

In the Planning and Environment Court
Held at: Brisbane



No. 2460 of 2020

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Between: **STOCKLAND DEVELOPMENT PTY LTD** Appellant
ACN 000 064 835

And: **SUNSHINE COAST REGIONAL COUNCIL** Respondent

And: **JANE MARGARET BECK & ORS** Co-Respondents By Election

**WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT
SUNSHINE COAST REGIONAL COUNCIL**

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A- PREAMBLE

1. This is not the first time that the Appellant (**Stockland**) has sought to develop a major residential estate on the subject land, nor is it the first time that its intentions in that regard have been rejected by the Respondent (**Council**) and the community.¹
2. While both the development assessment framework, and Stockland's proposal, have changed over the last decade, the land is highly constrained and the planning scheme amendments² which admit of residential development by including the land generally in the Emerging Community Zone also include a specific local plan³ and other relevant planning provisions⁴ that both guide and restrict any such development.
3. In terms of the constraints on development of the subject land (both in terms of physical constraints and planning scheme restrictions) one need go no further than the concessions of Stockland's town planner **Mr Reynolds** who accepted, with reference to the Emerging Community Zone provisions,⁵ that:
 - (a) the land needs to be developed subject to appropriate master planning;
 - (b) the land needs to be developed respecting the provisions of the local plan code which deal with this very parcel of Emerging Community land; and
 - (c) any development worthy of approval needs to respect ecologically important areas (and their buffers) recognised in the scheme(referring to overall outcomes (2)(a), (2)(c)(i) and (2)(c)(ii) of the Emerging Community Zone⁶).
4. In terms of the **physical issues that constrain the development of the land**, **Mr Reynolds** readily accepted (as would be obvious to the Court) that the land:
 - (a) is flood prone, being entirely mapped as subject to flooding inundation;
 - (b) contains significant conservation areas which need to be preserved and buffered;
 - (c) contains a public park that is of heritage significance and that needs to be protected and enhanced – not just the trees but, as this Court pointed out, by virtue of PO30 of the local plan,⁷ **enhanced as a recreational park**;
 - (d) lies adjacent to the CAMCOS corridor and the Sunshine Motorway;
 - (e) has an existing well established residential neighbourhood to the east (Twin Waters East-**TWE**) whose character and amenity needs to be respected.

¹ *Stockland v Sunshine Coast Regional Council & Ors* [2013] QPEC 79.

² First introduced with Version 12 of the Planning Scheme, which commenced in March 2018.

³ The Maroochy North Shore Local Plan.

⁴ Particularly the overlay codes referred to below.

⁵ T4-6, lines 25 - 40 and T4-7, line 25 to T4-8, line 5.

⁶ Exhibit 3.1, Planning Scheme Extracts, p. 182, section 6.2.17.2(2).

⁷ Exhibit 3.1, Planning Scheme Extracts, pp. 196-197, Table 7.2.18.4.1, PO30. See also AO30,

5. In terms of **town planning constraints** (often reflecting the physical constraints):⁸
 - (a) the land is subject to numerous overlays relating to flooding, biodiversity, conservation and buffering and also height control;
 - (b) the land's development is subject to specific provisions of the Maroochy North Shore Local Plan Code with respect to this very land, particularly guiding the character and intensity of the development by specific reference to TWE; and
 - (c) there is a planning scheme obligation upon any development to enhance Settler's Park.
6. In short, the benefit provided by the inclusion of the land in the Emerging Community Zone is accompanied by burdens on a developer, which are set out in clear terms in the Planning Scheme.
7. Relevant to the variation request forming part of the application **Mr Reynolds**, when pressed about the existence of any public benefits arising from development of the land which could not be achieved by development complying with the planning provisions (and therefore not being a variation request), **Mr Reynolds** said:

I don't think there is any benefit that would otherwise arise because the variations sought are, in fact, limited in number and they relate to certain configurations of the layout. So I – I would accept that proposition that the development of this urban land does result in planning benefits, but those benefits would be the same whether or not it is developed precisely in the way variations see.

Clearly the only person that may benefit is the developer.⁹ No credible explanation (in terms of planning or public benefit) was given to vary the requirements, particularly those that seek to achieve minimum average lot sizes consistent with those in TWE.
8. Moreover, **Mr Reynolds** was unable to identify where, in town planning terms, the Planning Scheme was wrong or misguided or irrational in terms of its assessment benchmarks guiding the development of this land in its current form (i.e. without the variations the subject of the proposed development).
9. Mr Reynolds' attempt to suggest that the variation would facilitate medium density residential development failed – as that is already facilitated by AO22(b) in the current Planning Scheme. He was left to suggest that the variations involved a “*refinement*” of the current planning controls– which, it is submitted, is hardly a position that necessitates a variation.¹⁰
10. Ultimately, the Council submits that the proposed development is not acceptable when assessed against the land's constraints, both physical and in terms of the assessment benchmarks. The proposal would require a complete redesign to respect these matters – which may well involve a lesser development footprint and certainly larger allotment sizes.
11. To that end, in the exercise of the planning discretion called for by the *Planning Act 2016*, the proposed development ought properly be refused.

⁸ T4-9, line 30 to T4-10, line 14.

⁹ T4-10, lines 15 - 35.

¹⁰ T4-11, line 35 to T4-12, line 35.

B- THE LOCALITY AND THE PROPOSED DEVELOPMENT

(a) The Application and The Appeal

12. The proposed development seeks to establish a residential community to be known as Twin Waters West (TWW) and involves:
 - (a) a Preliminary Approval for Material Change of Use of premises (including a Variation Request to vary the effect of the Sunshine Coast Planning Scheme 2014) for Residential, Business, Community and Sport and Recreation Uses; and
 - (b) a Development Permit to Reconfigure a Lot over 2 stages (4 lots into 169 residential lots and 1 community facility lot together with new roads, park and a balance lot).
13. The application for the proposed development was:
 - (a) properly made with the Council on 19 December 2018;¹¹
 - (b) refused by the Council in July 2020;¹²
 - (c) made subject to appeal before this Court in August 2020,¹³

all such steps therefore taking place during the currency of the *Planning Act 2016 (Planning Act)*.
14. Stockland has development intentions for the land that do not match outcomes for such development promulgated by Council or, it seems, the desired outcomes held by the community at large.
15. The planning scheme in force the date the application was duly made was Version 17 of the Sunshine Coast Planning Scheme 2014 (the **Planning Scheme**). The amendments relied upon by Stockland that included the subject land in the Emerging Community Zone came into force as part of Version 12 of the scheme, which was adopted in March 2018.
16. Despite the faint suggestions by **Mr Reynolds** to the contrary,¹⁴ the Court would be satisfied that there is nothing misguided, irrational or wrong about the Planning Scheme provisions adopted in their current form with respect to the character, nature, scale and form of development of this Emerging Community Land so as to warrant or require the variations sought.
17. Ultimately, the Court would bear steadily in mind that the departures from the Planning Scheme that form the genesis of the proposed development are not (in substance, if at all) matters which bring any greater public benefit than would be achieved from simple compliance with the Planning Scheme.
18. The deviations from the Planning Scheme embodied in the proposed development are, rather, matters that are directed towards the private development interests, and no doubt benefits, of Stockland.¹⁵

¹¹ Exhibit 1.1.

¹² Exhibit 1.8.

¹³ Exhibit 2.3.

¹⁴ T4-11, line 36 to T4-13, line 4.

¹⁵ T4-11, lines 11-34.

(b) The Land and its Locality¹⁶

19. The subject land (the **land**) is approximately 104Ha in size and is comprised of a number of individual allotments, the details for which are helpfully summarised by the planners.¹⁷ It sits within the suburb of Pacific Paradise, to the immediate west of the existing TWE.
20. The land is undeveloped and significantly cleared (having previously been used for agricultural purposes). However, a significant stand of recognised Native Vegetation (a recognised important wetland) sits in roughly the eastern centre of the land, with further extant vegetation located near the southern boundary as well.
21. Surrounding the land is:
 - (a) the Sunshine Motorway/CAMCOS Corridor to its west;
 - (b) David Low Way and Ocean Drive to its north (with the existing Pacific Paradise residential estate north of those roads);
 - (c) the existing Twin Waters development to its east (referred to as Twin Waters East or TWE for that reason);
 - (d) the Maroochy River (and surrounding conservation estate) to its south.

(c) The Proposed Development¹⁸

22. As summarised by the planners, the proposed development is one seeking to create a master planned community comprising:
 - (a) 584 residential allotments (approximately 54 hectares of the site);
 - (b) Two (2) medium density sites (approximately 4.5 hectares of the site), with a total density across the two sites of 180 dwellings;¹⁹

The proposed development therefore seeks approval for a total of in the order of 764 dwellings on the land with a likely population of some 1,820 persons.²⁰

- (c) Community and commercial uses at the northern end of the site (approximately 1.0 hectare of the site);
 - (d) Open space (approximately 27 hectares of the site, although at least 9.54Ha is actually conservation space²¹); and
 - (e) A central lake.
23. The Council accepts that the community and commercial uses are appropriate within the

¹⁶ Exhibit 4.19, (First Substantive) Joint Expert Report- Town Planning (**Planning JER1**), p. 6, paras. 9-14. See also p. 66 thereof.

¹⁷ Exhibit 4.19, Planning JER1, p. 7, para. 10.

¹⁸ Exhibit 4.19, Planning JER1, p. 7, paras. 16-20.

¹⁹ Exhibit 4.19, Planning JER1, p. 13, para. 43.

²⁰ T4-32, lines 25-45, being evidence from Mr Reynolds.

²¹ Exhibit 7.3, Landscape Master Plan, pp. 14-15.

context of the proposed development as a whole - if the Court is minded to approve the density that is proposed with 764 dwellings and a population in the order of 1,820 then the community and commercial uses are appropriately sized to cater to that development without unacceptable impacts on the centres hierarchy. Of course, a smaller development footprint (or less dwellings) may well be likely to need only a commensurately smaller scale of these uses.

24. The Council takes issue with the proposed development at both a high level (its density/intensity as the best example in that regard) and at the level of detail (its failure to properly interact with ecological concerns, address lake management issues etc). As noted below, all of these issues have been captured in an agreed List of Issues document.²²
25. The issues raised by the Council, taken collectively, cannot be dealt with by the imposition of conditions but require a (complete) redesign of the proposal to respect the physical constraints and planning requirements that need to be taken into account in the development of this land. As this Court has observed, it is not the role of the Court to redesign a proposal such as this, rather to assess the proposal advanced by the proponent.
26. It is not the Council's position that this land cannot ultimately be developed for urban or residential purposes, but rather that it would not be a proper exercise of the Court's discretion to approve this particular proposal in the light of the matters raised concerning the manner in which the proposal deals with the constraints and planning requirements apposite to the development of the land.

C- THE ASSESSMENT FRAMEWORK

27. The Court is required to consider, in the context of determining this appeal:
 - (a) The legal assessment framework, as prescribed by (in particular) sections 45, 60 and 61 of the *Planning Act*;
 - (b) The assessment that must be carried out against the assessment benchmarks in force at the time the development application was lodged, being (relevantly) the Planning Scheme;
 - (c) A consideration as to certain relevant matters, within the meaning of section 45(5)(b) *Planning Act*.

28. Before turning to the issues in dispute, it is useful first to set the scene for these assessment matters.

(a) Legal Matters

29. The subject development application was lodged in December 2018 and the subject appeal was commenced in August 2020, all during the currency of the *Planning Act*. This appeal was therefore commenced pursuant to Chapter 6, Part 1 of the *Planning Act* and is otherwise governed by Part 5 of the *Planning and Environment Court Act 2016 (PECA)*.
30. Stockland bears the onus in the appeal²³ and the appeal proceeds by way of hearing anew.²⁴

²² Exhibit 2.2, as subsequently updated in Exhibit 8.15.

²³ Section 45(1)(a) *PECA*.

²⁴ Sections 43 and 46(1) *PECA*.

31. Being impact assessable and including a component comprised of a variation request, the development application for the proposed development must be assessed in accordance with the provisions relevant to impact assessment and variation requests found in sections 45, 60 and 61 of the *PA*.²⁵
32. This assessment framework was given substantial consideration by the Planning and Environment Court in the decision of *Ashvan Investments Unit Trust v Brisbane City Council & Ors (Ashvan)*,²⁶ with the approach adopted in *Ashvan* later endorsed by the Queensland Court of Appeal.²⁷
33. In light of those decisions, the Planning and Environment Court has recently noted as follows (footnote omitted):²⁸

As the Court of Appeal observed in Brisbane City Council v YQ Property Pty Ltd, the ultimate decision called for when making an impact assessment under s 45 and s 60 (of the Planning Act is a broad, evaluative judgment.

34. The approach to non-compliance with the planning scheme in the decision making process has been explained by Her Honour Judge Kefford in this Court in the following terms (footnotes omitted):²⁹

The Sustainable Planning Act 2009 gave primacy to the planning scheme in the striking of the balance. That is not what s 60 of the Planning Act 2016 requires. Under the Planning Act 2016, the discretion is to be exercised based on the assessment carried out under s 45. Its exercise is not a matter of mere caprice. The decision must withstand scrutiny against the background of the planning scheme and proper planning practice. Not every non-compliance will warrant refusal. It will be necessary to examine the verbiage of the planning scheme to ascertain the planning policy or purpose of relevant provisions and the degree of importance the planning scheme attaches to them. The extent to which a flexible approach will prevail in the face of any given non-compliance with a planning scheme (or other assessment benchmark) will turn on the facts and circumstances of each case.

35. More recently, the Court of Appeal has noted:³⁰

The process adopted by a decision-maker may now be one which involves balancing a number of factors to which consideration was permitted under s 45(5) of the Planning Act in making a decision under s 60(3) of the Planning Act where the factors in favour of an approval have to be balanced with the factors in favour of refusal of the application. The weight that is given to each factor is a matter for the decision-maker.

²⁵ Section 46(2) PECA.

²⁶ [2019] QPEC 16.

²⁷ *Brisbane City Council v YQ Property Pty Ltd* [2020] QCA 253 (*YQ Property*), *Abeleda & Anor v Brisbane City Council & Anor* [2020] QCA 257 and *Willhelm v Logan City Council & Ors* [2020] QCA 273.

²⁸ *Nadi Lane Projects 1 Pty Ltd v Brisbane City Council* [2021] QPEC 5 at [10], with reference to *YQ Property* at [59]. See also *Barro Group Pty Ltd v Sunshine Coast Regional Council* [2021] QPEC 18 at [42]-[43].

²⁹ *Murphy v Moreton Bay Regional Council & Anor*; *Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor* [2019] QPEC 46 at [22].

³⁰ *Trinity Park Investments v Cairns Regional Council & Ors*; *Dexus Funds Management Ltd v Fabcot Pty Ltd & Ors* [2021] QCA 95 at [180].

36. Whilst any particular non-compliance with a planning scheme does not exclude it from approval,³¹ for the reasons that follow this is a case where the cumulative impact of the non-compliances support refusal of the development application. In the exercise of the planning discretion, refusal is the appropriate course.

(b) The Planning Scheme

37. While Version 12 was not the version of the scheme in force at the date this application was duly made (that was Version 17), it was Version 12 that was introduced in March of 2018 and which, on the one hand, included the subject land within the Emerging Community Zone and, on the other hand, introduced specific planning provisions to guide and limit the development of the subject land in that zone. As discussed during the hearing, it is submitted that Stockland cannot rely on the benefit of aspects of the Planning Scheme without acknowledging, respecting and addressing the burdens placed upon the development of the land in that very same Scheme.

38. It is significant, in that context, that the land was not placed in a residential zone (or zones) but in the Emerging Community Zone where (as **Mr Reynolds** for Stockland obviously acknowledged) any development must be appropriately master planned, must take place respecting the provisions of any local plan code which applies (and of course in particular the specific provisions applying to this land) and needs to respect both flooding constraints and ecologically important areas and their buffers (see above).

39. Version 17 of the Sunshine Coast Planning Scheme 2014 commenced effect on 10 December 2018 and was the version in force at the time the subject development application was properly made (the **Planning Scheme**). It is the version of the Planning Scheme against which the proposed development must be assessed³² and no party raises any query or concern with respect to subsequent revisions of the Planning Scheme in the context of this case and the issues that are in dispute.³³

40. For the purposes of the Planning Scheme, the land is:

- (a) Situated wholly within the bounds of the Maroochy North Shore Local Plan Area,³⁴
- (b) Predominantly included within the Emerging Community Zone;³⁵
- (c) Subject to the following relevant Overlays:
 - (i) Biodiversity, Waterways and Wetlands;³⁶
 - (ii) Acid Sulfate Soils;³⁷

³¹ *Trinity Park Investments v Cairns Regional Council & Ors; Dexis Funds Management Ltd v Fabcot Pty Ltd & Ors* [2021] QCA 95 at [183].

³² Section 45(7) *Planning Act*.

³³ Version 24 of the Planning Scheme is in force today.

³⁴ Exhibit 3.1, Planning Scheme Extracts, p. 567.

³⁵ Exhibit 3.1, Planning Scheme Extracts, p. 567. Small parts of the land are located variously in the Low Density Residential, Community Facilities and Open Space Zones, but those other zones are of not moment in the context of the present dispute.

³⁶ Exhibit 3.1, Planning Scheme Extracts, pp. 559 and 561.

³⁷ Exhibit 3.1, Planning Scheme Extracts, p. 560.

- (iii) Extractive Resources;³⁸
- (iv) Flood Hazard;³⁹
- (v) Height of Buildings and Structures, which imposes a uniform 8.5m height designation on all of the land;⁴⁰
- (vi) Heritage and Character Areas (Settlers' Park, being a mapped and listed Local Heritage Place);⁴¹
- (vii) Regional Infrastructure;⁴²
- (viii) Airport Environs;⁴³
- (ix) Scenic Amenity.⁴⁴

It is only a consideration of (i), (iv), (v) and (vi) which are particularly relevant to the question of approval or refusal (rather than conditions).

41. As is common in modern planning schemes such as the one in question here, the provisions of the Planning Scheme sit within a defined hierarchy, which is as follows:⁴⁵

1.5 Hierarchy of provisions within the planning scheme

- (1) *Where there is inconsistency between provisions within the planning scheme, the following rules apply:-*
- (a) *the strategic framework prevails over all other components to the extent of the inconsistency for assessable development requiring impact assessment;*
 - (b) *relevant categories of development as specified in schedules 6 and 7 of the Regulation and relevant categories of development, categories of assessment and assessment benchmarks as specified in schedule 10 of the Regulation prevail over all other components to the extent of the inconsistency;*
 - (c) *overlays prevail over all other components (other than the matters mentioned in (a) and (b)) to the extent of the inconsistency;*
 - (d) *local plan codes prevail over zone codes, use codes and other development codes to the extent of the inconsistency;*
 - (e) *zone codes prevail over use codes and other development codes to the extent of the inconsistency;*
 - (f) *provisions of Part 10 (Other plans) may override any of the above.*

42. The Maroochy North Shore Local Plan Code includes:⁴⁶

- (a) *the application of the local plan code;*
- (b) *the purpose of the local plan code;*
- (c) *the overall outcomes that achieve the purpose of the local plan code;*
- (d) *the performance outcomes that achieve the overall outcomes of the local plan code; and*

³⁸ Exhibit 3.1, Planning Scheme Extracts, p. 562. A mapped separation area applies to part of the land.

³⁹ Exhibit 3.1, Planning Scheme Extracts, p. 563.

⁴⁰ Exhibit 3.1, Planning Scheme Extracts, p. 564.

⁴¹ Exhibit 3.1, Planning Scheme Extracts, p. 565.

⁴² Exhibit 3.1, Planning Scheme Extracts, p. 566.

⁴³ Exhibit 3.1, Planning Scheme Extracts, p. 2, para. 3(f).

⁴⁴ Exhibit 3.1, Planning Scheme Extracts, p. 2, para. 3(f).

⁴⁵ Exhibit 3.1, Planning Scheme Extracts, p. 27, section 1.5.

⁴⁶ Exhibit 3.1, Planning Scheme Extracts, p. 184, section 7.1(6).

