



In the Planning and Environment Court
Held at: Brisbane

Appeal No. 2460 of 2020

Between: **STOCKLAND DEVELOPMENT PTY LIMITED** Appellant
(ACN 000 064 835)

And: **SUNSHINE COAST REGIONAL COUNCIL** Respondent

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

STOCKLAND’S WRITTEN SUBMISSIONS

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Table of Abbreviations

Council	the Sunshine Coast Regional Council
land	see paragraph 1 on p.2 of ex. 3.01
local plan	the <i>Maroochy North Shore Local Plan</i>
Planning Act	<i>Planning Act 2016</i>
Planning Court Act	<i>Planning & Environment Court Act 2016</i>
planning scheme	<i>Sunshine Coast Planning Scheme 2014 (version 17)</i>
plan of development	ex. 7.01 – <i>Twin Waters West – Plan of Development</i>
proposal	see paragraph 16 on p.7 of ex. 4.019
Stockland	Stockland Development Pty Ltd (one of the Stockland Group of Companies)



Summary

1. The appeal should be allowed as the proposal¹ provides an appropriate master planning framework to facilitate the future development of the land for residential purposes in the way sought by the local plan.
2. As is explained further below, the level of detail provided in support of the proposal is appropriate for the master planning exercise which the local plan seeks.²
3. Importantly, the evidence demonstrates how the various site constraints can be addressed, while matters of detail can be resolved through conditions and the numerous future approvals that will be required.
4. Relevantly:
 - (a) the only assessable development for which a development permit is sought is reconfiguration of stages 1 and 2 (which can only be developed for residential use after operational works approvals have been obtained);³ and
 - (b) having regard to the nature of the approvals sought (preliminary approval and variation request), and consistent with previous decisions of this Court⁴ and the Full Court⁵:
 - (i) matters of detailed design are not required at this stage;
 - (ii) these matters can be resolved by approvals of numerous future applications for development permits that will necessary; and
 - (iii) this Court would not prejudge the outcome of those future applications or dismiss this appeal unless it was satisfied that that matters of detailed design cannot be resolved as to do so would be inconsistent with *Walker v Noosa Shire Council* (1983) 2 Qd R 86.

¹ in these submissions, the term “the proposal” is used primarily to refer to the preliminary approval and variation request components which, if approved, will facilitate what the witnesses have referred to as the proposed development

² ex.3.01 CEO Certificate p.189 (black numbers) overall outcome 2(a)

³ T7-36/30-40, T7-38/1-10

⁴ see for example in *Navara Back Right Wheel Pty Ltd v Logan City Council & Ors; Wilhem v Logan City Council & Ors* [2020] QPELR 899 at [288]-[290]

⁵ *Walker v Noosa Shire Council* (1983) 2 Qd R 86 at 89

Overview

5. Having been historically farmed, including for sugar cane, the land has been dormant for some twenty years.
6. Since March 2018⁶, the land has included the only land in the emerging community zone in the local plan area⁷, and the planning scheme has included specific provisions to guide the development of that land as an emerging residential community⁸.
7. In particular, outcomes required by the local plan include:
 - (a) *“master planned”* development of the land in a logical and coordinated manner;⁹
 - (b) establishment of *“residential land uses that are sympathetic to, and in keeping with, the prevailing low density residential character of the area”, “of a scale and intensity, and in reconfiguration that is consistent with and sympathetic to the established low density residential character of the adjoining Twin Waters residential community”*¹⁰ and *“integrated with the existing Twin Waters residential community”*¹¹;
 - (c) development that responds to constraints including:
 - (i) flood immunity – in circumstances where much of the local plan area (including Twin Waters East) is flood affected;¹²
 - (ii) Settler’s Park and specifically the heritage listed Mango Trees – in circumstances where the point of primary road access to the land¹³ is to be through Lot 8 on SP 812125 (which presently comprises a park) and two

⁶ ex.3.02 CEO Certificate p.1584 (black numbers) – last row

⁷ ex.3.01 CEO Certificate p.567 (black numbers) – Zone Map ZM 21

⁸ ex.3.01 CEO Certificate p.187 (black numbers) section 7.2.18.2 – extrinsic material first paragraph and p.189 (black numbers) overall outcome 2(p)

⁹ ex.3.01 CEO Certificate p.189 (black numbers) overall outcome 2(o) and p.195 (black numbers) PO21

¹⁰ ex.3.01 CEO Certificate p.189 (black numbers) overall outcome 2(p) and p.195 (black numbers) PO22

¹¹ ex.3.01 CEO Certificate p.199 (black numbers) Figure 7.2.18A identifies pedestrian and cycle linkages, coastal paths and primary and local road access points

¹² ex.3.01 CEO Certificate p.189 (black numbers) overall outcome o(ii) and p.195 (black numbers) PO24

¹³ indicated on ex.3.01 CEO Certificate p.199 (black numbers) Figure 7.2.18A; see also pp.196-197 (black numbers) PO29, PO30 and AO30

of the Mango Trees are in the road reserve¹⁴ which was dedicated at the time Lot 8 was created¹⁵ ;

- (iii) ecologically important areas both on and off the site;¹⁶
- (iv) the State's transport corridor (including CAMCOS);¹⁷
- (d) provision of an "*extension of the existing Twin Waters waterway system*" which:¹⁸
 - (i) protects or improves flood storage capacity;
 - (ii) avoids adverse impacts upon coastal processes and resources;
 - (iii) protects environmentally important areas and other significant environmental areas;
 - (iv) does not result in adverse changes to the tidal prism of the Maroochy River;
 - (v) avoids or minimises impacts arising from:
 - (A) altered stormwater quality and flow;
 - (B) wastewater; and
 - (C) the creation or expansion of non-tidal artificial waterways;
 - (vi) avoids or minimises the release mobilisation of nutrients (including risk of algal bloom);
 - (vii) meets best practice hydraulic and environmental standards for water quality in surrounding waterways, wetlands and waterbodies.

¹⁴ ex.5.25 statement of Dr Bell p.5 para 4.1 and ex.4.23 joint report of the arborists p.1

¹⁵ ex.5.25 statement of Dr Bell at p.30, and midway down left column on p.31

¹⁶ ex.3.01 CEO Certificate p.189 (black numbers) overall outcome 2(o)(i) and p.198 (black numbers) PO35

¹⁷ ex.3.01 CEO Certificate p.189 (black numbers) overall outcome 2(o)(iii) and p.198 PO36-PO39)

¹⁸ ex.3.01 CEO Certificate pp.195-197 (black numbers) PO26

8. While the local plan requires that future residential development is not discordant with the existing adjoining Twin Waters residential community, a matter explored in some detail below, other outcomes that provide relevant context in that regard include those identified in paragraphs 9 to 12.
9. Firstly, in order to provide adequate flood immunity (including “*safe refuge*”) ¹⁹ the land must be filled. In response, and as will be discussed in more detail below, the evidence demonstrates that the proposal can provide flood immunity above the defined flood event (ARI 1% at 2100 plus 500 mm) and a designated safe refuge together with some 60 lots above the probable maximum flood.
10. Secondly, the local plan requires incorporation of “*large areas of public open space*” and “*connection to water as a key design and character element*” ²⁰, including a “*walkable waterfront along a significant portion of the waterway system*” ²¹ to which the proposal provides a direct response.²²
11. Thirdly, the local plan also requires cycle and pedestrian links connecting to the existing Twin Waters East, the regional pedestrian and cycle path adjacent Sunshine motorway and the Maroochy River and foreshore. ²³ Again, the proposal provides a direct response through the planned provision of on street and shared pedestrian/cycle paths within road reserves. ²⁴
12. Fourthly, in order to protect the State’s transport corridor (including CAMCOS) ²⁵ corridor dedication, visual buffering and acoustic barriers that do not involve hydraulic impact are required. Again, the proposal is directly responsive. ²⁶
13. Ultimately, the Court would be satisfied that the proposal furthers Council’s aspirations set out in the local plan while appropriately balancing the gamut of identified constraints.

¹⁹ ex.3.01 CEO Certificate p.195 (black numbers) PO24

²⁰ ex.3.01 CEO Certificate p.189 (black numbers) overall outcome 2(p)

²¹ ex.3.01 CEO Certificate p.197 (black numbers) PO32 and PO34

²² see for example ex.7.01 plan of development p.26, 33 and 34

²³ ex.3.01 CEO Certificate p.197 (black numbers) PO32 and PO33

²⁴ see for example ex.7.01 plan of development p.27 and road network sections A1 to A9, B1 to B3, and B5 on p.29 to 31

²⁵ ex.3.01 CEO Certificate p.189 (black numbers) overall outcome 2(o)(iii) and p.198 PO36-PO39)

²⁶ see for example ex.7.01 plan of development p.23 – the acoustic barrier was the subject of agreement – see ex.4.26 – 2nd noise joint report p.12 para 55 and ex.4.25 – 2nd flooding joint report p.4 para 9

14. In that context, Council has adopted a rather strange approach in this proceeding including:

- (a) abandoning²⁷ various issues as reasons for refusal during the first three weeks of the trial which, although welcome, is not explained by any change in circumstances;²⁸
- (b) seeking to cross examine witnesses in disciplines where there were no matters of disagreement, Council's own experts having agreed that the matters they were required to consider could be resolved by way of conditions;²⁹
- (c) seeking to advance a collateral challenge on groundwater modelling about which Council's own experts raised no issues and had specifically agreed that the modelling was appropriately conceptualised and fit for purpose, modelling which founded agreement that the proposed mitigation works could be satisfactorily conditioned³⁰ and that refinement of the management approach to mitigation should occur "*in the future as part of the more detailed design to be done before development commences*" ;³¹
- (d) otherwise "*nibbling around the edges*" in relation to the remaining issues in dispute, for example:
 - (i) focussing on differences in average lot sizes as the major plank to assert that the development facilitated by the proposal would have a different character to the existing area, when the imagery of Mr Elliot was not challenged and demonstrated just how "*in character*" a development facilitated by the proposal will be;
 - (ii) assertions that aspects of the proposed design response are too complex in circumstances where that design response is obviously driven by the requirements of the local plan and the constraints which have to be

²⁷ ex.8.01, T3-2/5-20, T7-81/15 – T7-82/5, T9-2/10-35

²⁸ A problem with these belated and unexplained concessions is that it has resulted in the inefficient use of the Court's time and has rendered the trial length estimate inaccurate. As a result there have been very few "full days" of evidence which also deprives others of having their matters litigated.

