Final Submission

Appellant's response to the Respondent's Written Submission.,

I make the following observations.

Overview

I concur with the position of the Respondent that the consideration by the Tribunal is restricted to:

A. Consideration of:

(i.) *the application of the relevant adopted charge*; **and**

(ii.) the working out of extra demand, for section 120;[1] ***and***

B. *The appeal may not be about the adopted charge*; **and**

C. The decision is required to be based on:

(i.) the evidence that was before the person who made the decision appealed against (i.e., the Respondent) at the time the decision was made; **and**

D. The Appellants have the onus of establishing that the appeal should be upheld

I could not find a connection or relevance for the material raised in the Written Submission in relation to:

a. The quality of the Appellants submission; or

b. The citing of a matter in progress in the P&E court.[2]

Minor disagreements

Respondents Comments

[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:*

Firstly, what was missing in the observation from the Court of Appeal case cited, was Judge Mullins previous sentence.

> *The relevant development is the proposed uses of the land as a result of the* ***reconfiguration*** [RAL/2012/6226 [Apeal-186/2017]] *and the accompanying application for a* ***material change of use***. [MCUC/2016/1844 [Apeal-184/2017]]

[1] Respondents Submission - 9 to 14 and *Allen-Co Holdings Pty Ltd v Gympie Regional Council* [2021] QPEC 64 @ [2]

[2] Respondents Submission - 11 and 22

The misconstruing of the content.

> *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.*

Thus making no mention of section 120 of the Planning Act or Justice Jones opinion that *Reconfiguring a Lot* does not constitute a **Use** as within a land planning context

And importantly - the following

> *Section 5.2(b) of the Charges Resolution expressly limits the accumulation of the charges, so that they do not exceed the maximum adopted charge for the development. Whether the maximum adopted charge for the development will be exceeded cannot be determined until the time for payment of the infrastructure charge arises. In the meantime, there was no error in issuing the ICN in conjunction with the reconfiguration of lot application, as it will be a matter of timing as to which ICN is paid first (which was recognised in the report prepared within the Council that preceded the issue of the ICN in respect of the reconfiguration).*

The '*trigger point*' referred to obviously is in a *Charge Resolution* not the Planning Act 2016 (PA16) or the Planning Regulations 2017 (PR17) and it is the matter of the *Charge Resolution* that we will get to later, as being a crucial element in this appeal.

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

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*[4].
>
> ***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.

[22] *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*

The matter surrounding the term *Rural township* is relevant only to the extent of the application of the *Charge Resolution* correctly identifying the **Use** type and areas to which the provisions of Table A "Use Category" applies.

A matter we shall get to when considering the *Charge Notice* itself.

[22] *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".*

The matter surrounding the requirement or not, to determine that a development will create *extra demand* we shall get to when considering that aspect of *Demand* and Section 120(1).

[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*.

This is correct.

[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.

Not sure how the Respondent arrives at this conclusion, as paragraph 22 subparagraphs (a) and (b) above, simply reiterate the grounds of an appeal in the Planning Act 2016 (PA16). I shouldn't have thought they constituted evidence of the proper construction of the *Charge Resolution* and it's application to the entirety of the Respondents local government area. Which according to Clause 1.6 of the *Charge Resolution* it does.

But in any event, here we are not discussing the application of that document we are here discussing the application of Table A, which is an entirely different construct.

By way of example, a development application for reconfiguring a lot within a *Locality* not prescribed by Column 1 of Table A is not caught by that Table, despite the *Charge Resolution* having application over that whole area.

But we shall get to that matter in due course.

[26] *That is so because:*

a. the Charges Resolution expressly states that it applies to all of the Respondent's local government area24;

Correct the *Charges Resolution* does express that intent. But as we shall see it does not have APPLICATION to the whole area.

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 works25, which are the only other types of development in respect of which the Charge Resolution applies adopted charges; and

I think for the purposes of accuracy that statement also needs to be addressed.