(e) *the acceptable outcomes that achieve the performance outcomes of the local plan code.*

This Local Plan Code includes numerous specific provisions with respect to the development of this very land, within both its overall outcomes and also within its POs and AOs, many of which have been in focus in this case and in these submissions.

43. The Emerging Community Zone Code includes:⁴⁷

- (a) the purpose of the code; and
- (b) the overall outcomes that achieve the purpose of the code.

This zone code includes a number of overall outcomes that are particularly relevant to the issues in this case, requiring appropriate master planning, the reflection of the specific statements and intents in the Local Plan Code and the protection of ecologically important areas including wetlands.

44. Finally, in terms of development assessment generally the Planning Scheme provides as follows:⁴⁸

(3) *The following rules apply in determining assessment benchmarks for assessable development:-*

(a) *assessable development requiring code assessment:-*

...

(iii) *that complies with:-*

(A) *the purpose and overall outcomes of the code complies with the code;*

(B) *the performance outcomes or acceptable outcomes of the code complies with the purpose and overall outcomes of the code; and*

...

(b) *assessable development requiring impact assessment:-*

(i) *must be assessed against all of the assessment benchmarks identified in the "assessment benchmarks for assessable development and requirements for accepted development" column;*

(ii) *is to have regard to the whole of the planning scheme, to the extent relevant; and*

(iii) *is to be assessed against any assessment benchmarks for the development identified in section 30 of the Regulation.*

(c) **Community Expectations**

45. The subject development is one that attracted considerable public interest during its notification period and, as evinced by the presence of the Co-Respondents by Election, has continued to elicit such interest thereafter. All of the Co-Respondents by Election before the Court join in the Council's ultimate submission that the proposed development ought properly be refused.

46. While the Issues in Dispute call for the Court to consider, amongst other things, whether "*the*

⁴⁷ Exhibit 3.1, Planning Scheme Extracts, p. 180, section 6.1(7).

⁴⁸ Exhibit 3.1, Planning Scheme Extracts, p. 99, section 5.3.3. Although the proposed development is impact assessable, the 'code assessment' tests extracted herein remain applicable for impact assessment - see *Lennium Group Pty Ltd v Brisbane City Council & Ors* [2019] QPEC 17; [2019] QPELR 835, 865 [201], citing *United Petroleum Pty Ltd v Gold Coast City Council & Anor* [2018] QPEC 8; [2018] QPELR 510. See also *Self Storage Helensvale Holdings Pty Ltd v City of Gold Coast Council* [2021] QPEC 29 at [57].

level and content of adverse local submissions favour refusal of the proposal”,⁴⁹ it is Council’s position that the submissions⁵⁰ and the concerns of the Co-Respondents by Election are reflective of the issues which warrant refusal and are the real focus of the Court’s determination.

(d) Stockland’s Relevant Matters

47. Finally, Stockland raises a series of what it describes as ‘relevant matters’⁵¹ that it says warrant approval of the proposed development.⁵² It would not be lost on the Court that many (if not all) of these relevant matters:

- (a) are simply the converse of matters raised against the proposed development, including assertions as to planning scheme compliance;
- (b) are squarely raised by the planning scheme provisions that are in issue, such that achievement of the said relevant matter(s) is, put fairly, more properly a consideration that should be viewed through those very same planning scheme provisions.

(As but one example, almost any residential development would improve choice and supply of housing in circumstances where there can be no doubt as to the need for such choice and supply throughout South-East Queensland. However, it is the Planning Scheme that seeks to create the framework for the delivery of that choice and supply. It is, therefore, properly the case that the Planning Scheme is the real metric by which provision of choice and supply (or perhaps over provision, in the case of an overdevelopment such as this one) should be viewed);

- (c) are not matters of such great moment as to warrant approval in these circumstances, where the deviation between the proposed development and what is contemplated for the development of the land under the Planning Scheme is so clear.

48. As noted by **Mr Reynolds**, when comparing the proposal (including the variation request) to simply developing the subject land consistent with the Planning Scheme controls:⁵³

“I don’t think there’s any additional benefit that would otherwise arise, because the variation sought are, in fact, limited in number and they relate to certain configurations of the layout. So I – I would accept that proposition that the development of this urban land does result in planning benefits, but those benefits would be the same, whether or not it was developed precisely in the way the variations see[k].” (emphasis added)

49. One particular matter raised to urge the Court to adopt “a flexible approach to the exercise of the planning discretion” (whatever that means) is paragraph 14(d), which provides:

(d) any unacceptable departure can be addressed by the imposition of appropriate

⁴⁹ Exhibit 2.2/8.15, Issue 12.

⁵⁰ Which are required to be considered as part of the impact assessment and variation request framework in accordance with sections 31(1)(g) and 32(a) *Planning Regulation 2017*.

⁵¹ Within the meaning of section 45(5)(b) *Planning Act*.

⁵² Exhibit 2.2/8.15, Issues 13-14.

⁵³ T4-10, lines 16-28. At T4-11, lines 21-28, Mr Reynolds appeared to suggest that the provision of medium density product saw greater choice and therefore public benefit, but such medium density product is, of course, contemplated in the Planning Scheme as well- see Exhibit 3.1, Planning Scheme Extracts, p. 195, Table 7.2.18.4.1, PO22 and AO22(b) in particular.

conditions and different variations to those requested.

50. Unfortunately the case run by Stockland is devoid of any serious particulars with respect to appropriate conditions (if any) addressing departures from assessment benchmarks raised, or any different variations which might save the proposal from refusal.
51. In any case, these matters are dealt with throughout these submissions as appropriate.

D- THE ISSUES IN DISPUTE

52. The parties had agreed a List of Issues in Dispute for the matter prior to the commencement of the hearing.⁵⁴
53. During the lead up to the hearing and during the hearing itself, Council and the Co-Respondents by Election (responsibly the Court might think) abandoned a number of issues as reasons to warrant refusal. Of course, the matters raised within these ‘abandoned’ issues will become very relevant in the event of an approval when conditions need to be considered.
54. The nature of issues abandoned from the List of Issues are:
 - (a) **Issue 1** – Acoustic amenity associated with the adjacent Sunshine Motorway and CAMCOS corridor impacting upon the proposed residential development;
 - (b) **Issue 8** – with respect to the acceptability of impacts during construction; and
 - (c) **Issues 10 and 11** - dealing with traffic matters.
55. Adopting the order in which they appear in the List of Issues, those issues that remain relate to:
 - (a) Residential Character (Configuration, Density, Intensity and Scale);⁵⁵
 - (b) Water Quality;⁵⁶
 - (c) Flood Emergency Management;⁵⁷
 - (d) Ecology;⁵⁸
 - (e) Settler’s Park;⁵⁹
 - (f) Community Expectations;⁶⁰ and
 - (g) Stockland’s Relevant Matters.⁶¹
56. Each of these matters is addressed below.

⁵⁴ Exhibit 2.2.

⁵⁵ Exhibit 2.2/8.15, Issue 2.

⁵⁶ Exhibit 2.2/8.15, Issue 3.

⁵⁷ Exhibit 2.2/8.15, Issue 4.

⁵⁸ Exhibit 2.2/8.15, Issues 5-7.

⁵⁹ Exhibit 2.2/8.15, Issue 9.

⁶⁰ Exhibit 2.2/8.15, Issue 12.

⁶¹ Exhibit 2.2/8.15, Issues 13-14.

(a) **Residential Character (Configuration, Density, Intensity and Scale)**⁶²

57. Issue 2 is framed as follows:

Whether the proposed residential development (both the residential subdivision and the two medium density residential sites) is unacceptable on the land because it does not reflect, and is not consistent with, sympathetic to, or in keeping with, the scale, intensity, and configuration of the established and prevailing low-density residential character of the adjoining Twin Waters residential community.

58. Relevant to this issue are the specific requirements in assessment benchmarks for the development of this very land. The Planning Scheme calls for consideration of the following key matters⁶³ in particular:

(a) **Overall Outcomes (2)(p)** of the Local Plan Code, which requires:⁶⁴

Development in the Emerging community zone (Twin Waters West) is integrated with the existing Twin Waters residential community and provides for the establishment of residential land uses that are sympathetic to, and in keeping with, the prevailing low density residential character of the area. Development incorporates large areas of public open space and focuses on connection to water as a key design and character element for the emerging residential community.

(b) **PO22** of the Local Plan Code, which states: ⁶⁵

Development in the Emerging community zone provides for residential uses at a scale and intensity, and in a configuration that is consistent with and sympathetic to the established low density residential character of the adjoining Twin Waters residential community.

(c) **AO22** of the Local Plan Code, which includes the following:⁶⁶

In partial fulfilment of Performance Outcome PO22:-

Development provides for:-

(a) *low density residential uses within the development to achieve:-*

(i) *a minimum lot size of 500m²; and*

(ii) *an average lot size of at least 700m²; and*

(b) *Limited Multi-unit residential uses which are focussed in discreet nodes with convenient access to public transport and active transport routes.*

59. As **Mr Adamson** notes,⁶⁷ to the above can be added the fact that the Strategic Framework identifies that “*although parts of the coastal urban area within the Sunshine Coast Enterprise Corridor display the characteristics of a complex and reasonably intense urban environment, other parts of the region are generally characterised by a less intensive scale and form of*

⁶² Exhibit 2.2/8.15, Issue 2.

⁶³ Exhibit 2.2/8.15, Issue 2, provides a complete list of the relevant provisions in this regard.

⁶⁴ Exhibit 3.1, Planning Scheme Extracts, p. 189, section 7.2.18.3(2)(p).

⁶⁵ Exhibit 3.1, Planning Scheme Extracts, p. 195, Table 7.2.18.4.1, PO22.

⁶⁶ Exhibit 3.1, Planning Scheme Extracts, p. 195, Table 7.2.18.4.1, AO22.

⁶⁷ Exhibit 4.19, pp. 20-21, para. 57.

development".⁶⁸ The Planning Scheme is not permissive of a 'one size fits all' approach across the Local Government Area. There are very particular planning controls in place for the very land in question here that are directed specifically to character outcomes. The Court would be inclined to pay these particular controls close attention given:

- (a) the specificity with which they are embraced in the planning documents, embodying (as they do) "*the reflection of the public interest in the appropriate development of land*",⁶⁹
- (b) as a general proposition the appropriateness (or inappropriateness) of the character outcome for a development necessarily involves assessment against relevant provisions of the Planning Scheme;
- (c) in this particular case, the specificity relates to the protection of the character and the scale of the existing TWE development, necessitated by amendments taking this neighbouring land from Rural to the Emerging Community Zone.

60. Much is said in the various expert reports about character, scale and intensity and how this development will compare with the existing TWE. However, what cannot be ignored are the facts that the proposed development seeks to vary (by permitting more intense development):

- (a) the minimum lot size for residential subdivision to 400m² (less than the actual minimum allotment size in TWE, which is 405m²);
- (b) the density of that development (by abandoning the 700m² average); and
- (c) the height of the medium density residential product and the density of that product.⁷⁰

It is all 'one way traffic' with respect to the amendments in this regard.

Further, by the Variation Request seeking the making of amendments to the relevant 'AO' test the proposed development also ensures that future applications consistent with that increased intensity never need be assessed against the higher order scheme provisions that are in issue in this proceeding.⁷¹ As **Mr Reynolds** conceded (and the Court recognised) the variation to AO22 facilitates compliance with the Code without reference to the higher order provisions seeking to preserve a certain character for the locality.⁷²

61. In summary, as developed below, the proposed development:

- (a) will have smaller allotment sizes, on average and overall, than TWE in terms of the 'residential subdivision' product;

⁶⁸ Exhibit 3.1, Planning Scheme Extracts, p. 82, s. 3.8.1(f).

⁶⁹ *Matthew Lawrence v The City of Gold Coast & Anor* [2022] QPEC 19 at [41], with reference to *Wilhelm v Logan City Council & Ors* [2020] QCA 273 at [77].

⁷⁰ See Exhibit 7.1, Plan of Development, pp. 17-19 in particular, where the residential variations proposed are outlined.

⁷¹ Stockland, somewhat unhelpfully, appears to place some moment on the fact that it is not altering provisions at the PO or higher level, ignoring the fact that those provisions will be irrelevant because of the new AOs that are sought to be introduced that will render those higher order provisions irrelevant as compliance with the Local Plan Code will be achieved by compliance with the relevant AO – see s.5.3.3(3)(iii)(B) at p.99 of Exhibit 3.1, Planning Scheme Extracts.

⁷² T4-17, lines 30-40.

- (b) will have a greater intensity (in terms of size, unit numbers and density) of 'medium density residential' product;
- (c) will have many houses built to boundary (see Exhibit 7.002, the ROL Plans, at pages 5 and 6), which are not characteristic of TWE; and
- (d) will involve the determination of allotment sizes and densities in any part of the land in the discretion of Stockland.

62. It would not be lost on the Court that the above summary, brief though it may be, covers all of the residential built form of the proposed development.⁷³ It also would not be lost on the Court the endeavours that Stockland's experts have gone to in an effort to avoid this quantitative reality. As:

- (a) **Dr McGowan** confirmed, he had not "*done any comparison of metrics*" in a quantitative sense;⁷⁴
- (b) **Mr Reynolds** identified in his second joint report, he did not consider character to be "*defined by a numeric density metric*" - albeit he then went on (in an entirely contradictory fashion) to define the character of this development as low density in nature by way of reference to a numeric metric⁷⁵ and confirmed that numeric metrics were a "*part of the overall amalgam*" of matters that were relevant to determining questions of character, scale and intensity of development.⁷⁶

Such disregard (or contradictory use of) quantitative matters is not, in the circumstances of this case, endearing as an approach.

63. **The fundamental threshold issue for the Court's determination is:**

- (a) **whether it is legitimate for the planning scheme to seek to control the character, scale and intensity of residential development by reference to the traditional matrices used to do so in planning documents, including minimum allotment size, average allotment size, and in terms of multiple dwellings, not just the size of the allotments allocated for such development, but also building height, to ensure that new development is sympathetic to and in keeping with existing residential character of an area; or**
- (b) **whether one should effectively ignore such quantitative standards and instead refer to the many qualitative issues (about which reasonable minds may well differ and the development application/approval process can scant control) sought to be relied upon by Stockland in a blatant attempt to ignore the traditional matrices.**

No credible reason was advanced for this Court to abandon the former in favour of Stockland's development intentions.

64. When pressed on the quantitative matters, **Dr McGowan** noted the proposed development will

⁷³ Putting to one side the c.1Ha retail/commercial/community precinct.

⁷⁴ T3-36, lines 10-12.

⁷⁵ Exhibit 4.27, (Second Substantive) Joint Expert Report- Town Planning (Planning JER2), p. 10, para. 21.

⁷⁶ T4-5, line 27 to T4-6, line 15.

have differences in lot sizes, lot widths and overall residential density as compared to TWE.⁷⁷ Further, **Mr Reynolds** acknowledged that:

- (a) the deletion of the 700m² average lot size contemplated by the Planning Scheme at present will see lots that are smaller in the proposed development (as compared to TWE)⁷⁸ and **this will not be consistent with TWE**;⁷⁹
 - (b) the Table of Assessment contemplated by the proposed development,⁸⁰ seeking a residential subdivision density of 12 dwellings/Ha,⁸¹ would see an overall density in the proposed development some 10% greater than in TWE.⁸²
65. There is no meaningful measure of urbanised built form by which it could fairly be said that TWW will be less intense than TWE. To the contrary, it is more intense in every meaningful way. It is submitted the Court would not be inclined to accept the proposition (as appears to be put by Stockland) that such an increase in intensity across such a broad range of considerations would have no impacts on character. These differences will be noticeable. They will see the proposed development take on a form that is not “*consistent with and sympathetic to the established low density residential character of the adjoining Twin Waters residential community*”.
66. The Court would also bear steadily in mind **Mr Adamson’s** sound criticism of the multiplicity of factors that Stockland’s experts appear to be seeking to rely on to hide from these ‘numbers’ and their inevitable impact on character. As Mr Adamson notes:⁸³
- (d) *While Mr Reynolds has now provided a range of attributes for a development, that is said contributes to the character of the low density residential community... many of these attributes are not matters that can be determined from an assessment under the planning scheme (for example, roof and driveway colours of the proposed dwellings, the age and condition of buildings, the type and nature of front fencing and the age of buildings to name a few). It is not reasonable or necessary to have regard to all of these attributes. This is particularly the case in the absence of any proposed building covenant which did apply for the development of TWE;*
 - (e) *The assessment is to be made on the attributes that can be properly considered under the proposal in order to make a reasonable comparison of the character and amenity of the existing TWE development, while having regard to the development outcomes sought under the planning scheme, in particular the local plan code. This includes the scale and intensity and location of the residential and other land uses, the minimum and average allotment sizes, including the areas, depths and widths, the allowable and proposed building setbacks, the width and design of the streets and verges, the amount and location of parks of varying types to be provided, the requirement for a waterbody,*

⁷⁷ T3-36, lines 21-22.

⁷⁸ T4-13, lines 12-17. See also T4-16, lines 26-42.

⁷⁹ T4-13, lines 15-17.

⁸⁰ Exhibit 7.1, Plan of Development, p. 15, section 5.3 and p. 18, section 8.1.

⁸¹ As distinct from the medium density residential produce, which is addressed separately.

⁸² T4-14, lines 18-25. Whilst a plan/map in the Plan of Development suggests a proposed overall density for the proposed development of only 10.4 dwellings/Ha, this plan is not referred to in the relevant Table of Assessment that is explicit in its only reference being to 12 dwellings/Ha. In any case, such internal inconsistency and confusion in the application material for which approval is sought is arguably a further reason for refusal.

⁸³ Exhibit 4.27, Planning JER2, p. 19, paras. 58(d) and 58(e).

external road connections etc. All of these attributes have informed my opinions in JER1 about whether the proposed residential land uses are sympathetic to, and in keeping with, the prevailing low density character of TWE. These opinions have been further informed in this JER (JER2);

67. As **Dr McGowan** noted during the course of his oral evidence:

- (a) Issues of character involve the planning evidence as well as his own evidence;⁸⁴
- (b) The scale of a given development relates to lot size (for residential subdivision) and the size of medium density residential product.⁸⁵ Intensity of development also involves the same considerations (including the number of lots).⁸⁶ Density and scale are also at least part of the considerations relevant to the configuration of a given development;⁸⁷
- (c) The filling proposed by the subject development⁸⁸ would see the multiple dwelling components sitting on fill that was in the order of a storey in height (3m-4m), with the height exceedance above that (from 8.5m to 12m) at least potentially, allowing up to a 12m, 4 storey building on top of that fill.⁸⁹ By way of stark contrast the multiple dwelling development in TWE is only 2-3 storeys⁹⁰ and is in an area that (unlike TWW) the Planning Scheme permits of development up to 12m in height;⁹¹
- (d) One did not need particular expertise to be able to identify the difference between large houses on smaller lots and large houses on larger lots;⁹²
- (e) The variation proposed to AO22(a) will result in smaller lots and overall differences in residential density,⁹³ this being a matter that **Mr Reynolds** appeared to agree with as well;⁹⁴
- (f) In circumstances where the acceptable solution is for an average lot size of 700m², whilst TWE saw 54% of its allotments greater than 700m² in area, Stages 1 and 2 of the proposed development saw **95% of the proposed allotments less than 700m² in area.**⁹⁵ Adopting a 700m² average would see in the order of 39 (or 23%) less allotments in Stages 1 and 2 alone.⁹⁶ **Mr Reynolds** similarly accepted this numeric analysis.⁹⁷ As the Court observed during the evidence of Mr Reynolds, it is difficult to seriously submit that such differences in allotment sizes does not have a bearing on character;⁹⁸

⁸⁴ T3-45, lines 34-35.

⁸⁵ T3-45, lines 4-9

⁸⁶ T3-45, lines 11-12.

⁸⁷ T3-45, lines 14-19.

⁸⁸ See Exhibit 4.21, Joint Experts Report on water quality and lake manage maintenance issues (**Water Quality/Lake JER1**), p.401.

⁸⁹ T3-51, lines 12-41. The variations sought in the Plan of Development do not seek to limit built form to only 3 storeys, regulating only height in metres- see Exhibit 7.1, Plan of Development, p. 17, section 6.

