



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	25-006
Appellant:	Kieran John Gibson
Respondent:	Gladstone Regional Council
Site Address:	3 Golding Street, Barney Point Qld 4680 and described as Lot 20 on G14118

Appeal

Appeal under section 229 and Schedule 1, Table 1, Item 4(a) of the *Planning Act 2016* against an infrastructure charges notice given by the Gladstone Regional Council on the ground the notice involved an error relating to the application of the relevant adopted charge.

Date and time of hearing:	19 May 2025 at 10:00am
Place of hearing:	Online via video
Tribunal:	Travis Schmitt – Chair Stewart Somers – Member

Decision:

The Development Tribunal, in accordance with section 254(2)(b) of the *Planning Act 2016*, changes the decision of the Council to give the adopted infrastructure charges notice in the amount of \$32,355.70 such that the total adopted infrastructure charge is \$0.

Background

1. The Appellant made a development application to the Gladstone Regional Council (**the Council**) for the material change of use of property at 3 Golding Street, Barney Point. Relevantly, the application sought to convert an existing dwelling house to a “Rooming Accommodation” use for long-term rental purposes for a maximum of eight people within three “tenancies”.
2. That application was approved by the Council and an adopted infrastructure charges notice was subsequently issued by the Council on 6 February 2025 (**the AICN**). The AICN detailed the infrastructure charge applicable to the approved development and stated that the charge had been “Calculated in accordance with the Gladstone Adopted Infrastructure Charge Resolution (No.1) – 2015 – Amendment No.2.” (**the Charges Resolution**)
3. In the AICN was the following “calculation breakdown” and the “amount of the charge”:

CALCULATION BREAKDOWN	Charge Area 1 Credit: Dwelling House (3+ bedrooms) = \$28,311.20 Charge: Rooming Accommodation (accommodation long Term) <u>@ \$20,222.30 (1 or 2 bedroom) = \$60,666.9 (3 bedroom units)</u>
AMOUNT OF CHARGE	Charge – Credit = \$32,355.7

4. The Appellant made representations to the Council concerning the calculation of the charge. The Council did not agree with those representations and issued a notice about its decision to confirm the AICN on 3 March 2025.
5. In this appeal the Appellant says that AICN involved an error relating to the application of the relevant adopted charge. In particular, the Appellant says the charge has been calculated incorrectly under the Charges Resolution.
6. The Appellant says that upon proper application of the Charges Resolution the amount of the charge, once credit to be applied to the existing use has been taken into account, is \$0.
7. The Appellant seeks that the AICN be changed such that there are no infrastructure charges payable. The Council opposes the relief sought and says the AICN should be confirmed.

Conduct of appeal

8. The Tribunal convened to hear the appeal via video link on 19 May 2025. The Appellant appeared and was assisted by Stephen Enders and Shaunte Farrington of Zone Planning Group. The Council was represented by its officers Nicholas Cooper, Zayra Rodriguez and Juanita Rodwell.
9. The Tribunal has considered the following material in determining the appeal:
 - (a) Form 10 – Notice of Appeal and attachments:
 - (i) Letter from the Council to the Appellant dated 3 March 2025 including Negotiated Decision Notice DA/76/2024
 - (ii) Letter from Zone Planning Group to the Registrar, Development Tribunals dated 18 March 2025 containing submissions in the appeal and appendices:
 1. Completed application form (Form 10)
 2. Negotiated Decision Notice DA/76/2024 including approved plans
 3. Infrastructure Charges Notice dated 6 February 2025
 4. Notice of refusal of negotiated ICN dated 3 March 2025
 5. Development Application submission dated November 2024
 6. Confirmation notice and Information request dated 10 December 2024
 7. Information Request Response dated 19 December 2024
 8. Negotiated ICN submission dated 11 February 2025

9. Gladstone Regional Council *Infrastructure Charges Resolution (No. 1) 2015, Amendment No. 2*

10. As discussed below, given the Charges Resolution's reference to the State Planning Regulatory Provision (Adopted Charges) – July 2012, that document has also been considered by the Tribunal.
11. Having considered that material, the Tribunal finds that the appeal was made within the appeal periods imposed by sections 125(7) and 229(3)(e) of the *Planning Act 2016*. The Tribunal also finds it has jurisdiction to hear the appeal pursuant to section 229 of that Act.¹
12. The appeal is by way of a reconsideration of the evidence that was before the Council.² It is for the Appellant to establish that the appeal should be upheld.³