Table A (The relevant Table for this Appeal) of the *Charge Resolution* does establish two areas. Essentially, they are *Hervey Bay* and localities of *Maryborough*; *Howard*; *Torbanlea*; *Tiaro* and *Rural townships*

But the Appellant makes the point that the localities set out in that Table, which the Respondent correctly identifies, and that Council has the authority to declare, is problematic because without a definition identifying the precise description or localities of the *Rural townships* it's impossible to know what localities and what circumstances, are caught.

An issue we will address in some detail in due course

[26] *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.*

Again, with the greatest of respect, I would assert that the application of Column 1 of both Table A and Table B clearly demonstrate an *indication* that the *Charge Resolution* has an *intention* to exclude areas. Particularly those not defined in the *Use Category* column. With the obvious consequence that those areas are excluded from the *application of an adopted charge* for those development types, (*Reconfiguring a lot*, *building works* and a *material change of use*).

For example,

The *Charge Resolution* appears, on first impressions, to **only** apply to localities named in the Table A and Table B.

Column 1, Table A, provides in row 1, under the heading *Use Category* - **Hervey Bay** (Inc Burrum Heads, Toogoom, Booral and River Heads) with certain details.

Except "Inc" indicates however that the named localities are only a **subset** of Hervey Bay. There are obviously more localities in Hervey Bay. But the undefined *Rural townships* are excluded as a *Use Category* locality within the Hervey Bay rows.

So that application of the *Charge Resolution* for Table A Row 1 – is only Hervey Bay. It does not apply to the whole area,

But, if any of those spatial localities, identified in the Appellant's Submission {Extract Below} constitute *Rural townships* within the spatially defined *Hervey Bay* catchment, then those *Rural townships* would be exempt from the relevant defined *adopted charges* for each defined USE, prescribed by Column 2 and 3 of the Table.

Turning now to row 2 of Column 1, Table A for the *Use Category* - **Maryborough**, **Howard**, **Torbanlea**, **Tiaro** and *Rural townships,* this includes the undefined localities for *Rural townships*.

While *Rural townships* are undefined, they must exclude any localities in the undefined area of Hervey Bay. However, if there are *Rural townships* within the undefined area of Hervey Bay, they are excluded from application of the *Charge Resolution*

The problem caused by the lack of definition of *Rural townships* is set out below

The *localities* below are the defined 'named places' in the Fraser Coast Regional Council area, identified by **ID.com.au** – For Table A and Table B - **Blue** for row 1; **Green** for row 2 are, outside of *Rural townships,* the one identified in the Tables

localities of:

Aldershot, Antigua, Aramara, Bauple, Bauple Forest, Beaver Rock, Beelbi Creek, Bidwill, Boompa, Boonooroo, Boonooroo Plains, **Booral**, Brooweena, Bunya Creek, Burgowan, **Burrum Heads,** Burrum River, Burrum Town, Calgoa, Cherwell, Craignish, Duckinwilla, Doongul, Dundathu, Dundowran, Dundowran Beach, Dunmora, Eli Waters, Eurong, Ferney, Fraser Island, Gigoomgan, Glenbar, Glenorchy, Glenwood (part), Gootchie, Grahams Creek, Granville, Great Sandy Strait, Gunalda (part), Gundiah, Gungaloon, **Howard**, Island Plantation, Kanigan (part), Kawungan, Maaroom, Magnolia, Malarga, Marodian, **Maryborough**, Maryborough West, Miva (part), Mount Urah, Mungar, Munna Creek (part), Neerdie (part), Netherby, Nikenbah, North Aramara, Oakhurst, Owanyilla, Pacific Haven, Paterson, Pialba, Pilerwa, Pioneers Rest, Point Vernon, Poona, Prawle, **River Heads,** Scarness, St Helens, St Mary, Sunshine Acres, Susan River, Takura, Talegalla Weir, Tandora, Teddington, Teebar, The Dimonds, Theebine (part), Thinoomba, **Tiaro**, Tin Can Bay (part), Tinana, Tinana South, Tinnanbar, **Toogoom**, Toolara Forest (part), **Torbanlea**, Torquay, **Tuan**, Tuan Forest (part), Urangan, Urraween, Walkers Point, Walliebum, Walligan, Wondunna, Woocoo, Yengarie and Yerra.