⁹⁰ Exhibit 4.19, Planning JER1, p. 26, Table 3.

⁹¹ Exhibit 3.1, Planning Scheme Extracts, p. 564.

⁹² T3-36, lines 34-40.

⁹³ T3-41, lines 1-3.

⁹⁴ T4-13, lines 12-17, T4-14, lines 18-25 and T4-16, lines 26-42

⁹⁵ T3-41, line 30 to T3-42, line 22.

⁹⁶ T3-42, lines 24-41. See also Exhibit 4.19, Planning JER1, pp. 22-24, Tables 1 and 2 and para. 76.

⁹⁷ T4-14, lines 27-47, T4-16, lines 26-42 and T4-17, line 41 to T4-18, line 2.

⁹⁸ T4-15, lines 1-25.

- (g) The multiple dwelling areas contemplated by the proposed development are both larger (in area) and accommodate more units than those in TWE.⁹⁹ The density within those areas is also greater than the TWE multiple dwelling development.¹⁰⁰ Dr McGowan appeared to acknowledge that this would have (at least) a “noticeable” impact on character as well,¹⁰¹
- (h) In addition to minimum and average lot sizes, **Dr McGowan** identified height, setbacks and building form as being other factors that affected character, and confirmed that **all of these matters were sought to be varied** by the proposed development.¹⁰²

68. To the above can be added the further evidence of **Mr Reynolds**, in particular that:

- (a) **It was orthodox planning, or a common method, to control the character, scale and density of development by controlling the size of allotments for detached dwellings and the height of development for multiple dwellings.**¹⁰³ Of course, the proposed development seeks to alter both of those measures as compared to the Planning Scheme (as well as other measures, such as minimum setbacks);
- (b) Many of the matters that he relied upon as defining the character of the proposed development that were not of a quantitative nature were matters that were beyond the remit of this appeal and of planning controls generally;¹⁰⁴
- (c) The proposed development can see much denser residential development with more open space between them, which is different to what is in TWE;¹⁰⁵
- (d) The proposed development sought to facilitate a large number of ‘built to boundary’ walls, in circumstances where there are not a lot of such walls in TWE;¹⁰⁶
- (e) The proposed development would have “*a far greater proportion of roads than you find next door at Twin Waters East*”;¹⁰⁷
- (f) With respect to the multiple dwelling component of the proposed development, he accepted that the proposed density and number of dwellings was more than what is present at TWE.¹⁰⁸

69. Within this framework, the comments of **Mr Adamson** are apposite. In particular, he notes that with respect to the residential subdivision product that is intended as part of the proposed development:

- (a) In terms of allotment sizes/areas, he confirmed that it is the (proposed removal of) the

⁹⁹ T3-43, lines 21-42.

¹⁰⁰ T3-44, lines 1-10. See also Exhibit 4.19, Planning JER1, pp. 26-27, Tables 3 and 4.

¹⁰¹ T3-44, lines 12-20.

¹⁰² T3-41, lines 1-22.

¹⁰³ T4-22, lines 1-7.

¹⁰⁴ T4-14, line 27 to T4-15, line 39.

¹⁰⁵ T4-18, lines 20-29. See also T4-19, lines 1-5.

¹⁰⁶ T4-22, line 33 to T4-23, line 22.

¹⁰⁷ T4-41, lines

¹⁰⁸ T4-19, line 24 to T4-20, line 3.

average lot size that is his “primary concern”,¹⁰⁹ noting further that:

- (i) Whilst there were many large allotments in TWE that fronted the waterway, there was also “a number of larger lots throughout the development”¹¹⁰ and that, indeed, even in areas where there may have been a larger number of ‘smaller’ lots, the average lot size “would still be well and truly above the 600[m²]” mark;¹¹¹
 - (ii) “Despite Twin Waters East having some smaller allotments (about 12% being less 500m²) the average allotment size is 705.9m², whereas the average allotment for Stages 1 and 2 is about 543.15m² (refer Attachment E3). Consequently, the average allotment size in Twin Waters East is consistent with the average allotment size of 700m² expected under AO22(a) of the MNSLPC. This is the key attribute which contributes towards the scale and intensity of development that exists in Twin Waters East and provides for the prevailing low density residential character and amenity of this established development”;¹¹²
 - (iii) “The difference in the average allotment size is substantial when compared to the average allotment size of proposed Stages 1 and 2 (705m² compared to about 543m²). The proposed Stages 1 & 2, and likely the remainder stages of Twin Waters West will have a more intensive scale and intensity of development and correspondingly a different character and amenity, which is not consistent with, sympathetic to, and in not keeping with the character of Twin Waters East”;¹¹³
- (b) Moreover, “the widths of the allotments also vary, with the general widths of the allotments in the Twin Waters East development being 20m or greater, with some frontages being about 30m in width. The wider frontage widths is also a function the larger allotment size, having an average of about 705m², with the majority of the allotments being more than 600m² in area with more than half having an area of 700m² and more than 800m² (refer Attachment E2). In contrast, the majority of the widths of the allotments within the proposed development for Stages 1 & 2 are less than 20m (74%). It would be reasonably expected where there is a higher average allotment size, the frontages of the allotments would also be wider, facilitating greater building setbacks and more open space generally within the allotments”;¹¹⁴
 - (c) With respect to the built form on the allotments as contemplated/proposed, “the proposed building setback requirements also differ from what was generally required under the covenant for Twin Waters East, which appears consistent when considering aerial photography. The end result of a reduced building setback is that the dwellings on the proposed smaller allotments have some reduced building setbacks and less private open space when compared to the dwellings and allotment sizes within Twin Waters East”;¹¹⁵
 - (d) With respect to open space (another undoubted contributor to character and perception of intensity), “it is also noted that there are 96 open space lots interspersed throughout the

¹⁰⁹ T4-52, lines 35-44.

¹¹⁰ T4-62, lines 20-26. See also T4-63, lines 23-26, T4-64, lines 18-22 and Exhibit 4.19, Planning JER1, p. 75.

¹¹¹ T4-65, lines 9-17.

¹¹² Exhibit 4.19, Planning JER1, p. 24, para. 74.

¹¹³ Exhibit 4.19, Planning JER1, p. 24, para. 75.

¹¹⁴ Exhibit 4.19, Planning JER12, p. 25, para. 79.

¹¹⁵ Exhibit 4.19, Planning JER1, p. 26, para. 84.

*Twin Waters East development, along with and 3 conservation lots provided towards the south, as shown on Attachments E1 & E2. These small pocket and linear parks along with the well landscaped and relatively wide road reserve widths contribute towards a low density residential character and amenity within a landscaped setting, with regular areas of open space provided. While the proposed development also has a reasonable amount of open space (Drawing No POD-06), this open space is not interspersed throughout the proposed development. The provision of the pocket and linear parks, along with the landscaping in the road reserve contributes to established low density residential character and amenity, which is different from the proposed development. It is accepted the proposed development will provide some landscaping in the proposed roadways”;*¹¹⁶

(To this can be added the fact that, contrary to what is suggested in the Local Plan, much of the proposed ‘open space’ area is actually conservation area and stormwater infrastructure, rather than being “public open space”.¹¹⁷)

- (e) *“Consequently, while the density of the development might be similar, the scale and intensity of development is quite different, and, in my opinion, not consistent with, sympathetic to, or in keeping with the character of Twin Waters East”.*¹¹⁸

70. Turning then to the medium density residential product that forms part of the proposed development, **Mr Adamson** notes that:

- (a) The densities for the two proposed medium density sites are clearly larger than anything in TWE and, indeed, also larger than the ‘third site’¹¹⁹ considered by Mr Reynolds¹²⁰ (but which **Mr Adamson** maintains is not part of TWE¹²¹ and, in any case, is of a different nature and not a proper metric against which to compare¹²²);
- (b) In terms of land area, MD1 (in particular) will have an area “substantially larger” than anything within TWE.¹²³ Moreover, having regard to its location and the built form proposed (height in particular), “the proposed multiple dwelling development within MD1 will have a building massing and scale that is not relative to its surroundings, and will not have the expected scale and intensity and configuration that is consistent with, and sympathetic to, the established low density residential character of Twin Waters East”.¹²⁴ That same MD1 site will also be “clearly visible across the lake and from the major collector road”¹²⁵ and also be “clearly apparent” when driving along the Sunshine Motorway, particularly on the nearby overpass;¹²⁶
- (c) Whilst better screened in parts, MD2 will also be visible from certain parts of the

¹¹⁶ Exhibit 4.19, Planning JER1, pp. 24-25, para. 78. See also T4-68, lines 10-35.

¹¹⁷ Exhibit 3.1, Planning Scheme Extracts, p. 189, s.7.2.18.3(2)(p)

¹¹⁸ Exhibit 4.19, Planning JER1, p. 24, para. 77.

¹¹⁹ The 6 storey Magnolia Lane Luxury Holiday Apartment overlooking the golf course.

¹²⁰ Exhibit 4.19, Planning JER1, pp. 26-27, paras. 87-91.

¹²¹ This is also acknowledged in Exhibit 5.16, Statement of Evidence of Dr Nicholas McGowan (**McGowan SE**), p. 12, para 29(f).

¹²² T4-65, lines 28-47 and Exhibit 4.19, Planning JER1, p. 27, para. 90.

¹²³ Exhibit 4.19, Planning JER1, pp. 27-28, para. 92.

¹²⁴ Exhibit 4.19, Planning JER1, p. 28, para. 93.

¹²⁵ T4-59, lines 37-38.

¹²⁶ T4-60, lines 1-7

proposed development;¹²⁷

- (d) By way of comparison to TWE, which is of course the precise exercise called for by the Planning Scheme:
- (i) *“The comparable two multiple dwelling developments within Twin Waters East are generally centrally located and can be considered discreet nodes. These existing multiple dwelling developments have an appropriate scale and intensity when considering the scale and intensity of the prevailing Low Density Residential Areas (LDR1) within Twin Waters East, discussed above”*,¹²⁸
 - (ii) *“The existing multiple dwelling nodes within Twin Waters East are in keeping with the character and amenity of the low density areas (LDR1). While the proposed nodes MD1 and MD2 are likely to have convenient access to public transport and open space, they are not discrete, and are not consistent with the intended low density residential scale and intensity of development”*,¹²⁹
 - (iii) to this can be added that both these developments are mapped¹³⁰ on the Height Overlay Code Map as 12m (not 8.5m as applies across the subject land).

71. As Mr Adamson ultimately summarises that:

- (a) With respect to the residential subdivision component of the proposed development (both as shown in Stages 1 and 2 and as further contemplated by the preliminary approval):¹³¹

In summary, primarily it is the difference in the scale and intensity of the development caused by a smaller average allotment size, that will have the greatest impact upon the character and amenity of TWW, which will not be sympathetic to, and consistent with the established low density residential character of TWE. This results in the majority of the allotments having a frontage width of less than 20m, which is evident on the proposal plans provided for Stages 1 & 2 (Stage 1 – 85% & Stage-2 - 74%). In comparison, a relatively large proportion of the allotments within TWE (about 71% - refer Attachment E2 – JER1) have an area of 600m² or more and generally have a width of 20m or more (refer Attachment B). This combined with many of the allotments indicated on the building envelope plans (refer ROL-05 & O6, Rev 12) that can be built to the boundary and have a reduced setback to the alternative boundary in accordance with the Allotment Setbacks Table, will result in a more intensive residential form.

- (b) With respect to the medium density residential component of the proposed development:

- (i) *“it’s really about the character issue. My concern about it is the land area, the corresponding building height, and the sheer number of dwelling units that are being proposed in each, both of which exceed what’s in Twin Waters East”*,¹³²

¹²⁷ T4-60, lines 22-25. See also T4-86, lines 10-18.

¹²⁸ Exhibit 4.19, Planning JER1, p. 29, para. 99.

¹²⁹ Exhibit 4.19, Planning JER1, p. 29, para. 100.

¹³⁰ Exhibit 3.1, Planning Scheme Extracts, Vol 2, p.564.

¹³¹ Exhibit 4.27, Planning JER2, pp. 30-31, para. 71.

¹³² T4-61, lines 13-20.

- (ii) “... in my opinion, these are not discrete nodes as intended under the local plan code (AO22(b)). In particular, MD1 will have a substantial number of units (111) and will be a relatively large scale and bulky development, with a building height transitioning from 8.5m to 12m in a prominent location. This development will be visible from the main collector road, viewed across Recreation Park 2 and will also be visible, at least in part, from the Sunshine Motorway”.¹³³

72. The proposed development does not accord with what the Planning Scheme calls for in terms of residential character. It will be discordant with TWE, which is directly contrary to the strongly expressed planning intent for the development of this land.
73. Regardless of any other issues occasioned by the proposed development, in its current form as dealt with herein, the proposed development ought properly be refused for this reason alone. Many of the issues referred to below are, ultimately, symptoms of the overdevelopment embodied in this issue.

(b) Water Quality¹³⁴

74. This issue is before the Court in the following way:

Whether the proposed extension of the existing Twin Waters waterway system will cause unacceptable on-site and off-site water quality impacts (in particular impacts on the downstream receiving environment including existing tidal wetlands and the Maroochy River) because of design, water depth and on-going maintenance.

75. There is no dispute as between the parties that the proposed lake needs to be maintained on an ongoing basis. Such maintenance is required to ensure the continued appropriate and acceptable operation of the lake, including its water quality (which is ultimately discharged into the Maroochy River). Given enough resources it is likely that an engineering solution could be found to matters that may arise with the lake. That is not, however, even close to the test that is required under the terms of the Planning Scheme.
76. To that end, as a starting point and as was noted during the course of the hearing, the Council is not prepared to accept ownership and responsibility for the lake that forms part of the proposed development.¹³⁵ A developer (and, with respect, even this Court) cannot force a Council to take ownership of an asset (or a liability) in such circumstances.¹³⁶ This calls into serious question all of the evidence of Dr Walker in support of the proposal, which he readily acknowledged was founded on the proposition that Council would ultimately take possession and ownership of (and responsibility for) the lake¹³⁷ – probably three (3) years after the lengthy construction phase is over.

77. Further:

- (a) Stockland has not identified any positive case that suggests that the proposed

¹³³ Exhibit 4.27, Planning JER2, p. 31, para. 74.

¹³⁴ Exhibit 2.2/8.15, Issue 3.

¹³⁵ T6-7, line 4 to T6-13, line 18.

¹³⁶ *Harderan Pty Ltd v Logan City Council* [1989] 1 Qd R 524 at 527-528. See also *Mascotmont Pty Ltd v Bundaberg Regional Council* [1997] QPELR 350, *Jones Flint & Pike Pty Ltd v Maroochy Shire Council* [1999] QPELR 434 and *Adam & Anor v. Gold Coast City Council* [2007] QPEC 25 at [17].

¹³⁷ See, as but one example, T6-6, line 45 to T6-7, line 16.

development (or even the size of the water body) is the *only way* to undertake a lake based development of the land,¹³⁸

- (b) the Court would not be satisfied that the only way to construct the proposed lake is with the pumping system that is contemplated (and the other ancillary infrastructure that the proposal inherently requires).

78. The above matters call into serious question all of the evidence of Dr Walker in support of the proposal, which (again) he readily acknowledged was founded on the proposition that Council would ultimately take possession and ownership of (and responsibility for) the lake.¹³⁹

79. Entirely contrary to Dr Walker's position (but entirely in support of Council's position) is the Strategic Framework in the Planning Scheme that notes that:¹⁴⁰

Constructed water bodies are not created except where maintained as private assets and used for other than water treatment purposes.

80. That same theme is found elsewhere in the Planning Scheme, where it is further noted that:¹⁴¹

Constructed waterbodies which are proposed to be dedicated as public assets are avoided, unless there is an overriding need in the public interest.

81. Dr Walker noted that he had not given any consideration as to whether there was an overriding need in the public interest for the proposed waterbody, considering that to be a question for others.¹⁴² Regardless of whether he is correct in terms of how this provision ought be interpreted, no other witness has given any such consideration to this question involving "overriding need" either. The Court has no evidence upon which it can be satisfied that any such need (which might justify the lake being a public asset) has been established.

82. Undoubtedly, Stockland may argue that no non-compliance arises with sections 3.7.4.1(f) and PO18 on the basis that because Council will not accept the proposed infrastructure, the provisions do not apply. Ultimately, that is a matter that need not be resolved by the Court on the basis that non-compliance with the planning scheme arises (in any event) regardless of whether the lake infrastructure is considered a non-private or public asset (or liability).

83. The Local Plan states:¹⁴³

Development in the Emerging community zone provides for the ongoing maintenance and management of any constructed waterbody and associated infrastructure, taking into account whole of life cycle costing and the provision of an ongoing funding source (i.e. sinking fund).

84. The Planning Scheme also identifies that:¹⁴⁴

Constructed waterbodies are designed, constructed and established to minimise maintenance and decommissioning costs and the requirement for specialised maintenance equipment and

¹³⁸ See Exhibit 2.2/8.15.

¹³⁹ See, as but one example, T6-6, line 45 to T6-7, line 16.

¹⁴⁰ Exhibit 3.1, Planning Scheme Extracts, p. 79, section 3.7.4.1(f).

¹⁴¹ Exhibit 3.1, Planning Scheme Extracts, p. 279, Table 9.4.6.3.1, PO18.

¹⁴² T6-15, lines 19-45.

¹⁴³ Exhibit 3.1, Planning Scheme Extracts, p. 196, Table 7.2.18.4.1, PO28.

¹⁴⁴ Exhibit 3.1, Planning Scheme Extracts, p. 277, Table 9.4.6.3.1 PO20.

techniques, and are provided with an on-going funding source.

85. Finally, and noting that the lake in question here is a piece of infrastructure created to manage stormwater (i.e. flooding) and to obtain fill, the following further provision from the Planning Scheme is also relevant:¹⁴⁵

Stormwater infrastructure is designed to minimise maintenance costs and the requirement for specialised equipment or maintenance techniques.

86. In simple terms, the Planning Scheme makes it plain that:
- (a) ongoing maintenance and specialised equipment and techniques (ie engineering solutions) **must be minimised**; and
 - (b) development must **provide for ongoing maintenance and management of any constructed waterbody taking into account whole of life cycle costing and the provision of an ongoing funding source.**

87. Dealing with (b) first, Stockland has simply not placed before the Court any persuasive evidence of how it intends to deal with, for the lake:

- (a) ongoing maintenance;
- (b) management;
- (c) whole of life cycle costing; or
- (d) the provision of an ongoing funding source.

88. The evidence of Dr Walker was entirely premised on the notion of the infrastructure being handed over to Council in (about) 13 years. It therefore does not assist.

89. It is also insufficient for Stockland to simply submit that they are prepared to establish a sinking fund for future lot owners. *The provisions of the Planning Scheme are clear: they require these matters to be demonstrated (at this point in the development assessment process) to ensure that there is sufficient clarity around how these items of infrastructure are going to be maintained, managed, costed and provided for. The planning intent behind such a provision is clear: the local government (and the community it represents) should have clarity about how infrastructure of this nature is to be dealt with so that it does not become a burden on the public.*

90. On this criterion, Stockland has simply and entirely failed to discharge its onus.

91. Returning to (a), the Planning Scheme, as noted above, makes it clear that ongoing maintenance and specialised equipment and techniques **must be minimised**. It is not sufficient merely to offer to provide a funding source for such maintenance and equipment/techniques (e.g. a Body Corporate, a sinking fund etc). The Planning Scheme seeks to prevent the creation of such problems at the outset, not create a framework where they are simply paid for by others (whether it be a private entity or the local government). This is a clear policy direction on the part of the drafters that ought be given meaning.¹⁴⁶ The policy is obviously designed to protect

¹⁴⁵ Exhibit 3.1, Planning Scheme Extracts, p. 277, Table 9.4.6.3.1 PO4.

¹⁴⁶ See also T6-26, lines 18-46.

the ratepayers from the expensive risk of ongoing maintenance of a lake in a private development, or worse, the rehabilitation in the event of a failure of the system to maintain water quality (and protect the wetlands).

92. Future requirements are inherently unpredictable and there is, therefore, a strong desire expressed in the Planning Scheme to minimise such requirements from the outset, rather than create a problem that will only emerge much later. This policy is one that warrants refusal of this proposed development, not merely its conditioning.

