Submission

Further to my request to the Minister to consider amending the Planning Act 2016 as a consequence of a decision of the Planning and Environment Court in the Grunske versus Fraser Coast Regional Council, [QPEC 16-2016] the Minister has referred me to consult with you about my concerns in this regard.

If you peruse the decision of the court in the above matter you will see that Judge Cash has determined that the correct interpretation of the relevant part of the legislation, as it exists, is as follows: -

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BACKGROUND

Section 112 of the Act provides that a **regulation** may prescribe the development for which there may be an adopted charge under Chapter 4 of the Planning Act 2016 and the maximum amount permissible for that charge.

Accordingly, the Planning Regulation 2017 in Section 52 prescribes the condition under which a development may attract that charge.

Section 113 of the Act provides the format and the power to local government to adopt such a charge.

Section 114 provides that an adopted charge may be made for a development approved by a council if the **charge is permitted by regulation** for that development and the charges is no more than the maximum adopted charge for providing trunk infrastructure for that development.

Section 119 provides that a local government must give an ***infrastructure charges notice*** to the Applicant of a development application when that ***prescribed*** *development* is *approved*.[21][1]

REASONING/INTERPRETATION

Judge Cash reasoned that the correct interpretation of this legislation is that if the approved development is one of the three development types identified in Section 52 and is FOR a USE set out in Column 1 of Schedule 16 of the regulation, then this development is a development that is to be the subject to an *Infrastructure Charging Notice.*

However, the most important component of the judge's interpretation is that '**any use'** identified in Column 1 of Schedule 16 CAN BE APPLIED to a development and need not be a use defied or identified in the Form 1 of the subject development application of the subsequent approval.

A USE need only be a use that is ***accepted development*** under the planning scheme of a council for the parcel of land, the subject of the development approval.

As you will note from a review of the decision, the development in this particular case was for the Reconfiguration a Lot **only**. The application was not an IDAS type application. No Schedule 16 use was identified in Form1 or the common material and was not so required to identify one.

The court's determination was, that it was sufficient of itself that there exist "a use" in Column 1 of Schedule 16 that may **or may not** occur in the future, as a consequence of the subdivision, as long as

[1] QPEC-16

the USE type was an allied possibility, indicated as an *accepted development* under the Council's planning scheme's Table for **Material Changes of Use** for the zoning.

Outcome

This decision is fraught with a wide range of implications. - I will set them out below.

As an example of this application of the courts determination, you will note that Judge Cash, when delivering his interpretation [22][51][2], chose as the example of potential future USE, a "dwelling house" that may occur as a consequence of the development approval for this *Reconfiguration a Lot*, because the zoning of the land [*low-density residential*] at that particular time was a 'residential use' in nature, and Column 1 of Schedule 16 defined a number of uses that could be carried on land within the *category* {not zone} ***Residential uses***.

The first issue to be considered is whether or not this determination by the court poses real problems for the requirements of Section 5 of the act, which requires an entity who is administering the planning act to do so in a way that it achieves the purpose of the act.

The purpose of the Act is set out in Section 3

The purpose of the Act is to provide amongst other things, a **development assessment system** that amongst other things is ***transparent*** and ***accountable.***

It can hardly be asserted a system is *transparent* and *accountable* if it is entirely at the discretion of an assessment manager to determine what particular **future use** may be attached to a parcel of land, that is the subject of a development approval for subdivision, for the purposes of determining the appropriate infrastructure charge to be applied.

You don't have to have a lot of experience in land planning and development assessment to recognise that this represents a reasonable portion of speculative capacity and *speculation* is not an attribute that belongs associated with *transparency* and *accountability.*

For example. The particular parcel of land that was the subject of the subdivision was created in 1908 the land has in consequence, remained vacant for 118 years.

If this legislation existed in 1908 an infrastructure charge would have been levied for land that did not at any of that time, provide any evidence of making an extra demand for impact on existing council infrastructure.

The next particular feature which is relevant is the four *uses* identified by Judge Cash [22][3] is as follows:

Firstly, none of the four uses cited are **ironclad** *acceptable developments*.

The Councils planning scheme provides for circumstances, relevant to any particular *acceptable development*, that it can be remove from being an *assessable development* upon failure to satisfy the scope of the accreditation. The ability to make this decision requires information on the design and function of the *acceptable development.*

[2] QPEC-16
[3] QPEC-16

This is not available to a speculative use selection.