Infrastructure charges regime

13. To best understand the parties' rival contentions, it is convenient to start with the infrastructure charges regime applicable in this matter.
14. It is uncontroversial that the Council has adopted charges for providing infrastructure for development by the Charges Resolution. That resolution took effect on 8 March 2017 and applied at the material time.
15. As stated at paragraph 1.1 of the Charges Resolution, the resolution was made pursuant to s 630 of the *Sustainable Planning Act 2009* and is to be "read in conjunction with the State Planning Regulatory Provision (Adopted Charges) – July 2012" (**the SPRP**).
16. Section 630 of the now repealed *Sustainable Planning Act 2009* provided that "A local government may, by resolution (a **charges resolution**), adopt charges (each an **adopted charge**) for providing trunk infrastructure for development." Section 631 then provided that "An adopted charge may be made only if it is – (a) permitted under the SPRP (adopted charges); and (b) no more than the maximum adopted charge for providing trunk infrastructure for development."
17. Section 635 then relevantly provided that:

635 When charge may be levied and recovered

- (1) This section applies if—
 - (a) a development approval has been given; and
 - (b) an adopted charge applies for providing the trunk infrastructure for the development; and
 - (c) section 205 does not apply to the development.
- (2) The local government must give the applicant an infrastructure charges notice.

18. Similar provisions are now contained at sections 113, 114 and 119 of the *Planning Act 2016*.

¹ See also *Planning Act 2016*, Schedule 1, Table 1, Item 4(a). The Tribunal has considered s 229(6) of the *Planning Act 2016* and is satisfied that the appeal is not about the matters listed therein.

² *Planning Act 2016*, s.253(4).

³ *Planning Act 2016*, s.253(5).

19. By paragraph 2.2 of the Charges Resolution, the Council did adopt charges for particular development. It provides:

2.2 Application to particular development

- (i) This resolution adopts a charge for particular development that is equal to or less than the *maximum adopted charge* and adopts different charges for particular development in different parts of the *local government area*.
- (ii) To enable the *adopted infrastructure charges schedule* identified in the SPRP to be applied to existing development use types, Appendix 1 identifies the relationship between existing planning scheme use types and the classes of development to which the *adopted infrastructure charges schedule* apply.

20. Relevantly, paragraph 3.1 then provides:

3.1 Development subject to adopted infrastructure charges

- (1) The local government may levy an adopted infrastructure charge on the following development:-

...

- (ii) a material change of use or building work for:
 - (a) residential development as stated in Appendix 3, Adopted charge for residential development.

21. How any charge is to be calculated is prescribed by paragraph 3.3:

3.3 Calculation

An adopted infrastructure charge that may be levied by the *local government* is calculated as follows:-

$$TAIC = [(AIC \times U) - (C)] \times I$$

TAIC is the total adopted infrastructure charge that may be levied by the *local government*

AIC is the adopted infrastructure charge as identified in Appendix 2, 3 & 4.

U is the unit of calculation as identified in Appendix 2, 3 & 4.

C is the credit as set out in Part 4.

I is the indexation rate as stated in Section 3.4.

22. In determining the values to be applied to AIC and U in the above formula regard must be had to the appendices listed therein. Relevantly, the adopted charges for residential development are contained in Appendix 3. As required by paragraph 2.2(ii), Appendix 1 must first be consulted to identify the relationship between existing planning scheme use types and the classes of development to which the “adopted infrastructure charges schedule” apply.

23. At Appendix 1, the approved use, Rooming Accommodation, appears in the table as follows:

APPENDIX 1

Planning Scheme use types to which *adopted infrastructure charges schedule* apply.

Gladstone Regional Council Planning Scheme Uses	Definition	State Adopted Infrastructure Charge Schedule	Council Charging Category
Rooming accommodation	Premises used for the accommodation of one or more households where each resident: • has a right to occupy one or more rooms • does not have a right to occupy the whole of the premises in which the rooms are situated • may be provided with separate facilities for private use • may share communal facilities or communal space with one or more of the other residents. The use may include: • rooms not in the same building on site • provision of a food or other service • on site management or staff and associated accommodation. Facilities includes furniture and equipment as defined in the Residential Tenancies and Rooming Accommodation Act 2008.	Accommodation (Long Term)	N/A