93. To that end, as was noted by **Dr Walker**:

(a) Much of the infrastructure required for this project was not representative of a typical approach.¹⁴⁷ Moreover, **the pumped lake system itself**, whilst contemporary in nature, also is **not typical**,¹⁴⁸

Dr Johnson similarly agreed that the proposal for stormwater to be collected and discharged via infiltration basins sited around the periphery of the central wetland was “*innovative*” and therefore “*unusual*”.¹⁴⁹ The proposal as a whole was “*complex*”, with complex solutions proposed as a consequence¹⁵⁰

(b) His costing work did not include any consideration of decommissioning¹⁵¹ (in circumstances where the Planning Scheme calls for precisely such a consideration). It also did not include costing associated with maintenance for the water related infrastructure outside the lake;¹⁵²

(c) He appeared to base much of his evidence on the proposition that an infrastructure agreement would be entered into as between Stockland and Council,¹⁵³ that being an outcome that cannot be forced (upon either party) by way of condition of approval¹⁵⁴ or otherwise;

(d) There is an extensive array of ongoing maintenance tasks that are required for the lake (which were contemplated to be ultimately the sole responsibility of the Council)¹⁵⁵ and, in addition, there is other proposed infrastructure, such as groundwater recharge trenches and the like.

94. As **Mr Collins** noted in the joint reports¹⁵⁶ and as the Court would ultimately accept (in the face of no challenge to this evidence under cross-examination¹⁵⁷):

(a) “*additional contingencies and funding mechanisms are required to address the risk of*

¹⁴⁷ T6-15, lines 10-17.

¹⁴⁸ T6-39, lines 17-34.

¹⁴⁹ T7-9, lines 21-46, with reference to Exhibit 4.29, Second Joint Experts Report on water quality and lake manage maintenance issues (**Water Quality/Lake JER2**), p. 36, Table, response to PO4.

¹⁵⁰ T7-27, lines 12-25.

¹⁵¹ T6-16, lines 15-17.

¹⁵² T6-34, line 5 to T6-36, line 23.

¹⁵³ T6-17, lines 4-10.

¹⁵⁴ Section 66(1)(b) *Planning Act*.

¹⁵⁵ T6-17, line 20 to T6-24, line 36, with reference to Exhibit 4.21, Water Quality/Lake JER1, pp. 353-355.

¹⁵⁶ Noting, in this context, Mr Collins affirmation of his views in Exhibit 4.29, Water Quality/Lake JER2, p. 23, paras. 1 and 2.

¹⁵⁷ T7-88, lines 41-47. The reference to Mr Lyons at line 47 appears to be in error, as the speaker was Mr Batty.

sediment movement and scour during the construction period and beyond, until such time as the site has fully stabilised”;¹⁵⁸

- (b) *“more details including ownership, on-going maintenance costs and full life cycle costings for the groundwater and surface water management systems proposed for maintaining the ecological health and groundwater and surface water regime of the existing central wetland are required, and these costs should be incorporated into the proposed lake sinking fund. Surface water management directs developed area runoff to the wetlands, but no information on volumetric runoff impacts has been provided. The urbanised areas will run off much faster than the existing catchments, and storage and slow release of stormwater may be required to ensure minimisation of impacts to the hydrologic regime*”;¹⁵⁹
- (c) *“allowance is required in the proposed sinking fund for lake management for repairs and additional works to stabilise the outfall after floods and if erosion and shoreline movement occurs, particularly when the uncertainties of increased river floods, rising sea levels and changes in estuary dynamics due to climate change are considered. Management of poor lake water quality discharge will also be required, which relates to additional lake management contingency measures*”;¹⁶⁰
- (d) There are residual issues with respect to the proposed lake sinking fund and the need for additional lake water quality management contingency measures.¹⁶¹

95. Dr Walker asserts that the annualised¹⁶² costs of maintaining the lake (and the lake alone) will be in the order of \$41,352. Mr Collins suggests that to this should be added a further annual sum of \$75,000, making a total annual maintenance cost of \$116,352.¹⁶³ These costs estimates do not include any allowance for:

- (a) Maintenance of the groundwater management systems (infiltration trenches etc) and surface water management systems (bio-basins etc), in circumstances where such maintenance will certainly be necessary to maintain the freshwater wetland that will otherwise be surrounded by a saltwater water body;
- (b) Contingencies for water quality management in the lake itself (noting Mr Collins’ residual concerns regarding the quality of the water in the lake on a long term basis¹⁶⁴).

96. Regardless of whose evidence is preferred in this regard these are by no measure small sums. They are not representative of a minimisation of maintenance costs. They are indicative of the specialised maintenance equipment and techniques that are required to ensure this lake operates

¹⁵⁸ Exhibit 4.21, Water Quality/Lake JER1, p. 16, para. 19.

¹⁵⁹ Exhibit 4.21, Water Quality/Lake JER1, p. 16, para. 21.

¹⁶⁰ Exhibit 4.29, Water Quality/Lake JER2, p. 23, para. 2.

¹⁶¹ Exhibit 4.21, Water Quality/Lake JER1, p. 17, paras. 26-27.

¹⁶² It is acknowledged that some costs are not actually incurred annually, but they have been apportioned accordingly for ease of comparison (e.g. a \$10,000 cost incurred only every 10 years has been apportioned as \$1,000 per year for comparison purposes).

¹⁶³ Exhibit 4.21, Water Quality/Lake JER1, pp. 7-15, Exhibit 4.29, Water Quality/Lake JER2, pp. 22-23 and Exhibit 4.30, Third Joint Experts Report on water quality and lake manage maintenance issues (Water Quality/Lake JER3), pp. 20-21. See also T6-27, line 25 to T6-33, line 31.

¹⁶⁴ See, in particular, Mr Collins’ contributions to Exhibit 4.30, Water Quality/Lake JER3, with respect to this issue.

safely and effectively, given its complexity.

97. It is submitted that the Court could not be satisfied that the proposed lake (and therefore the proposed development which depends on that lake) should be approved for a multitude of reasons, including:
- (a) Any notion that the Lake would become a public asset is contrary to the Planning Scheme requirements;
 - (b) No work has been undertaken that supports the Lake becoming a private asset (in terms of costs, ongoing maintenance, contingency issues and the like), so the Court has no evidence to act on in support of such a proposition;
 - (c) The proposal does not meet the Planning Scheme requirement that “*constructed waterbodies are designed, constructed and established to minimise maintenance and decommissioning costs and the requirement for specialised maintenance equipment and techniques, and are provided with an on-going funding source*”.¹⁶⁵
98. It is not the case that the lake remaining a private asset is the acceptable solution to all concerns about costing (as a private asset notionally imposes no burden on the public purse). The Planning Scheme requires that costs be minimised. Such a position is entirely sensible, seeking to avoid creating what could become an unmanageable future cost burden for whomever might ultimately need to carry said burden – almost invariably the Council, in the event the private arrangements (whatsoever they may be) should fail.
99. This is not a matter where conditions could simply set the correct funding amount (or the correct mechanism to secure such funding). It is fundamental to compliance with the Planning Scheme that costs be minimised. The minimisation of costs has not occurred in this case, regardless of the public or private status of the lake. The design of the lake, and all of the matters that flow as a consequence of that, have caused this circumstance.
100. The proposed development ought be refused (not conditioned) as a result of the lake (and its associated consequences) as it is proposed.

(c) Flood Emergency Management¹⁶⁶

101. This issue calls for consideration of “*whether, if implemented, the proposed Flood Emergency Management Plan adequately mitigates risks to safety of people from flooding*”.
102. The land and its locality is flood affected, both in the pre and (proposed) post developed state. There are and will be risks associated with flooding as a result. The question is whether the proposed development (which if approved will run with the land) does enough to mitigate those risks in terms of (very) strong language used in the **Strategic Framework** which calls for “*a precautionary and conservative approach*”.¹⁶⁷ It is to be:
- (a) “... *demonstrated that the impacts of flooding can be effectively mitigated such that there is no foreseeable risk to life or property*”.¹⁶⁸ This requirement is also repeated in the

¹⁶⁵ Exhibit 3.1, Planning Scheme Extracts, p. 277, Table 9.4.6.3.1 PO20.

¹⁶⁶ Exhibit 2.2/8.15, Issue 4.

¹⁶⁷ Exhibit 3.1, Planning Scheme Extracts, p. 93, section 3.10.1(c).

¹⁶⁸ Exhibit 3.1, Planning Scheme Extracts, p. 94, section 3.10.5.1(c).

Flood Hazard Overlay Code;¹⁶⁹

(b) ensured that “*areas of community isolation are not created*”.¹⁷⁰

103. The proposed development involves precisely the opposite of (b) above: it seeks to create an isolated community of considerable size (c. 1,800 people). Such obvious non-compliance with a provision of the Strategic Framework ought not be lightly dismissed. These provisions (and this non-compliance) prevail over the lower order provisions of the Planning Scheme, including the Local Plan and Zone Code provisions, which themselves are not silent on the issue of flood safety. The Local Plan addresses this concern by requiring that “*development in the Emerging community zone provides for adequate flood immunity (including safe refuge) and emergency access arrangements while avoiding any adverse off-site flooding impacts*”.¹⁷¹ It sets this high standard for new development of this “*greenfield*” site in the Emerging Community Zone, so low lying and close to the ocean and the river.
104. The Flood Hazard Overlay Code puts the matter as follows:¹⁷²

PO4	<i>Development does not compromise the safety of people resulting from the residual flood or storm tide inundation risk associated with events exceeding the DFE or DSTE, up to and including the probable maximum flood (PMF) or probable maximum storm tide (PMST).</i>	AO4	<i>Development provides an effective evacuation route that remains passable, with sufficient flood warning time, to enable people to progressively evacuate to areas above the PMF or PMST in the face of advancing flood or storm tide waters for events exceeding the DFE or DSTE.</i> OR <i>Development incorporates building floor levels or surface levels within each lot, as adequate safe refuges, that are above the PMF or PMST. (emphasis added)</i>
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105. It is clear from the provisions of the Planning Scheme that establishment of ground level above the relevant Defined Flood Event (as the proposed development contemplates) is not enough. The Planning Scheme calls for consideration of events up to and including the Probable Maximum Flood (**PMF**). It requires that the development adequately address risk in that event. As Mr Collins succinctly put matters, when it comes to people’s safety “*the bar’s higher*”.¹⁷³
106. Further, the Planning Scheme requires that “*development does not compromise the safety of people*”, not referring simply to the preservation of human life. It speaks more broadly of a concept of safety. Safety is not defined in the Planning Scheme but is defined (together with ‘safe’) in the Macquarie Dictionary as follows (emphasis added):¹⁷⁴

Safety: *The state of being safe; freedom from injury or danger*
Safe: *Secure from liability to harm, injury, danger, or risk*

¹⁶⁹ Exhibit 3.1, Planning Scheme Extracts, p. 223, section 8.2.7.2(2)(a).
¹⁷⁰ Exhibit 3.1, Planning Scheme Extracts, p. 95, section 3.10.5.1(d)(iv).
¹⁷¹ Exhibit 3.1, Planning Scheme Extracts, p. 195, Table 7.2.18.4.1, PO24.
¹⁷² Exhibit 3.1, Planning Scheme Extracts, p. 226, Table 8.2.7.3.2
¹⁷³ T7-66, lines 1-20.
¹⁷⁴ Macquarie Dictionary, 7th Edition.

107. That the Planning Scheme requires safety in the PMF is a policy decision on the part of the drafters that ought be given meaning, particularly in the development of a low lying but otherwise “greenfield” site.
108. Moreover, **Mr Collins** articulated why even if there may be no risk of drowning *per se* (because people have somewhere above the PMF they can physically stand, be that indoors or outdoors), that does not mean they are **safe**. In this case:
- (a) *“The facility requires a bit more than just space above the PMF. That is, you’ve got elderly people, you might have children... You need facilities to actually deal with that... I think there’s still a risk of people dying if you don’t have appropriate facilities. We heard evidence yesterday about the number of potential callouts for ambulances, and that’s real. So if someone – if there isn’t appropriate facilities to deal with that, someone could die”*,¹⁷⁵
 - (b) Put more simply, *“there are secondary issues of risk to life that still exist if you don’t have appropriate facilities on site”* for which, in response, the notional availability of emergency services (helicopters and the like) is not enough.¹⁷⁶ The concerns with respect to safety go beyond a mere provision of space (at that not even guaranteed undercover space for this proposal) above the PMF;
 - (c) Mr Collins’ disagreed with the notional prospect that these are simply matters that the Council (and emergency personnel) will have to deal with and he described how these were matters that are difficult to condition and that.¹⁷⁷

The problem I’m having is that ordinarily for a development, the developer proposes those things and the detail of those things, whether it’s at this stage of the development or subsequently, but what’s been put to us – or put to me is that, at this stage, it’s all going to be council’s issue down the track. So council... shouldn’t be charged with having to organise all of that, in my opinion.

109. As **Mr Molino** noted, *“from a flood risk point of view, you would in theory be able to build everything above the... PMF level”*.¹⁷⁸ That the proposed development does not adopt this approach is a design decision taken by Stockland (undoubtedly as a result of a range of other factors, perhaps including maximising development yield). It is for this Court to assess whether the right balance has been struck as between what is undoubtedly the safer flood option (i.e. all development above the PMF) and what is undoubtedly a less safe option (namely what is proposed here instead, with all bar about 60 detached dwellings and the community area below the PMF). Council submits that the balance has not been appropriately struck such that refusal is warranted.
110. In terms of the balancing exercise the matters of principle that even **Mr Molino** agreed were apposite in terms of flood emergency management planning are important. In addition to confirming that the PMF was the relevant ‘touchstone’ for assessment that the Court was encouraged to adopt in this case,¹⁷⁹ he confirmed that:

¹⁷⁵ T7-66, lines 27-45.

¹⁷⁶ T7-67, lines 1-18.

¹⁷⁷ T6-69, lines 5-47.

¹⁷⁸ T6-47, lines 20-41.

¹⁷⁹ T6-68, lines 44-46. See also T6-52, line 43 to T6-53, line 3, T6-64, lines 5-9 and T6-64, lines 27-32.

- (a) Even if people have sufficient time to evacuate, research and anecdotal evidence points to the fact that most people will choose to stay at home rather than evacuate;¹⁸⁰
- (b) Once stranded for more than a day, people may want to leave;¹⁸¹
- (c) People will desire to return to their homes during a flood if they are away when flooding occurs;¹⁸²
- (d) People will enter hazardous floodwaters despite warnings from authorities and even physical barriers to prevent entry.¹⁸³ Moreover, the majority of fatalities in Australia occur from people voluntarily entering hazardous floodwaters;¹⁸⁴
- (e) For every fatality which occurs there are many more rescues performed by emergency services;¹⁸⁵
- (f) In practice a real flood could rise at a rate faster than the Q100 design flood. In practice the NSW SES generally uses the rate of rise of a PMF in calculating available evacuation time, which leads to less time to evacuate;¹⁸⁶
- (g) Although he supported non-structural measures to reduce flood risks, because they have a human element **they cannot be relied upon** and it is inappropriate to rely upon them as a central method of risk mitigation;¹⁸⁷
- (h) Road access is fundamental to good emergency management.¹⁸⁸ Road access to the proposed development is, of course, cut in the Q100 (AEP 1%) event, with the evacuation warning triggered at some stage between a Q50 and Q100 event (the '2m level' at the relevant Picnic Point flood gauge);¹⁸⁹
- (i) Perhaps self-evidently:
 - (i) rare flood events do occur and so it is appropriate to have regard to those events when assessing risk and that is why measures need to be taken to address those risks.¹⁹⁰ "*The probability of isolation and the probability of buildings flooding would increase*" depending on the outcomes of climate change as well;¹⁹¹
 - (ii) the Bureau of Meteorology gets forecasting wrong and emergency plans, including those administered and run by Local Governments, do not always go according to plan.¹⁹²

111. More specifically with respect to this proposed development, **Mr Molino** also confirmed (in

¹⁸⁰ T6-62, lines 39-40, with reference to Exhibit 8.8.

¹⁸¹ T6-62, line 46, with reference to Exhibit 8.8.

¹⁸² T6-63, line 10, with reference to Exhibit 8.8.

¹⁸³ T6-63, lines 12-14, with reference to Exhibit 8.8.

¹⁸⁴ T6-64, lines 11-12, with reference to Exhibit 8.8. See also T6-55, lines 37-40.

¹⁸⁵ T6-64, line 14, with reference to Exhibit 8.8.

¹⁸⁶ T6-64, lines 22-25, with reference to Exhibit 8.8.

¹⁸⁷ T6-66, lines 18-21, with reference to Exhibit 8.8.

¹⁸⁸ T6-67, lines 23-28, with reference to Exhibit 8.8.

¹⁸⁹ T6-66, lines 10-14.

¹⁹⁰ T6-64, lines 5-9.

¹⁹¹ T6-76, lines 17-23.

¹⁹² T6-64, line 41 to T6-66, line 2.

numerous different ways) that he was reliant on the Council to effectively manage this development (and its FEMP) when needed.¹⁹³ Moreover, Mr Molino noted:

- (a) In larger floods the site may be **isolated for three days or more**¹⁹⁴ (the FEMP notes isolation periods of three to five days are expected¹⁹⁵) and people may become restless and want to leave the site;¹⁹⁶
- (b) In terms of the residential population, if an on site refuge was to be provided at a size consistent with the Red Cross Guideline referred to by the experts it would need to be in the order of 9,300m²,¹⁹⁷ **over 6 times larger** than the 1,500m² refuge that is proposed (and, in effect, being the total size of the 1Ha community hub that forms part of the development). To overcome this substantial deficit Mr Molino was relying on one or more of:
 - (i) People evacuating the site in the 12 hour window where that was possible,¹⁹⁸ in circumstances where 12 hours was also the needed time for such evacuation.¹⁹⁹ Despite relying on this option (quite heavily, it is submitted), he had not looked at whether there was any available capacity at off site evacuation centres to accommodate residents who left²⁰⁰ and appeared to rely (as well) on people simply finding their own alternative accommodation off site during a flood event;²⁰¹
 - (ii) People returning to their homes after the peak of a (non-PMF) flood (but before flood waters entirely subside);²⁰²
 - (iii) People using **other people's homes**,²⁰³ albeit that was a proposition that he appeared to disclaim in the witness box²⁰⁴ despite advocating for it in the written reports that were prepared for the hearing;
 - (iv) Utilising outdoor (perhaps covered) areas around the refuge space as 'overflow',²⁰⁵ also relying on Council potentially providing temporary shelters;²⁰⁶
- (c) In the figures put forward in support of the proposed development no allowance has been made for the 'non-residential' uses contemplated for the land, including a child care centre, such that those uses relied on complete evacuation.²⁰⁷ The evacuation of these *non-residential uses does not appear to have been accounted for in the methodology used to determine the amount of evacuation time that was needed (i.e. the calculated time appears to relate only to the residential uses)*;²⁰⁸

¹⁹³ See, as but some examples, T6-56, lines 12-26, T6-65, lines 10-41, T6-66, lines 18-37

¹⁹⁴ T6-72, lines 19-26.

¹⁹⁵ Exhibit 7.41, FEMP, p. 19.

¹⁹⁶ T6-67, lines 20-21, with reference to Exhibit 8.8.

¹⁹⁷ T6-48, line 44 to T6-49, line 2.

¹⁹⁸ T6-45, lines 22-36.

¹⁹⁹ T6-72, lines 28-33.

²⁰⁰ T6-51, lines 4-41.

²⁰¹ T6-52, lines 10-17.

²⁰² T6-45, lines 22-36 and T6-49, lines 31-38.

²⁰³ See, for example, Exhibit 4.15, (First) Joint Experts Report on Flooding and Flood Emergency Planning Issues (**Flooding and FEMP JER1**), p. 22, para. 131(a)(iii).

²⁰⁴ T6-49, lines 40-44 and T6-50, lines 19-21.

²⁰⁵ T6-50, lines 10-14.

²⁰⁶ T6-56, lines 6-15.

²⁰⁷ T6-48, lines 24-38.

