

# Submission

## Background

**On 21 February 2025** Fraser Coast Regional Council (Council) issued a Decision Notice in relation to development application RAL21 – 0138. Concurrent with that date, Council issued [Infrastructure Charge Notices](#) 5138178 (ICN).

**On 9 April 2025** the Appellant made [Representation to the Council](#) regarding the ICN.

**On 11 June 2025** Council [drafted a response](#) to the Appellant's Representation rejecting all the issues raised in the Representation.

In rejecting the issues raised, Council confirmed that it '*is committed to maintaining a framework to ensure ongoing provisioning and upgrading of infrastructure for the benefit of those new developments and **existing residents in the region***'.- The bases for which local governments are empowered under a LGIP to raise infrastructure charges is NOT to benefit existing residents.

**On 17 June 2025** Council [emailed their response](#) to the Appellants.

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## Legislation

Chapter 4 of the Planning Act 2016 (PA16) deals with **Infrastructure**.

**Section 110** of Chapter 4 advises that Part 2 authorises local governments to do, amongst other things, two things in relation to development approvals affecting trunk infrastructure

Those two things are"

(a) adoption by **resolution**, charges for those development approvals; and

(b) The

(i.) **process** and

(ii.) **requirement**

for levying those charges

### Part 2

**Section 111** of Part 2 provides that Part 2 is only applicable if the local government's planning scheme includes an LGIP (Local Government Infrastructure Plan).

Fraser Coast Regional Council [have a LGIP](#). It is Part 4 of the current Planning scheme. It was developed under the *Sustainable Planning Act*.

**Section 113** of Part 2 of Chapter 4 provides the authority for local governments to adopt, by resolution charges for providing trunk infrastructure for developments

Fraser Coast Regional Council has [adopted such a Resolution](#)<sup>1</sup>. It was adopted at the Ordinary Council Meeting held on Wednesday, 20 November 2024 (ORD 11.3.4) to take effect from 1 January 2025.

**Section 120** deals with the **requirements for levying a charge** for trunk infrastructure.

Subsection 1 of that section provides that a charge **can only be levied** to cover the costs of providing trunk infrastructure when and if a **development places "extra demand"** on the relevant trunk infrastructure.

While Subsection 2 and 3 of that section prescribes things to be taken into consideration when **working out** that extra demand, the sections however remained **silent** as to the process for determining what constitutes extra demand.

This silence is most likely why the matter has been litigated in the Planning and Environment Court<sup>2</sup> and then in the Court of Appeal<sup>3</sup>

It is important to be cognisant of the fact that the developments that were the subject of consideration by both courts, were;

1. in relation to the application of the *Sustainable Planning Act 2009* ([SPA](#)); and
2. did not address the mechanism for determining - 'in what circumstances a development places *extra demand* on relevant trunk infrastructure'.

While the sections considered by the court under that SPA were not dissimilar in their wording to PA16, they are strategically different within the construction of PA16 itself.

**The object** of this appeal is to determine the correct process under PA16 for an assessment manager to arrive at the conclusion that any particular development results in placing *extra demand* upon trunk infrastructure.

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## The Argument

### 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<sup>4</sup>.

What constitutes *extra demand* has not been determined by the courts, however it could comprise 2 elements

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<sup>1</sup> Fraser Coast Regional Council Adopted Infrastructure Charges Resolution March 2025.

<sup>2</sup> *Wagner Investments Pty Ltd & Anor v Toowoomba Regional Council* [2019] QPEC 24 {PEC} [\[Get Copy\]](#)

<sup>3</sup> *Toowoomba Regional Council v Wagner Investments Pty Ltd & Anor* [2020] QCA 191{CoA} [\[Get Copy\]](#)

<sup>4</sup> PA Section 120(1)

1. Does a development, simply by **type** (i.e. Subdivision of land) constitute sufficient grounds to determine that an *extra demand* will arrive as consequence of its approval; or
2. If an assessment is required to first determine if a development generates an *extra demand*, does *extra demand* mean:
  - (a) 'a demand' that exceeds the current design capacity of the current infrastructure to accommodate increase at the required service standard level; or
  - (b) 'a demand' over and above the current use of the infrastructure even if within the current design capacity of that infrastructure;