²⁹ T2-15/25 – T2-20/15; see for example 4.11 air quality joint report p.3 paras 4-7 and ex.4.26 2nd noise joint report p.12 para 55 and 57

³⁰ ex. 4.17 groundwater joint report at lines 180 to 187 on p. 16 and lines 207 to 210 on p. 17

³¹ ex.4.17 groundwater joint report at lines 359 to 363 on p. 20

resolved in order for the land to be developed for residential purposes as intended by the planning scheme;

(iii) assertions that the level of detail that has been provided was not appropriate in circumstances where:

(A) the development application seeks a preliminary approval which does not authorise the carrying out of assessable development³²; and

(B) the variation request does not cut Council out of assessing future applications including those for future reconfigurations, operational works for earthworks and development in the two multiple dwelling precincts;³³

and, perhaps most troublingly,

(e) despite a lengthy application and appeal history, including substantial case management intervention for identification and refinement of issues, raising a *Harderan* point for the first time during cross-examination in the second week of the trial, whereby Council now “*instructs*” that it will not accept ownership of the lake that is required by the local plan;³⁴

15. That numerous further development applications will be necessary provides Council with the ability to assess, decide and impose conditions upon future approvals.

16. In that regard the proposal is quite unusual in just how little it seeks to “*vary*” the effect of the planning scheme both in terms of the applicable assessment benchmarks it seeks to change and the very limited designation of “*accepted development*”.³⁵

³² see s.49(2)(b) of the Planning Act

³³ ex.7.01 plan of development pp.12-16 ss.5.2-5.5

³⁴ T6-12/10-30

³⁵ ex.7.01 plan of development pp.12-14

17. Relevantly, having regard to the issues that remain in dispute:
- (a) operational works are unaffected (other than in relation to approvals for signs related to a *sales office*);³⁶
 - (b) development applications to subdivide land³⁷ or develop multiple dwellings³⁸ are never “*accepted development*” and are generally subject to code assessment;³⁹ and
 - (c) code assessment is in some ways more difficult for a developer because, by operation of s.45(3) of the Planning Act, there is no ability to rely upon “*relevant matters*”.⁴⁰
18. Having regard to the need for future development approvals, the level of detail provided in support of the proposal is appropriate.
19. The State’s “*Reasons for referral agency response*” reiterate the need for further approvals including a “*development permit for operational works involving all elements of the lake system, including earthworks and the inlet and outlet structures*”.⁴¹
20. Moreover, Stockland’s approach is consistent with observations that have been made by this Court on previous occasions.
21. In particular:
- (a) in *Navara Back Right Wheel Pty Ltd v Logan City Council & Ors; Wilhelm v Logan City Council & Ors* [2020] QPELR 899 (which did not involve a preliminary approval) at [288]-[290] Williamson QC DCJ observed:

“For completeness, I note that the ‘final submissions’ made on behalf of Navara take issue with the level of certainty attaching to the proposed design of the bio-retention basin, landscaping and access driveways.

That the design of the proposed development has not descended to the final detailed design phase is to be expected. As his Honour Judge Rackemann

³⁶ ex.7.01 plan of development p. 15 s.5.4; see also ex. 3.02 pp.187-189

³⁷ ex.7.01 plan of development p.15 s.5.3

³⁸ ex.7.01 plan of development p.12

³⁹ ex.7.01 plan of development p.21 s.5.4

⁴⁰ Acknowledging that there is a residual discretion provided by s.60(2)(b) of the Planning Act

⁴¹ ex. 1.08, page 39

observed in *SDW Projects Pty Ltd v Gold Coast City Council* [2007] QPELR 24 at paragraph [23]:

“Development design is commonly an iterative process. As one would expect, the Applicant has not, at this stage, descended to the final detailed phase. It would not be surprising if there were some changes as the design is refined and settled. That is, no doubt, why many approvals are subject to conditions which require development “generally” in accordance with the approved plans. The Respondent does not cavil with that, but suggests that the degree of “latitude,” reserved by the Applicant in this case, is excessive.”

The evidence does not suggest the development is a futility, in the sense it cannot be constructed. Further, I am satisfied the design of the proposal does not impede the proper determination of whether the proposal complies, or could be conditioned to comply with, the relevant assessment benchmarks.”

- (b) similarly, in *Donaldson & Anor v Brisbane City Council & Anor* [2009] QPEC 58 (which did not involve a preliminary approval) Rackemann DCJ observed at [40]:

“As the Court has pointed out in the past, development design is commonly an iterative process.”⁴² An applicant for approval for a material change of use or for the reconfiguration of a lot is not always required to descend to matters of detailed design. That is more commonly associated with subsequent applications for approval of operational works. What is required in a given case will depend upon the type of approval which is sought and the matters of relevance in the particular case. In this case, the degree of uncertainty arising from a lack of more detailed design is not such as to call for the refusal of the application, although it may be reasonable to require documents such as the VMP and the environmental covenant, required by conditions of approval, to be resolved to a greater extent before conditions of approval are finalised.”

22. In this regard the observations of the Full Court in *Walker v Noosa Shire Council* (1983) 2 Qd R 86 are also of direct application in this appeal.
23. Given the need for future applications and approvals and the evidence that design solutions are available and will be dealt with at the detailed design stage, the Court would not act on the basis that future applications will be a “clear futility” nor would the court “pre-empt other applications by assuming that they will fail.”⁴³

⁴² citing *Buderim Private Hospital Pty Ltd v Maroochy Shire Council & Anor* [1996] QPELR 251 at 254; *SDW Projects Pty Ltd v Gold Coast City Council* [2006] QPEC 74; and *Garyf Pty Ltd v Maroochy Shire Council & Ors* [2008] QPEC 101

⁴³ *Walker v Noosa Shire Council* (1983) 2 Qd R 86 at 89

24. During the cross examination of some witnesses, it was suggested that some elements of design were too complex. Obviously, the response adopted has been driven by the identified constraints and the direction given by the local plan as to how those constraints might be addressed.
25. However, Council will remain seized of the ability to determine whether particular technical solutions are too complex when subsequent applications are lodged, particularly those required for operational works.
26. Put simply, the subject land has constraints that need to be resolved in order to facilitate development for residential purposes. In response, Stockland has demonstrated that solutions are available with matters of detailed design to be dealt with as part of the numerous necessary future approvals.

Background

27. Any person who travels along the Sunshine Motorway would be aware of a large parcel of vacant land that lies between the existing Twin Waters residential development and the Sunshine Motorway. That parcel, which comprises most of the land, has not been cultivated for sugarcane since 2003 (when the Moreton Sugar Mill closed) and has been sitting unused for almost 20 years.⁴⁴
28. Stockland wishes to develop that land for a master planned lake based residential community.⁴⁵
29. That is the very type of development which is contemplated by amendments made to the planning scheme in 2018.
30. To facilitate this development, Stockland lodged the development application the subject of this appeal.⁴⁶
31. The development application was subject to impact assessment⁴⁷ and after a comprehensive assessment process was recommended for approval by Council

⁴⁴ *Stockland v Sunshine Coast Regional Council & Ors* [2014] QPELR 52 at [3]

⁴⁵ ex.4.19 1st town planning joint report p.7 paras 16-18

⁴⁶ ex.4.19 1st town planning joint report p.7 para 16

⁴⁷ ex.4.19 1st town planning joint report p.7 para 20

officers.⁴⁸ Despite that recommendation, Council decided to refuse the development application.⁴⁹

An overview of the proposal and the plan of development

32. The proposal seeks to facilitate development described by agreement in the town planning joint report as a “*master planned community*” comprising:⁵⁰
- (a) 584 residential allotments (approximately 54 hectares);
 - (b) two medium density sites (approximately 4.5 hectares);
 - (c) community and commercial uses at the northern end of the site (approximately 1.0 hectare);
 - (d) open space (approximately 27 hectares); and
 - (e) a central lake.
33. It is expected that it will take some 8 – 10 years for that development to be completed⁵¹ and obviously, a large number of further development applications and approvals will be required in that regard.⁵²
34. The utilisation of a preliminary approval is consistent with the planning scheme intention that development on the land be master planned.⁵³
35. The variations to the planning scheme that have been requested and which will guide future development applications are found in the plan of development.⁵⁴
36. Salient features of the plan of development include:

⁴⁸ see the Notice of Appeal (Court Document 1) p.6 paras 23-25

⁴⁹ ex. 1.008 – Decision Notice

⁵⁰ ex.4.19 1st town planning joint report p.6 para 18

⁵¹ ex.5.01 statement of Mr Allen p.8 para 36; ex.4.21 1st water quality joint report p.14 para 3 (after para 3(q))

⁵² see for example ex.7.01 plan of development p.15 ss.5.3-5.4 which does not seek to change the assessment triggers for operational works (other than for advertising devices related to the sales office) and makes future reconfiguration applications either code or impact; see also ex.5.01 statement of Mr Allen p.8 para 34

⁵³ ex.3.01 CEO Certificate p.189 (black numbers) overall outcome 2(o) p.195 (black numbers) PO21 and see also the note on p.152 (black numbers)

⁵⁴ ex. 7.01, the *Twin Waters West – Plan of Development*

- (a) it is to be read in conjunction with the planning scheme (i.e. if the plan of development does not vary provisions otherwise applicable (e.g. levels of assessment and assessment benchmarks), the planning scheme applies;⁵⁵
 - (b) it prescribes the maximum number of dwellings (including multiple dwellings) in total and across various precincts;⁵⁶
 - (c) it provides tables of assessment for relevant uses, but provides quite limited circumstances in which development is “*accepted development*”;⁵⁷ and
 - (d) it provides for quite limited variations to specific assessment benchmarks in the planning scheme⁵⁸.
37. Most importantly, the variation request does not alter the level of assessment for operational works (other than in relation to operational works approvals for signs related to a sales office).⁵⁹
38. Similarly, all future applications for reconfiguring a lot or to develop multiple dwellings (on the 2 nominated sites) are subject to, at the very least, code assessment.⁶⁰
39. As a result, Council has a continuing role in deciding future development applications, including the imposition of development conditions⁶¹.

