Submission-Supplementary

LEGISLATION

The *Planning Act 2016* (PA16) provides that an assessment manager may **only** levy a **charge** for its **trunk infrastructure**, when an issuing a *development permit* (DP) for a specific development[1], if that development would result in ***demand*** being **generated,** which places ***extra*** *demand*[2] on the service delivery capacity, of the local *trunk infrastructure*[3].

Compliance with this provision is mandatory for the issuing of an *Infrastructure Charge Notice* (ICN) by a local authority.

The provision encompasses 4 essential components.

They are:

A. *the development* must be of a **type** provided for by the legislation; and then
B. *the development* type must **generate** a ***demand***; and then
C. That *demand* must produce an ***extra*** load on the local trunk infrastructure; and then
D. A process is required to be undertaken to determine the application of Section 120(1) before issuing an ICN.

Section 120(2) reinforces the requirement for a process to be to undertake[4] by advising that, 'when working out this *extra demand* there are certain things that must not be taken into consideration' and then detail those exemptions.

THE PROCESS

A -Applicable development

Section 112 can be of assistance determining what and if a development application will generate '*extra demand*'

This section advises that a regulation [*Planning Regulation 2017* (PR17)] provides the following knowledge.

1. It will prescribe the **maximum amount** of a charge that can be levied in relation to a **particular development**; and
2. more cogently, it will actually **identify the developments,** for which there may be an adopted charge under a *charge resolution* adopted by a local authority

So, let's look and see what PR17 has to say.

The relevant section is 52.

[1] PA19 Section119(1)(a)- *a development approval has been given;*
[2] PA16 Section 120(1)-…… *charge may be only…*
[3] Note: While legislation is silent as to the *trunk infrastructure* for which an ICN may be levied, the determination that it must be in relation to "local" is the only conclusion that can be drawn from studying the mechanism by which the *charge is calculated* in compliance with Section 52 of the *Planning Regulations 2017.*
[4] PA16 Section 120(2)(a)- *When working out extra demand*,

It tells us, that for the purposes of determining the **maximum amount** of a charge that can be levied in relation to a particular development one needs to consult **Schedule 16** of PR17 which comprises 2 Columns.

PR17 advises that **Column 2** contains the '*prescribed amount'* that although not actually saying the word 'maximum' is the maximum amount that can be charged for the USE, provided in **Column 1**, opposite the *prescribed amount*.

This is our first clue in establishing the process for determining **what** developments attract determination of a charge to be levied.

The most poignant part of Section 52 however, is subsection 3(a) for it describes the developments, defined[5] in PA16 **and their circumstances** that make them eligible for the application of levied charge.

There are three development types defined by PA16.

A. a material change of use
B. reconfiguring a lot and
C. building work

BUT here is a **most** significant part of that advice.

Those three development types are contingent (*and*[6]) on being a development that attracts a charge, by delivering a USE that is identified in Column1 of Schedule 16

So, to take the first step in the process, which is to identify **a development which would attract a levy** one needs to first determine that the particular development is identified as being **eligible**, by PR17.

And whether or not a particular development **type** (the subject of the DP) is eligible, will be determined by the USE it engenders as identified in Column 1 of Schedule 16

Section 114 also lends authority to the position that for a development to be eligible to be considered for an *adopted charge*, the charge to be levied, must be that *prescribed by the regulation for the development* identified in the regulation (PR17)

Section 114 also deals with the ability to **adopt** an infrastructure charge for a particular development.

This section clearly demonstrates that to do this, any charge that the local authority wishes to incorporate into their resolution must be a charge *prescribed by regulation*[7]

The charges *prescribed by regulation* can be located in Column 2 of Schedule 16 of PR17.

So, if there is no charge identified in Schedule 16 then the resolution cannot contain a charge outside of that circumstance.

To reiterate - If a development is not a development in terms of the regulation that attracts an infrastructure charge, then there is no need to progress to the step or indeed necessity, for determining if it generates *extra demand* or not, because only developments prescribed by the regulation are subjected to the application of Part 2 of Chapter 4 of PA16

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[5] PA16 Schedule 2 - (p415)
[6] Regulation s52(3)(a)"*… **and** is for a use stated in schedule 16, column 1*"
[7] PA16 s114(1)(a)

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[8] 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.

B-Generate Demand

The next issue to be determined is to consider whether a development **type** (i.e. reconfiguring a lot) solely of itself which does not generate a USE has any support at law as being the mechanism for determining its liability to be the recipient of an ICN.

This matter has already been dealt with in the primary submission. But to reiterate, simply being a development for the *reconfiguring a lot* of itself does not even in accordance with PR17, qualify it to be the recipient of an ICN.

C-Extra demand

The initial problem with '*extra demand*' is, what actually is it.

The term is not defined anywhere within PA16 or PR17 or the *Explanatory Notes* for either.

In trying to interpret the intent of Parliament in relation to the application of *extra demand in* section 120(1) we must look elsewhere other than Section 120.