Section 120 (2) provides some insight into possible scenarios in support of the interpreting of the legislation regarding what comprises extra demand, in favour of No 2(a)

Two examples are provided by Section 120(2) in the context of an acknowledgement that *demands* can be generated under certain circumstances and that these *demands* are not to be considered for the purposes of determining under section 120 (1) as "*extra*"

The two examples are:

Section 120(2)(b) provides the scenario where there was a 'previous use', that would have without question generated a certain *demand* and, in the situation, where the use had stopped thus removing the demand and when considering a further development, the previous demand cannot form part of the component in determination of what is *extra*; and

Section 120(2)(c) provides that another development on a premises that is lawful being carried out and no doubt generating existing *demands* for that premises similarly do not qualify as contributing *extra* demands for 120(1)

The best example I can think of from my experience is Blackwater in Central Queensland.

In the 1960s the Town of Blackwater was designed and constructed with infrastructure to accommodate a town population of 10,000 people.

Not only did Blackwater fail to reach the design parameters to fully utilise the constructed infrastructure but changes in mining practice saw dramatic decreases in the population size of the town from the 1980's over the period of the late 20th century and early 21st century (increasing mechanism and later FIFO).

Applying infrastructure charge on development in that context, would be contrary to the spirit and intentions of the legislator in introducing the mechanism that resulted in the development of LGIPs

## LGIP

### Premise 2

LGIP are essential in managing infrastructure decisions.

According to the department's website<sup>5</sup> LGIPs performed two functions.

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<sup>5</sup> <https://www.planning.qld.gov.au/planning-framework/infrastructure-planning/infrastructure-charges>

They are necessary:

1. In order to levy infrastructure charges; and
2. Determining development will place *extra demand* on the trunk infrastructure network.

And

*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 charges resolution.*<sup>6</sup>

Fraser Coast Regional Council (Council) Local Government Infrastructure Plan (LGIP) comprises **Part 4** of the Council's *Local Planning Instrument*

Council advises, via its web site that the LGIP

*"identifies council's plans for trunk infrastructure that is necessary to service urban development at the desired standard of service in a coordinated, efficient and financially sustainable manner";*  
and

*"The LGIP includes planning assumptions (for population and employment), priority infrastructure area, desired standards of service and plans for trunk infrastructure".*

The Department advises, via its web site that:

## 4.2 Levying infrastructure charges through development

### 4.2.1 Levied infrastructure charges

New development is **likely** to result in additional demand being placed on the existing trunk infrastructure servicing an area. Where a **LGIP** has been adopted, a local government may levy infrastructure charges on new development to recover costs associated with future expenditure on trunk infrastructure that is necessary to support the increased demand that the new development places on trunk networks.

.....

*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 charges resolution.*<sup>7</sup>

## Part 4

Provides at

### 4.1 Preliminary

(1) that "*This local government infrastructure plan has been prepared in accordance with the requirements of Sustainable Planning Act 2009.*"

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<sup>6</sup> Local infrastructure planning Guidance for local governments and applicants August 2023 – vs1.4 (4.2.1{p33})

<sup>7</sup> Local infrastructure planning Guidance for local governments and applicants August 2023 – vs1.4-Department of State Development, Infrastructure, Local Government and Planning

It then advises at subsection 2

*'The purpose of the **priority infrastructure plan**<sup>8</sup> is to:- "*

No document by that title "*priority infrastructure plan*" could be located in an extensive search of Council's website.

All that could be located was a reference in \***Schedule 3** Titled **Local Government infrastructure plan mapping and tables** (last updates on 9 September 2019 [More than 5 years ago]) –

Schedule 3 is a schedule to the Planning Scheme.

Schedule **3** contained **SC3.4 Priority Infrastructure Plan Mapping** [S3-21]

**SC3.4** title the *Local Government Infrastructure Plan Mapping* is a blank page in that Schedule.

The term *demand* appear 3 times in the LGIP.

1. **Part 4 Local Government infrastructure plan**

4.1 Preliminary

.....