The local plan

40. In March 2018, Council amended the planning scheme to change the zoning of the land and to include specific provisions in the Maroochy North Shore Local plan code to guide development of the land together with necessary consequential amendments.⁶²
41. The planning scheme makes clear that local plans both “*organise the planning scheme area at the local level and provide more detailed planning for the zones*”.⁶³

⁵⁵ ex.7.01 plan of development p.2 s.1 3rd para

⁵⁶ ex.7.01 plan of development p.24 (table 1 and 2) and see also p.19

⁵⁷ ex.7.01 plan of development pp.11-16

⁵⁸ ex.7.01 plan of development pp.17-20

⁵⁹ ex.7.01 plan of development p.15 s.5.4; see also ex. 3.02 pp.187-189

⁶⁰ ex.7.01 plan of development p.12 s.5.2 and p.15 s.5.3

⁶¹ Planning Act, s. 60(2)(c) and (d) – and *example*

⁶² Ex. 3.02 CEO Certificate p. 1584, last row

⁶³ ex. 3.01 CEO Certificate p.184 (black numbers) s.7.1(1)

42. The local plan includes extrinsic material that refers to “*the emerging residential community of Twin Waters West*”.⁶⁴
43. The purpose of the local plan code is to provide locally relevant planning provisions for the assessment of development within the local plan area.⁶⁵
44. The overall outcomes include specific guidance as to the development of the emerging residential community on the land, including:
- (a) overall outcome 2(o), which seeks that Twin Waters West be “*master planned and developed in a coordinated manner*”⁶⁶ so as to appropriately deal with environmental, flooding, and State transport infrastructure matters;⁶⁷
 - (b) overall outcome 2(p), which seeks that Twin Waters West be “*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*”⁶⁸ while also providing for large areas of open space and “*connection to water as a key design and character relevant*”;⁶⁹
 - (c) overall outcome 2(q), which seeks for Twin Waters West to enhance “*connectivity and permeability while minimising traffic and other amenity impacts on existing residential neighbourhoods to the east*”⁷⁰.

⁶⁴ ex. 3.01 CEO Certificate p.187 (black numbers) s.7.2.18

⁶⁵ ex. 3.01 CEO Certificate p.188 (black numbers) s.7.2.18.3(1)

⁶⁶ PO21 contains similar requirements: ex.3.01 CEO Certificate p.195

⁶⁷ ex.3.01 CEO Certificate p.189 (black numbers) 2(o)

⁶⁸ PO22 contains similar requirements: ex.3.01 CEO Certificate p.195 (black numbers)

⁶⁹ ex.3.01 CEO Certificate p.189 (black numbers) 2(p); see also PO25 ex.3.01 CEO Certificate p.195 and PO34 ex.3.01 CEO Certificate p.197

⁷⁰ ex.3.01 CEO Certificate p.189 (black numbers) 2(q); see also PO23 ex.3.01 CEO Certificate p.195 (black numbers)

45. The performance outcomes and acceptable outcomes also include guidance for the development of the emerging residential community on the land, including:
- (d) PO21 and AO21 call for master planning (and AO21 an infrastructure agreement) to ensure development occurs in a logical coordinated manner;⁷¹
 - (e) PO22 speaks to the desired character of the emerging residential community with the corresponding acceptable outcome AO22 identifying some possible means for “*partial fulfilment*” of that performance outcome;⁷²
 - (f) PO23 looks to maintenance and improvement of amenity on neighbouring premises with the corresponding acceptable outcome AO23 identifying some means for “*partial fulfilment*” of that performance outcome⁷³
 - (g) PO24 wants “*adequate flood immunity (including safe refuge) and emergency access arrangements while avoiding any adverse off-site flooding impacts*” provided;⁷⁴
 - (h) as to the proposed lake:
 - (i) PO25 emphasises the role of water as a key character relevant and lifestyle feature of the community;⁷⁵
 - (ii) PO26 seeks “*an extension of the existing Twin Waters waterway system*” that avoids unacceptable impacts on (in summary) flooding, ecology, tidal prism and water quality;⁷⁶
 - (iii) PO27 calls for an approved lake management plan;⁷⁷

⁷¹ ex.3.01 CEO Certificate p.195 (black numbers)

⁷² ex.3.01 CEO Certificate p.195 (black numbers)

⁷³ ex.3.01 CEO Certificate p.195 (black numbers)

⁷⁴ ex.3.01 CEO Certificate p.195 (black numbers)

⁷⁵ ex.3.01 CEO Certificate p.195 (black numbers)

⁷⁶ ex.3.01 CEO Certificate pp.195-196 (black numbers)

⁷⁷ ex.3.01 CEO Certificate p.196 (black numbers)

- (iv) PO28 requires ongoing maintenance and management of the waterway and associated infrastructure be provided by way of a whole of life ongoing funding source such as a “*sinking fund*”;⁷⁸ and
- (v) PO32 calls for waterfronts along a significant portion of the waterway system as part of a legible and permeable active transport network, a matter also germane to PO34(b) and its corresponding acceptable outcome AO 34(a);⁷⁹
- (i) PO29 (in conjunction with Figure 7.2.18A⁸⁰) specifies the intended road network including primary access (through Settler’s Park – Lot 8 on SP 812125) at the Ocean Drive/David Low Way intersection, noting that PO 31 also guides road design, including the provision of generous verge widths;⁸¹
- (j) PO30 calls for the “*protection and enhancement*” of Settler’s Park with the corresponding acceptable outcome AO30 contemplating reconfiguration of its boundaries;⁸²
- (k) PO32 and PO33 emphasise the desirability of cycle and pedestrian links connecting to the existing Twin Waters East, the regional pedestrian and cycle path adjacent Sunshine motorway and the Maroochy River and foreshore;⁸³
- (l) PO35 and its corresponding acceptable outcomes AO35.1 and AO35.2 identify ecological outcomes that are more fully explored below;⁸⁴ and
- (m) PO36, PO37, PO38 and PO39 seek outcomes in relation to the State’s transport corridor (including CAMCOS)⁸⁵.

46. The proposal responds to these provisions.

⁷⁸ ex.3.01 CEO Certificate p.196 (black numbers)
⁷⁹ ex.3.01 CEO Certificate p.197 (black numbers)
⁸⁰ ex.3.01 CEO Certificate p.199 (black numbers)
⁸¹ ex.3.01 CEO Certificate p.196 (black numbers)
⁸² ex.3.01 CEO Certificate p.196 (black numbers)
⁸³ ex.3.01 CEO Certificate p.197 (black numbers)
⁸⁴ ex.3.01 CEO Certificate p.198 (black numbers)
⁸⁵ ex.3.01 CEO Certificate p.198 (black numbers)

The legal framework

47. At the time the development application was lodged (19 December 2018⁸⁶), the Planning Act and the Planning Court Act were in force. Accordingly, the development application is to be assessed and decided pursuant to the provisions of those Acts.
48. The development application required impact assessment⁸⁷ and the legal framework for impact assessable development applications under the Planning Act is well known to this Court and has been dealt with in cases such as *Abeleda*⁸⁸ and *Ashvan*.⁸⁹
49. Those decisions confirm that the statutory framework for assessing and deciding development applications under the Planning Act more flexible than the framework under previous planning legislation.⁹⁰
50. A helpful summary was provided in *Barro Group Pty Ltd v Sunshine Coast Regional Council* [2022] QPELR 235 where Williamson QC DCJ relevantly observed:

[41] *The statutory assessment and decision-making framework for this appeal is prescribed by the PA. It requires the application to be assessed in accordance with, inter alia, s 45, and decided in accordance with ss 59(3) and 60.*

[42] *The statutory framework is to be approached consistent with three recent Court of Appeal decisions, namely Brisbane City Council v YQ Property Pty Ltd [2020] QCA 253, Abeleda & Anor v Brisbane City Council & Anor [2020] QCA 257 and Wilhelm v Logan City Council & Anor [2020] QCA 273. Taken collectively, they confirm much of what was said in Ashvan Investments Unit Trust v Brisbane City Council & Ors [2019] QPELR 793. The parties argued the appeal before me on the footing that Ashvan was correctly decided.*

[43] *I pause to observe in passing that YQ Property confirms the ultimate decision called for when making an impact assessment under ss 45 and 60 of the PA is a 'broad evaluative judgment'.⁹¹ Abeleda also confirms, inter alia, that: (1) in contrast to its statutory predecessor, the discretion conferred by s 60(3) of the PA admits of more flexibility to approve an application in the face of non-compliance with a planning*

⁸⁶ see the Notice of Appeal (Court Document 1) para 6

⁸⁷ ex.5.19 1st town planning joint report p.7 para 20

⁸⁸ *Abeleda & Anor v Brisbane City Council & Anor* (2020) 246 LGERA 90, in relation to the material change of use and reconfiguration component see ss.45 and 60 of the Planning Act, in relation to the variation request component see ss.45 and 61 of the Planning Act

⁸⁹ *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPELR 793

⁹⁰ see for example *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPELR 793 at [50]

⁹¹ *YQ Property*, per Henry J at [59] (footnote is as appears in the *Barro* decision)

scheme; and (2) the exercise of the discretion is subject to three requirements, including that it be based upon the assessment carried out under s 45 of the PA.⁹²

[44] *The clear words of s 45(5)(a)(i) of the PA mandate that Barro's development application must be assessed against the applicable assessment benchmarks. The primary assessment benchmark for this appeal is the planning scheme. The agreed list of issues identify a number of alleged non-compliances with the planning scheme...*