24. The term “adopted infrastructure charges schedule” is not defined in the Charges Resolution. However, at paragraph 2.2 it refers to that schedule being “identified in the SPRP”. The Tribunal finds that where the Charges Resolution refers to the “adopted infrastructure charges schedule” that is a reference to Schedule 1 of the SPRP. As paragraph 2.1 of the SPRP provides, “The maximum charge for trunk infrastructure that may be levied for development for a use mentioned in schedule 1, column 2, is the charge specified in schedule 1, column 3 for that use.” Relevantly, in regard to “Accommodation (long-term)” that schedule provides:

Adopted infrastructure charges schedule

Column 1 Adopted infrastructure charge category	Column 2 Use	Column 3 Maximum adopted charge
Accommodation (long-term)	- Community residence - Hostel - Relocatable home park - Retirement facility	For a relocatable home park: \$20,000 per 1 or 2 bedroom relocatable dwelling site, or \$28,000 per 3 bedroom relocatable dwelling site
		For a community residence, retirement facility or hostel: \$20,000 per suite (with 1 or 2 bedrooms), or \$28,000 per suite (with 3 or more bedrooms), or \$20,000 per bedroom (for a bedroom that is not within a suite)

25. Notably Rooming Accommodation is not contained in column 2 above or elsewhere in Schedule 1 of the SPRP. Therefore, the following part of that table is also relevant:

Column 1 Adopted infrastructure charge category	Column 2 Use	Column 3 Maximum adopted charge
Other uses	A use not otherwise listed in column 2, including a use that is unknown because the development application does not specify a proposed use.	The maximum adopted charge is the charge (in column 2) for the charge category (in column 1) that the local government decides should apply for the use at the time of assessment.

26. Appendix 3 of the Charges Resolution then relevantly provides as follows:

APPENDIX 3

Table 4 Adopted charge for residential development

Use Schedule	State Maximum Adopted Infrastructure Charge	Charge Area (see map)	Local Government Adopted Infrastructure Charge Gladstone Regional Council
Accommodation (Long Term) (1 or 2 bedroom)	\$20,222.30 per 1 or 2 bedroom relocatable dwelling site	Area 1	\$20,222.30
		Area 2	\$20,222.30
		Area 3	\$19,300
		Area 4	\$12,850
		Area 5	\$11,800
		Area 6	\$12,700

Accommodation (Long Term) (3+ bedroom)	\$28,311.20 per 3 + relocatable dwelling site.	Area 1	\$28,311.20
		Area 2	\$28,311.20
		Area 3	\$27,000
		Area 4	\$18,000
		Area 5	\$16,500
		Area 6	\$17,800

27. The parties agree that the subject premises is contained within Charge Area 1. The parties are also agreed that in calculating the infrastructure charge using the formula at paragraph 3.3 of the Charges Resolution:

The value of C is \$28,311.20 (being the adopted infrastructure charge applicable to the existing lawful use – Residential (Dwelling house 3+ bedroom))

The value of I is 1 as there is no indexation to be applied.

28. What is in dispute is the value to be given to AIC and U in that formula.

The parties' contentions

The Council

29. As described above, the AICN provided a breakdown as to how the charge was calculated. The Council has used the "Accommodation (Long Term) (1 or 2 bedroom)" rate of \$20,222.30 and multiplied it by three (3).
30. In its response to the Appellant's representations concerning the AICN, the Council provided the following reasons for that calculation:
- The *Planning Act 2016* definition of "premises."
 - The *Planning Regulation 2017*, specifically Schedule 16 – Prescribed Amounts for Rooming Accommodation.
 - The dictionary definition of "suite."
 - The approved development consists of three tenancies/suites with the following bedroom allocations:
 - Tenancy 1 - 2 bedrooms
 - Tenancy 2 - 1 bedroom
 - Tenancy 3 - 1 bedroom
 - According to the *Gladstone Regional Council Adopted Infrastructure Charges Resolution (No. 1) – 2015 Amendment No. 2*, each tenancy attracts a charge of \$20,222.30, as all tenancies contain no more than two bedrooms. This results in a total infrastructure charge of \$60,666.90.
 - Section 3.2 of Council's AIC Resolution states that an adopted infrastructure charge applies only to the additional demand placed on trunk infrastructure by the

development. Therefore, a credit of \$28,311.20 was applied for the existing lawful use of a Dwelling House.