²⁰⁸ See, for example, Exhibit 4.15, Flooding and FEMP JER1, p. 23, para. 131(c).

- (d) Assuming the site was not fully evacuated, there was “*a good probability*” that within the time this site was isolated by flood waters someone would have to be evacuated for a medical emergency, with Mr Molino suggesting a helicopter as the option for evacuation in that regard,²⁰⁹ that being the **only** means by which he saw the land could be reached if emergency evacuation was required;²¹⁰ and
- (e) Otherwise, Mr Molino seemed content to allow matters of important detail (e.g. emergency water supply, food, wastewater, communications) to be left to another day.²¹¹ He could not even advise (nor had he bothered to investigate) when things such as water and power supply to the land would likely be cut in a flood event.²¹²

112. **Mr Collins** addressed his concerns in the first joint expert report noting (generally consistent with Mr Molino’s evidence above):

- (a) The available area for flood refuge on site was inadequate when compared to relevant standards.²¹³ As is perhaps self-evident and common sense, “*due to the uncertainties in flooding and in human behaviour, there may be more people who are forced to take refuge on site during a severe flood event than allowed for. This means that the proposed refuge shelter is not large enough. Insufficient space has been allowed for per person in the sizing of the shelter*”;²¹⁴
- (b) “*Only one evacuation route is nominated, and if there is a traffic accident, no alternative route is possible, and delays to evacuation will occur. Based on the FEMP, 12 hours is required for the evacuation. Any accidents would lead to a larger number of people being trapped on site and hence, the need for a larger refuge building*”.²¹⁵ Moreover, in circumstances where the proposed development relies on a 12 hour evacuation time, the relevant route is only accessible for 12.2 hours, being an unacceptably short period of time (particularly when more severe flood events are considered).²¹⁶ In short, “*there is still a risk to people attempting to evacuate the site during severe weather events and the level of risk to these people, the number of people and the risk level acceptability has not been adequately defined*”;²¹⁷
- (c) No contingencies are provided for failures in the warning system (which can and do occur in reality)²¹⁸ and unacceptable reliance is placed on the storage of equipment ‘off site’.²¹⁹ To similar effect, “*the FEMP is proposed to be managed by Council and that this places additional burden on emergency services personnel that may be unacceptable*”;²²⁰
- (d) Substantive concerns as to matters of detail in the relevant documents and plans

²⁰⁹ T6-67, lines 37-44.

²¹⁰ T6-70, lines 46-47, T6-71, lines 11-12.

²¹¹ T6-70, lines 21-47, T6-72, lines 1-6 and T6-75, lines 28-38, with reference to Exhibit 7.41, FEMP, p. 19 in particular.

²¹² T6-71, lines 43-47.

²¹³ Exhibit 4.15, Flooding and FEMP JER1, p. 21, para. 130(a).

²¹⁴ Exhibit 4.15, Flooding and FEMP JER1, p. 44, para. 173.

²¹⁵ Exhibit 4.15, Flooding and FEMP JER1, p. 21, para. 130(c).

²¹⁶ Exhibit 4.15, Flooding and FEMP JER1, p. 21, para. 130(b) and p. 45, para. 183.

²¹⁷ Exhibit 4.15, Flooding and FEMP JER1, p. 44, para. 175.

²¹⁸ Exhibit 4.15, Flooding and FEMP JER1, p. 21, para. 130(d).

²¹⁹ Exhibit 4.15, Flooding and FEMP JER1, p. 21, para. 130(e) and p. 45, para. 181.

²²⁰ Exhibit 4.15, Flooding and FEMP JER1, p. 45, para. 177.

associated with the proposed development.²²¹ Mr Molino conceded as much in terms of him being unaware of the detail with respect to a range of matters (or that detail simply not existing as yet).²²²

113. With respect to that last matter (a lack of detail), when the issue is one of the safety in severe emergency events these matters are not ones that the Court would accept can be ‘left to another day’. To quote a recent decision of this Court concerned with that very proposition (namely an applicant seeking to improperly leave matters of detail involving public safety to be addressed as conditions).²²³

I also do not accept it was sufficient for Barro to contend that the design of the [quarry] access is a matter for conditions. It did so in reliance upon Mr Douglas' view that he could readily foresee an engineering design solution. However, such a contention ignores that Council has put in issue, as a reason for refusal, the design of the access. More particularly, Council has alleged non-compliance with Performance outcome PO2 of the Transport and parking code in the planning scheme, which is relevant to the design and operation of the access. The provision requires the 'design' of the site access to achieve specified objectives; one objective is that the design be 'safe, convenient and legible'.

114. It is incumbent on Stockland to put forward now how it intends to address these issues that the proposed development will create. They have not been adequately addressed at this time. Such a failure warrants refusal.
115. The proposed development, and in particular its FEMP, is bereft of appropriate (and necessary) details. Moreover the FEMP, remarkably:
- (a) Involves an approach whereby substantial necessary equipment and supplies will be kept off site and only brought to the refuge when needed (presumably via the road network that will otherwise be needed to evacuate people, or otherwise by way of boat/helicopter once the site is isolated, although none of this is specified in the FEMP);²²⁴
 - (b) Is reliant on Council to, in effect, manage all of its aspects (from flood warnings to emergency responses in a flood event).²²⁵ Whilst it is true that the Council has the role generally across the community, it is not a fair approach to say that the Council should therefore have to take on the additional issues and risk that this development entails. That development may have occurred in the past that has created a burden on Council's limited emergency services/responses and resources is not a warrant for such development to continue to be approved now and into the future. The Planning Scheme supports that proposition by way of the high bar that it places on development, seeking to ensure they are safe even in the PMF – particularly on this undeveloped vacant site.
116. This is not a situation that warrants approval in the face of known flood risk. Having regard to the manner in which the Planning Scheme treats this issue, the proposed development ought properly be refused for this reason.

²²¹ Exhibit 4.15, Flooding and FEMP JER1, p. 21, para. 132. See also Exhibit 4.15, Flooding and FEMP JER1, p. 39, para. 154(c) and p. 42, para. 165.

²²² See, as examples, T6-70, lines 29-44, in conjunction with the FEMP document itself, being Exhibit 7.41.

²²³ *Barro Group Pty Ltd v Sunshine Coast Regional Council* [2021] QPEC 18, at [60].

²²⁴ See T6-71, lines 14-15, together with Exhibit 7.41.

²²⁵ See, for example, Exhibit 7.41, FEMP, pp. 7, 11, 16, 18, 19, 20 and 21, together with Mr Molino's oral evidence more generally as noted above.

(d) **Ecology**²²⁶

117. The land itself has significant ecological values in terms of mapping and ‘first principles’ assessment, namely:
- (a) the ‘Central Wetland’, being a substantive extant freshwater wetland area;
 - (b) providing connectivity between that Central Wetland and the Maroochy River (and associated conservation area) to the South; and
 - (c) providing a buffer (from whatever development ultimately occurs on the balance of the land) to the Maroochy River (and associated conservation area) to the South.
118. All of these ecological features are mapped. They are mapped at the level of the Strategic Framework,²²⁷ the Local Plan²²⁸ and at the Overlay²²⁹ level in the Planning Scheme. As one would expect, that mapping carries with it Planning Scheme requirements as to development.
119. Dealing first with the most applicable provisions of the Local Plan and Overlay Code:

Local Plan- OO(2)(o)²³⁰

- (o) Land included in the Emerging Community Zone (Twin Waters West) is master planned and developed in the coordinated manner that:
 - (i) *Protects and enhances significant environmental and riparian areas, including ecologically important areas...*”

Local Plan- PO35²³¹

Development in the Emerging community zone provides for... the protection, buffering, connection and rehabilitation of ecologically important areas (including the Maroochy River and the Maroochy River Conservation Area) and the Conservation and rehabilitation areas shown on Figure 7.2.18A... (emphasis added)

Biodiversity, Waterway and Wetlands Overlay Code- PO2, PO7 and PO9²³²

PO2 Development on or adjacent to land containing an ecologically important area is designed and constructed to:-

- (a) *prevent any direct or indirect impacts on the ecologically important area;*
- (b) *enhance and restore the ecologically important area;*
- (c) *retain, enhance and restore known populations and supporting habitat of significant flora and fauna species; and*
- (d) *minimise the impacts of construction and ongoing use on native fauna.*

PO7 Ecological linkages are protected and enhanced and have dimensions and characteristics that:-

- (a) *effectively link ecologically important areas on and/or adjacent to the site; and*
- (b) *facilitate unimpeded, safe and effective movement of terrestrial and aquatic fauna traversing the corridor or accessing and/or using the site as habitat.*

²²⁶ Exhibit 2.2/8.15, Issues 5-7.

²²⁷ Exhibit 3.1, Planning Scheme Extracts, p. 81.

²²⁸ Exhibit 3.1, Planning Scheme Extracts, p. 199.

²²⁹ Exhibit 3.1, Planning Scheme Extracts, pp. 559 and 561.

²³⁰ Exhibit 3.1 Planning Scheme Extracts, p. 189.

²³¹ Exhibit 3.1, Planning Scheme Extracts, p. 198, Table 7.2.18.4.1, PO35 and Figure 7.2.18A at p. 199.

²³² Exhibit 3.1, Planning Scheme Extracts, pp. 214-218, Table 8.2.3.3.2, PO2, PO7 and PO9.

PO9 Development provides and maintains adequate vegetated buffers and setbacks to protect and enhance the environmental values and integrity of natural waterways and wetlands, having particular regard to:-

- (a) *fauna habitats;*
- (b) *wildlife corridors and connectivity;*
- (c) *adjacent land use impacts;*
- (d) *stream integrity;*
- (e) *water quality;*
- (f) *sediment trapping;*
- (g) *resilience to flood and storm tide inundation events and consequent erosion, including the safety of people and risk of damage to property on the site;*
- (h) *overland and groundwater flows; and*
- (i) *recreational amenity* (emphasis added)

120. The relevant provisions of the Strategic Framework are:

*3.7.1(f) The natural environment is protected and enhanced in a way that maintains and improves biodiversity, ecological processes, habitat and habitat connectivity, landscape character and amenity, economic and community wellbeing, resilience and capacity to evolve and adapt to the predicted impacts of climate change.*²³³

3.7.2 Element 1 – Natural habitats and biodiversity

3.7.2.1 Specific outcomes

(a) *Development is located, designed, constructed and operated to avoid, as far as practicable, or where avoidance is not practicable, minimise and mitigate, adverse impacts on the ecologically important areas identified conceptually on **Strategic Framework Map SFM 5 (Natural environment elements)** which include remnant and regrowth native vegetation, riparian areas and natural waterways, wetlands and waterbodies.*

...

(d) *Ecological buffers, fauna fencing, supplementary planting to prevent edge effects and other measures as appropriate are provided to mitigate adverse impacts from development on land adjacent to an ecologically important area.*

(e) *The network of ecological linkages identified conceptually on **Strategic Framework Map SFM 5 (Natural environment elements)** is established and maintained by undertaking ecological rehabilitation works in degraded areas (including where as part of a biodiversity offset arrangement), and ensuring unimpeded fauna movement.*²³⁴

3.7.4 Element 3 – Waterways, wetlands and natural water catchments

3.7.4.1 Specific outcomes

(a) *Natural waterways and wetlands are maintained predominantly in their natural state with development providing for rehabilitation and enhancement to improve their ecological functioning and water quality.*

...

(c) *Where adjoining a natural waterway or wetland, development provides for ecological buffers and other measures to protect and improve ecological functioning and water quality.*

(d) *The quality of ground and surface water is protected and enhanced in a manner that ensures its long-term environmental values and sustainability.*

²³³ Exhibit 3.1, Planning Scheme Extracts, p. 77, s. 3.7.1(f).

²³⁴ Exhibit 3.1, Planning Scheme Extracts, p. 78 and Strategic Framework Map SFM 5 at p. 81.

(e) *The health of waterways and wetlands on the Sunshine Coast is protected and enhanced by applying best practice standards to the quality and quantity of groundwater, surface water and wastewater discharge.*²³⁵

121. The Scheme provisions do not only call for the preservation of ecologically significant areas (e.g. the ‘on the ground’ current extent of wetlands and the like). They call for much more than that. In these ‘adjoining’ areas the Scheme requires:

- (a) the “*protection, buffering, connection and rehabilitation of... [mapped] Conservation and rehabilitation areas*”. As was noted in the evidence, **this development in fact proposes dwellings in these mapped areas** (let alone the myriad of other built form and infrastructure also proposed in those areas).²³⁶ Moreover, even Dr Daniel acknowledged that there is a requirement to rehabilitate these mapped areas embedded in the Planning Scheme;²³⁷
- (b) development to “*retain, enhance and restore known populations and supporting habitat of significant flora and fauna species*”;
- (c) buffers and setbacks that “*enhance the environmental values*”.

122. In other words, the areas that adjoin existing ‘on the ground’ values are intended by the Planning Scheme to, with the fullness of development and time, actually become ecologically significant themselves. So much is emphasised by the Riparian Protection Areas on Map 21C(ii) (at page 562 of Exhibit 3.1). As **Dr Thorgood** acknowledged: simply because an area is ecologically degraded does not mean it should be cast aside²³⁸; and the proposed development would not protect and rehabilitate all degraded areas of the mapped riparian protection area.²³⁹

123. It is not enough to suggest (as Stockland appears to) that development will not interfere with existing values (although even that suggestion is clearly disputed). Development of this land, if it is to be consistent with the Planning Scheme and the constraints that the Scheme places on such development, is to add to ecological values, improve them and enhance them. As **Ms Thorburn** notes, **2.97Ha of development footprint is proposed within the mapped Conservation and Rehabilitation Area.**²⁴⁰ There cannot be any sensible suggestion that such widespread intrusion into the mapped areas (that the Scheme calls to be enhanced and restored) is consistent with the ecological outcomes called for by the Planning Scheme. This proposition stands even before one considers the real impacts that are likely to be occasioned to the existing ‘on the ground’ values that the Scheme also seeks to protect and enhance.

124. In light of the above, the Court might have difficulties with the evidence of **Dr Daniel**, in that:

- (a) he readily acknowledged that he had approached the matter on the basis that buffers were

²³⁵ Exhibit 3.1, Planning Scheme Extracts, p. 79.

²³⁶ Exhibit 5.19, Statement of Evidence- Andrew Daniel (AD SE), p. 12, Figure 2. See also T9-43, line 21 to T9-46, line 29.

²³⁷ T9-48, lines 13-20.

²³⁸ T10-9, lines 33-40.

²³⁹ T10-10, lines 26-27.

²⁴⁰ Exhibit 4.24, Ecology JER2, p. 28, para. 101. **Dr Daniel** also did not appear to dispute this figure- see T9-60, lines 3-16, nor did any other expert in the joint report. **Dr Thorgood** concurred in his oral evidence that all mapped areas were not protected- T10-6, lines 14-15.

not required to enhance ecologically important areas, only to protect them.²⁴¹ Moreover, he saw ‘protection’ of the wetland areas as being equivalent to ‘enhancing’ them.²⁴² His approach in that regard (in both respects) is not in line with the requirements of this Planning Scheme: his evidence is, similarly, out of line with the assessment exercise that is required; and

- (b) when pressed on matters pertinent to the Planning Scheme, he conceded non-compliance with a provision from the Local Plan (PO35) that arguably represents the most site specific and important provision related to the ecology of this land.²⁴³

125. **Mr Caneris** appeared to also take an approach that set aside the requirements of this Planning Scheme, being more concerned with what he said were matters more important in terms of ecology.²⁴⁴ When he was taken to the Planning Scheme, he readily conceded **non-compliance with both the Local Plan and the Strategic Framework**.²⁴⁵ It is difficult to see how any non-compliance could be more significant than one that arises in both the locally specific planning document and the highest level of the Planning Scheme (which sets the policy direction).

126. **Dr Thorogood** appeared to care little for established literature with respect to issues of (in particular) buffers.²⁴⁶ Whilst it is undoubtedly true that a ‘one size fits all’ approach should not be adopted, such disregard for literature as was displayed by Dr Thorogood (and, indeed, all of Stockland’s ecology experts to at least some extent) is not an approach that is readily understandable or supportable. Moreover, Dr Thorogood’s repeated refusal to meaningfully engage on the issue of enhancement, with respect to the buffer areas in particular, was telling.²⁴⁷

An Unacceptable Lack of Detail

127. Before addressing the three particular aspects of Ecology raised by the Issues in Dispute something must also be said about the unacceptable lack of detail in the proposed development, which calls into serious question any agreement as between the experts (or some of them), including (but certainly not limited to) any agreement that the proposed development may, in fact, not intrude into the existing ecologically significant areas, provide sufficient buffers or appropriately treat water quality impacts.²⁴⁸

128. As Mr Collins’ noted, Stockland must “*get past the fundamental test*” as to whether the various items of proposed infrastructure can “*actually fit*” in the area that (by virtue of its design choices) Stockland has allotted to them.²⁴⁹ Dr Daniel appeared to agree as to the importance of this fundamental question and also agreed that there was no plan at hand that demonstrated this question could be answered in support of the proposed development.²⁵⁰ This is in circumstances where a plan of this kind was requested in the **Preliminary Joint Expert Report** of the ecologists in March 2021 and still has not been produced some 15+ months later.²⁵¹

²⁴¹ T9-41, line 40 to T9-42, line 10.

²⁴² T9-49, line 27 to T9-50, line 6.

²⁴³ T9-46, lines 1-28.

²⁴⁴ T9-72, line 10 to T9-73, line 12.

²⁴⁵ T9-73, lines 14-34. See also T9-74, lines 20-28.

²⁴⁶ T10-3, line 42 to T10-4, line 46.

²⁴⁷ See, as some examples, T10-12, line 7 to T10-13, line 32 and T10-14, line 19 to T10-16, line 11.

²⁴⁸ Such agreement is unsustainable in light of the fact that, at the very least, 1.8m-3m wide constructed pathways are proposed within the Central Wetland- see Exhibit 7.1, p. 27.

²⁴⁹ T7-74, lines 9-17.

²⁵⁰ T9-56, lines 32-44.

²⁵¹ T9-56, line 46 to T9-57, line 21.

129. The only plans that Stockland have provided (and modelled) show (at least) groundwater infiltration trenches alongside (if not in) measurable portions of the ecologically sensitive areas (totalling some **1.5km in length**²⁵²) including in **almost all of the areas where the relevant buffer or setback is narrowest**.²⁵³ Moreover, with respect to the groundwater plan in particular,²⁵⁴ neither **Dr Merrick**²⁵⁵ nor **Dr Daniel**²⁵⁶ could assist with how the wetland area on that plan had been determined (so there can be no certainty that even that plan accurately shows infrastructure outside, rather than inside, the wetland; that appropriate buffers can be maintained; or that the necessary infrastructure relied on by Stockland to preserve the wetland can be appropriately located and designed).
130. In that regard, there are simply put no plans put forward by Stockland that could found a conclusion that the infrastructure required can fit in the space provided:
- (a) **Dr Merrick** noted he could not design groundwater infiltration systems²⁵⁷ and was not responsible for the design of the relevant systems in this case, seeing that task as one that was the responsibility of Dr Johnson.²⁵⁸ Dr Merrick was clearly only responsible for a theoretical modelling exercise which had significant shortcomings, including that it was not done on the ‘leaky basin’ concept now relied on by Dr Johnson; it did not attempt to locate or design the infrastructure relied on; it relied on a number of assumptions that have not been proven and, perhaps most tellingly, it utilised a model with 25m x 25m “squares” in circumstances where that means that there is significant ambiguity about the location of the proposed infrastructure (and therefore how it would perform in terms of both groundwater and water quality);
- (b) **Dr Johnson** stated “*this is a complex matter*” with solutions that, as a result, were “*innovative*” and “*complex*”.²⁵⁹ In spite of this, and whilst he had reasons why he considered it unnecessary, Dr Johnson confirmed that no appropriate design had yet been done for the groundwater infiltration or bioretention system.²⁶⁰ Despite being involved in the project for many years:
- (i) new design details and suggestions (including meaningful changes to the areas of infrastructure proposed for the setback or buffer areas) were identified as late as his Individual Statement of Evidence;²⁶¹
- (ii) Dr Johnson agreed that more detailed analysis still remained to be undertaken to fully quantify pre and post-works flows to the infiltration basins over extended periods of time.²⁶²

Dr Johnson also confirmed that no plans had been put forward endeavouring to show

²⁵² T7-21, lines 15-21.