51. Further to the above, s.61 of the Planning Act specifies the matters to be considered for the variation request component.⁹³
52. As such it is relevant to reiterate that numerous future approvals will be required to be assessed and decided by Council⁹⁴ and the variations proposed are very limited.
53. Pursuant to the provisions of the Planning Court Act, the appeal is a "*hearing anew*"⁹⁵ and Stockland bears the onus in demonstrating that the appeal should be allowed.⁹⁶

Matters no longer pressed as reasons for refusal

54. Prior to the trial, Council and the Co-Respondents abandoned reliance upon matters related to the KRA, the CAMCOS corridor and acid sulfate soils as reasons for refusal.
55. At various times during the first, second and third week of the trial, Council and the Co-Respondents confirmed that they no longer contended for refusal referable to a number of other issues.⁹⁷

The remaining issues in dispute

56. The issues that remain in dispute are set out in Exhibit 8.15 and are dealt with below.

⁹² *Abeleda*, per Mullins JA at [53] and [58] (footnote is as appears in the *Barro* decision)
⁹³ see also *Southway Services No. 2 Pty Ltd v Brisbane City Council & Ors* [2022] QPEC 8 at [19]-[21]
⁹⁴ ex.7.01 plan of development pp.12-16
⁹⁵ see s.43 of the Planning Court Act
⁹⁶ s.45 of the Planning Court Act
⁹⁷ week 1: paragraph 1 (acoustics) and paragraph 11 (traffic) – and some assessment benchmarks – see ex.8.01, T3-2/5-20; week 2: paragraph 8 (construction management), T7-81/15 – T7-82/5; week 3 paragraph 10 (balance of traffic) T9-2/10-35

(1) Residential character (configuration, density, intensity, and scale)

57. The first of the remaining issues in dispute is:

“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. This requires consideration of whether the proposed “residential subdivision and the two medium density sites” are, in essence, “in character” with existing development.

59. To determine whether a development is “in character” with existing development turns on matters of fact and degree.⁹⁸

60. In *Jakel Pty Ltd & Ors v Brisbane City Council & Anor* [2018] QPELR 763 at [277] the Court highlighted the inherently subjective nature of determining such matters:

“Whether the proposed development acceptably responds to the performance outcomes and overall outcomes with respect to height, bulk, scale, setbacks, transitions and separations and is acceptable in terms of its character and amenity impacts, is an evaluative judgment on which minds might differ.”⁹⁹ Questions of consistency of bulk and scale with streetscape character and amenity involve judgments that are “inherently subjective and can be nebulous”.¹⁰⁰

61. The provisions of the planning scheme raised for consideration in relation to this issue in dispute serve to highlight this. Some of those provisions apply broadly to urban areas such as the provision of the strategic framework s.3.8.1(f),¹⁰¹ whereas others call for “an appropriate mix of land uses and housing types”¹⁰² (which the proposal facilitates¹⁰³).

62. The provisions of most direct application to the issue are those within the local plan from which the language of the issue is plainly drawn.¹⁰⁴

⁹⁸ *IB Town Planning v Sunshine Coast Regional Council* [2021] QPEC 36 at [115]

⁹⁹ citing *Caltibiano v Brisbane City Council* [2005] QPELR 60 at [24]; *Quintenon Pty Ltd v Brisbane City Council* [2017] QPELR 88 at [62]

¹⁰⁰ citing *Caltibiano* at [24] referring to *Broad v Brisbane City Council* [1986] 2 Qd R 317 at 319-20 and 326

¹⁰¹ ex.3.01 CEO Certificate p.82 (black numbers)

¹⁰² ex.3.01 CEO Certificate p.183 (black numbers) overall outcome 2(c)(v)

¹⁰³ ex.4.19 1st town planning joint report p.17 para 50, ex.4.27 2nd town planning joint report p.43 para 146 and ex.5.01 statement of Mr Allen p.6 para 24

¹⁰⁴ ex.3.01 CEO Certificate p.189 (black numbers) overall outcome 2(p) and p.195 (black numbers) PO22

63. In that regard:

(a) overall outcome 2(p) provides:¹⁰⁵

“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 provides:

“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.”

64. Those provisions do not call for a carbon copy of the existing (adjoining) Twin Waters residential community.

65. Rather they call for:

(a) firstly, by the overall outcome, the establishment of residential uses “*sympathetic to, and in keeping with, the prevailing low density residential character of*” that residential community; and

(b) secondly, by the performance outcome, provision of residential uses “*at a scale and intensity, and in a configuration that is consistent with and sympathetic to*” that residential community.

66. In *Andema Pty Ltd v Noosa Shire Council* [2020] QPEC 62 at [28]¹⁰⁶ the Court highlighted that in considering whether development is “*consistent with*” other development does not “*require replication*” and instead “*requires something that is compatible with structures on adjoining and surrounding land in the sense of being capable of existing in harmony with that other built form.*”¹⁰⁷

¹⁰⁵ ex.3.01 CEO Certificate p.189 (black numbers)

¹⁰⁶ Noting the provision considered at [25]

¹⁰⁷ citing *the Planning Place v Brisbane City Council* [2019] QPELR 396 at [75]-[77] and *Lake Maroon Pty Ltd v Gladstone Regional Council* (2017) 224 LGERA 166 at [14]-[25]

67. In *Lake Maroona Pty Ltd v Gladstone Regional Council*¹⁰⁸ the Court had highlighted by reference to the observations of Sackville J in *Flanagan v Australian Prudential Regulation Authority* that “*there is a certain elasticity about the expression*” ‘consistency ... with’¹⁰⁹.
68. In *Alford v Brisbane City Council* [2016] QPELR 1 at [147] the Court emphasised that expressions like “*sympathetic to*” and “*consistent with*” are expressions which “*connote concepts of compromise and tolerance, rather than inflexibility.*”
69. Turning to the evidence, Stockland called Dr McGowan and Mr Elliott to address the issue. Mr Reynolds also addresses it from a town planning perspective. Council engaged Mr Adamson.
70. For the purposes of considering matters of character Mr Adamson had council officers prepare Attachment E to the 1st town planning joint report.¹¹⁰ The first point to observe is that these documents do not represent how the character of an area will be experienced “*on the ground*”. At best they provide an analysis “*from the air*”.
71. The first page in Attachment E (p.74) (and, for example, pages 1 to 3 of ex. 7.54) demonstrates that that while some open space is available adjoining water in the existing Twin Waters estate, little is provided by way of “*walkable waterfront*” of the type identified in the proposal¹¹¹; and, as was confirmed by the site inspection, the “*parks*” identified by Mr Adamson on that page which flank the western boundaries of the existing Twin Waters estate are for the most part densely vegetated and cannot serve any active open space role.¹¹²
72. The remaining pages in Attachment E are focused upon lot sizes.¹¹³

¹⁰⁸ Supra.

¹⁰⁹ *Flanagan v Australian Prudential Regulation Authority* (2004) 138 FCR 286 at [47]; see also *the Planning Place v Brisbane City Council* [2019] QPELR 396 at [75] and note the emphasis added by Kefford DCJ to the reference to *Flanagan* as part of the quote at [75]

¹¹⁰ ex.4.19 1st town planning joint report p.22 paras 64-65 and pp.73-76

¹¹¹ e.g. ex. 7.01 pp. 26, 27 and 29 (sections A4 and A6)

¹¹² see the site inspection documents exs.7.52-7.54

¹¹³ ex.4.19 1st town planning joint report pp.75-76

73. As to parks/open space, overall outcome 2(p) highlights the intent for the land to include “large areas of open space and focusses on connection to water as a key design and character element”¹¹⁴ and as can be seen plan of development includes large areas of open space and the ability for the community to walk along the waterfront of the lake system.¹¹⁵ This desire is reinforced in PO34 of the local plan which seeks the provision of open space that “maximises public access to the waterfront”¹¹⁶ and in PO32 seeks a “walkable waterfront along a significant portion of the waterway system”¹¹⁷ which again, is met by the proposal.¹¹⁸
74. The proposal incorporates 3 large recreation parks in addition to the upgrading of Settler’s Park and providing four “pocket parks” of a minimum of 1000 m² each.¹¹⁹
75. Mr Adamson’s approach to the issue focuses on differences in average lot sizes¹²⁰, and at paragraph 86 of the 1st town planning joint report he observes:¹²¹

“When considering all of the above, in my opinion, the proposed development will have a different residential amenity and character when compared to Twin Waters East. This is primarily because of the difference in the average allotment, along with the general frontage width and the high number of small pocket and linear parks that are interspersed throughout Twin Waters East. This provides for an established low density residential scale and intensity set amongst a relatively large amount of integrated open space and landscaping. In my opinion, the proposed residential character and amenity of Twin Waters West is not consistent with, sympathetic to, and in keeping with the prevailing low density residential character of Twin Waters East.”

76. In the 2nd town planning joint report Mr Adamson observes that:¹²²

“The matter of residential character relates to both the low density and the multi-unit components. The provisions under AO22(a) of the local plan code provide for a minimum allotment size of 500m² and an average allotment size of 700m² relating to the low density residential component. While it is agreed that these are not the only aspects of the development that contribute to the character of the existing TWE

¹¹⁴ ex.3.01 CEO Certificate p.189 (black numbers)
¹¹⁵ ex.7.01 plan of development p.26
¹¹⁶ ex.3.01 CEO Certificate p.197 (black numbers)
¹¹⁷ ex.3.01 CEO Certificate p.197 (black numbers)
¹¹⁸ ex.7.01 plan of development p.26
¹¹⁹ ex.7.01 plan of development p.26
¹²⁰ ex.4.19 1st town planning joint report pp.20-26 paras 56-86
¹²¹ ex.4.19 1st town planning joint report p.26 para 86
¹²² ex.4.27 2nd town planning joint p.11 paras 24-25

development, these are the predominant parameters referred specifically in the local plan code.

These parameters are a point of difference, which seek to differentiate the intended character and amenity of TWE and TWW from other areas of the Sunshine Coast. For the subject site, these are the primary parameters that seek to maintain the prevailing low density residential character of the TWE community as it applies to the proposed TWW residential community. Under AO22(b), this also includes limited multi-unit residential uses which are to be focused in discreet nodes, which has also been discussed in JER1.”