Districts of:

Booral - **River Heads, Burrum Heads**, Craignish - Dundowran (part), Eli Waters, Fraser Island - Great Sandy Strait, Glenwood and District, Granville and Surrounds, **Howard** - **Torbanlea** - Pacific Haven District, Kawungan, **Maryborough Central** – North, Nikenbah - Dundowran (part), Oakhurst - Yengarie and District, Pialba, Point Vernon, Rural West, Scarness, Sunshine Acres - Walligan - Takura District, **Tiaro** - Bauple and District Tinana and District, **Toogoom**, Torquay, Urangan, Urraween, Wondunna

So, according to **ID.com.au** Hervey Bay is not an identified locality but according to **Schedule 3** of the **Planning Scheme** there is an estimate of between 68-76,000 EP[3] demand, within the sewerage network for Hervey Bay. So somewhere in Council documentation Hervey Bay must have a defined spatial area, just not called up within the *Charges Resolution*.

How many of these *localities* above are within the spatially defined area of Hervey Bay and could qualify as *Rural townships* is unknown and dependent on the definition, but in any event, they would be exempt from application of the *Charges Resolution*.

However, we can speculate that the following localities could probably be located in the Hervey Bay area and possible comprise attributes that may be caught by a definition for *Rural townships.*

[3] EQ= Equivalent Persons

Traviston; Craignish; Dunowran; Dunowran Beach; Point Vernon; Eli Waters; Nikenbah; Urraween; Pialba; Kawungan; Scarness; Torquay; Urangan; Wondunna; Walligan; Sunshine Acres; Takura - to name but a few

As for row 2, of *Use Category* in the Tables, that is ***Maryborough***, ***Howard Torbanlea***, ***Tiaro*** and ***Rural townships***, what members of the localities identified above by ID.com.au, qualify as *Rural townships* and what do not? - The answer is unknowable.

In the **absence of the definition** of what constitutes a *Rural township* it is possible that every *locality* identified above, 'named' could, theoretically, constitute a *Rural township* and for all zones.

Question like:

- does the definition of *Rural townships* prescribe a certain distance from the ocean to become a *Rural township?* or
- does the *Rural townships*, if any, so classified and within Harvey Bay catchment now get caught as the *Rural townships* for the purposes of row 2 of this Use Category of the Tables or
- are localities within this Harvey Bay catchment exempt under some definition for *Rural townships*? or
- is it only *Rural townships* which are located within **a rural atmosphere** (whatever that may be) and not of course in a rural zone (as that would be a zoning problem), are theses the ones caught by the relevant *Use Category* part of row 2 of Tables A

And, who is in possession of this knowledge?

The right and only answer of course is that it can't be known, unless we have a definition of what actually constitutes a *Rural township* and where they are located by say: spatial location, population size, available service, facilities, number of premises, etc, etc.

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 PA16.

……

Specific content and context

Legislation

Drafting, adopting, utilizing a LGIP is legislatively controlled both by PA16 and the Minister responsible under the act via published guidelines and the adoption of resolutions relevant to a LGIP, is controlled by PA16 and the Local Government Act 2009 (LGA9)

The decision to issue an *Infrastructure Charge Notice* (ICN) is likewise the subject to all these circumstances.

The current LGIP, commenced as a PIP (Priority Infrastructure Plan) and adopted in the Council's current 2014 Planning Scheme. On 3 July 2017 the PIP converted to an LGIP under the *Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014*.

The statutory review of the LGIP required under section 25(3) of PA16 was to be completed by 3 July 2022 but was concluded by the appointed reviewer on 20 March 2024. However, there is no information available as to the consequences for a LGIP from failure to comply with section 25.

On 28 April 2025 the responsible Minister provided me with this personal written advice.

