause & Reference]
- Nor is a RAL listed as a *Use* in Column 1 Schedule 16 of PR17

PA16 Section 112 — Prescribed Developments

10. Section 112 PA16

(a) provides at (1) -> a regulation may *prescribe a maximum amount* for **each** *adopted charge*; and

(b) provides at (3)(b) -> a regulation may define *development* for which there may be an adopted charge.

PR17 Section 52 — Prescribe Development

11. Section 52 — Development for which an Adopted Charge May Be Levied

S 52 provides at (3)(a) a local government may *adopt a charge* for *trunk infrastructure* for development that is:

- *a material change of use;*
- *reconfiguring a lot;*
- *building work;*

AND is for a Use stated in Schedule 16, column 1.[3] [Cite 29 of Douglas]

Prescribed Development

12. A Schedule 16 prescribed Use, together with a *development types*, are co-determinant required for applying an *adopt a charge* for a *prescribed development*.

13. A *prescribed development* is required to acquire **chargeability**.

14. This is the statutory gateway.

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[2] *Johnston v Cassowary Coast Regional Council* [2008] QPEC 102 [Everson DCJ @ [7, 9 & 10] {Link}

3 Douglas Construction & Engineering Pty Ltd v Logan City Council [2023] QPEC 28 @ [29] {Link}

If a development does not satisfy both limbs, it is not a *prescribed development* and cannot lawfully attract an *adopted charge*.

15. The issuing of an ICN is only authorised where the development is a *prescribed development* within the authority of s 112 of PA16 and defined by s 52 of PR17

16. **RAL21 0138 is not a** *prescribed development*.

Schedule 16 — The Mandatory Use Test

17. Schedule 16 Column 1 lists the Use for which an *adopted charge* may be levied. These uses are *premises* Use, not *development* **types**.

18. Schedule 16, Column 1 lists *premises* Use such as:

- Dwelling house
- Multiple dwelling
- Short term accommodation
- Garden centre
- Shop
- Etc.

19. The statutory scheme requires the *assessment manager* to identify the Column 1 Schedule 16 Use associated with the development type to which the *adopted charge* applies in order to issue a ICN because the *adopted charge* has a relationship with the relevant *Prescribed amounts* in Column 2

20. Without an identified Schedule 16 Use it is not possible to determine the application of the correct *Prescribed amounts.*

21. A *reconfiguring a lot* development is not a Use listed in Column 1 Schedule 16.

22. As a result, the Respondent lacked jurisdiction to issue ICN25.

23. **This ground is dispositive.**

The Appellants Position Placed Before the Tribunal

24. The Appellants position before the Tribunal[4] was

- If a development is not for a Use prescribed in Column 1 of Schedule 16, it is not a *prescribed development* under PA16;
- If a development is not a *prescribed development* it cannot attract an *adopted charge*; even if:

[4] Appellants Supplementary P1 {Link} and Final Submission P2 Position 1{Link}

- that development is responsible for generating *extra demand* on *trunk infrastructure.*[5]

25. The Tribunal acknowledged the existence of such an entity as a *prescribed development*[6].

26. The Tribunal disposed of this argument with considering the matter raised[7]

The Respondent's Position Placed Before the Tribunal

27. The Respondent's submissions in DTA25 did not identify a **Schedule 16 use** for RAL21-0138.
Instead, the Respondent:

- relied on:
  - **geographic application** of the *Charges Resolution*;[8]
  - the **method** of calculating the applied charge; and[9]
- asserted that:
  - Upon **approval** of a development the Respondent was required, subject to the *extra demand* criterion, to give an ICN;[10] and
  - The Appellant had **only two** potential grounds of appeal[11]
    - The *Rural Township* definition problem; and
    - The Councils failure to undertake the necessary assessment required to determine that *extra demand* had been established
- treated the existence of the *development type* cited within the *Charges Resolution* solely as sufficient authority that the statutory preconditions for levying a charge, was met[12].

28. None of these matters satisfy the statutory requirement for the existence of a Schedule 16 Use.

29. The Tribunal accepted the Respondent's approach without addressing the **threshold question** of statutory precondition of identifying a Schedule 16 Use in order to issues an ICN[13].

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[5] Example Building Work for a Class X building (New shed on vacant land)
[6] DTD25 @ 38 {Link}
[7] DTD25 @ 25 {Link}
[8] Respondents Submission @26.
[9] Respondents Submission @6; 24; 27.
[10] Respondents Submission @21.
[11] Respondents Submission @22
[12] Respondents Submission @24
[13] DTD25 @ 25 {Link}

30. The Tribunal did not determine whether RAL21-0138 comprised a Schedule 16 Use necessary to be a *prescribed development* under s 112 PA16 and s 52 PR17.