77. Mr Adamson’s focus on average lot size highlights the error in his approach. It proceeds on the basis that character should be determined by adherence to one aspect of an acceptable outcome in circumstances where that is not mandatory, and in any event AO22 only acts as a “*partial fulfilment*” of its corresponding performance criterion.¹²³
78. The performance criterion PO22 to which AO22 relates is set out above and calls for a consideration of the “*elastic concept*” of whether development is “*consistent with*” existing Twin Waters.
79. Mr Adamson’s focus on average lot size permeated his oral evidence, during which he however acknowledged that minimum lot size of 400, with no more than 12% of lots less than 500m² was consistent and took no issue with the nett residential density of identified for the low-density residential precincts.¹²⁴
80. Based on Mr Adamson’s work, the density in existing Twin Waters is approximately 11 dwellings per hectare¹²⁵ whereas the proposal will facilitate what Mr Adamson describes as the “*marginally higher*” density of approximately 12 lots per hectare.¹²⁶
81. Both the plan of development and the assessment benchmarks control these matters in terms of future applications as:
 - (a) the plan of development:¹²⁷

¹²³ ex.3.01 CEO Certificate p.195 (black numbers)

¹²⁴ E.g. T4-51/1 40 to t4-53/145

¹²⁵ ex.4.19 1st town planning joint report p.22 para 65

¹²⁶ ex.4.27 2nd town planning joint report p.15 para 43

¹²⁷ ex.7.01 plan of development p.18 s.8.1 (1st and 2nd bullet point) and p.24 table 1 specifies a maximum number of 584 lots and identifies maxima for each of the low density residential precincts

- (i) sets a maximum yield of 584 low density residential lots (broken down to maxima across precincts);
 - (ii) requires that the density across the whole site does not exceed 12 lots per hectare;
 - (iii) specifies 400m² as the minimum lot size and caps the proportion of lots less than 500m² at 12%; and further,
- (b) the provisions of the *Reconfiguring a lot code*, against which future code assessable reconfiguration applications are to be assessed¹²⁸ contain a number of assessment benchmarks that deal with character and lot size.¹²⁹

82. As to matters related to road widths:

- (a) firstly, there is no suggestion that the proposed roads are inappropriate for their intended function, including the provision of on street and shared pedestrian/cycle paths within road reserves that respond to identified elements of the local plan. (noting also that all traffic issues have been abandoned as reasons for refusal);
- (b) secondly, the proposal has been designed by reference to the Council's Transport and Parking Scheme Policy whereas existing Twin Waters appears to have been designed by reference to Qld Streets;¹³⁰ and
- (c) thirdly, there are differences between those standards including that the planning scheme policy seeks for wider reserve widths for an "*access street*" (15.3m-16.6m as compared to 14m for Qld Streets),¹³¹ a "*neighbourhood collector street*" (21-25.4m as compared to 16-20m for Qld Streets)¹³² along with increases for a "*district collector street*".¹³³

¹²⁸ ex.7.01 plan of development p.12 s.5.2

¹²⁹ ex.301 CEO Certificate pp.264-272 (black numbers) and note for example the purpose s.9.4.4.2(1)(a), overall outcome 2(a), PO2(b), (g), PO4

¹³⁰ ex.4.31 3rd traffic joint report p.2 paras 13-14

¹³¹ ex.4.31 3rd traffic joint report p.5 para 35

¹³² ex.4.31 3rd traffic joint report p.5 para 35

¹³³ ex.4.31 3rd traffic joint report p.6 para 52

83. The traffic experts highlight that neither of these documents represent mandatory design standards¹³⁴ and that determining the application of the functional hierarchy of roads has always been “*somewhat subjective*”.¹³⁵ This subjective element explains the differences between Mr Douglas and Mr Healy as to whether certain lower order roads are to be classified as an “*access street*” or something lower in the hierarchy.¹³⁶
84. The Court is referred to the tables on pages 24-26 of the 3rd traffic joint report and in particular to Mr Healy’s observations in the final column which highlight changes between the standards that are of relevance to the present case.
85. In any event, it remains unexplained as to how the difference in average lot size, road widths or the like actually manifests in any unacceptable impact on character.
86. In *IB Town Planning v Sunshine Coast Regional Council* [2021] QPEC 36 Council sought to rely upon the evidence of Mr Adamson to assert that the character of a proposed hotel was “*vastly different*” to that of an approved “*food and drink outlet*”.¹³⁷ In that case Williamson QC DCJ considered the differences and similarities between the proposed use and the approved use and noted at [118]:

“...the differences do not sound in any material, let alone unacceptable, town planning consequence in character and amenity terms. Mr Adamson did not take this into account, which undermines the opinion expressed by him. Further, these matters, in my view, do not support the proposition that the approved use and Hotel are vastly different in terms of character and amenity impacts.”

87. That same error in approach has occurred in the present case. Even if it is accepted that the differences highlighted by Mr Adamson might result in some difference in character Mr Adamson does not point to any unacceptable town planning consequence in terms of character and amenity and the evidence particularly of Dr McGowan and Mr Elliott confirms this lack of consequence.

¹³⁴ ex.4.31 3rd traffic joint report p.2 para 15

¹³⁵ ex.4.31 3rd traffic joint report p.2 paras 11-12

¹³⁶ ex.4.31 3rd traffic joint report p.4 paras 30-31; see also para 32 and Mr Healey’s road reserve measurements on p.14

¹³⁷ *IB Town Planning v Sunshine Coast Regional Council* [2021] QPEC 36 at [112], [116]

88. However, to be clear, it is not accepted that any differences result in the development that will be facilitated being “*out of character*” in a way that offends overall outcome 2(p) or PO22 in the local plan.

89. As Dr McGowan explains, there are a range of factors that impact upon character and a “*numeric exercise*” is only part of the picture. As Dr McGowan observes:¹³⁸

*“In my view the appreciation of character (being the impression of a place that distinguishes it from others) is the result of a qualitative interplay of the types of factors that Mr Reynolds has identified. I further note that, in this instance, the experience of character will predominantly be from street, paths, and public open space within each estate. **The maps and metrics relied on by Mr Adamson do not reflect how each estate is likely to be experienced from such locations or the fact that the majority of people are unlikely to experience enough of each estate contemporaneously such that they could form any type of comparative evaluation of the similarities or differences of each estate.**”*

Appendix B sets out a more qualitative comparison of Stages 1 and 2 of the proposed development and TWE (as they would be experienced from the public realm). This Appendix comprises a streetscape comparison of four street sections from Stages 1 and 2 of the proposed development against corresponding street sections from TWE.”

90. Appendix B of Dr McGowan’s report contains imagery prepared by Mr Elliott which is contrasted with photographs of the existing Twin Waters streets.¹³⁹ No party sought to challenge the reliability of Mr Elliot’s work and he was not required for cross examination. This is understandable given the numerous times Mr Elliot has provided assistance to this Court.

91. By reference to Appendix B it is clear that the proposal will facilitate development that is “*in character*” with the existing Twin Waters development. As Dr McGowan further observes:¹⁴⁰

*“Obviously, a person travelling through or living in either estate will observe and experience the visual environments of each estate in a range of ways (i.e. not just looking along a road). However, **these images of views along the street reflect what is likely to be the most common types of experience for people in each area, and also provides for an appreciation of an assemblage of attributes, rather than a more narrow focus on one or two attributes in plan form.** Additional photos of TWE depicting other views from the street (i.e. not down the centre of the street)*

¹³⁸ ex.5.16 statement of Dr McGowan p.9 paras 17-18

¹³⁹ ex.5.16 statement of Dr McGowan pp.10-11 paras 22-27

¹⁴⁰ ex.5.16 statement of Dr McGowan p.9 paras 17-18

are included at Appendix C In order to provide a further appreciation of the TWE streetscape.

The comparisons provided by the images at Appendix B confirm that, while basic metrics relating to lot sizes, widths, and even setbacks may be perceptible on plans, they are far less apparent 'on the ground'. Such metrics are disguised by perspective and by the range of other elements and attributes that make up a typical streetscape (such as street furniture, boundary fences, qualities of the road verge, and landscaping). Notably, along with the basic parameters of the road reserve, landscaping is the variable that has the greatest bearing on the appearance of the streets and has the greatest impact on the visibility and perceptibility of built form density. Other more specific observations include:

- a) For views along a street (such as those depicted in the analysis) side boundary setbacks, built to boundary walls, and building separation are, even if visible, difficult to appreciate. As the additional photos at Appendix C indicate, these attributes may be more easily appreciated when seen in views that are more perpendicular to the street but are often disguised by fencing and landscaping.
- b) Lot widths and lot sizes are not obvious in views along a street. This is typically because lot widths are often disguised by changes in road alignments and by landscaping in the road reserve (especially street trees). Lot sizes can only be appreciated in circumstances where front, side and rear setbacks for a particular lot can be observed (which is unusual). Otherwise it is difficult to appreciate the actual size of a lot from the street.
- c) A clear and precise appreciation of the built form density of an area is made particularly difficult by the above factors and particularly when the local lot pattern is interrupted by pockets of open space (park or water), as is often the case in these estates.
- d) The generally flat terrain also makes appreciation of density difficult because there are no opportunities for views across an expansive area of development, nor does development traverse slopes which could make more development visible in any single view. Put another way, in this local terrain it is mainly the buildings that front the streets which are visible and little if anything of the buildings behind those buildings can be seen.
- e) Because the separation to neighbouring buildings behind houses along the street is not obvious, and because the rear boundaries are not usually obvious from the street, the reduced rear boundary setbacks allowed by the PoD do not result in an obvious difference in the intensity or density of development compared to TWE. The same is true of TWE where there are numerous examples of houses with reduced side or rear boundary setbacks which are not particularly apparent from the street (such as at Figures 2f, 3h, 3j, 4l, and 4n of Appendix B).