²⁵³ Exhibit 4.17, Joint Report on Groundwater, Hydrogeology and ASS Issues (**Groundwater/ASS JER**), p. 35, Figure 5.

²⁵⁴ Exhibit 4.17, Groundwater/ASS JER, p. 35, Figure 5

²⁵⁵ T8-18, line 42 to T8-19, line 2.

²⁵⁶ T9-62, lines 33-40.

²⁵⁷ T8-22, lines 1-13.

²⁵⁸ T8-12, lines 20-23. See also T8-9, lines 1-21, T8-20, lines 36-46 and T8-24, lines 23-27.

²⁵⁹ T7-27, lines 12-25.

²⁶⁰ T7-8, line 25 to T7-9, line 19. See also T7-11, lines 24-30 and T7-19, line 26 to T7-20, line 28.

²⁶¹ T6-100, line 1 to T6-103, line 27. See also T7-10, lines 1-29.

²⁶² T7-19, lines 26-41, with reference to Exhibit 4.30, *Water Quality/Lake JER3*, p. 11, para. 18.

how all necessary infrastructure could fit within the relevant buffer/setback areas.²⁶³ When presented with an attempt at such plans (namely Exhibits 8.12 and 8.13²⁶⁴), his response was to suggest yet more design changes that would then need to be modelled to ascertain whether or not they worked.²⁶⁵ Even still, he confirmed that infiltration trenches would be needed in the pinch points where the space for such trenches was smallest and therefore potentially unavailable.²⁶⁶

131. There were other such examples of design changes through the joint reporting process and even thereafter (some with and some without reason), including what was (or was not) required to facilitate the groundwater recharge trenches operating effectively (e.g. tanks, injection wells).
132. The only attempt at a level of detail that the Court does have in that regard were prepared by Mr Collins (Exhibits 8.12 and 8.13). He described those exhibits in terms the Court would likely accept, as being “a representation of what has been put forward through the joint expert process reports and in individual statements. It’s my interpretation of what that actually physically means on the ground”.²⁶⁷ He did this exercise for two separate locations (hence the two exhibits). In light of the cross-examination of Mr Collins as to these Exhibits the Court would be inclined to accept that, whilst those Exhibits are not perfect and detailed design could undoubtedly refine matters beyond what is shown, the Exhibits remain a fair representation of what is actually proposed (and, in any case, are the only attempt to show such a representation that the Court has before it).²⁶⁸ Stockland has no evidence on this point and therefore cannot discharge its onus on water quality, ecology and groundwater matters. Where provisions of the Planning Scheme dealing with the development of this Emerging Community land call for these matters to be satisfied, this difficulty for Stockland is not answered by an ambiguous suggestion that such matters can be subject to either conditions or detailed design because Stockland has not demonstrated to the requisite standard how either could potentially resolve the issues that have been identified.
133. Exhibits 8.12 and 8.13 demonstrate the exact opposite conclusion as compared to that put forward by Stockland, namely that **there is a very real risk, if not certainty (based on the plan that the Court is invited to approve by Stockland), that works will extend into the existing mapped areas (and those areas intended to operate as buffer)**, particularly in and nearby to the Central Wetland (and such works will, in any case, apparently occupy vast portions of the supposed buffer/setback areas). To again adopt Mr Collins’ phraseology, the design (such as it is) does not pass the “*fundamental test*” as to whether it can fit in the space that Stockland has chosen to provide it in. This represents overdevelopment.
134. These matters are not ones that the Court would accept can be ‘left to another day’. To again quote a recent decision of this Court concerned with that very proposition (namely an applicant seeking to improperly leave matters of detail to be addressed as conditions):²⁶⁹

I also do not accept it was sufficient for Barro to contend that the design of the access is a matter for conditions. It did so in reliance upon Mr Douglas’ view that he could readily foresee

²⁶³ T7-20, line 44 to T7-21, line 13.

²⁶⁴ Noting Mr Collins’ explanation as to how they were produced having regard to his attempts to amalgamate the relevant evidence- see T7-53, line 46 to T7-54, line 24.

²⁶⁵ T7-29, line 17 to T7-30, line 29. See also T7-32, lines 1-13.

²⁶⁶ T7-25, line 46 to T7-26, line 7.

²⁶⁷ T7-75, lines 25-44.

²⁶⁸ See T7-73, line 33 to T7-80, line 27.

²⁶⁹ *Barro Group Pty Ltd v Sunshine Coast Regional Council* [2021] QPEC 18, at [60].

an engineering design solution. However, such a contention ignores that Council has put in issue, as a reason for refusal, the design of the access. More particularly, Council has alleged non-compliance with Performance outcome PO2 of the Transport and parking code in the planning scheme, which is relevant to the design and operation of the access. The provision requires the 'design' of the site access to achieve specified objectives; one objective is that the design be 'safe, convenient and legible'.

135. It is abundantly clear that:

- (a) The Planning Scheme places an elevated level of importance on ecological concerns for the development of this land, both within existing 'on the ground' areas of importance and in the areas adjoining them (which on this land are mapped as well);
- (b) The Council has agitated, throughout, that there are very real issues associated with how all of the infrastructure that Stockland has dictated (via its design choices) must form part of the proposed development will respect and interact with the ecological values of the land (both as they exist today and as the Planning Scheme requires in any 'post-developed' state).

136. The second point, above, should be seen in the context of a development site that, as has been noted by the Court, is effectively a blank canvas. In that regard:

- (a) There is no particular constraint that dictates why a road near a wetland (as one example of what is proposed) must be 5m, 10m, 15m or 50m away from that wetland. Dr Daniel agreed that there was no importance attached to (as an example) having a road within a buffer.²⁷⁰ Further, **Mr Caneris** acknowledged that he had nothing to do with the design of the development, instead simply assessing what had been presented to him in that regard.²⁷¹ Neither Stockland nor its experts can point to any physical constraint present on this land (that will effectively be subject to cut and fill works across its entire 'non-wetland' extent) that mandates the location of internal roads and other infrastructure;
- (b) Insufficiency of space to install necessary infrastructure between the built form of the proposed development and the existing areas of ecological value (including buffers) is **solely** a result of the decision by Stockland to develop dwellings (and roads and other infrastructure) so close to the wetland. The development could simply have been placed further away, thereby creating more space for the necessary infrastructure (be that groundwater infiltration trenches, bio-basins or otherwise);
- (c) The fact that development infrastructure is "*required*" to be installed in the ecological buffer or setback areas is, again, a design choice made by Stockland (rather than choosing to locate that infrastructure outside the ecological buffer or setback areas). **Dr Merrick** noted that the groundwater infiltration trenches, being the only piece of infrastructure that might be said to have a direct relationship with the ecologically sensitive areas, would probably **see the best effect if located closer to the lake, not the wetland.**²⁷² Again, the decision to place the trenches so close to the wetland is a design decision on the part of Stockland.

These matters are all indicators that the proposed development would be an unacceptable

²⁷⁰ T9-58, lines 1-6.

²⁷¹ T9-86, lines 27-41.

²⁷² T8-7, lines 19-23.

overdevelopment of the land.

137. In such circumstances it is incumbent on Stockland to put forward, with far greater precision than it has in this case, how it intends to address these issues that its proposed development will create. They are matters that Stockland ought properly address now. They have not been adequately addressed at this time. Such a failure warrants refusal.
138. With this general proposition in mind, attention should then be drawn to three particular areas of ecological concern.

Buffers and Fauna Habitat and Movement

139. The first component of the ecology issues is whether the buffers or setbacks to the Central Wetland, eastern property boundary (linking the Central Wetland to the River area), and the Maroochy River and Maroochy River Conservation Park are adequate.
140. As noted by **Ms Thorburn** (but which does not appear to be disputed):²⁷³

The freshwater wetlands on and adjacent to the site are MNES, MSES and MLES. They are of high ecological value and are an endangered ecological community.

(**Dr Daniel** went so far as to note that protection of the Central Wetland (in particular) was of “paramount” importance.²⁷⁴)

141. To much the same effect **Ms Thorburn** also notes that:²⁷⁵

... there are at least 160 native vertebrate fauna species which are either known to occur or could utilise the central wetland habitats. It is my view this is notable given the relatively small size of the habitat patch. Sensitivity to edge effects, habitat modification, and / or disturbance will vary between species and species groups and habits within the ‘central wetland’ (as is the Maroochy River Conservation Area) need to be adequately buffered... I maintain that proposed buffers to the central wetland and along the eastern boundary of the site are inadequate in regard to native fauna (and inconsistent with best practice and planning scheme assessment benchmarks).

Mr Caneris similarly conceded a range of fauna either were or could be present on the land.²⁷⁶

142. Consistent with the standards that the Planning Scheme calls for, and entirely unresponsive of the proposed development, **Ms Thorburn** notes that **2.97Ha of development footprint is proposed within the mapped Conservation and Rehabilitation Area.**²⁷⁷
143. Looking at what should properly be situated within these buffer/setback areas, **Ms Thorburn** and **Mr Agnew** have endeavoured to summarise what role and function the setback (or buffer) to these areas is intended to serve. They identify in this regard that “*the buffers on the site are*

²⁷³ Exhibit 4.24, Ecology JER2, p. 17, para. 44.

²⁷⁴ T9-52, lines 29-45.

²⁷⁵ Exhibit 4.24, Ecology JER2, pp. 20-21, para. 59.

²⁷⁶ T9-77, lines 16-39.

²⁷⁷ Exhibit 4.24, Ecology JER2, p. 28, para. 101. **Dr Daniel** also did not appear to dispute this figure- see T9-60, lines 3-16, nor did any other expert in the joint report.

required to perform the following functions:

- a. protect and enhance the biodiversity and ecosystem functions of the wetland (e.g. food webs, nutrient cycling)
- b. protect the wetland from edge effects that are known to occur with urban development
- c. protect and enhance the ability of the wetland to provide habitat for fauna
- d. provide additional habitat for fauna, particularly those which may rely on adjacent but non-wetland habitat (e.g., eastern grey kangaroo)
- e. reduce impacts of urban generated disturbance to fauna, and
- f. provide a corridor for fauna movement, either for wetland-dependent or terrestrial species...

... roads, bikeways, and other infrastructure to facilitate the development do not contribute to the above buffer functions, and should be excluded from assessments of the setback distance needed to achieve the required biodiversity and ecosystem function outcomes”.²⁷⁸

144. The Court would be satisfied that this synopsis of the role and function of a buffer or setback is consistent with what the Planning Scheme calls for. It is the proper basis against which to compare (and contrast) the proposed development.

145. To that end, and putting to one side what may be placed within them, the setbacks proposed by the subject development are inadequate. As noted by **Ms Thorburn**, at a minimum they are in the order of **only 6m**.²⁷⁹

146. **Dr Daniel** and **Mr Caneris**, on behalf of Stockland, have effectively sought to suggest that conditions can control what occurs in the setbacks that are proposed so as to achieve an acceptable outcome. That approach is not accepted by **Ms Thorburn** and **Mr Agnew** and would not be accepted by the Court. As noted by **Ms Thorburn**:²⁸⁰

The ‘setback rules’ proposed by AD & AC do not address the fact that the buffer provided to the wetland is less than is required to protect and enhance the biodiversity values, ecological connectivity, and ecological functioning of the wetlands (as required by the relevant planning scheme provisions) in accordance with the scientific literature.

147. As noted above, there are also (serious) residual concerns about the extensive array of infrastructure that is required to be constructed in the buffer, such as detention basins, groundwater recharge infrastructure and the like. Whilst such infrastructure may, if properly designed and understood, be capable of being integrated within an appropriate setback or buffer,²⁸¹ it is the scale and uncertainty involved here that is in issue:

(a) **Dr Daniel** and **Mr Caneris**²⁸² put forward a requirement that “*where road reserves are within 10m to the mapped boundary of the central wetland, any bioretention basins and infiltration trenches should only be considered in these locations where absolutely necessary. Where required these are to be constructed in series, and not in parallel and minimised as far as possible*”;²⁸³

(b) **Mr Caneris** identified “*that any civil works intruding within 5 meters of the mapped*

²⁷⁸ Exhibit 4.24, Ecology JER2, pp. 15-16, paras. 41-42.

²⁷⁹ Exhibit 4.24, Ecology JER2, pp. 14-15, para. 38 and Table 1.

²⁸⁰ Exhibit 4.24, Ecology JER2, p. 17, para. 44.

²⁸¹ A matter acknowledged by both Ms Thorburn and Mr Agnew- see Exhibit 4.24, Ecology JER2, p. 28, para. 103.

²⁸² Exhibit 4.24, Ecology JER2, pp. 95-97, Appendix C.

²⁸³ Exhibit 4.24, Ecology JER2, p. 96, Item 20.

wetland should be viewed as inappropriate development".²⁸⁴ On any of the myriad design options presently before the Court it is, put bluntly, **impossible to comply with this plainly stated requirement** from Stockland's own ecologist. Mr Caneris' attempt to step back from this opinion in the witness box (seeking to, apparently, limit it only to the construction phase), which he himself conceded had no foundation in the Planning Scheme or other literature, is not one that the Court would be inclined to accept;²⁸⁵

(c) **Dr Daniel:**

- (i) appeared to care little for the drastic changes that have occurred over the life of the matter in terms of the quantum of water infrastructure that is required within the buffer areas (and the overarching lack of detail for that infrastructure that pervades);²⁸⁶
- (ii) appeared willing to accept a buffer/setback as little as perhaps 1m in width;²⁸⁷
- (iii) had not even endeavoured to calculate how much of the buffer area actually would be occupied by infrastructure.²⁸⁸ He also had not bothered to provide a map that demonstrated the 30m setback (from the Central Wetland to future property boundaries) that he considered important, nor to even determine if that 'rule' he espoused could be complied with based on the current Plan of Development;²⁸⁹
- (iv) had not turned his mind to how, if at all, many of the measures he had suggested would be implemented (e.g. weed management, pest control).²⁹⁰

148. The Court would not be satisfied that even the criteria set by Stockland's own experts can be met, let alone those included in the applicable planning instruments. Indeed, it appears impossible to achieve either given the locations at which groundwater infiltration trenches (in particular) have been identified by Dr Merrick as being required,²⁹¹ noting as well that their location in this instance, so close to the wetland (if not within it), is a design decision by Stockland driven by the location of other aspects of the development in circumstances where, again, Dr Merrick confirmed that the groundwater infiltration trenches would probably **see the best effect if located closer to the lake, not the wetland.**²⁹²

149. As Mr Agnew stated:²⁹³

I support a redesign of the infiltration trenches to minimise the area consumed within the buffer. That the gravel batters could support trees and shrubs would also be positive. Whether those outcomes can actually be achieved (and to what extent) is yet to be demonstrated. Further, proposed water quality management devices may present sub-optimal conditions for movement for some fauna, and will constrain effective fauna movement opportunities in areas where buffers are narrow. Information on the proportion of the buffer (excluding roads and

²⁸⁴ Exhibit 4.13, Ecology JER1, p. 61, para. 219.

²⁸⁵ T9-74, line 30 to T9-77, line 14.

²⁸⁶ T9-54, lines 14-45.

²⁸⁷ T9-55, line 10 to T9-56, line 4. See also T9-59, lines 24-46.

²⁸⁸ T9-58, lines 30-46.

²⁸⁹ T9-60, line 43 to T9-61, line 6.

²⁹⁰ T9-62, line 42 to T9-63, line 17.

²⁹¹ Exhibit 4.17, Groundwater/ASS JER, p. 35, Figure 5, with reference to Exhibits 8.12 and 8.13 as well.

²⁹² T8-7, lines 19-23.

²⁹³ Exhibit 4.24, Ecology JER2, p. 27, paras. 94 and 98.

bikeways) to be used for bioretention and infiltration trenches has not been made available for my assessment...

I have sought information on the area and proportion of the setback (excluding other infrastructure) that would be required for the purposes for bioretention and the infiltration trenches. Unfortunately, this information has not been made available for my for assessment. I maintain that this information is important to fully assess the residual benefits of the setback (excluding other infrastructure) to native fauna.

150. Notably, Mr Agnew was not cross-examined on this opinion (nor most of his opinions).

151. Further, whilst this Court is not bound by previous evidence with respect to the development of this land,²⁹⁴ **Mr Agnew's** synopsis is informative:²⁹⁵

The previous Stockland MCU development proposal for the site was subject to an Appeal before the Planning and Environment Court in 2010... In that matter all four highly experienced ecologists providing evidence to the Court, wholly endorsed a 30m conservation buffer around the central wetland and a 50m conservation buffer along the eastern boundary. The unanimously accepted buffer outcomes were incorporated in the plans that was part of the matter at that time... It is my view that the ecological values to be buffered in 2010, have not materially changed in the following 12 years, though it is clear that the current development proposal is materially different in its far greater extent and development intensity.

152. Again, Mr Agnew was not cross-examined about this point.

153. Returning to the now proposed development:

(a) **Mr Agnew** summarised what in reality is perhaps self-evident, namely that:²⁹⁶

Both the construction phase and final development will introduce stressors to fauna and fauna habitat which are not associated with the existing grassland environment which surrounds the wetland. The proposed setbacks, of as little as 6m in width, do not minimise exposure of fauna and fauna habitat negative edge effects introduced by an extended construction phase or by a highly urbanised environment.

(b) As **Ms Thorburn** summarised in the first joint report²⁹⁷ and maintained in the second joint report:²⁹⁸

... the potential impacts of low and medium density residential (and associated infrastructure such as roads) adjacent to the HES wetland are different from those of current land use (maintained grassland). The wetland is currently in good condition and is of high ecological value. While I have observed some edge effects in the central wetland adjacent to the existing Twin Waters development, few edge effects are noted on the other boundaries of the wetland (i.e. within the subject site). While AD has attributed this to the 'sealed edge', in my view, the adjacent land use is also relevant.

²⁹⁴ *Stockland v Sunshine Coast Regional Council & Ors* [2013] QPEC 79.

²⁹⁵ Exhibit 4.24, Ecology JER2, p. 21, para. 61.

²⁹⁶ Exhibit 4.24, Ecology JER2, p. 24, para. 74.

²⁹⁷ Exhibit 4.13, (First) Joint Experts' Report- Ecology (**Ecology JER1**), p. 35, para. 105.

²⁹⁸ Exhibit 4.24, Ecology JER2, p. 24, para. 72.

The wetland currently has approximately 3.55 km of edge adjacent to maintained grassland or regrowth terrestrial vegetation, i.e. a vegetated landscape with limited human activity (apart from maintenance slashing), and 395 m of edge (i.e. 10% of the wetland edge) along urban development (backyards of houses or a vegetated buffer strip). The proposal intends for this to be increased to a near 100% edge to urban development (with the interface being a road rather than housing lots for the proposed development).

154. The buffers or setbacks that are proposed herein are inadequate. They will not achieve the desired ecological outcomes when assessed against the Planning Scheme. The failure to provide adequate buffers to the agreed ecological features of high importance is a matter that ought properly be fatal to the prospect of an approval of this proposal. The proposed development is an overdevelopment of the subject land.

Surface and Groundwater Quality Measures

155. The second component of the ecology related issues is whether adequate measures can be provided, and if so whether they are practical, reasonable and achievable, to protect the ecology of the Central Wetland, the Maroochy River and the Maroochy River Conservation Park from unacceptable impacts relevant to surface water and groundwater.
156. There is an obvious interplay with respect to the evidence of the ecologists and the water experts in the context of this issue. **Dr Daniel**,²⁹⁹ **Mr Caneris**³⁰⁰ and **Dr Thorogood**³⁰¹ all conceded (in their own ways and in part, if not entirely) that:
- (a) the potential for adverse impacts, associated with surface and groundwater, was created by virtue of the proposed development;
 - (b) their evidence depended on the 'water' experts delivering (in effect) an acceptable hydrological regime (surface and groundwater) to the ecological areas that were of concern to them. Put another way, they depend on the water experts delivering appropriate ameliorative measures to address the otherwise unacceptable 'water' impacts that would be occasioned by the proposed development.
157. In that vein, the Court would be concerned by the lack of detail and precision in the matters put forward by Stockland and its witnesses, as well as the changes that have been made 'on the run' to such design matters. The Court could not be satisfied that this proposed development can be undertaken without adverse impacts.
158. As noted above, **Dr Johnson** identified that "*this is a complex matter*" with solutions that, as a result, were "*innovative*" and "*complex*".³⁰² In spite of this, Dr Johnson confirmed that no detailed design had yet been done for the groundwater infiltration or bioretention system,³⁰³ despite his involvement in the project for many years:
- (a) new design details and suggestions (including significant changes to the areas of infrastructure proposed for the setback/buffer areas) were identified as late as his

²⁹⁹ T9-51, lines 1-43. See also T9-54, lines 3-12.