- As a result, the final AIC for the approved Rooming Accommodation is:

$$\$60,666.90 - \$28,311.20 = \$32,355.70$$

31. At the hearing of the appeal Mr Cooper provided oral submissions to further explain the Council's rationale. Mr Cooper acknowledged that Appendix 3 to the Charges Resolution does not mention Rooming Accommodation. Rather, in respect of Accommodation (Long Term), the second column of the table (titled "State Maximum Adopted Infrastructure Charge") merely refers to a charge based on "per 1 or 2 bedroom relocatable dwelling site" or "per 3 + relocatable dwelling site" (suggestive of a relocatable home park use). Mr Cooper conceded those charges were not applicable to a Rooming Accommodation use.
32. Mr Cooper argued that reliance should therefore be placed on the *Planning Regulation 2017*, Schedule 16 insofar as it prescribes an amount for an adopted charge for Accommodation (long-term). The relevant part of Schedule 16 provides:

Accommodation (long-term)	
1 Relocatable home park	1 \$24,609.05 for each relocatable dwelling site for 2 or less bedrooms
	2 \$34,452.65 for each relocatable dwelling site for 3 or more bedrooms
2 Community residence	1 \$24,609.05 for each suite with 2 or less bedrooms
3 Retirement facility	2 \$34,452.65 for each suite with 3 or more bedrooms
4 Rooming accommodation	3 \$24,609.05 for each bedroom that is not part of a suite

33. Mr Cooper acknowledged that neither the *Planning Regulation 2017*, the *Planning Act 2016* nor the Charges Resolution defines a "suite", as that word is used in the above schedule in reference to Rooming Accommodation. Mr Cooper therefore urged the Tribunal to have regard to the dictionary definition of "suite" which generally contemplates a connected series of rooms to be used together by one person or more. The Council says that the "tenancies" in the approved development satisfy that definition and, having regard to the number of bedrooms in each tenancy (being 2 or less), the maximum charge under the *Planning Regulation 2017* is \$24,609.05 for each suite.
34. It was submitted that the fact that the levied infrastructure charge is less than the maximum prescribed amount under the *Planning Regulation 2017* supports the Council's rationale.
35. The Tribunal questioned Mr Cooper as to how, given the Council's reliance on Schedule 16 of the *Planning Regulation 2017*, should the calculation at paragraph 3.3 of the Charges Resolution be performed. In particular, Mr Cooper was asked how values are to be given to AIC and U given they are "as identified in Appendix 2, 3 & 4". Mr Cooper argued that the AIC is to be taken from Appendix 3 (Accommodation (Long Term) (1 or 2 bedroom) at \$20,222.30. As to the value to be given to U, Mr Cooper conceded that Appendix 3 does not provide a "unit of calculation" for Rooming Accommodation and

argued the number of “suites”, as described in the Schedule 16 of the *Planning Regulation 2017*, may be used as the unit.

The Appellant

36. The Appellant says the Council has calculated the infrastructure charge incorrectly.
37. In written submissions to the Tribunal the Appellant argues that, given the approved development converts an existing 4-bedroom Dwelling House into Rooming Accommodation, the applicable use under Appendix 3 of the Charges Resolution is “Accommodation (Long Term) (3+ bedroom)”. It follows that, in the Appellant’s submission, the AIC is \$28,311.20. The Appellant uses this same reasoning to submit that “Being the conversion of an existing single Dwelling House only one unit would be applicable as it is a single premises being converted and will remain a single premises.” The Appellant therefore says the value of U is 1.
38. The Appellant submits that no infrastructure charge is payable based on the following calculation:

Calculation of Charge

$$TAIC = [(AIC \times U) - (C)] \times I$$

$$\begin{aligned} TAIC &= ((\$28,311.20 \times 1 \text{ (Accommodation (Long Term) (3 + bedrooms))} - \\ &(\$28,311.20 \text{ (Residential 3+ bedrooms))} \times 1. \\ &= \$28,311.20 - \$28,311.20 \\ &= \$0.00. \end{aligned}$$

39. At the hearing of the appeal, having heard Mr Cooper’s oral submissions, Mr Enders and Ms Farrington submitted the Council’s attempt to rely on Schedule 16 of the *Planning Regulation 2017* was impermissible given the Council had not adopted the charges prescribed therein.