The above analysis also highlights differences within each estate. Due to variations in road alignment, proximity to difference types of open space, differences in the scale and size of housing, etc, each estate has areas with slightly different character. For example the streetscape character at C9 (which is a small enclave

surrounded by a golf course) is noticeably different to the character of C5 (which is the same type of street but is in a different part of the estate). **The lack of a uniform character in each estate highlights the fact that character is not precise and that areas can have variation in certain attributes but maintain an overall character which is similar.**

Having regard to the above observations I do not believe that the differences in lot size or width (between the proposed development and TWE) will be obvious for people moving through these areas (and that assumes that someone might move through both). Rather, other qualities observable from the public realm will be more apparent and will in my opinion ultimately leave the viewer with the impression that the proposed development is a type of low-density residential development similar to TWE. Such an observer would observe a similar overall character, defined by: low rise built form, the majority of which would be detached housing; set amongst an irregular network of attractive landscaped streets that have a comparable hierarchy; interspersed with generous pockets of open space (including buffers and conservation areas); and arranged around expansive waterbodies. While there will undoubtedly be observable differences (such as newer houses, different landscape aesthetic and street furniture, a different arrangement of open spaces etc), there would be enough similarities for the casual observer to consider that the two developments are consistent and that the proposed development is "in keeping with" TWE in terms of overall scale, intensity, configuration and character.

I note that the above analysis does not illustrate how corner lots might appear in the proposed development and how, because of the alternative setbacks to secondary frontages, they might appear differently to corner lots in TWE. However, based on what the analysis does show, it is likely that any reduced setbacks to secondary frontages will be disguised to some degree by landscaping and other structures (such as boundary fences), such that these particular aspects of the proposed development are unlikely to be an obvious point of difference between the two estates. Photos included at Appendix C show that the setbacks to corner lots in TWE are not always visible and, even when they are, other factors make the extent of setback difficult to discern. Even if the reduced setbacks contemplated for the proposed development are apparent, they would be perceived as a relatively minor differences in the context of a wider range of other common attributes.

I note as well that the above analysis does not illustrate the relationship of development to proposed open space through the estate. As the Landscape Report shows, the proposed development will incorporate a range of open spaces (landscape and waterscape) throughout the estate such that it will be a central feature with many houses adjoining or being opposite to these open spaces. According to measurements my office has undertaken (which I have checked): approximately 30% of the site will be utilised for parks, landscape buffers, and conservation areas; and the waterbody will account for approximately 16.5% of the site. While the central lake will provide a sense of openness, as does the waterbody in TWE, the large areas of park and conservation space will be effective at dividing and separating discrete areas of development within the proposed development. Except for development adjacent the riparian buffer to the south and around the neighbouring golf course, this is not a feature of TWE. As

well as being a desirable outcome for the amenity of future residents, the provision of open space will impact on the perception of density within the estate.”

92. Further, as Mr Allen confirmed on behalf of Stockland, covenants are proposed to give Twin Waters West a “*quality, look and scale*” to fit in with local character.¹⁴¹ As Mr Allen observed:¹⁴²

*“Covenants routinely implemented by Stockland deal with a range of matters from setback, building heights, roof pitch and sizing requirements, house style and sizing, fencing, landscaping and external elements. **Stockland intends to attach building covenants to the Twin Waters West development. This is to ensure that dwellings meet the expectations as to quality, look and scale and fit in with the local character. Stockland will ensure that the development has homes which will be designed and built to a very high standard in keeping with the existing Twin Waters estate by implementation of such building covenants.***

Stockland has a dedicated team that assists in the preparation, implementation, and enforcement of these covenants. Stockland requires the builder for each individual dwelling to submit building and siting plans and landscape plans to its ‘builder portal’ so Stockland can assess the plans before they are lodged for the purposes of obtaining covenant approvals.”

93. A covenant to secure built form in keeping with the existing Twin Waters estate could be conditioned.
94. It is also important to note that for the low-density residential precincts, the only lot sizes that have been specified are those in stages 1 and 2 and all future stages will be subject to code assessment.¹⁴³ Such applications are to be assessed against the Reconfiguring a Lot Code.¹⁴⁴
95. The purpose of the Reconfiguring a Lot Code is specified as including “*to ensure that new lots are configured in a manner which ... is consistent with the desired character of the area*”.¹⁴⁵
96. In relation to the development permit for stages 1 and 2, no provisions of the Reconfiguring a Lot Code are raised for consideration and there is no suggestion by Council or the Co-Respondents of non-compliance with this Code.

¹⁴¹ ex.5.01 statement of Mr Allen p.5 para 20

¹⁴² ex.5.01 statement of Mr Allen pp.5-6 paras 21-22

¹⁴³ ex.7.01 plan of development p.15 s.5.3 and p.18 s.8.1

¹⁴⁴ ex.7.01 plan of development p.15 s.5.3 and p.18 s.8.1

¹⁴⁵ ex.3.01 CEO Certificate p.264 (black numbers) s.9.4.4.2(1)(a)

97. As to lot size and character issues in relation to future code assessable reconfiguration applications, the following provisions of the Reconfiguring a Lot Code are of note:

(a) overall outcome (2)(a) provides:¹⁴⁶

*“**development provides for lots that are** of a size and have dimensions that are appropriate for their intended use and **responsive to local character** and site constraints”*

(b) PO2 (to which there is no acceptable outcome specified) relevantly provides:¹⁴⁷

“Development provides for a lot layout, land use and infrastructure configuration that:-

...
 (b) ***effectively connects and integrates the site with existing or planned development on adjoining sites;***

...
 (g) ***promotes a sense of community identity and belonging;**”*

(c) PO4 provides:¹⁴⁸

<i>Performance Outcome</i>	<i>Acceptable Outcome</i>
<p><i><u>Development provides for small residential lots (of less than 600m²) to be created in limited circumstances where:-</u></i></p> <p>(a) <i><u>consistent with the intent of the zone and compatible with the preferred character of the local area; and</u></i></p> <p>(b) <i><u>on land that is fit for purpose and not subject to topographic constraints.</u></i></p>	<p><i>Notwithstanding Acceptable Outcome AO3.1 (above), <u>small residential lots may be created on land in one of the following zones:-</u></i></p> <p>(a) <i><u>the Emerging community zone;</u> or</i> (b) <i><u>the Medium density residential zone.</u></i></p> <p><i>The land on which small residential lots are created has a slope of not more than 10%.</i></p>

(d) as to the reference in AO4 to AO3.1, that acceptable outcome provides:

“Except where otherwise specified in a structure plan or local plan code, a lot complies with the minimum lot size and the minimum average lot size specified in Column 2 of Table 9.4.4.3.2 (Minimum lot size and dimensions).”

¹⁴⁶ ex.3.01 CEO Certificate p.264 (black numbers)

¹⁴⁷ ex.3.01 CEO Certificate p.264 (black numbers)

¹⁴⁸ ex.3.01 CEO Certificate p.266 (black numbers)

98. That table specifies that for land in the Emerging Community Zone, the minimum lot size is 10 hectares.¹⁴⁹ However, the notes to the table (which are part of the planning scheme¹⁵⁰) relevantly state:¹⁵¹

“Note - for land included in the Medium density residential zone or Emerging community zone, the minimum lot size requirements specified in column 2 of Table 9.4.4.3.2 (Minimum lot size and dimensions) may be varied by an approved plan of development that provides for a minimum lot size of 300m² ...”

99. In short, the provisions of the Reconfiguring a Lot Code against which future reconfiguration applications are to be assessed include provisions to deal with character and lot size. Council will have the opportunity to consider compliance with these provisions (along with others that deal with a variety of matters including environmental matters¹⁵² and parks¹⁵³).

100. In terms of the proposal’s identification of two multiple dwelling sites, again the local plan confirms that multi-unit residential uses are intended with overall outcome 2(a) providing that the local plan area is to remain “*a predominantly low density*” area¹⁵⁴, and acceptable outcome AO22(b) contemplating “*limited multi-unit residential uses which are focussed in discreet nodes with convenient access to public transport and active transport routes*”¹⁵⁵.

101. As the Court is aware, the proposal identifies only two locations for multiple dwellings.¹⁵⁶ Those locations are referred to as MD1 and MD2 and are located away from existing Twin Waters East close to public transport with a maximum number of 180 units specified.¹⁵⁷

¹⁴⁹ ex.3.01 CEO Certificate p.273 (black numbers)

¹⁵⁰ ex.3.01 CEO Certificate p.26 (black numbers) s.1.3.2(3)

¹⁵¹ ex.3.01 CEO Certificate p.273 (black numbers) see note 15; see also p.152 (black numbers) which sets out in a table the level of assessment for the Emerging Community Zone and the note which provides: “*development in the Emerging Community Zone is intended to be the subject to a master plan. An approved plan of development may provide variations to the levels of assessment specified in this table*”

¹⁵² see for example ex.3.01 CEO Certificate (black numbers) p.264 overall outcome 2(c)(iii), p.265 PO1(b), pp.265-266 PO2(m)

¹⁵³ see for example ex.3.01 CEO Certificate p.271 PO18

¹⁵⁴ ex.3.01 CEO Certificate p.188 (black numbers)

¹⁵⁵ ex.3.01 CEO Certificate p.195 (black numbers)

¹⁵⁶ ex.7.01 plan of development p.24

¹⁵⁷ ex.7.01 plan of development p.24; for the location of the bus stops see the concurrence agency response in the decision notice ex.1.08 p.44

102. The evidence of Mr Allen on behalf of Stockland explains that:¹⁵⁸

“The location of medium density nodes was chosen to be proximate to the central community use site and public transport and located so that they do not overlook neighbours external to the site.”

103. The maximum height for the multiple dwellings is specified in the plan of development as 12m.¹⁵⁹ As can be seen by the Height of Buildings and Structures Overlay Map¹⁶⁰, there are locations within existing Twin Waters that have a nominated building height of 12m.

104. Dr McGowan’s evidence highlights the existence of multiple dwellings in Twin Waters East.¹⁶¹ As he observes:¹⁶²

“There are two medium density developments within TWE: Viewpoint apartments to a height of 3 storeys and approximately 12m; and 20 Anchorage Cct to a height of 2 storeys (with rooftop pergolas) and a height of approximately 10m. There is a third medium density development adjacent to TWE: Magnolia Lane with a height up to 6 storeys and approximately 21m. Appendix E includes photos of these developments.”