(3) The local government *infrastructure plan*:-

(b) growth and urban development including the assumptions of demand for each trunk infrastructure network;

2. **4.2 Planning assumptions**

(1) The planning assumptions state the assumptions about:

(b) the **type**, scale, location and timing of **development including the demand** for each trunk infrastructure network.

3. **4.2.2 Development**

.....

(2) The planned **density** for future development is stated in \***Table SC3.1.3** (Titled *Planned density and demand generation rate for a trunk infrastructure network*) in *Schedule 3-Local government infrastructure plan mapping and tables*.

\*

**Schedule 3** - *Local Government infrastructure plan mapping and tables* provides in **SC3.1 Planning assumption tables** - a Table, **SC3.1 (Planning assumption table index)** lists the *planning assumption tables applicable to the planning scheme area*, and then within **SC3.1** the **Table SC3.1 Planning assumption table index** which lists tables contained within the schedule.

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<sup>8</sup> Sustainable Planning Act 2009- Priority infrastructure plan=PIP means a priority infrastructure plan under the unamended Act.

The list identifies the **Table SC3.1.3** as *Planned density and **demand** generation rate for a trunk infrastructure network*.

The first column in that *Table SC3.1.3* is titled - "Development Type" and listed are:

- detached dwellings
- attached dwellings
- commercial and retail
- community
- industry
- others and
- environmental management

There is no development **type** for **reconfiguring a lot** the subject of this appeal

#### Further

*SC3.2 Schedule of works tables* provides "*Table SC3.2 (Schedule of works table index) lists the schedule of works tables applicable to the planning scheme area*", which identifies **SC3.2.4 Transport network schedule of trunk works (roads and public transport)**

**SC3.2.4** List "LGIP ID", "Asset Names" and "Locality"

- **Tuan** does not appear as a *Locality* and
- The road network connection **Tuan** to **Maryborough** via Wilkinson Road; Booroonoo Road; and Maryborough-Cooloola Road, are not identified in the Table for the local government's infrastructure plan mapping.

#### 4.2 Planning assumptions (of the LGIP provides)

(3) The planning assumptions have been prepared for:

(a) the base date 2011 and the following projection years to accord with future Australian Bureau of Statistics census years:

- (i) mid 2016;
- (ii) mid 2021;
- (iii) mid 2026; and
- (iv) mid 2031.

(b) the LGIP **development types** in column 2 that include the **uses** in column 3 of **Table 4.2.1 - Relationship between LGIP development categories, LGIP development types and uses**.

(c) the projection areas identified on Local Government Infrastructure Plan Map PA-001 Projections Area Map in Schedule 3 - Local government infrastructure plan mapping and tables.

There is no **projection areas identified** as *Plan Map PA-001*. There is however online, a Plan Map **PIA-001** this however does not include **Tuan**

The subject development is located in **Tuan**.

**Tuan** is located in online map titled **PIA-004** of the *Projections Area Maps*

**PA-004** is not called up by '*4.2- Planning Assumptions*' of the *LGIP*.

**PIA-004** in any event only identifies the 'PIA' and 'Zoning' it does not address development **types**. In the case of the subject development - **Reconfiguring a Lot**

## Charge Resolution 2025

The Resolution states that it '*applies to all of Council's area*'.

The adopted charges for *trunk infrastructure* for **all** areas is for "*identified networks*"

The charges levied are **NOT** earmarked to **any** particular *trunk infrastructure*.

However, the resolution provides a notional proportional breakdown of the charges as follows:

- |   |         |
|---|---------|
| • water supply                            | – 7%    |
| • sewerage                                | – 21%   |
| • stormwater                              | – 7.5%  |
| • transport                               | – 53%   |
| • parks and land for community facilities | – 11.5% |

Infrastructure CHARGE	– 100%
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### Overview

The charge resolution itself is difficult to interpret.

The purpose of a Charge Resolutions (Resolution) is to determine, by resolution, the charge to be levied on a development which places an *extra demand* on specifically defined trunk infrastructure

### The Schedule

Schedule 1 of the Resolution is titled **Adopted Charge Rates**.

The notes in a schedule advise the number of things

They include:

That the content of column 1 is just included for convenience and to align (one assumes) to the contents with Schedule 16 of the planning regulations.