Further, this would then require a development application for *assessable development.*

Now, if an applicant wished to determine the maximum charge applicable before lodging an application, it would require knowledge of the number of bedrooms that are proposed for the speculative future use, chosen from Column 1 in the *Residential Use* category of Schedule 16. - An impossible task.

Unless of course, a local government determined to set an adopted charge for all 4 residential USES at a level below the lowset maximum. I note this is not the current case.

Even if this was allowable, we have situations where Column 3 further requires empirical knowledge to be able to carry out a determination as to what the **maximum amount** of a levied *Infrastructure Charge Notice* would be, using this required data, in the form of the:

- 'number of bedrooms' in a building or
- 'number of tents or caravan sites or cabin on site' or
- 'size and nature' of the square metre - 'gross' or 'court' areas; and
- 'nature of the buildings' associated with each.

Next. Planning law at present provides the facility for an individual to make an application to **materially change the use** of any parcel of land, except that prohibited by regulation

There not only provides wide scope for a future owner of a parcel of land, purchased as a consequence of a subdivision, to lodged with Council and application for a *Material Change Of Use,* which may, for example in the development before the court, be the installation of say, a 'bait and tackle business' to service the large volume of residential fishing enthusiasts that utilise the boating facilities provided in the locality of this land or perhaps a 'storage facilities' for people who may wish to utilise the storage of fishing vehicles and equipment in close proximity of this boat ramp facility - plus several other options that are equally plausible.

The legislation appears to be silent as to these circumstances, if this was to occur. Would the approval of the Material Change of Use in these cases also generate the issuing of further infrastructure charge notice? - A duplication of the adopted charging!

Next. Then of course there are uses in Schedule 16 for which there are zero amounts chargeable for **low impact; rural; or minor uses;** such as home-based businesses; markets; and temporary use.

What would be the circumstances if the actual **final use** effected on one of the subject lots, turned out to be a use for which there is a zero maximum infrastructure charge amounts?

What facility is there for a refund to the Applicant of the original reconfiguration, of the funds, paid to Council, to cover infrastructure costs, no longer applicable to the eventual use of the land.

The point being, in all these examples, none of these things are available to assessing authority **at the point they are required to make a determination of the relevant charge to be levied.**

Nor is it possible for an applicant, lodging an application for approval with an assessment manager, to be able to determine by reference to the legislation, as interpreted by the court, the maximum liability

they may occur in receiving an approval for a development for which **no use** has yet been identified by the applicant for subdivision.

Next. A further complication is also embedded in this interpretation of the court.

If we take the example of the court, which selected a “dwelling house” use, as an example of a use that may be applied to a development for the subdivision of land zoned residential. This demonstrates a lack of understanding of the difference between ‘a legislative use’ and ‘enlivening that use’ into effect.

For example, the land planning *use* of the term *dwelling house*, cannot be exercised in the absence of a **building**. While a *dwelling house* itself may, under councils planning scheme be considered to be an *accepted development* in land use terms, in a residential area, a person cannot exercise this right without the construction of a building and the construction of a building for a *dwelling house* is *assessable development* under the planning scheme.

Further the *accepted use* provided by a planning scheme is conditional upon the **building design** complying with the use qualifications of the scheme.

Falling to meet those prescriptions for a building for a *dwelling house*, places it outside the prescribed criteria for *accepted development* and thereby ceases to be *accepted development.* An outcome that will requires the local authority, as concurrence agency, to assess any development application made to a building certifier in this regard.

Again, none of this can be known, when a use type is chosen by speculation, at the time of approving a unqualified simple subdivision of land.

With none of this above material available at the point of decision making, one could only come to the conclusion that the determination by court of this application of the legislation must surely not satisfy the requirements of Section 5 and 3 of the Planning Act 2016 as it is also practically undeliverable at the point of determination without the presence of any of the concrete data that is essential in determining the actual Use that will me made of the subdivided land, post subdivision, and to appropriate the relevant **maximum prescribed amount** for a development, relevant to the regulation.

With respect, given this determination of the court, serious amendments are needed to rectify the problem created by this outcome.

Warren Bolton

Monday, 30 September 2026