105. The two proposed multiple dwelling sites (MD1 and MD2) comprise 4.53ha, similar to the three multiple dwelling sites within or adjacent to Twin Waters East, which comprise 4.25ha.¹⁶³ The number of dwellings able to be accommodated within MD1 and MD2 is 180, of similar order to the 143 dwellings at the three existing multiple dwelling sites.¹⁶⁴ In terms of the height of the multiple dwellings, no unacceptable impacts arise from the height.¹⁶⁵ For example, overlooking issues, overshadowing and unacceptable visual impacts are not pressed as issues and in any event, those sorts of matters would be considered and addressed in the assessment of future development applications for multiple dwellings.¹⁶⁶

¹⁵⁸ ex.5.01 statement of Mr Allen p.6 para 24

¹⁵⁹ ex.7.01 plan of development p.17 s.6.1

¹⁶⁰ ex.3.01 CEO Certificate p. 564 (black numbers)

¹⁶¹ ex.5.16 statement of Dr McGowan Appendix E pp.69-73

¹⁶² ex.5.16 statement of Dr McGowan p.12 para 29(f)

¹⁶³ ex.5.16 statement of Dr McGowan p.12 para 29(b)

¹⁶⁴ ex.5.16 statement of Dr McGowan p.12 para 29(b)

¹⁶⁵ ex.5.01 statement of Mr Allen p.6 para 24

¹⁶⁶ see ex.7.01 plan of development p.12 s.5.2

106. In that regard those future applications are to be assessed against the Multi-Unit Residential Uses Code¹⁶⁷ which contains provisions including:

- (a) overall outcomes that seek for such development to be “*visually attractive with a built form...that integrates with surrounding development*”,¹⁶⁸ that “*responds to...the character of the particular local area*”¹⁶⁹ and “*incorporates high quality landscapes*”¹⁷⁰
- (b) performance outcomes that require a “*positive to the contribution to the character of the street and local area*”,¹⁷¹ as well as “*residential density that is compatible with the intent of the zone and the preferred character of the local area*”¹⁷² along with many others.

107. Having regard to the above matters, the Court would conclude that the proposal will facilitate development that is “*in character*” with the existing Twin Waters development and the residential development to be facilitated by the proposal (both the residential subdivision and the two medium density residential sites) is not unacceptable on the land.

108. Of course, the Court can approve (or refuse) all or some of the variations sought; or approve different ones.¹⁷³

109. Further and in any event, Council will have the opportunity to assess, decide and condition the specific “*look and feel*” of future applications to establish low-density residential uses by way of reconfiguration, and multiple dwellings in the identified nodes, and the Court would not pre-empt the outcome of applications yet to be made.

¹⁶⁷ ex.7.01 plan of development p.12 s.5.2

¹⁶⁸ ex.3.01 CEO Certificate p.243 overall outcome 2(a)

¹⁶⁹ ex.3.01 CEO Certificate p.243 overall outcome 2(b)

¹⁷⁰ ex.3.01 CEO Certificate p.243 overall outcome 2(c)

¹⁷¹ ex.3.01 CEO Certificate p.243 PO1(c) (no acceptable solution is provided)

¹⁷² ex.3.01 CEO Certificate p.244 PO6

¹⁷³ Planning Act s. 61 (3)

(2) Lake water quality

110. The next issue remaining in dispute relates to water quality from the extension to the existing Twin Waters waterway system and requires consideration of:¹⁷⁴

“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.”

111. In considering this issue, there are two important matters to highlight. Firstly, the issue is limited to the potential for water quality impacts from the proposed lake with issues related to the construction period having been abandoned.¹⁷⁵ Secondly, PO26 of the local plan intends for the development of the subject land to involve *“an extension to the existing Twin Waters waterway system”*.¹⁷⁶

112. In other words, the issue arises from the intention of the planning scheme to have a lake on land that is flood prone and proximate to a groundwater dependent wetland and the Maroochy River. The drafting of PO26 confirms that the lake is to appropriately deal with these constraints (and others)¹⁷⁷ and PO27 and PO28 contemplates the creation of a lake management plan and provision of a sinking fund to achieve this.¹⁷⁸

113. It may also be noted that the State has imposed conditions which require a water quality management plan including the *“lake system and associated discharge to the Maroochy River”* and specified release limits.¹⁷⁹ The State’s conditioned approval followed information in relation to impacts on coastal processes, erosion and tidal prism that was provided Dr Johnson¹⁸⁰, the State deciding that the preliminary approval is considered to comply with State code 8: Coastal development and tidal works.

¹⁷⁴ ex.2.02 p.2 para 3

¹⁷⁵ T7-81/15 – T7-82/5

¹⁷⁶ ex.3.01 CEO Certificate p.195 (black numbers)

¹⁷⁷ ex.3.01 CEO Certificate pp.195-196 (black numbers)

¹⁷⁸ ex.3.01 CEO Certificate p.196 (black numbers)

¹⁷⁹ ex. 1.08 pp. 25 and 26, condition 5 and Table 1

¹⁸⁰ ex. 4.21 1st water quality joint report p.321 – 333 attachment 11; ex. 1.08, p. 39

114. Dr Walker was an impressive witness whose *curriculum vitae* confirms his highly specialised knowledge of lake design and management (albeit he has no previous experience as a court expert).¹⁸¹
115. The proposed lake has been designed by Dr Walker in a way that achieves compliance.
116. In that regard, it is relevant to observe that there was no challenge by Council or any other party to the proposed water quality objectives¹⁸² or to SARA's conditions which set release limits to the Maroochy River and specify the frequency of the monitoring regime to determine compliance (which for all bar one matter, is required to be done on a bi-monthly basis).¹⁸³
117. As Dr Walker explained, monitoring buoys are located in the lake and the Maroochy River which can read the water quality and ensure that water is only discharged into the River that meets the specified water quality objectives.¹⁸⁴ The lake design uses pumps which can be controlled so that pumping only occurs when water quality meets the specified water quality objectives.¹⁸⁵
118. As to water quality from the lake, in the 2nd joint report Mr Collins on behalf of Council states that "*as to whether the constructed lake will achieve suitable water quality objectives depends heavily on having appropriate maintenance and replacement works in perpetuity.*"¹⁸⁶
119. In light of Mr Collins' appropriate concession, it is submitted that this is clearly a matter for conditions.

¹⁸¹ see in particular ex.4.21 1st water quality and lake maintenance joint pp.22-25 and in particular p.25 which details his experience with lake design and the review and remediation of lake projects

¹⁸² these are specified in ex.4.21 1st water quality and lake maintenance joint report pp.348-349

¹⁸³ ex.1.08 decision notice pp.25-26 condition 5

¹⁸⁴ T6-5/10 – T6-6/10; the monitoring locations are shown in ex.4.21 1st water quality joint report on p.360 (locations A-F); see also p.348 s.9.1 (1st para)

¹⁸⁵ T6-5/20 – T6-6/10

¹⁸⁶ ex.4.29 2nd water quality joint report p.37 (3rd column, 2nd last entry; as can be seen from p.35, the 3rd column sets out Mr Collins' views)

120. In terms of conditioning, there is a core level of agreement between Dr Walker and Mr Collins¹⁸⁷ with the remaining areas of disagreement relating to some cost estimates, along with the recurrence and need for certain measures which would form part of the lake maintenance plan and sinking fund.
121. The differences between Dr Walker and Mr Collins were explained by Dr Walker as arising because, as a scientist, Dr Walker acts on data.¹⁸⁸ Dr Walker explained that his opinions on these matters were informed by actual data including quotes and were the subject of cost modelling.¹⁸⁹ In contrast, Mr Collins provided scant detail about why he disagreed with Dr Walker, but in any event as can be seen by reference to those remaining items of disagreement, these matters can clearly be dealt with by conditions.
122. To assist the Court, the remaining matters of disagreement are set out by Dr Walker in the 3rd water quality joint report in table 1 on pages 20-21.¹⁹⁰ As can be seen from that table, the disputed matters relate to things that are clearly matters for conditions and involve the cost to be attributable to certain matters and the recurrence or certain maintenance activities such as shark and fish management.
123. These are obviously matters that can be dealt with by way of conditions and as Dr Walker volunteered in the 3rd joint report "*it is fair and reasonable for Council to ensure that any sinking fund value provided will cater to the ongoing maintenance for the proposed waterbody at Twin Waters West*".¹⁹¹ Stockland does not submit otherwise and in the event of an approval, this matter should be the subject of appropriate conditions.
124. Having regard to the above, it is submitted that on-site and off-site water quality impacts related to the proposed extension of the existing Twin Waters waterway system are clearly matters that can be dealt with by the imposition of conditions.
125. However, in light of the way that Council has conducted its case on this issue it is necessary to make some further observations.