The *Department of State Development, Infrastructure, Local Government and Planning* in their publication *Local infrastructure planning Guidance for local governments and applicants January 2022 – vs1.2* only has to this to say

> *7. Working out extra demand placed on trunk infrastructure that the development will generate*
>
> *Section 120 of the Planning Act provides that a levied charge may be only for extra demand placed on trunk infrastructure that the development will generate. In working out extra demand, the demand generated by the following* ***must not*** *be included:*
>
> - *an existing use on the premises if the use is lawful and already taking place on the premises*
> - *a previous use that is no longer taking place on the premises if the use was lawful at the time it was carried out*
> - *other development on the premises if the development may be lawfully carried out without the need for a further development permit.*

Unfortunately, this tells us what extra demand **is not**, it doesn't tell us what extra demand **actually is.**

But it does tell us one thing though, it has to **be a thing** that can be **measured** at the **point of making a termination** whether or not to apply an infrastructure charge.

For a search of the department website for the subject "*Extra Demand" planning act 2016 infrastructure*. - No publication where encountered.

[8] PA16 a112(3)(b)

Legal precedent

I could find only three cases[9] where the P&E court considered matters associated with 'extra demand'. None of those cases attempted to define exactly what constitutes *extra demand,* just the mechanism by which it would it arise and in those three cases, only two were mildly relative to the consideration of its application to the development application RAL21-0138.

As far as I can determine the P&E court has not determined what constitutes 'extra demand' in relation to the alternatives set out in my Submission.

There is a tendency at present to hold the view that it means the 'additional use of existing infrastructure' regardless of whether or not that additional use has the potential to eventually require its the infrastructure's expansion in order to cope with the extra demand.

While at present it is rare, but not unknown, that there are areas in the state of Queensland where populations in established urban areas is declining and that in such places new development may simply be serving no better purpose than nudging the circumstances back towards historic levels of utilisation of existing infrastructure.

In such cases it would be considered to be an incorrect and in appropriate interpretation of the legislation that simply because its new development it will lead to consequences where existing infrastructure must inevitably be upgraded and consequently levy charges for such an event are supported by PA16.

Applying these findings to RAL21-0138

The first thing to note, is that this development application was for reconfiguring a lot (RAL) **only**.

> NOTE: It is relevant to the circumstances under consideration in this appeal that residential development that simply generates vacant lots of land are no longer a common form of subdivision of land. The vast majority of development for residential housing occurs now as a house/land package and only land more of the rural orientation is subdivided as just a RAL.

Fraser Coast Regional Council Infrastructure Charges Resolution 2025 sets out in schedule 1 the adopted charge rates

Schedule 1 contains the following notes

Notes –

> *1. *The categories shown in Column 1 below are **included only for convenience**, and to align with schedule 16 of the Planning Reg.*
>
> *2. Table A identifies the Adopted Charge rate for development that is **reconfiguring a lot**. Table B identifies the Adopted Charge rates for development that is a material change of use or building work.*
>
> *3. If a development approval approves a material change of use for more than one use, and provides for an area that is able to be used for more than one use, or is common between two or more uses, the Adopted Charge applicable to that area is to be calculated based on the applicable **use** listed in the table below with the highest Adopted Charge rate.*

[9] *1. Douglas Construction & Engineering Pty Ltd v Logan City Council [2023] QPEC 28-OPD*[Douglas] *– 2. Developers Pty Ltd v Logan City Council [2025] QPEC 8* [OPD] *– 3. Allen-Co Holdings Pty Ltd v Gympie Regional Council [2021] QPEC 64*[Allen-Co]

4. For an existing lawful use to which a development application is seeking to expand the gross floor area of the facility, the infrastructure charge is only to be applied on the part of the development which is subject to intensification or extension.

* It is difficult to comprehend the nature and explanation for this statement, because the identification of the use generated by a particular development is **paramount** in the decision-making as to if or what infrastructure charges will be served on the applicant as a consequence of the issuing of the development permit and seems to infer that Schedule 16 of the regulation has no real application to this *charge resolution*

Table a provides the following

Table A – Reconfigure a Base Charge Rate

Column 1 USE Category	Column 2 Reconfigure a Lot USE	Column 3 (U) Charge Category	Column 3 (AC) Adopted Charge
Maryborough, Howard, Torbanlea, Tiaro and Rural townships- All zones	New lot with development entitlement.	$ per lot	$19,000

While Table B provides:

Column 1 Use Category	Column 2 USE	Column 3 (U) Charge Category	Column 3 (AC) Adopted Charge
Rural townships	Dwelling House	$ per 1 bedroom dwelling	$6,500
		$ per 2 bedroom dwelling	$10,500
		$ per 3 or more bedroom dwelling	$19,000

I believe the Planning and Environment Court has satisfactorily established the principle that *reconfiguring a lot* of itself does not constitute a USE[10], in terms of the USE provided for within PR17.

As we have seen the USE defined in Column 1 of Schedule 16 are almost universally describes as the USE of a **facility**, which of themselves **are not a zone**.

Column 1 of Schedule 6 does have headings above the facilities for the USE that it defines but these do not necessarily correlate to zones within local planning instruments but grouping of types of facilities that service the nature of that activity.

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

[10] *Wagner Investments Pty Ltd & Anor v Toowoomba Regional Council* [2019] QPEC 24 @ [98]

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.

Warren Bolton

Sunday, 17 August 2025