> *During the development assessment process, a Local Government may determine whether development places additional demand on trunk infrastructure by undertaking a demand assessment of the development using criteria within its LGIP and infrastructure charges resolution.*

[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 generate17.

[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~~ extra 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].

The matter at issue in this appeal is not the '**calculation of the levy charged'** what is at issue in this appeal is the '**application** of the levy charge by the adopted *Charge Resolution*.

Cited Authorities

Things to note in relation to the cited authorities

Firstly ***Allens***

This appeal was on the ground that there was an error in the calculation of the charge. This is not the basis for the current appeal before the tribunal.

The Court also held (at [24]) that an appeal about the ICN cannot be about the *adopted charge*

Therefore, the Applicant's submission was not within the scope of what was permitted to be appealed against under PA16.

And Justice Rackemann provided the following:

> *The appellant did not directly attack the validity of the charges resolution and as has been observed, the appeal may not be about the adopted charge. Further, the appellant did not attempt to advance the* ***unreasonableness ground*** *of appeal and no sufficient evidentiary basis was laid for it in any event.*[4]*.*

Now **Wagner**

[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 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.*

The proceeding before the primary judge involved **10 appeals** by Wagner against the ICNs and were concerned with *transport* and *stormwater* infrastructure charges.[5]

Justice Mullins, on appeal, had this to say.

> The primary judge found (at [17] of the reasons) that there are two pre-conditions that must be satisfied before a local authority can issue an ICN: there must be a relevant trunk infrastructure and there must be additional demand placed on that trunk infrastructure [39]
>
> The primary judge noted (at [83] of the reasons) that for those four appeals, (179, 181, 182 and 185 of 2017) there was no relationship between the GFA and the likely traffic outcomes.
>
> The primary judge concluded (at [87] of the reasons) that the approach adopted by the Council in those four appeals was not a lawfully reasonable approach in the sense that it would result in outcomes that would be unlikely to bear any legitimate relationship between these developments and any additional demand placed upon trunk infrastructure for the purposes of s 636 (Now Section 120 of PA16) of the SPA [51]
>
> The primary judge then dealt with Appeal 186 of 2017. The primary judge concluded (at [99] of the reasons) that there was 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 and that "the levied infrastructure charge could not sensibly be said to be based on a reasonable estimate of likely additional demand placed upon trunk infrastructure that would be generated by this approval". [53]

And

> A minor aspect of the Council's argument takes issue with the primary judge's reference (at [18] and [19] of the reasons) to the observations made by McMurdo P at [46] and Morrison JA at [97] in *Fraser Coast Regional Council v Walter Elliott Holdings Pty Ltd [2017] 1 Qd R 13* as to s636 of the SPA requiring additional demand placed upon trunk infrastructure that will be generated by the development for the issue of an ICN.

[4] Allen- [32] p12
[5] Wagner QPEC 24 [7] p5

> The observations merely reflect the actual wording of s 636(1) of the SPA and **there could be no error in the primary judge's legal approach** as a result of referring to those observations. [54]
>
> I would therefore not be prepared to grant leave to appeal to permit the Council to argue that there was an error in the legal approach of the primary judge to the appeals.[74]

So, one must be cautious with the statement 'that the findings of the primary judge were overturned on appeal'

Further Justice Mullins went on to say:

> In order to deal with the construction of the Charges Resolution that is the subject of ground 2, it is necessary to dispose of the parties' competing arguments about the proper construction of **s 636** of the SPA.
>
> The respondents (Wagner) emphasise the requirements set out in s 636 of the SPA that limit an infrastructure charge to additional demand placed upon trunk infrastructure that will be generated by the development.
>
> They (Wagner) contend that the Charges Resolution must be construed in that context, so that a specialised use required that an approval-specific assessment of actual demand of the development on the trunk infrastructure be carried out by the Council.
>
> The Council's response is that s 636(1) (s120(1) PA16) must be construed by having regard to s 636(2) which shows the Legislature's intention was to set up a statutory regime that did not require an approval-specific assessment to be carried out to determine the additional demand generated by the development.
>
> Instead, the Council points to the methodology of the Charges Resolution that works out the additional demand by the selection of the adopted charge for the appropriate development category and charge area and the provision for deductions for a credit that are also calculated by reference to the appropriate adopted charge for the use which gives the entitlement to the credit or an offset or refund.
>
> The Council submits that the working out of additional demand for the purpose of s 636(1) is by the application of the adopted charge that is applicable under the Charges Resolution. [76]
>
> Section 636(1) of the SPA expressly provided for a limitation on the charge that may be levied by the Council for trunk infrastructure.
>
> That limitation is, there must be,
>
> "*additional demand placed upon trunk infrastructure that will be generated by the development".*
>
> That must be considered in the context of s 635(1) and s 635(2) that empowered the Council to give an applicant for development an ICN where "an adopted charge applies for providing the trunk infrastructure for the development".
>
> The relationship between s 635 (s119-PA16) and s 636 is important.
>
> Whereas s 635 authorised the levying of an infrastructure charge, s 636(1) imposed a limitation on the levied charge.

The nature of the additional demand contemplated by s 636(1) is set out in the Explanatory Notes for s 636 in the Bill that was enacted as the 2014 Amendment Act:

> *"Section 636 provides that a levied charge may be only for additional demand placed upon trunk infrastructure.*
>
> *For example, an application is lodged for the subdivision of 1 lot into 3 and there is an existing 3 bedroom house on the original lot.*
>
> *Assuming that each lot is intended to be used for a 3 bedroom dwelling and the local government has set an adopted charge of $28,000 per 3 or more bedroom house, the applicant should receive an infrastructure charge for the 2 new lots only ($56,000).*
>
> *The adopted infrastructure charge for the third lot, which includes the existing house, does not warrant an infrastructure charge as there is no additional infrastructure demand created by the lot.*
>
> *The recognition of the existing lawful use of a site or the existing (uncommenced) rights to develop a site through a discounted infrastructure charge is an established practice undertaken by many local governments and is commonly known as a 'credit'. Stipulating the parameters which govern how a 'credit' is issued within the SPA provides greater certainty to all stakeholders."*

And went on to advise:

There are therefore **two** aspects to demand in s 635 and s 636.

There **must be** demand which links the development with the relevant trunk infrastructure, but there **must be** additional demand over and above what the current uses of the subject land generate in respect of that trunk infrastructure.

On the basis of the express terms of s 635(1) and s 636(1), there are **two** pre-conditions for the levying of an infrastructure charge by the issue of an ICN.

These were **correctly identified** by the primary judge (at [17] of the reasons) as

- relevant trunk infrastructure and
- additional demand placed on that relevant trunk infrastructure by the development.

Where the parties disagree is **how that additional demand is determined** and reflected in the ICN.
[78]

The key to construing "additional demand" in s 636(1) is again the relationship between s 635 and s 636, the emphasis in s 635(1)(b) on the adopted charge applicable for providing the trunk infrastructure for the development and the relationship between the adopted charge and the SPRP[6] (adopted charges).

When the development generates additional demand on the relevant trunk infrastructure, the adopted charge for the appropriate development category is applied to calculate the levied charge.[79]

The levy charge is not required to be **calculated** by the quantum of additional demand **but** it is required to be triggered, as to if there is any 'actual additional demand generated by that particular development'[7]

[6] SPER is now reproduced as section 52 of the Planning Regulations 2017 and Schedule 16 of that Regulation
[7] Paraphrased from the contents of the lower portion of Paragraph [79] of Wagner - CoA

This still leaves us though without an unclear understanding of what actually constitutes *additional demand* or in the case of the current legislation's -the *extra demand* criterion.

Finally

> The primary judge erred by rejecting the application of the **adopted charge** for the development category selected by the Council in accordance with the requirement that applied for a use of "Air services" that fell within the development category of "Specialised uses".