Schedule 16 of the *Planning Regulations 2017* identifies wide range of **terms** which in general refer to the 'nature of a building or a structure' but in some contexts, refer to an 'activity' for which either a building or parcel of land is used for.

**Table A** of the Schedule relates to **Reconfiguring a Lot** and comprises 4 columns and two rows. The first column is labelled "*Use Category*". In this column it identifies a number of spatial named localities within local government area and includes a term - "All zones"

Column 1 of Table A identifies "*Use Category*"

The first row of the *Use Category* identifies

- Harvey Bay
- Barham Head
- Toogoom
- Booral
- River Heads

**all zones** (not uses)

The second row identifies

- |                          |             |
|--------------------------|-------------|
|                          | Census 2021 |
| • Maryborough            | Pop 18,558  |
| • Howard                 | Pop 1,394   |
| • Torbanlea              | pop 841     |
| • Tiaro and              | pop 778     |
| • <b>Rural townships</b> |             |

**all zones** (not uses)

Column 3 AC of the Table - *Adopted Charge* displays the value in dollars

It is important however to note that Section 113(2) of PA16 reminds local authorities that the mere adoption of a charge resolution of its self, DOES NOT provide for the levying of that charge.

There are other requirements to be met in this regard.

In a planning context *zones* are used to define areas where certain *uses* are permitted. According to the Queensland government's Department of State Development Infrastructure and Planning "*every piece of land in Queensland is included in a zone*"

On the correct interpretation of Column 1. the statement provided in 1.6 (a) of the Resolution that "*This resolution applies to all of Council's local government area.*" is not correct.

If Schedule 1 is to be applied as drafted the contents of the Resolution apply **only** to all the "zones" in the spatial areas identified in that column.

This then leads us to the next area of contention.

Some of the spatial areas are identified by a 'locality name' (i.e. Toogoom) and easily defined I would say even by a metes and bounds description available through the mapping system of the planning scheme.

However, a significant problem arises in the use of the term *Rural townships*



“*Rural townships*” are not defined **textually** or **spatially** in the Resolution

The Fraser Coast Regional Council area ,according to **ID.com.au** includes the **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, Craginish, 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, Gualda (part), Gundiah, Gungahlon, 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.

And the **Districts** are:

Booral - River Heads, Burrum Heads, Craginish - 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

### And also

*The Fraser Coast Regional Council area encompasses **rural areas** and growing **rural-residential** and residential areas, with some commercial and industrial land uses. The main urban centres are Hervey Bay and Maryborough, with numerous **smaller townships** and **villages**.*<sup>9</sup>

So, what area constitutes a *Township*, *Rural Township*, *Village* or just a *Locality*?

According the Resolution<sup>10</sup>, a term used but not defined in this resolution will, unless the context otherwise requires, have the meaning give to it by (in the following order):

- (a) the Planning Act;
- (b) the Planning Reg;
- (c) the Planning Scheme;
- (d) the Acts Interpretation Act 1954 (Qld); or

*Rural Townships* are not defined in any of the (a-d) above

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<sup>9</sup> <https://profile.id.com.au/fraser-coast/about?>

<sup>10</sup> Charge Resolution 2025 (6.2)

(e) its ordinary meaning.

## Position 1

**It is unclear if Tuan constitutes 'Rural Townships or not.**

### Premise 3

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

The Planning and Environment Court determined that:

*While under the SPA the term "development" includes "reconfiguring a lot", it does not follow that that form of development would be capable of generating a demand on infrastructure.*

*The reconfiguration of a lot 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.*

*A distinction identified by Everson DCJ in Johnson v Cassowary Coast Regional Council.*<sup>11</sup>

It then went on to determine:

*While the evidence concerning this particular appeal is not entirely satisfactory, 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.*

And what did the Court of Appeal (CoP) say about that position?

Firstly, it said this

*If the charge applied for reconfiguring a lot, the charge became payable .....*

The use of the term "*if*" clearly indicating that it is simply not automatic that a development for *reconfiguring a lot*, would, solely because of the 'type' of development, qualify to attract the application of a charge under an Infrastructure Charge Notice (ICN) which in order to be levied must firstly satisfy Section 120(1) of PA16.