This was a threshold issue; it was required to address.

Consequence of Non-Compliance

31. If a development is not for a Schedule 16 Use it is not a *prescribed development* under s 112 PA16 and s 52 PR17, and a local government has no authority to levy an *adopted charge*.

32. Section 119 PA16 can only authorise the issuing of an ICN for a *prescribed development*. which results in *extra demand* on the *trunk infrastructure* required by s 120

The issuing of ICN25 under the conditions set out in paragraph 6 was therefore beyond power.

The Tribunal's Failure to Address the Threshold Question

33. The Appellants' *Final Submissions* before the Tribunal clearly confirmed the issue that RAL21-0138 was not a *prescribed development* because it did not involve a Schedule 16 Use[14].

34. The Tribunal acknowledged the existence of such an entity as a *prescribed development*[15].

35. The Tribunal accepted the Appellants' summary of this contention[16] but then did not go on to determine:

- whether RAL21-0138 was a *prescribed development* under s 112 PA16;
- whether s 52 PR17 was satisfied; or
- whether any Schedule 16 Use applied.

36. Instead, the Tribunal focused on the mechanics of the levy calculation rather than the **threshold question** of identifying the **Use** to which the *adopted charge* applied[17].

37. The Tribunal's reasoning bypassed the statutory requirement that a Schedule 16 **Use** must be identified in order to support the issuing of an *adopted charge*.

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

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[14] Appellants Final Submission (Page 2 Position 1) and Supplementary (Page 2)
[15] DTD25 @ 38
[16] DTD25 @ 11
[17] DTD25 [13 to 18 and 28 to 34]

39. If the Court accepts Ground 1, it need not consider Grounds 2–4.

Charge Resolution

GROUND 2

Charges Resolution Compliance

FRASER COAST REGIONAL COUNCIL'S CHARGES RESOLUTION (2025).

Statutory Framework

Gergraphical Area of Application

40. 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*

41. This claim in the *Charges Resolution* is incorrect. 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 this resolution, to effectively exercise its rights under s 114(3) of PA16 to restrict its **application,** just to parts of its local government area.

Let me explain

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

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

In **Table A** 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 column 2 and 4, the following:

- *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*

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

These localities do not comprise the **entire** local government area and are simply a subset, therefore the statement in **1.6** is inaccurate and misleading.

The Undefined Term "Use Category"

44. (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**.

45. 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*."

46. (a) The *Activity Groups* are the **only lawful grouping mechanism** for uses under the Scheme.

(b) **Tables A** and **B**'s Column 1 *Use Categories* are not *Activity Groups* — they are **geographic** localities.

(c) **Tables A** and **B** *Use Categories.* do not engage with any lawful planning scheme terms at all.

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

- a **Schedule 16 use** (statutory requirement), and

Under 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 categories, development types* and *uses* which conform to the definitions in the planning scheme. These are not repeated in **Tables A** and **B** of Schedule 1 of the *Charges Resolution* instead it introduces a new and foreign term *Use Categories.*

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

The term *Use Category* appears nowhere in:

- PA16
- PR17
- Schedule 16
- The *Charges Resolution*
- The LGIP
- The Minister's Guidelines and Rules

49. **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.

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

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

51. 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.

52. Section 110 PA16 provides for a **regulation** to govern local government *adopted charges*[18]

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[19].

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;

The Undefined Term "Rural Townships"

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

54. The Tribunal accepted that:

> *the absence of a definition does introduce some ambiguity as to the application of Schedule 1, Table A*[20]

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*[21]

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.*[22]

55. Paragraphs 38 to 41 above-clearly display the error of the conclusion.

56. Without a definition, *Rural townships* there is no clear **certainty** with which the *assessment manager*, the **Tribunal** nor the **public** can clearly determine the document application as to:

- the **extent** of the areas the term *Rural townships* was intended to capture;
- **whether** the subject land (Lot 51 MCH567) falls within such an area;
- **where** an *adopted charge* should lawfully be applied.

This cannot be cured by administrative interpretation:

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[18] PA16-s110 (1)(c)
[19] PA16-s113 (5)
[20] DTD25 [43]
[21] DTD25 [44]
[22] See Footnote29

57. This approach is inconsistent with the statutory requirement for **transparency** and **certainty** under ss 3 and 5 PA16 for **transparency** and **certainty**.