³⁰⁰ T9-85, lines 17-37.

³⁰¹ T10-16, lines 20-26.

³⁰² T7-27, lines 12-25.

³⁰³ T7-8, line 25 to T7-9, line 19. See also T7-11, lines 24-30 and T7-19, line 26 to T7-20, line 28.

Individual Statement,³⁰⁴

- (b) he agreed that more detailed analysis **still** remained to be undertaken to fully quantify pre and post-works flows to the infiltration basins over extended periods of time;³⁰⁵ and
- (c) Dr Johnson also confirmed that no plans had been put forward endeavouring to show how all necessary infrastructure could fit within the relevant buffer or setback areas,³⁰⁶ and when presented with an attempt at such plans (namely Exhibits 8.12 and 8.13³⁰⁷), his response was to suggest yet more design changes that would need to be modelled to ascertain whether or not they worked.³⁰⁸ Even still, he confirmed that infiltration trenches would be needed in the pinch points where the space for such trenches was smallest.³⁰⁹

159. **Dr Merrick** frankly admitted that his evidence was based on the (theoretical) modelling exercise that he had undertaken³¹⁰ and further:

- (a) *“Any development will cause some degree of change to a groundwater system. So exact duplication is not possible”*.³¹¹ Moreover:
 - (i) It was agreed that the proposed development (the lake in particular) will cause salinity levels to rise in and around the wetlands;³¹²
 - (ii) *“Some form of mitigation is essential to not alter the natural groundwater salinity significantly beneath the wetland”*;³¹³
- (b) He had modelled (and had **only** modelled) an infiltration trench in every 25m x 25m cell³¹⁴ (represented by the blue triangles on the relevant figure³¹⁵). That modelling assumed that water entered the ground in a uniform fashion across the entirety of that 25m x 25m cell.³¹⁶ Dr Merrick identified that he could have designed the model with a smaller cell size.³¹⁷ With all of that at hand, and despite their being no modelling of any other outcome, Dr Johnson appeared to suggest that trenches could be as narrow as 4m (or even 2m)³¹⁸ and that there could be gaps between trenches as large as 50m³¹⁹ and Dr Merrick appeared to suggest that the modelled scenario could be deviated from with gaps as large as 100m, but that this was *“yet to be proven”*.³²⁰ Such (entirely untested, undesignated and unmodelled) speculation on the part of the Stockland experts, clearly

³⁰⁴ T6-100, line 1 to T6-103, line 27. See also T7-10, lines 1-29.

³⁰⁵ T7-19, lines 26-41, with reference to Exhibit 4.30, Water Quality/Lake JER3, p. 11, para. 18.

³⁰⁶ T7-20, line 44 to T7-21, line 13.

³⁰⁷ Noting Mr Collins' explanation as to how they were produced having regard to his attempts to amalgamate the relevant evidence- see T7-53, line 46 to T7-54, line 24.

³⁰⁸ T7-29, line 17 to T7-30, line 29. See also T7-32, lines 1-13.

³⁰⁹ T7-25, line 46 to T7-26, line 7.

³¹⁰ T8-12, lines 35-36.

³¹¹ T8-6, lines 1-5.

³¹² T8-6, lines 7-8.

³¹³ T8-6, lines 30-42.

³¹⁴ T8-13, lines 21-25. See also T8-14, lines 21-27 and T8-17, lines 24-30.

³¹⁵ Exhibit 4.17, Groundwater/ASS JER, p. 35, Figure 5. See also T8-17, lines 24-30.

³¹⁶ T8-14, lines 33-36.

³¹⁷ T8-18, lines 35-40.

³¹⁸ T7-21, lines 15-23, T7-24, lines 11-15 and lines 42-44, T7-25, lines 39-42, T7-27, lines 1-10, T7-29, lines 17-34.

³¹⁹ T7-21, lines 19-23.

³²⁰ T8-13, lines 21-44.

intended to avoid the obvious consequences of what has actually been modelled (namely an unacceptable interplay as between infrastructure and ecology), is not an approach the Court would find acceptable;

- (c) The modelling did not correctly account of the actual fill levels that were proposed for the 'developed' parts of the site, instead assuming fill only in the order of 1.2m-1.8m;³²¹
- (d) Despite acknowledging that nitrogen and phosphorus can affect groundwater quality, he had only modelled the more "generic" measure of salinity;³²²
- (e) He suggested that he had modelled month-by-month rainfall statistics,³²³ but there was no persuasive evidence of that in the relevant documents;³²⁴
- (f) He acknowledged that groundwater impacts were particularly important in times of drought,³²⁵ that the groundwater model only addresses "*the volume of water that is input*"³²⁶ and that operation of the injection trenches will need to be "*near continuous... particularly during dry periods when runoff water is not available*".³²⁷ With that in mind he identified that:
 - (i) his modelling actually assumed an increase in rainfall of 10%³²⁸ (and not any decreases³²⁹);
 - (ii) despite it being suggested in the joint report,³³⁰ no modelling or design had been done as to supplementary infrastructure to supply water in times of drought;³³¹
 - (iii) his own modelling (for the construction phase, **not** the post-construction phase) had demonstrated that two very dry years in succession could occur.³³² By comparison the historical period he used when designing the model for the post construction phase only had one very dry year contained within it,³³³
 - (iv) in periods of extended drought (say 2 years), the 'curtain' of protective water provided by the groundwater infiltration infrastructure would be pulled down.³³⁴ However, and despite his own work demonstrating (at least) 2 dry years in a row had occurred in the very recent past, **he had not** "*modelled the salinity effects of two or three very dry years in a row*";³³⁵
 - (v) rather, and entirely unhelpfully in terms of potential impacts of a lake and development that will be in place effectively in perpetuity, he had only modelled

³²¹ T8-19, line 27 to T8-20, line 17.

³²² T8-20, lines 19-24.

³²³ T8-26, line 31 to T8-28, line 33.

³²⁴ Be that Exhibit 7.35 or the joint report, Exhibit 4.17.

³²⁵ T8-20, lines 26-29. See also Exhibit 4.17, Groundwater/ASS JER, p. 16, lines 180-186.

³²⁶ T8-11, lines 32-44.

³²⁷ Exhibit 4.17, Groundwater/ASS JER, p. 21, lines 364-370.

³²⁸ T8-32, lines 8-23.

³²⁹ See T8-36, lines 1-47.

³³⁰ Exhibit 4.17, Groundwater/ASS JER, p. 17, lines 207-210 and p. 21, lines 364-370.

³³¹ T8-25, lines 1-18.

³³² T8-29, line 21 to T8-22, line 5, together with Exhibit 7.34, p. 8, Table 1

³³³ Exhibit 7.35, p. 10, Table 1.

³³⁴ T8-30, lines 21-29.

³³⁵ T8-42, lines 19-24.

what he described as “*the most normal*” period amongst the 120 years of records that he had at hand. The model “*was designed to see how the system would respond to a fairly normal sequence of years*”.³³⁶

160. The Court has a paucity of detail as to how the relevant stormwater and groundwater measures will actually be delivered as part of the proposed development. That the Council had to produce the images that ultimately became Exhibits 8.12 and 8.13, in an effort to at least show part of something that may be implemented by Stockland (and which Stockland and its experts proceeded to identify may not represent the final design in any case) is unacceptable. The evidence the Court does have with respect to groundwater is entirely theoretical, and lacking *appropriate real world applicability with respect to this development and its potential adverse impacts*. A design that fits appropriately within the proposed development is entirely absent.
161. The Court would not be satisfied, to the requisite standard, that Stockland has discharged its onus to demonstrate that stormwater and groundwater measures can be implemented in the manner proposed to achieve the outcomes required without adverse impact on the ecologically significant areas.

Constructed Lake and Pipe Outlet

162. The third component of the ecology related issues concerns whether the proposed constructed lake with a pipe outlet to the Maroochy River will cause unacceptable impacts upon ecological values.
163. Insofar as **Ms Thorburn** is concerned she, in effect, sensibly defers to the water experts with respect to the water quality impacts associated with such matters, summarising that whilst an acceptable outcome will be achieved if the relevant water quality targets that have been identified are met,³³⁷ “*if the quality of the water discharged from the lake is poor, there would be impacts to the ecological values of the Maroochy River*”.³³⁸ The submissions set out above with respect to water quality need not be repeated herein in that regard.
164. With respect to the potential impact on water mouse habitat (effectively associated with where the pipe is proposed to be constructed, being through an ecologically sensitive area), **Ms Thorburn** and **Mr Agnew** agree that:³³⁹

... we were able to detect current water mouse activity at two previously known nest sites and at six previously unknown sites. Whilst not a comprehensive investigation of the area, the results demonstrate that a water mouse population continues to occupy the area adjacent and to the south of the subject site. Further, that the values for water mouse within habitats local to the proposed Lake Southern Outlet Pipe works warrant a detailed and systematic program of nest site searches and trapping to confirm habitat values for water mouse and the implications of the Lake Southern Outlet Pipe works upon those values.

165. **Mr Agnew** goes further, noting that:³⁴⁰

... the Lake Southern Outlet Pipe works represent a high risk of negative impacts to the

³³⁶ T8-42, line 46 to T8-43, line 7.

³³⁷ Exhibit 4.24, Ecology JER2, p. 44, para. 196.

³³⁸ Exhibit 4.24, Ecology JER2, pp. 44-45, para. 197.

³³⁹ Exhibit 4.24, Ecology JER2, p. 46, para. 208.

³⁴⁰ Exhibit 4.24, Ecology JER2, pp. 46-47, para. 211.

vulnerable water mouse and habitat values upon which it depends. The presence of water mouse mounds with 9 and 20m of the alignment works are at risk. There is a high potential that habitat within the alignment would represent foraging habitat for the water mouse population associated with those mounds. The works program identified by Saunders Havill (2019) shows that works could extend over 4-6 weeks, though timeframes may alter as a result of factors including unfavourable weather.

166. This is a matter that stands in support of the overall position with respect to ecology, namely that ecology is properly a reason for refusal of the proposed development.

Ecology- Conclusion

167. **Ms Thorburn** ultimately summarises (and **Mr Agnew** agrees, as it pertains to his field of expertise) that:³⁴¹

.. I disagree that the proposed development, in its current form, supports the relevant objectives of the planning scheme... it remains my view that the proposed development footprint has been maximised at the expense of the protection and enhancement of ecologically important areas; specifically, the development does not provide appropriate setbacks to the freshwater wetlands that are MLES, MSES and MNES.

168. The Court would be inclined to accept this summation.

169. Ecology concerns are a matter that warrant refusal of the proposed development.

(e) **Settler's Park**³⁴²

Introduction

170. It is difficult to understand how Stockland could have adopted such a cavalier attitude to the requirements for the development of this land to enhance Settler's Park, which lies at the very entry to the proposed development.

171. PO30 of the Local Plan (which appears under the heading "*Development in the Emerging Community Zone (Twin Waters West)*") could not be in clearer terms.³⁴³

PO30

Development in the Emerging Community Zone provides for the protection and enhancement of Settler's Park as a recreation park, local heritage place and gateway entry feature for the Pacific Paradise and Twin Waters communities.

172. It is site specific and clear on its face.

173. As was conceded by **Mr Reynolds**,³⁴⁴ whomsoever seeks to take the benefit of the development of this land in the Emerging Community Zone is burdened with not just the protection, but also the enhancement of Settler's Park, and not just as a local heritage place but also as a "*recreation park... and gateway entry feature for the Pacific Paradise and Twin Waters Communities*".

³⁴¹ Exhibit 4.24, Ecology JER2, p. 51, para. 236 and p. 52, para. 239.

³⁴² Exhibit 2.2/8.15, Issue 9.

³⁴³ Exhibit 3.1, Planning Scheme Extracts, pp. 196-197, Table 7.2.18.4.1, PO30. See also AO30.

³⁴⁴ T4-10, line 4 to 15

174. There is no doubt in Stockland’s landscape plan (Exhibit 7.3, at pages 14 and 15 in particular) that Stockland was well aware of what a “recreation park” involves and the type of facilities that ought to be considered for inclusion within it. There can also be no doubt that the enhancement of Settler’s Park as contemplated by the Planning Scheme was location specific – it was to serve as a gateway to both the Pacific Paradise and Twin Waters communities.
175. The notion that Stockland seems to advance, namely that it could satisfy these requirements merely by preserving the mango trees (which it has accepted can be done) but by otherwise providing a linear park that is not much more than a drainage reserve, rather than the enhanced recreation park at this gateway location, is simply absurd. The decision made by Stockland as reflected in its reconfiguration documentation (Exhibit 7.2 at pages 1 and 3) was to use land adjacent to the park, which ought to have been used to “enhance Settler’s Park”, for residential allotments instead. This demonstrates a decision to favour development yield over accepting an obligation clearly placed on the developer of this land in respect of Settler’s Park.

Heritage

176. The land presently includes a mapped and listed Local Heritage Place, being Settler’s Park. The Heritage Citation is before the Court as part of the Planning Scheme.³⁴⁵ It explicitly applies to all of Lot 8 on RP812125 (**Lot 8**) and states as follows:

The mango trees and the quarter acre (1,000m²) of land on which they stand are significant for their historical association with early European settlement of the area. In 1888, Frederick Peatling selected portion 16V Parish Maroochy and built a highset weatherboard house. Water was obtained from wells dug through the coffee rock. Peatling erected stockyards, cleared a small area of land and planted an orchard including the mango trees.

In the late 1890s, Peatling sold his land. Alfred Dennis set up a dairy and Eddie de Vere bought the land in 1964 and farmed cane. After he found some of the original house stumps, the area became known locally as Settlers’ Park.

177. Fundamental to a consideration of (in particular) the heritage issues associated with the Park are the following propositions:

- (a) First, this is not an enquiry into the correctness of the entry into the Local Heritage Register;
- (b) Second, as this Court has determined on previous occasions,³⁴⁶ pursuant to section 114 of the *Queensland Heritage Act 1992* it is the Local Heritage Register that determines the heritage significance of a place. In other words, the subjective desires of any person to raise or diminish issues of heritage significance cannot be sustained unless those matters are raised in the relevant statement of significance in the entry in the Local Heritage Register. As this Court has previously noted, “the cultural heritage significance of a place, for the purpose of assessment, is limited to that identified in the statement about the cultural heritage significance of the place”.³⁴⁷

³⁴⁵ Exhibit 3.1, Planning Scheme Extracts, p. 439-440, Appendix SC6.10A.

³⁴⁶ See *ISPT Pty Ltd v Brisbane City Council & Anor* [2017] QPEC 52 at [67] and see also *Body Corporate for Mayfair Residences v Brisbane City Council* [2017] QPEC 22 at [121] – [122].

³⁴⁷ *ISPT Pty Ltd v Brisbane City Council & Anor* [2017] QPEC 52 at [67].

178. **Dr Bell** identified that “*the age of the mango trees is central to establishing their significance*”.³⁴⁸ The only person appropriately qualified and that did give evidence on the age of the trees, namely **Mr Hobbs**, gave evidence entirely supportive of the trees being of an age (and provenance) consistent with the Heritage Citation.³⁴⁹ Stockland appears to have confirmed that (notwithstanding the hubris in Dr Bell’s Exhibit 5.17) it does not seek to challenge the listing in that regard.³⁵⁰
179. Notwithstanding the above **Dr Bell**, Stockland’s witness, sought to go behind the entry in the Local Heritage Register, in what can only be seen as a collateral attack on the local heritage listing (and PO30 – no doubt in an attempt to diminish the significance of gross non-compliance with PO30). **Dr Bell** whose evidence the Court would not accept:
- (a) sought to criticise what he saw as a relative ‘recency of action’ in terms of recognising this heritage place³⁵¹ but gave no reasons as to the relevance of recency (which Council denies, in any event);
 - (b) queried the age of the trees and whether they truly are of the age suggested by the heritage citation³⁵² when he is entirely unqualified to give evidence on such matters; and
 - (c) otherwise more generally, questioned the significance of the trees specifically, or the heritage place generally, in multiple locations throughout his report.³⁵³
180. The proper approach to such matters is not to criticise the listing or significance, but assess how the proposed development fails to enhance Settler’s Park as required and how it will impact on the recognised heritage significance as expressed in the Heritage Citation.

The Planning Scheme Provisions

181. Again, PO30 provides:

*Development in the Emerging community zone provides for the protection and enhancement of Settler’s park as a recreation park, local heritage place and gateway entry feature for the Pacific Paradise and Twin Waters communities.*³⁵⁴

182. With the provenance of the listing firmly in mind, the Planning Scheme calls for not just the preservation, but the enhancement, of this parkland area and also its “*context*”, by reference to the Heritage Code:

*Development is sensitive in its design response and the manner in which it relates to and addresses places of cultural heritage significance.*³⁵⁵

(1) *The purpose of the Heritage and character areas overlay code is to ensure that:-*

(a) *development on or adjoining an identified heritage place is compatible with the heritage significance of the place; and*

³⁴⁸ Exhibit 5.17, Individual Expert Report – Peter Bell (Bell SE), p. 9, para. 6.1.

³⁴⁹ Exhibit 5.24, Arboricultural Assessment Report- Jonathan Hobbs (Hobbs SE).

³⁵⁰ T3-31, line 1 to T3-32, line 47.

³⁵¹ Exhibit 5.17, Bell SE, pp. 7-9 section 5.

³⁵² Exhibit 5.17, Bell SE, p. 9, section 6.

³⁵³ Exhibit 5.17, Bell SE, pp. 8-10, paras. 5.6, 5.7, 5.8, 6.1, 6.3, 7.2, 7.4, 7.5.

³⁵⁴ Exhibit 3.1, Planning Scheme Extracts, pp. 196-197, Table 7.2.18.4.1, PO30. See also AO30.

³⁵⁵ Exhibit 3.1, Planning Scheme Extracts, p. 85, section 3.8.4.1(b).

(b) *the streetscape character and significance of identified character areas is conserved and enhanced.*

(2) *The purpose of the Heritage and character areas overlay code will be achieved through the following overall outcomes:-*

...
(b) *development on a local heritage place is compatible with the heritage significance of the place by:-*

...
(iii) *protecting, as far as practicable, the context and setting of the local heritage place; and*

(iv) *ensuring development on the local heritage place is compatible with the heritage significance of the place;*

(c) *development adjoining a local or State heritage place is sympathetic to the heritage significance of that place...*³⁵⁶ (emphasis added)

183. As Mr Adamson helpfully (and accurately) summarises matters, “*the planning scheme provides not only for the protection of Settlers Park and the Local Heritage Place, but also its enhancement*”.³⁵⁷ Mr Reynolds fairly accepted this requirement as a responsibility (and effectively a constraint) placed on the development of this land.³⁵⁸

184. These requirements are understandable in context. The proposed development seeks to place in the order of 1,800 residents on the land.³⁵⁹ Not only do these provisions seek to facilitate parkland for the benefit of those 1,800 new residents, but also for the existing community. They seek to specify a location for that parkland in an area that is of local heritage significance and value, thereby increasing its exposure to the community through use of the planned park. It is not in dispute that, at present, Settler’s Park is not the most heavily used or attractive piece of parkland. Such a view, though, entirely misses the mark in terms of what the Planning Scheme seeks to deliver and seeks to deliver for entirely understandable purposes. **Settler’s Park is planned to become more than it is today.** Development of this greenfield site should, properly, accommodate and deliver on that planning.