The CoP went on to state the primary judge's position thus:

*The proceeding below was conducted on the basis of pleadings and expert evidence and the agreed issues before the primary judge were summarised at [9] of the reasons. The approach of the primary judge to the construction of s 636 and other relevant provisions of the SPA is set out at [12]-[15] of the reasons. 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*

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<sup>11</sup> (2008) QPEC 102, [10],

- there must be **additional demand** placed on that trunk infrastructure<sup>12</sup>.

And

*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”***.<sup>13</sup>

Then

*The relevant development is the proposed uses of the land as a result of the reconfiguration and the accompanying application 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 for the issuing of an ICN in relation to that (material change of use) development.*<sup>14</sup>

And finally

### **Orders**

*It therefore follows that the orders should be:*

1. *Application for leave to appeal granted, **but not including leave to argue that there was an error in the legal approach of the primary judge to the appeals.***

So, the legal approach by the primary judge was to express the opinion that there is ‘no link between a development application for *reconfiguring a lot*, in determining whether or not there is **additional demand**, as a consequence of that development’

### **Claim 1**

**The assessment manager under section 120(1) of PA16 is required to undertake the exercise of determining whether or not additional demand on existing trunk infrastructure will occur as a consequence of that development, in order to issue a ICN.**

**No material has been produced or discovered to that identifies that this process was undertaken by the assessment manager.**

## **Evidence for extra demand**

Council provides on its website information in relation to its current LGIP. Amongst the information provided is an Excel spreadsheet which details trunk infrastructure Schedule of Works Model (SOW) Within the file is a spreadsheet labelled *Existing Trunk assets – Transport*.

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<sup>12</sup> CoA [P16(39)]

<sup>13</sup> CoA [P18(53)]

<sup>14</sup> CoA [P35(115)]

This particular spreadsheet lists all the road assets identified as a *trunk asset*

The development, the subject of the ICN, is located on Wilkinson's Road- Tuan. It is the trunk asset that would be subjected to the maximum impact of any increase in demand placed upon the trunk infrastructure asset for road transport.

Column 'O' of that spreadsheet indicates the 'current valuation' of the road asset: Column 'V' indicates the 'current replacement cost' of the asset.

The current *replacement cost* for the asset of Wilkinson's Road is exactly the same as the *current valuation* for Wilkinson's Road.

Under accounting principles this indicates that the asset has not depreciated below its replacement value, indicating no requirement for the allocation of funds for capital upgrading of the assets value.

No historic data is provided as to the traffic counts for the history of Wilkinson's Road that would support the proposition that road traffic in and out of Tuan is continuing to expand in demand and that the design of Wilkinson's Road would be required to be **upgraded** to handle this increased demand.

One of the two principal indicators used in the LGIP to assess potential generation of extra demands on infrastructure is **population growth**.

The appellant provided details to Council in their Representation to support the position that the Village of Tuan is actually contracting in population PLUS the population density of Tuan is significantly less than larger urban residential areas in the LGA area.

Further Tuan hosts a significant boat ramp facility with low tide access to the Great Sandy Strait providing for significant demand for traffic on this road not associated with residential development in the village. This creates the proposition that Wilkinson's Road already has reserve traffic capacity and corresponding standard in excess of that required to cater for transport generated by the development of 4 additional residential lots.

The principal of the LGIP system is to provide funds for capital works required to expand existing infrastructure. The LGIP system is not for the purposes of raising funds for the maintenance of existing infrastructure- This is a function of a local governments rates system.

## **Conclusion**

The Appellant asserts that the onus was upon Council to undertake the process required by Section 120(1) of PA16, to arrive at a determination that a development actually is responsible for '*extra demand*' over and above that which is within the capability of current existing trunk infrastructure.

The courts have determined that the mere classification of a development **type** is of itself not necessary a criterion indicating the generation of *extra demand*.

### **Proposed Finding**

The Council failed to undertake the necessary assessment required by section 120(1) of PA16 to determine if *extra demand* on existing trunk infrastructure actually existed and thereby required for the issuing of the ICN.

The ICN is therefore flawed and should be withdrawn.

Warren Bolton

Saturday, 12 July 2025