Schedule 1 Table A and Schedule 16 PR17

58. **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.*

59. **Table A**, *Column 1 - Use Categories* contains expressed geographic localities (e.g., "*Maryborough*", "*Howard*", "*Torbanlea*", "*Tiaro*" "*Rural townships*",) for *All Zones*.

60. These are not Schedule 16 Use. - They are geographic descriptors.

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

62. This is not Schedule 16 Use. – Plus putting aside the legality, this information is ambiguous and confusing and therefore unacceptable as a statutory document statement.

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

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

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

65. 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.

66. 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.

67. 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 its function in Schedule 1;
- fails to provide the **transparency**, **accountability**, and **certainty** required by ss 3 and 5 PA16.

68. 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.

Performance of the Charge Resolution

69. 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.* "

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

71. The *Editor's note* cites:

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

This is the correct gateway — 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.

72. 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***.

73. This omission explains why the *Charges Resolution* does not identify any Schedule 16 *use* in **Table A** and also explains why **Table A** substitutes '*development types*, *zones* and 'locality descriptors' for lawful Use categories.

The Tribunal and the Charges Resolution's Globally Application.

74. 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.[23]

- Only development on land defined by *Column 1* of *Charges Resolution* is subject to application of the document.
- The interpretation of the *Charges Resolution's* global application disregards it's the designed function.

CONCLUSION

75. The drafting of the *Charges Resolution* failed to comply with the law thereby removing it authority to issue ICN25

76. The Charges Resolution is inconsistent with PA16 on the ground of its lack of **transparency** and **accountability** and its **unlawful** application.

77. **This ground is dispositive.**

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

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[23] DTD25 [42-45]

Extra Demand

GROUND 3

Application of Extra Demand

Introductory Framework

79. 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). [sX 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. [MGR x]

That process produces a baseline projection of future demand

This includes both

- the "**extra projected demand**" and
- the extent of any existing "**spare capacity**" —

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

Those projections are derived from objective investigation and modelling, and they form the foundation of the adopted charges framework.

Statutory Framework

80. **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.*[24]

81. Working out Extra Demand 120(2)

[24] *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

*(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.

82. Section 120(1) imposes a substantive statutory requirement — a precondition — that a levied charge may only be for extra demand that the development will generate.

That requirement operates as a limitation on the exercise of the charging power in s 119.

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.

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

Section 120(2) then 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 the applicant, nor does it authorise reliance on development type or presumption.

83. What remains unresolved by legislation is:

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

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.

84. What is also 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* to be determined.

85. The courts have already determined that, determination of the **quantum** of *extra demand* is not required for it to have application only whether the identified demand 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. [X]

86. What similarly remains unresolved is the process required to determine:

- whether a **development type** automatically generates *extra demand*, or
- whether *extra demand* identified, but by reason of existing *spare capacity*, can be accommodated in the existing in the network would still constitute *extra demand* for s 120(1).

87. A review of all 5 decision the Planning and Environment Court and Court of Appeal authorities concerning the term "extra demand" relevant to the matter raised in 77 and 79 above, did not provide a decision articulating:

- The definition of *extra demand*; or
- The process required by an assessment manager when determining if a development generates extra demand under s 120 as to:
  a. is an objective assessment of the all material at the disposal of the decision maker, required; or
  b. whether speculation or assumption is sufficient.

These uncertainties form the context in which Ground 3 arises.

Interpretation of "Extra Demand" Under s 120(1)

88. **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 that power.

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.

89. **Subdivision 1** of the same Division - **Adopting charges**, sets out the mechanism by which a local government may adopt 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.**

90. 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 usual or necessary.

When read with "demand", the phrase "*extra demand"* naturally refers to demand that exceeds the existing level or capacity.

91. 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 that generates demand beyond the **capacity of the existing network.**

92. 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 must be made by an objective and evidence-based assessment and cannot be satisfied by assumption or speculation, including assumption based on development type, of the actual demand generated by the defined use.

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 may an adopted charge be lawfully levied under s 119.

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

94. The development application material that supported RAL21 did not identify any use associated the development.

95. PR17 Schedule 16

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

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

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96. 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**

Instead, the evidence indicates that Council relied solely on **development type. [X]**

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.

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

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

Precedent

GROUND 4

The Tribunal decision that ICN25 was lawfully authorised by precedent law.