Findings and reasons

40. Pursuant to s 635 of the *Sustainable Planning Act 2009*, the Council was empowered to give an infrastructure charges notice only if “an adopted charge applies for providing the trunk infrastructure for the development.”
41. By its Charges Resolution, the Council says it has resolved to adopt a charge for a Rooming Accommodation use. In particular, it points to Appendix 1 and its identification of a “Rooming Accommodation” use being categorised as “Accommodation (Long Term)” under the “State Adopted Charges Schedule”. The Council relies on the charges contained at Appendix 3 of the Charges Resolution in calculation of the charge.
42. There is apparent agreement from the Appellant that Appendix 3 does have application, although there is disagreement as to whether the “1 or 2 bedroom” or “3 + bedroom” rate applies.
43. Proceeding for the moment on the basis that the charges at Appendix 3 apply, paragraph 3.3 of the Charges Resolution contemplates that the AIC value is to be taken from that appendix.
44. Paragraph 3.3 of the Charges Resolution also contemplates that the U value is to be taken from Appendix 3:

U is the unit of calculation as identified in Appendix 2, 3 & 4.

45. To the extent paragraph 3.3 refers to Appendix 2 (adopted charge for reconfiguring a lot) and Appendix 4 (adopted charge for non-residential development), the Tribunal finds those appendices have no application in the present case.
46. Appendix 3, insofar as it provides an adopted charge for “Accommodation (Long Term)” does not prescribe a unit of calculation which may be applied to Rooming Accommodation uses. Any unit of calculation therein is referable only to a “relocatable dwelling site”. The Tribunal finds that unit has no application in the present case.
47. While the Council urges the Tribunal to look to Schedule 16 of the *Planning Regulation 2017* and its reference to “suites” to discern a unit of calculation for a Rooming Accommodation use, the simple matter is that the Council has not resolved to adopt the charges prescribed therein pursuant to s 113 of the *Planning Act 2016*. The Tribunal therefore rejects the Council’s submissions to the extent it seeks to rely upon Schedule 16 of the *Planning Regulation 2017*.
48. Any infrastructure charge that may be levied by the Council is limited by the terms of the Charges Resolution. The Council has resolved that a Rooming Accommodation use falls within the “Accommodation (Long Term)” category of development (Appendix 1). That category of development is included as “residential development” at Appendix 3 and the Tribunal finds that the “Local Government Adopted Infrastructure Charge[s]” prescribed therein apply.
49. As has been noted above, no relevant unit of calculation is prescribed for Rooming Accommodation. The Tribunal has regard to the terms of the development approval and understands that the approved development comprises four bedrooms. In that premise, in determining the applicable charge at Appendix 3, the Tribunal finds that “Accommodation (Long Term) (3+ bedroom) applies.
50. In the absence of any applicable unit at Appendix 3, the Tribunal finds that the value of U in the formula prescribed by paragraph 3.3 of the Charges Resolution is 1.
51. For completeness, should the Tribunal be wrong about the interpretation it places on Appendix 3, regard has been given to Schedule 1 of the SPRP and its treatment of “Accommodation (long-term)”. Relevantly, the SPRP does not include “Rooming Accommodation” as a use in Column 2. It follows that no unit of calculation applicable to that use has been included in Column 3. In that premise, and while it was not argued by the Council to be so, reference to Schedule 1 of the SPRP would not assist in determining a unit value in this case.
52. The Tribunal has also given consideration to the category of “Other uses” at Column 1 of Schedule 1 of the SPRP. It provides that in respect of a “use not otherwise listed in column 2 ... The maximum adopted charge is the charge (in column 3) for the charge category (in column 1) that the local government decides should apply for the use at the time of assessment.” In this case, the Council has decided that the “Accommodation (long-term)” charge category applies. For the reasons above, this part of Schedule 1 does not assist in determining a unit value.
53. The Tribunal therefore calculates the adopted infrastructure charge applicable to the subject development as \$0 based on the following formula:

$$\text{\$0} = [(\$28,311.20 \times 1) - \$28,311.20] \times 1$$

$$\text{TAIC} = [(AIC \times U) - (C)] \times I$$

AIC \$28,311.20 (Appendix 3, Accommodation (Long Term) (3+ bedrooms), Charge Area 1).

U 1

C \$28,211.20 (Appendix 3, Residential (3+ bedroom), Charge Area 1).

I 1

54. In that premise, the Tribunal is reasonably satisfied that the Council erred in the application of the relevant adopted charge under the Charges Resolution.

Disposition

55. The Appellant has satisfied the Tribunal that the appeal should be allowed.
56. The decision of the Council to give the AICN in the amount of \$32,355.70 is changed such that the total adopted infrastructure charge is \$0.

Travis Schmitt
Development Tribunal Chair
Date: 3 July 2025

Appeal rights

Schedule 1, table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

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