Then

> Section 478(3) of the SPA made it clear that any appeal could not be about the adopted charge itself.
>
> The respondents had sought to distinguish between the adopted charge and the levied charge.
>
> Provided the threshold issue of additional demand being generated by the development on the relevant trunk infrastructure was satisfied, it was a distinction without a difference, as the levied charge was determined by the application of the adopted charge. [94]

Significant is:

> There was **no error** in the primary judge's decision to allow the appeal in respect of each of the stormwater charges associated with the **nine** appeals referred to in order 1 made by the primary judge and to set aside the stormwater infrastructure charges in the relevant ICNs.
>
> The Council's appeal against orders 1 and 2 made by the primary judge must be dismissed [107]

Reconfiguring a Lot -

> The relevant development is the proposed uses of the land as a result of the reconfiguration (DA RAL/2012/6226 - Appeal 186/2017) and the accompanying application (DA-MCUC/2016/184 - Appeal184/2017) for a material change of use.
> 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 (under Council Charges Resolution) for the issuing of an ICN in relation to that development. [115]

What would have been useful to assessing the authority of the opinion of Justice Jones in QPEC [2019] 24 regarding the status of *reconfiguring a lot,* as a development capable of generating a **use**, would have been, a determination by the CoA, if DA RAL/2012/6226 had simply been for solely reconfiguration itself, without a concurrent *material change of use* application.

……

Conclusion

GROUNDS

The ICN notice involved an error relating to—

A - The application of the relevant adopted charge by;

(i.) The working out of extra demand, for section 120;
(ii.) applying an incorrect 'use category', under a regulation, to the development

Extra demand- Section 120(1)

The Court of Appeal (CoA) clearly has dispelled the mythology that extra demand is whatever an assessment managers *Charges Resolution* says it is. The CoA supported Justice Jones conclusion in QPEC [2019] 24 that the process required to be undertaken by the assessment manager in determining to issue an *Infrastructure Changed Notice* (ICN) is a twofold exercise as described in paragraph 78 of the CoA reasons.

The CoA was not afforded the opportunity of forming a view on Justice Jones determination regarding the ability of the *reconfiguring a lot* to **not** generate a 'use' required as part of the process of making a determination in relation to the correct *adopted charge* to be levied under the *Charge Resolution*, as the concurrent *material change of use* rendered the issue mute.

We are still, as a consequence, lacking a statutory definition or an opinion of the courts, that conclusively defines the meaning of *extra demand* and the intent of the application in relation to criterion No1 under 120(1) of PA16.

However, the current legislation regarding the requirement to assess the impact of 'demand' by a particular development was first introduced in 2014 in the *Sustainable Planning Act.*

The Explanatory Notes to the bill, stated, when dealing with the scope of appeals advice about the 'reasonableness of a levy charge' and consideration of 'if the cost had been correctly apportioned between existing and future users taking into account the anticipated **usage** of the infrastructure or the **capacity** of the infrastructure, allocated to developments"

Specifically identifying of the term *capacity* in relation to the 'infrastructure servicing the development' is a significant element when considering a 'demand' application[8]

The fact that the Respondent has demonstrated the process by which it arrived at the determination that 'extra demand' was not required to be considered by a specific exercise when considered RAL21/0138, demonstrates without argument, that they failed to undertake part 1 of the statutory requirement [120(1) of PA16] before issuing the ICN.

Further, the evidence provided in the **Representation** stage to the Respondent for the ICN and reiterated in the **Submission** for this Appeal, provides good grounds for arriving at a determination that, had the required competent assessment been undertaken, at the appropriate stage, a significant possibility exists that it could have resulted in a finding, for this particular development application, in this specific location, that a distinct possibility existed that **no** extra demand would occur on the infrastructure identified.

Finally, lot 51 MCH 567, the subject of DA RAL21/0138 (Subject Development) was created in 1908. In the 117 years since its creation, this lot has made no demands upon trunk infrastructure.