OVERVIEW

97. PA16- Section 120[25]

98. Even if Grounds 1–3 are not accepted, the Tribunal's decision must be set aside because it misinterpreted *Wagner Investments Pty Ltd v Toowoomba Regional Council [2019] QPEC 24* (**Wagner 1**) and *Toowoomba Regional Council v Wagner Investments Pty Ltd [2020] QCA 191* (**Wagner 2**), and failed to consult *Johnston v Cassowary Coast Regional Council* [2008] QPEC 102 (**Johnson**) thereby consequently misapplied s 120 of the PA16.

99. The Respondent's Submission at [17]; [18] and [20] referenced *Allen-Co Holdings Pty Ltd v Gympie Regional Council [2021] QPEC* 64 (**Allen**) as authority relevant to DTA21 for:

- compliances with s 120 PA16.
- requirement to calculate levied charges relative to *additional demand*
- *adopted charge* in a charge resolution being *immutable*

100. *Allen* concerned a challenge to an error in the **calculation** of an infrastructure charge[26]**.** It did not involve, and expressly excluded, any challenge to the validity of the **application** of an *adopted charge* or the legality of that *charges resolution*.

It also did not address the question of:

- what constitutes a *prescribed development*; and
- the requirement for a **Schedule 16** Use

101. This is because *Allen* applied to provisions of the *Sustainable Planning Act 2009* (SPA09), including ss 478 and 663, and described a charging framework consistent with SPA09 rather than the PA16.

As the statutory charging regime under the PA16 is different, *Allen* could not provide assistance to the Tribunal in determining this appeal.

[25] *Douglas Construction & Engineering Pty Ltd v Logan City Council [2023] QPEC 28 @* [6]-*"… on the basis that the infrastructure charge notice involved an error relating to the working out of extra demand for s 120 of the Planning Act 2016".*
[26] Allen-Co Holdings Pty Ltd v Gympie Regional Council [2021] QPEC 64 [3]

102. The Tribunal treated *Wagner 2* as authority for the proposition that an adopted charge *must apply* to **any approved development for Reconfiguring a lot**, on the basis that *extra demand* necessarily frows from the future consequence of that approval.

***Wagner 2* does not support that proposition**.

The decision in *Wagner 2* concerned a combined development approval for **reconfiguration** and **material change of use** development application for a defined Schedule 16 use, in which the existence of *extra demand* and the applicability of the *adopted charge* were not in dispute.

103. *Wagner 2* dealt with the infrastructure charging system under the *Sustainable Planning Act* 2009 and like *Allen* reviewed a system reformed by PA16

104. This makes the distinction unassailable

105. The Tribunal erred in law by concluding that RAL21 0138 generated *extra demand* on *trunk infrastructure* for the purposes of s 120(1) of PA16.[27]

106. ICN25 was therefore issued without statutory authority.

107. **This ground is dispositive.**

STATUTORY FRAMEWORK
The Legal Position: A RAL Is Not a Use and Cannot Generate Demand

Johnson (2008)

108. In *Johnson*[28], the Planning and Environment Court held that:

- A "*premises*" is not a "*lot*".
- A "*lot*" is a cadastral concept under the *Land Titles Act*.
- A RAL does not start a new use of *premises*.
- A RAL does not **intensify** or **change the scale** of *use*.
- A RAL simply rearranges boundaries on titles.

109. *Johnson* remains the only authority directly addressing standalone RALs.

It has never been overturned or challenged when applied to a development application of a single development for *Reconfiguring a lot*.

Wagner 1 (QPEC)

110. In *Wagner 1*, the primary judge

[27] DTD25 [14 &17&40]
[28] Johnson @ 9 and 10

at [98] held that:

- a RAL *···of itself does not involve the carrying out of work on land, nor does it involve a material change in use of premises. Instead, it is concerned with the re-arrangement of boundaries of premises rather than the **use** to which those premises may be put*.

And at [99]

- *The evidence, such as it is, is sufficient to satisfy me that there is no rational link between the reconfiguration of the land to create the subject lot and the estimated additional demand the Council considers will be placed on the transport trunk infrastructure network.*
- The *additional demand* in Wagner 1 arose from the accompanying MCU[29], for the *premises* not the RAL[30]

111. *Wagner 1* confirms — and does not disturb — the *Johnson* principle that a ROL is not a *use* and thereby cannot generate demand on *trunk infrastructure*.

Wagner 2 (Court of Appeal)

112. The *Court of Appeal* did not consider whether a standalone RAL can generate demand.

The only RAL in *Wagner2* (Appeal 186/17) was accompanied by an MCU, (Appeal 184/17) for the same *premises* and within the period of the overall development of the new airport and where demand on the lots, the subject of DA-RAL/2012/6226 arose from the MCU, DA-MCUC/2016/1844[31].