185. With that in mind, the Court would not be enamoured with the approach of Dr Bell insofar as he appears to simply equate keeping the trees with being the primary (or even sole) indicia of an acceptable outcome,³⁶⁰ an approach that Mr Reynolds appears to adopt as well.³⁶¹ The Planning Scheme (understandably in context) calls for far more than just the preservation of the trees.

Assessment of the Proposed Development

186. As Mr Adamson notes:

(a) “*The required roadworks in this location to facilitate the access to Twin Waters West is a function of the scale and intensity of development*”;³⁶²

³⁵⁶ Exhibit 3.1, Planning Scheme Extracts, p. 234, sections 8.2.9.2(1) and 8.2.9.2(2).

³⁵⁷ Exhibit 4.27, Planning JER2, pp. 31-32, para. 78.

³⁵⁸ T4-23, lines 24-32.

³⁵⁹ T4-32, lines 27-43.

³⁶⁰ Exhibit 5.17, Bell SE, pp. 9-10, paras. 7.1 and 7.5.

³⁶¹ Exhibit 4.19, Planning JER1, p. 33, para. 111.

³⁶² Exhibit 4.19, Planning JER1, p. 40, para. 131.

- (b) Moreover, *“the design also should encourage the appropriate use of Settler’s Park and protect the overall context and setting, to make use of the new facilities recently provided, rather than creating what is generally considered an isolated linear park. General public access should be provided and maintained to make use of this recreational park, and provide access to the Local Heritage Place and not be reduced in size and adversely impacted by substantial roadworks. ...while a linear park is proposed in this location, this is not the planning intent”*,³⁶³
- (c) *“While a linear park is being provided, this does not enhance or protect Settlers Park, but rather the proposal is to seek to provide this park elsewhere within the development”*;³⁶⁴
- (d) In the Planning Scheme *“it is not intended to replicate an equivalent amount of land removed from Settler’s Park elsewhere within the development for recreational purposes. Rather, enhance and protect the amount of parkland in this location in conjunction with the Local Heritage Place, to maintain the context and setting, which should be accessible by the general public in order to appreciate the cultural heritage values of the site”*.³⁶⁵
The proposed development does not meet this test.

187. **Mr Adamson’s** critique of the proposal above is borne out in the development application material put forward by Stockland. As is demonstrated in Exhibit 7.3 (at pages 14 and 15 in particular):

- (a) The area now known as Settler’s Park (adjacent the roadway) is proposed to be developed as **only a Linear Park** with a level of (or rather lack of) improvements commensurate with that far lower order status (and, it ought be said, commensurate with the fact that a large proportion of this park is, in fact, a drainage channel, not ‘parkland’; in the more common use of that term³⁶⁶); and
- (b) Stockland proposes two new parks in two different locations (near the proposed lake) that it describes as **Recreation Park(s)**. Indeed, the proposed development even seeks to name one of them ‘Settler’s Park’.³⁶⁷ These parkland areas, as the proposed development itself acknowledges, will be larger, ‘squarer’ in dimension and vastly better improved (as their size self-evidently allows).

188. **Mr Reynolds** also:

- (a) Concedes that (the real) Settler’s Park as proposed is of a *“pocket’ or ‘linear’ format”*³⁶⁸ and certainly is not of a recreation park nature, with far lesser facilities intended to be provided in Settler’s Park than are evident in recreation parks³⁶⁹ (despite the clear Planning Scheme requirement for Settler’s Park to be of precisely that ‘recreation park’ nature).

Moreover, as **Mr Adamson** noted, there is no proposal to improve the enhancements in

³⁶³ Exhibit 4.19, Planning JER1, p. 40, para. 134.

³⁶⁴ Exhibit 4.27, Planning JER2, pp. 31-32, para. 78.

³⁶⁵ Exhibit 4.19, Planning JER1, p. 41, para. 136(c).

³⁶⁶ Exhibit 5.16, McGowan SE, p. 75.

³⁶⁷ Exhibit 7.3, p. 14.

³⁶⁸ Exhibit 4.19, Planning JER1, p. 34, para. 112(b). See also T4-32, lines 1-25.

³⁶⁹ T4-24, lines 1-24

Settler's Park (in terms of infrastructure) and the proposed development could only be conditioned to provide such infrastructure enhancement "*in a limited way*";³⁷⁰ and

- (b) Accepts (perhaps most tellingly) that Settler's Park, in the 'post development' state, "*is likely to be more a landscape setting. I think it's – it's a dimensions are really too limited to be of any particular and strong passive recreation utility, in terms of people occupying that space on a regular basis*".³⁷¹

189. **Mr Reynolds** (and indeed Stockland's³⁷²) referral to the simple fact that Settler's Park may be larger and somewhat better improved in the post-development' state, and that parkland may be provided elsewhere in the proposed development,³⁷³ is no proper response to the Planning Scheme provisions that call for a far different outcome to that, namely the enhancement of the existing Settler's Park "*as a recreation park, local heritage place and gateway entry feature for the Pacific Paradise and Twin Waters communities*".

190. In short, **Mr Adamson** is (it is submitted) correct in his conclusion that rather than delivering Settler's Park as envisaged in the Planning Scheme where it will benefit the entire community and not just the residents of Stockland's development, Stockland instead seeks to deliver parkland elsewhere and do nothing of the sort of improvements and enhancements as the Planning Scheme fairly calls for with respect to Settler's Park as part of the development of this Emerging Community land.

191. The overdevelopment of the land as a whole has led to a circumstance where even the preservation **and enhancement** of an existing heritage place has had to be compromised. Whilst it appears that none of the four mango trees will need to be removed, the setting of those trees is clearly and unequivocally proposed to be altered. Most of Lot 8 will be lost to the road and associated works. The proposed development does not provide "*for the protection and enhancement of Settler's park as a recreation park, local heritage place and gateway entry feature for the Pacific Paradise and Twin Waters communities*".

192. This is a matter that properly supports refusal of the proposed development.

(f) Community Expectations³⁷⁴

193. This issue is (relevantly) framed in the following way:

Whether the expectations of the community reflected in the level and content of adverse local submissions favour refusal of the proposal.

194. As noted above, there was a large quantum of submissions received as part of the application process for the proposed development. All of those submissions are now before the Court as Exhibit 1.2. Those submissions represent a mandatory consideration as part of the assessment process.³⁷⁵ The Court also has the benefit of statements of evidence from members of the

³⁷⁰ T4-80, line 40 to T4-81, line 9.

³⁷¹ T4-36, lines 24-34.

³⁷² T4-30, line 1 to T4-31, line 26.

³⁷³ T4-24, line 34 to T4-26, line 37. See also T4-28, lines 4-13 and T4-31, line 25 to T4-32, line 25.

³⁷⁴ Exhibit 2.2/8.15, Issue 12.

³⁷⁵ Sections 31(1)(g) and 32(a) *Planning Regulation 2017*.

community tendered as part of the hearing of this appeal.³⁷⁶

195. As noted by the planners, there were a significant number of submissions received in support of approval of the proposed development (some 132).³⁷⁷ However, it is equally true to note that over double that number of submissions was received in opposition to the proposal (some 285 opposed).³⁷⁸ Even a cursory overview of the submissions (and the summaries of them provided by the planners) show a significant level of overlap as between the content of the submissions and the issues that have been agitated before the Court in this appeal (including residential character/density, amenity, flooding, traffic, ecology, heritage etc).³⁷⁹ That level of overlap speaks, in broad terms, to an alignment as between community expectations and what the Planning Scheme provides for as well- namely that these issues of concern ought be carefully considered and addressed as part of any development of the subject land.

196. **Mr Adamson** ultimately summaries his views as to the submissions, and community expectations generally, in terms that the Court would equally accept. He does so in the following way:³⁸⁰

125. While the number of submissions might vary in terms of raising any one particular issue, such as density or lot size, building height or the impact upon Settlers Park, this does not mean that these issues are not valid. In my opinion, it is not a numbers game, but rather the planning issues raised need to be considered collectively while having regard to the intent of the planning scheme and whether these issues are valid and are real cause for concern when considering the level of impact and degree of compliance.

126. On balance, the submissions in objection raise valid concerns about the scale and intensity of the proposed development not being consistent with, and sympathetic to, the established low density character of TWE. Further, that the proposed development does not adequately provide for the protection and enhancement of Settlers Park. Both of these issues are reflected in the submissions received in objection to the proposal, to some degree. In my opinion, while the site is able be developed where consistent with the planning scheme, the proposed development is contrary to reasonable community expectations.

197. As has recently been noted by this Court, “while these submissions are entitled to weight, they cannot outweigh what the planning scheme contemplates as appropriate development for the site in circumstances where it is “the reflection of the public interest in the appropriate development of land”.³⁸¹

198. Whilst the above statement of law from the Court is undoubtedly true, what is of interest in this case is the coincidence with what the Planning Scheme considers appropriate and what the

³⁷⁶ Exhibits 5.3 to 5.15, noting that Exhibit 5.4, Statement of John Low, has been withdrawn.

³⁷⁷ Exhibit 4.27, Planning JER2, pp. 37-38, para. 120, where Mr Adamson summarises their content.

³⁷⁸ Exhibit 4.27, Planning JER2, pp. 38-39, para. 121, where Mr Adamson summarises their content. See also T4-49, lines 1-9, where he clarified their number at 285 opposed.

³⁷⁹ That level of overlay extends into issues that were addressed by joint reports in this appeal, albeit they are not before the Court now as reasons for refusal as conditions can address them adequately (such as the interaction with the CAMCOS corridor). This again demonstrates a level of conformity as between community expectations and planning scheme considerations- the community is concerned about the same matters the Planning Scheme is concerned about.

³⁸⁰ Exhibit 4.27, Planning JER2, pp. 39-40.

³⁸¹ *Matthew Lawrence v The City of Gold Coast & Anor* [2022] QPEC 19 at [41], with reference to *Wilhelm v Logan City Council & Ors* [2020] QCA 273 at [77].

community considers appropriate. Both of those things speak against approval. Thus the community expectations in this case reinforce what the Planning Scheme already stipulates, namely that the proposed development ought properly be refused.

(g) Stockland's Relevant Matters³⁸²

199. Stockland's Relevant Matters are voluminous in form, although (perhaps) not in content. It would not be unreasonable to suggest that many if not all of these matters are in the nature of matters that:

- (a) Are simply the converse of matters raised against the proposed development, including assertions as to *planning scheme compliance*. Those matters are dealt with comprehensively above and need not be repeated here;
- (b) Are squarely raised by the planning scheme provisions that are in issue, such that achievement of the said relevant matter(s) is, put fairly, more properly a consideration that should be viewed through those very same planning scheme provisions. As but one example, almost any residential development would improve choice and supply of housing in circumstances where there can be no doubt as to the need for such choice and supply throughout South-East Queensland. However, it is the Planning Scheme that (properly and definitively) seeks to create the framework for the delivery of that choice and supply. It is, therefore, properly the case that the Planning Scheme is the real metric by which provision of choice and supply (or perhaps over provision, in the case of an overdevelopment such as this one) should be viewed; and
- (c) Are not matters of such great moment as to warrant approval in circumstances where the deviation as between the proposed development and what is contemplated for the development of the land under the Planning Scheme is so severe.

200. Again, as noted by **Mr Reynolds**, when comparing the proposed development to simply developing the subject land consistent with the Planning Scheme controls:³⁸³

I don't think there's any additional benefit that would otherwise arise, because the variation sought are, in fact, limited in number and they relate to certain configurations of the layout. So I – I would accept that proposition that the development of this urban land does result in planning benefits, but those benefits would be the same, whether or not it was developed precisely in the way the variations see.

201. The Court would bear steadily in mind that the departures from the Planning Scheme that form the genesis of the proposed development are not (in substance, if at all) matters seeking to establish a greater public benefit than would be achieved from simple compliance with the Planning Scheme. The deviations from the Planning Scheme embodied in the proposed development are, rather, matters that are directed towards the private interests and benefits of Stockland. They are not matters that are (properly) relevant matters in support of approval.

³⁸² Exhibit 2.2/8.15, Issues 13-14.

³⁸³ T4-10, lines 16-28. At T4-11, lines 21-28, Mr Reynolds appeared to suggest that the provision of medium density product saw greater choice and therefore public benefit, but such medium density product is, of course, contemplated in the Planning Scheme as well- see Exhibit 3.1, Planning Scheme Extracts, p. 195, Table 7.2.18.4.1, PO22 and AO22(b) in particular.

Limited Land Supply?

202. One matter that, perhaps, warrants more particular attention is that found in Issue 13(c),³⁸⁴ being the assertion that “*the limited availability of land suitably designated for residential development in the Maroochy North Shore local plan area*” is one that supports approval. Some things can be said in response to this at the outset. First:
- (a) The consideration called for by this issue is (far) too narrow to be of any probative assistance to the Court. The residential land supply market is not so constrained and nor is the Court’s proper consideration of such matters;
 - (b) Further to (a), it is for the Planning Scheme to dictate where land ought properly be supplied (and not supplied) for any form of development. The Court is well aware of the dwelling targets (and the like) that need to be met in all Local Government Areas. They are, in the SEQ region, predominately set by way of State prescribed regional planning, which is a touchstone against which all planning schemes (and planning scheme amendments) must be assessed- planning schemes are overridden by such regional plans to the extent of any inconsistency.³⁸⁵ This scheme makes it clear that (with the Minister’s imprimatur) the Planning Scheme already “*appropriately advances the South East Queensland Regional Plan 2009-2031, as it applies in the planning scheme area*”;³⁸⁶ and
 - (c) As a corollary of (a) and (b), to the extent land supply in a given area may be limited, that is a determined outcome of the planning authorities (both the State and the Local Government) that this Court ought not properly interfere with³⁸⁷ and that a developer ought not seek to supersede.
203. Turning to the evidence of the experts, and entirely consistently with the higher order propositions set out above, Stockland has already conceded that this is a matter that ought be dealt with by the town planners, not economists.³⁸⁸
204. To that end, **Mr Reynolds**’ attempt to rely on the Regional Plan as a matter (perhaps his sole matter) in support of this issue³⁸⁹ is, with respect, entirely misguided. Moreover, as **Mr Reynolds** acknowledged it is important, in terms of town planning, to direct residential development and the density of such development (including in emerging community areas).³⁹⁰ Moreover, these are matters that should properly be directed by planning schemes (and the like), not by market forces.³⁹¹
205. With this in mind the Court would prefer the approach of **Mr Adamson**, who identifies that whilst land supply in the (very limited) Maroochy North Shore local plan area may be

³⁸⁴ Exhibit 2.2/8.15.

³⁸⁵ Section 9(4) *Planning Act 2016*.

³⁸⁶ Exhibit 3.1, Planning Scheme Extracts, p. 30, section 2.2. *ShapingSEQ*, the current Regional Plan, was not in force at the time the subject Planning Scheme was drafted. Perhaps more importantly though, there is no suggestion by Stockland of any material change as between those Regional Plan iterations that supports approval of its development.

³⁸⁷ *Elan Capital Corporation Pty Ltd and Anor v Brisbane City Council* [1990] QPLR 209 at 211.

³⁸⁸ Transcript of Review, 12 August 2021, p. 7, line 31 to p. 8, line 35.

³⁸⁹ Exhibit 4.19, Planning JER1, p. 57, para. 213. Mr Reynolds provides no further commentary on the issue in the second joint report- see Exhibit 4.27, Planning JER2, p. 41, para. 129.

³⁹⁰ T4-32, line 45 to T4-33, line 7.

³⁹¹ T4-33, lines 9-12.

constrained:

- (a) *“in terms of the matter of need from a town planning perspective, it is not expected under the planning scheme that every local plan area provide necessarily for additional residential land”*;³⁹²
- (b) *“it is reasonably expected that within the Sunshine Coast Regional area additional land will be made available for development under a planning scheme review. This is to ensure land is made available in appropriate locations, within the Urban Footprint (SEQRP), having limited or no constraints, being close to urban services and facilities, and where adequate infrastructure is available or can be provided”*.³⁹³ Again, the issue Stockland seeks to agitate is one that (much more) properly is one for the planning authorities, not a private developer; and
- (c) returning to Mr Reynold’s key proposition, namely consistency with the Regional Plan:³⁹⁴

While it is accepted the development is consistent with the SEQRP, it is not the case that the land could not be developed for residential purposes to meet the objectives under the planning scheme, which appropriately advances the SEQRP. Rather, the land is able to be developed where consistent with the planning scheme to provide additional housing choice, diversity and a variety of housing in a consolidated, efficient focussed, innovative, sensitive and timely manner. This does not mean the proposed development should not meet the particular low density residential character outcomes sought and reasonably expected under the local plan code.

206. **Mr Reynolds’** concession as to the true motivations for the proposed development as compared to compliance with the Planning Scheme are equally apposite here. In short compass, and as **Mr Adamson** ultimately opines, *“there is no town planning or community need to justify development in its current form”*.³⁹⁵

Other Relevant Matters

207. Returning to the other relevant matters relied upon by Stockland, and with the commentary set out above with respect to their (lack of) difference as compared to the other matters the Court is already called upon to determine, **Mr Adamson** summarises, in terms the Court would be inclined to accept, that.³⁹⁶

145. It is accepted the proposed development provides for the provision of some parks and public open spaces, including some accessible walkable waterfronts; however, the proposed development does not meet a number of provisions under the planning scheme, in particular with respect to the protection and enhancement of Settlers Park.

146. It is agreed the proposed development would provide for a range and mix of living options, which provide for improved choice and affordability; however, it is not agreed the proposed residential uses are sympathetic to, and in keeping with, the prevailing

³⁹² Exhibit 4.19, Planning JER1, p. 57, para. 214.

³⁹³ Exhibit 4.19, Planning JER1, pp. 57-58, para. 215.

³⁹⁴ Exhibit 4.27, Planning JER2, pp. 42-43, para. 143.

³⁹⁵ Exhibit 4.19, Planning JER1, p. 58, para. 217.

³⁹⁶ Exhibit 4.27, Planning JER2, pp. 43 and 46, paras. 145-147 and 158.

low density residential character of the existing Twin Waters residential community (TWE) as reasonably expected under the planning scheme. Further, for reasons already explained, it is not agreed the proposed development provides for multi-unit residential uses which are substantial in terms of their scale and intensity and are not focused within discrete nodes.

147. *While it is accepted that conditions of approval can be imposed, in my opinion, the required road works will have a substantial impact upon the existing Settlers Park and most likely the Local Heritage Place (four mango trees) (subject to the review of any amended plans). While access to the proposed development is intended in this location (Figure 7.2.18A), the proposed development does not provide for the protection and enhancement of Settlers Park as required by the local plan code. The excessive scale and intensity of the development might contribute to the extent of road works required at the entry to TWW, which is another factor that suggests overdevelopment of the site...*
158. *The changes being sought to the planning scheme under the variation request are not minor when considering important aspects under the local plan code, that seek to ensure the development of TWW is sympathetic to, and in keeping with, the prevailing low density residential character of the area. Further, it is specifically acknowledged that the parts of the coastal urban are generally characterised by a less intensive scale and form of development. It is also expected that where consolidation occurs, it is to be compatible with, and sympathetic to, the preferred character of the local area. In my opinion, when considering the intent of the planning scheme, there will be adverse town planning consequences if the proposed development is allowed in its current form because it represents overdevelopment of the site.*
208. As is likely the case with any development that comes before this Court, in at least the broadest sense there are matters that could be said to warrant approval. The provision of further housing opportunities in the South-East Queensland market is but one example in that regard. However, this proposed development does not, put fairly, do anything ‘special’ that could be said to be a probative relevant matter in support of approval. It seeks to do (in effect) no more than what the Planning Scheme already requires and contemplates for the development of the land, but it fails in its attempts to do so- it is an overdevelopment of the land that results in real adverse consequences (across a range of fields).

209. There is no matter that is of such sufficient magnitude so as to warrant approval, in the exercise of the planning discretion, when weighed against the panoply of matters that properly warrant refusal. Refusal is the appropriate course, in the exercise of that discretion.

E- CONCLUSION

210. For the above reasons, the Court would be inclined to dismiss the appeal and refuse the proposed development.

Christopher Hughes QC
M. J. Batty
B. G. Rix
Counsel for the Respondent
11 August 2022