[8] Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014-Explanatory Notes- See "Capacity" [P13-Clause 9] and [P48-Clause 41]

Demonstrating the fragility of a position that the mere creation of lot of land is a reliable indicator that it will result in subsequently posing, a **demand** on trunk infrastructure.

It is the Appellants position that the Respondents, in ***working out of extra demand, for section 120*** failed to undertake the required process to determine if DA RAL21-0138 will generate an extra demand on the relevant trunk infrastructure before issuing ICN 5138178 and thereby the ICN is ultra vires.

S112 PA16 and 52 PR17

The position that a council's *charge resolutions* and *adopted charges* are largely an unfettered, and liberal expression of authority, under the concept of a 'broad brush' approach is challenged by a forensic examination of s112 of PA16 and s52 of PR17, as set out on pages 1 and 2 of the **Supplementary** in support of this Appeal and should dispense with that position and demonstrate a requirement under law, to still operate in compliance with existing legislation, as detail in the Supplementary.

If further evidence was required, the evolution of infrastructure charges from *Integrated Planning 1997* through to the many iterations of the *Sustainable Planning Act 2009* will demonstrate beyond doubt the solid bases for arriving at the conclusion that this current process is not a free for all in its administration, by local authorities.

As argued in the Supplementary, trunk infrastructure charges applied as a consequence of a LGIP must have their basis squarely rooted in the requirements of the regulations. Both as to the **maximum amount** that can be charged and the spread of **uses** to which they can be applied

The Respondents *Infrastructure Charge Resolution January 2025* (Charge Resolution) in Table A

A. Identifies something termed a "Use Category" - Schedule 16 - Column 1 does not recognise a '*Use Category'.*
B. In Column 2 under the heading "Reconfigure a Lot Use" the Table does not identify any USE prescribed in Schedule 16 - Column 1

Section 52(3)(a) of PR17 called up by section 112 of PA16 makes it abundantly clear that simply being a *prescribed development* is not sufficient of itself to meet the requirements. It must be for a "Use" stated in Schedule 16 column 1 and if it doesn't qualify, then it will not fit the criteria required to be included in the 'local government's *adopted charges* for *trunk infrastructure,* for a development under Chapter 4 of the planning act'.[9]

And then, only when it has been determined that the particular development satisfies requirements of s120(1)

[9] PR17- s52(3)(a)

It is the Appellants position that the Respondents *Charge Resolution* ***applies an incorrect 'use category, under a regulation***, to DA RAL21-0138 and thereby the resultant ICN 5138178 issued as a consequence, is ultra vires.

Rural township

As presented above, the absence of the definition for *Rural townships* within *Charge Resolution* renders the application of Tables A impossible, in determining the *application of the relevant adopted charge.*

The *Purpose* of PA16 states that the Act will "*establish an efficient, effective, transparent, integrated, coordinated, and accountable system of land use planning (planning), development assessment*"

The *Charge Resolution* fails that requirement.

It is the Appellants position that the Respondents *Charge Resolution,* used as a basis to issue ICN 5138178, produced an "***incorrect Use Category***" thus rendering the subsequent ICN as ultra vires.

The Office of the Queensland Parliamentary Counsel's *Principles of good legislation-Clear meaning* provides that Legislation should be simple, precise and organised in a way to enhance comprehension. And that legislation should be user-friendly and accessible, so ordinary Queenslanders can gain an understanding of the laws relating to a particular matter without having to refer to multiple Acts of Parliament; and

legislation should:

- contain provisions that are precisely drafted; and
- contain coherent provisions that address foreseeable matters; and
- be drafted in a style that is as simple as possible and be consistent with the nature of the subject matter.

It is the Appellants position that the Respondents *Charge Resolution* is a *statutory instrument* and as such failed to achieve, under the *Principles of good legislation-Clear meaning*, the OQPC guidelines, for precisely drafted provisions, required in order to determine the correct ***Use Category*** for determination of *infrastructure charges notices,* thereby rendering the document inoperable resulting in the incorrect issuing of ICN 5138178.

Warren Bolton

Monday, 25 August 2025