113. The Court of Appeal's observations concerning *trigger points*[32] were directed to the operation of the *assessment manager Charges Resolution* under the *Sustainable Planning Act 2009*

Those provisions have no analogue in the PA16 or the PR17.

114. The Tribunal's reasons do not disclose any analysis of the statutory text of PA16 or PR17, nor any examination of the structure of Wagner 2 beyond the submissions advanced by the Respondent.

The conclusion reached is difficult to reconcile with the statutory scheme, because the process mandated by PA16 and PR17 does not support the outcome adopted.

In circumstances where the Tribunal's reasoning aligns with the Respondent's mischaracterisation of Wagner 2 and the charging framework, and does not appear

[29] Wagner Appeal 186/17
[30] Wagner Appeal 186/17
[31] Appellant *Final Submission* (Page 1 - Response to Respondents Submission [20])
[32] Wagner 2 @ [115]

to engaged with the statutory preconditions in PA16 and PR17, the Tribunal has fallen into error of law.

115. The *Court of Appeal* did not over turn the primary judge's determination regarding the facility of a development for *Reconfiguring a lot* to generate demand on *trunk infrastructure*[33]

Application to RAL21-0138

116. The current state of the precedent law, as reflected in *Johnson* and *Wagner 1* is that *Reconfiguring a lot* (RAL) is not a *use* of *premises* and cannot, of itself, generate *extra demand* on *trunk infrastructure*.

117. Development approval RAL21 0138 is a standalone RAL development, not an integrated development approval (IDAS) containing any additional development for a *material change of use* (MCU), or *building works* and therefore of itself, incapable, of generating *extra demand* relevant to s 120(1) PA16.

118. RAL21 0138 as a consequence:

- contained no information in the material submitted with the development application[34] that could establish any use of the *premises* as a consequence of development approval;
- was not an integrated development (IDAS) accompanied by other developments;
- did not identify any Schedule 16 use;
- did not seek to authorise any use of land.

119. Under precedent law RAL21 0138 is incapable of generating demand on *trunk infrastructure*.

120. Section 120(1) PA16 requires that the development, the subject of the approval, actually generate *extra demand*.

RAL21 0138 produces no *extra demand*.

121. Section 120(2)(c) PA16 expressly excludes future *accepted development* from the assessment of *extra demand*.

The Tribunal's reliance on hypothetical **future** *accepted development* for MCU use[35] contravenes s 120(2)(c), which expressly excludes such development from the assessment, was not only erroneous speculation but unlawful interpretation.

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[33] Wagner 2 @ [ORDERS No 1]
[34] https://tuanqld.com/dt/docs/dap21.pdf
[35] DTD25 [38]

122. Section 119 PA16 authorises the issuing of an ICN for a development that attracts an *adopted charge* only if S120(1) is satisfies in relation to *extra demand.*

Statutory Consequence:

123. Section 119 (1) PA16 authorises the issue of ICN

However, s 119(1) is prohibited from operating on RAL21 0138 by s 119(12)(a), because an ICN can only be issued "*subject to section 120*", and s 120 cannot be sustained for RAL21 0138.

124. RAL21 0138 did not generate the *extra demand* required by s 120(1).

125. The statutory preconditions for issuing ICN25 were not met.

126. ICN25 was therefore issued without statutory authority.

The Tribunal's Error

127. The Tribunal:

- did not apply *Johnson*; and
- did not apply *Wagner1*; and
- misapplied *Wagner2*; and
- treated *Allan* as relevant when it was not; and
- treated RAL21 0138 as if it were a *use*; and
- relied on hypothetical possible future *accepted* development as evidence of *extra demand* generated by RAL21 0138
- did not give effect to the exclusion in s 120(2)(c) for *accepted* development; and
- treated speculative future for any use of the 5 *lots* as evidence of *extra demand*:
- failed to correctly interpret the exclusions authority of s 120(2)(c).

In doing so, the Tribunal failed to recognise that RAL21-0138 cannot generate demand as a matter of law and cannot therefore attract a ICN

128. This constitutes an interpretative error of law and a constructive failure to perform the required statutory task.

Summary

129. Because RAL21 0138 is incapable of generating *extra demand* under s 120(1) PA16, the statutory preconditions for issuing an ICN were not met.

130. ICN25 was issued without statutory authority and must be set aside.

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

Extrinsic Material

The Material

External assessment of legislative application

132. The Appellant notes that concerns regarding the implementation of Queensland's infrastructure charging framework have been raised by industry stakeholders.

In its 2022 submission[36] to the *Department of State Development, Infrastructure, Local Government and Planning*, the *Property Council of Australia* (Property Council) observed that cultural and implementation issues have emerged across the sector, including a shift from infrastructure planning toward revenue-focused practices, and instances of conduct exceeding the scope of authority conferred by the framework.

133. The Property Council further noted common practices such as the denial of offsets, the application of charges in a manner that results in "double dipping", and the abandonment of planning principles in the negotiation of conditions and infrastructure agreements.

These observations reflect the experience of industry participants navigating the current framework and perhaps why Parliament imposed stricter statutory preconditions in PA16 and PR17 and why those preconditions must be applied as enacted.

134. These matters are not relied upon as evidence of any particular conduct by the *assessment manager* in this proceeding. Rather, they provide a contextual understanding why PA16 places emphasis on *transparency*, *accountability* and strict statutory preconditions, and why careful attention to those preconditions is essential to maintaining the integrity of the charging framework.

Interpretive Framework: Transition from SPA09 to PA16 and Legislative Intent

[36] See https://tuanqld.com/dt/docs/propconc.pdf

135. The introductory section[37] of *Explanatory Notes* to the Bill that introduced PA16 confirms that PA16 is not intended to be interpreted through the reflected light of the *Sustainable Planning Act 2009* (SPA09).

SPA09 had been the subject of extensive review due to concerns about complexity, lack of transparency, and poor planning outcomes.

136. PA16 was designed to remedy those deficiencies by establishing a new legislative structure that improves accountability, transparency, predictability and planning outcomes, and provided a clearer, more responsive framework for both community and industry.

> *The Bill aims to significantly improve the **accountability** and **transparency** of the system, and enable better planning and development outcomes with effective engagement in a framework that **instils** investor and community **confidence**.*[38]

137. PA16 was designed to remedy those deficiencies by providing a clearer, more responsive and accountable framework than SPA09 for both community and industry.

Historic context of the Tribunal assessment process in DTA21

138. During the Tribunal consideration of DTA21, the Respondent characterised the Appellant's written submissions as "*unclear*" and "*not articulated with precision*" and advised the Tribunal that the Appellants' submissions *raises only two potential grounds of appeal*.[39]

(a) the *Rural townships* issue; and
(b) an alleged failure to undertake a mandatory assessment to determine *extra demand*

139. The Appellant did not accept that characterisation and addressed that in the *Final Submission* filed with the Tribunal[40].

140. As set out in paragraph 5 above, the Appellant submissions before the Tribunal[41]. presented a structured statutory pathway comprising three Premises and two legal Positions, each clearly identified and forming the basis of the Appellant's argument in DTA21

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[37] Explanatory Notes - Planning Bill 2015 - Pages 1 to 4
[38] Explanatory Notes - Planning Bill 2015 - Pages 2 para 3
[39] Respondents' submission [22]
[40] Appellants Final Submission – Page 2
[41] Appellants Final Submission – Page 2

Conclusion

141. RAL21-0138 is not a *prescribed development* under s 112 PA16 and s 52 PR17. It does not involve, identify, or authorise any *use* listed in Schedule 16. The Respondent did not identify any such *Use*, and the Tribunal did not determine whether any such *Use* applied.

142. The Respondent impermissibly relied on development types, zoning and geographic categories as proxies for *Use*. This approach is inconsistent with the statutory scheme, which requires use-based charging. Proxies cannot lawfully substitute for *Use*.

143. The *Charges Resolution* is inconsistent with PA16. It employs geographic descriptors instead of Schedule 16 uses, contains undefined and ambiguous locality categories, proports to applies globally, contrary to the LGIP, and fails to provide the transparency and certainty required by ss 3 and 5 PA16. A resolution that is inconsistent with the PA16 cannot support the issuing of an ICN.

144. The Tribunal misunderstood the decision in the two *Wagners* and *Johnson* cases and consequently misapplied s 120 PA16.

It relied on assumed future uses, treated RAL as if it were a *Use*, misapplied binding authority, and made a factual finding unsupported by evidence.

145. Each ground is independently sufficient to invalidate ICN25. Together, they demonstrate that the Tribunal's decision cannot stand.

146. The appellants respectfully submit that the appeal should be allowed, the Tribunal's decision set aside, and ICN25 declared invalid.