¹⁸⁷ ex.4.29 2nd water quality joint report p.22 paras 95-96

¹⁸⁸ T6-25/25

¹⁸⁹ T6-25/25, T6-27/40, ex.5.21 statement of Dr Walker p.4 para 23

¹⁹⁰ ex.4.30 3rd water quality joint report pp.20-21

¹⁹¹ ex.4.30 3rd water quality joint report p.32 para 82

126. The first matter relates to the fact that in the second week of the trial, Council announced for the first time “instructions” that it would not accept ownership of the lake in the event of an approval thereby raising a *Harderan* point.¹⁹²
127. It is disappointing that a model litigant would raise that matter for the first time in circumstances where it has been over 3.5 years since the development application was properly made,¹⁹³ nearly 2 years since this appeal was commenced,¹⁹⁴ over 1.5 years since Council notified its reasons for refusal¹⁹⁵ and over 4 months since the list of issues were agreed.¹⁹⁶
128. Despite all of this, and the substantial work that had gone into refining the agreed disputed issues, these “instructions” were raised for the first time during the cross examination of Dr Walker.¹⁹⁷
129. It is clear from the joint report that Council’s expert Mr Collins had proceeded on the basis that the lake would be handed over to Council and as Dr Walker explained, it was intended that Stockland would “bear responsibility to maintain and monitor the lake for a period of up to 13 years subject to market forces”.¹⁹⁸ The 13 year period was based upon a proposed construction period of 10 years and a 3 year “on maintenance” period pursuant to the infrastructure agreement that Council officer’s had recommended that Council enter into which provided for the lake to be handed over to Council with an agreed sinking fund contribution of over \$3 million that increases upwards with PPI.¹⁹⁹

¹⁹² T6-12/10-30; *Harderan Pty Ltd v Logan City Council* (1989) 1 Qd R 524; the *Harderan* principle has been applied in a number of cases in this Court including *Jones Flint & Pike Pty Ltd v Maroochy Shire Council* (1999) QPELR 434, *Adam v Gold Coast City Council* (2007) QPELR 379, *Wroxall Investments v Cairns Regional Council* (2011) QPELR 82

¹⁹³ see the Notice of Appeal (Court Document 1) p.4 paras 6-8

¹⁹⁴ the appeal was commenced on 27 August 2020 (Court Document 1)

¹⁹⁵ see Council’s particularised reasons for refusal (Court Document 24) which was filed on 17 November 2020

¹⁹⁶ the agreed list of issues is dated 28 March 2022 see ex.202

¹⁹⁷ T6-12/10-30

¹⁹⁸ ex.4.21 1st water quality joint report p.14 para 3

¹⁹⁹ ex.4.21 1st water quality joint report p.14 para 3, T6-34/1-5, T6-39/40

130. It is also of interest that Council would seek to raise this *Harderan* point in circumstances where the planning scheme (unlike many others) specifically contemplates the prospect of constructed waterbodies being handed over to Council. In particular PO18 of the stormwater management code provides:²⁰⁰

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

131. The content of PO18 puts the *Harderan* issue in a different light to other cases as there is a planning scheme nexus with the proposed dedication. As has already been noted, the local plan requires an extension to the existing Twin Waters waterway system and presses that extension as a key design and character element, with walkable waterfront along significant portions of it.

132. As to the “*overriding need in the public interest*” component of PO18, the acceptable outcome references a planning scheme policy and as the Court is aware, a similar expression being “*overwhelming community need*” was considered by the Court of Appeal in *Yu Feng Pty Ltd v Brisbane City Council* (2007) 156 LGERA 399. In *Yu Feng* in considering that expression Williams JA observed at [26]:

“It is more in the nature of a ‘motherhood statement’ and what will constitute an ‘overwhelming need’ will vary enormously. There would almost be an infinite variety of facts which could impact upon the decision whether or not there was an ‘overwhelming need’ for a proposal under consideration.”

133. The above matters (i.e. the words of PO18 and the observations of the Court of Appeal), make the raising of this issue, particularly at such a late stage in the proceeding somewhat “*passing strange*” however, it does result in the Court not having to resolve a drafting problem embedded within the planning scheme.

134. Further, in the absence of a resolution founding the “*instructions*”, the Court would not prejudge²⁰¹ whether Council will in future accept the extension to the existing waterway required by the local plan, particularly given the knowledge of Council’s acceptance as recently as this year of another pumped lake.²⁰²

²⁰⁰ ex.3.01 CEO Certificate p.279 (black numbers)

²⁰¹ cf. *Walker v Noosa Shire Council* (1983) 2 Qd R 86 at 89

²⁰² ex.4.30 3rd water quality joint report p.22 para 58

135. As to the drafting problem, as the Court is aware, the strategic framework prevails over other parts of the planning scheme to the extent of any inconsistency²⁰³ and s.3.7.4.1(f) of the strategic framework provides:²⁰⁴

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

136. This provision of the strategic framework obviously contemplates the provision of constructed water bodies as long as they are private assets. However, the provision that contemplates constructed water bodies being public assets is within a development code which does not apply if inconsistent with the strategic framework.

137. Happily, accepting that Council has now raised the *Harderan* point it is unnecessary to resolve this obvious “*drafting disconnect*”.

138. Stockland has confirmed that it is willing to retain the lake in private ownership by way of a community titles scheme.²⁰⁵

139. The next matter that emerged from the way Council is now seeking to conduct its case on this issue was a suggestion that the use of pumps was somehow unusual or complex.

140. As was highlighted by Dr Walker and Dr Johnson, there are pumped lakes throughout Queensland including many within the local government area (such as Sunshine Cove, Brightwater, Parrearra Lake²⁰⁶, Koala Lake and the two systems at Pelican Waters).²⁰⁷ Indeed, Dr Walker gave evidence about Council’s development arm Sun Central putting a pumped lake into the Maroochy CBD which from memory he thought was about 12 hectares in size.²⁰⁸ Similarly, Dr Walker’s evidence confirmed that the Brightwater Lake was a 13 hectare saline lake at Mountain Creek on the Sunshine Coast (which had been managed by Stockland) but was taken by this Council “*off maintenance*” in 2022.²⁰⁹

²⁰³ ex.3.01 CEO Certificate p.27 (black numbers) s.1.5(a)

²⁰⁴ ex.3.01 CEO Certificate p.79 (black numbers)

²⁰⁵ ex.5.01 statement of Mr Allen p.15 para 62; ex.5.26 further statement of Mr Allen pp.3-4 paras 5-10

²⁰⁶ which was the original subject of the lake’s maintenance management framework provided by Council to Dr Walker for his lake design and management report in this matter: ex. 4.21 1st water quality joint report at top of page 353 – see: T6-39/1 7-10

²⁰⁷ T6-39/20-35 (Dr Walker) and T6-98/45 – T6-99/5 (Dr Johnson)

²⁰⁸ T6-39/30 and T6-36/30

²⁰⁹ ex.4.30 3rd water quality joint report p.22 para 58

141. Dr Walker’s evidence was that pumped systems were not “*atypical*” and were “*a more contemporary solution as opposed to having tidally-driven systems.*”²¹⁰ Dr Walker’s evidence in relation to Pelican Waters on the Sunshine Coast was that it was larger than the proposed system²¹¹ and that Council had agreed to change the design from “*a tidally-driven penstock-based system to go to a pump on the basis that it would provide a greater level of protection for the water body because it could be more readily switched off and simpler to maintain.*”²¹²
142. Dr Walker also confirmed that the suggestion of an extension that was at grade with the existing Twin Waters lake would be a “*fairly complex response*”²¹³ that would involve exposed rock and the potential for scour.²¹⁴
143. Dr Walker’s evidence also confirmed the benefits of a pump system and in particular:²¹⁵

“The pump system will allow for more control in the management of the lake system, as pumping duration can be increased or decreased in line with water quality monitoring results. A remote water quality monitoring system is proposed to govern the salinity exchange system activation. It is considered that this approach will reduce unnecessary use of the pump, prolonging pump system life and reducing electricity use.”

And similarly:²¹⁶

“Pump infrastructure can be advantageous over alternative measures to achieve lake flushing (e.g. actuated penstocks) as this approach is not reliant on tidal variation. Further, a pump system can be adjusted to suit water quality monitoring (e.g. the pump rate may be reduced if water quality monitoring shows a 30-day turnover time is not required).”

144. A theme that seemed to emerge involved the suggestion on behalf of Council that the proposed lake system was complex.
145. Again, the number of pumped lakes that exist in both public and private ownership, including within Council’s local government area, suggests that this is not the case and for the reasons identified by Dr Walker, there are advantages to this type of system as

²¹⁰ T6-39/35 (the word “*an*” appears to be missing)

²¹¹ T6-36/30

²¹² T6-39/20-25

²¹³ T6-21/15-20

²¹⁴ T6-21/35-40

²¹⁵ ex.4.21 1st water quality joint report p.248 (first para)

²¹⁶ ex.4.21 1st water quality joint report p.168 (3rd para)

compared to alternative approaches including the ability to control pumping to ensure that water which does not meet specified water quality release limits is not discharged.

146. In any event, if the Court formed the view that the proposed lake system is complex it is a consequence of the planning scheme seeking to have a lake on land that is flood prone, proximate to a groundwater dependent wetland and the Maroochy River with PO26 requiring the lake to deal with and resolve those constraints.²¹⁷
147. How it does so will be the subject of assessment during the necessary operational works approval process and the relevant assessment benchmarks in the Stormwater Management Code relied upon by Council in support of this issue will be addressed for that application.²¹⁸ It is at that time that any suggestion of complexity will be tested and if Council is correct, such applications would be refused, but that is no bar to approving the current development application.²¹⁹
148. It bears repeating that the State's "*Reasons for referral agency response*" reiterate the need for a "*development permit for operational works involving all elements of the lake system, including earthworks and the inlet and outlet structures*".²²⁰
149. In summary, this issue is concerned with achieving appropriate water quality from the proposed extension of the existing Twin Waters waterway system. The evidence demonstrates that appropriate water quality is achievable, can be managed by way of conditions and are not a reason for refusal.

(3) Flood emergency management

150. The next issue remaining in dispute calls for consideration of:

"Whether, if implemented, the proposed Flood Emergency Management Plan adequately mitigates risks to safety of people from flooding."

²¹⁷ ex.3.01 CEO Certificate pp.195-196 (black numbers)

²¹⁸ ex.3.02 CEO Certificate pp.187-189 (table of assessment for operation work for the Emerging Community Zone)

²¹⁹ *Walker v Noosa Shire Council* (1983) 2 Qd R 86 at 89

²²⁰ ex. 1.08, page 39

151. In terms of flooding issues, as the Court is aware, this part of the Sunshine Coast is flood prone and the planning scheme requires that flooding issues to be addressed to facilitate the residential development intended by the local plan.
152. There is no suggestion that the proposal would facilitate a development that would cause any adverse impact on flooding behaviour external to the site²²¹ and as the flood risk expert Mr Molino observes:²²²

“Table 8.2.7.3.3 requires that the finished floor levels of urban developments such at Twin Water West are at or above the 1% annual exceedance probability (AEP) flood with projected climate change in 2100 plus 0.5m freeboard.

The minimum floor levels proposed in Twin Water West will all be above this level with many properties being well above this level and at least 60 dwelling being above the probable maximum flood (PMF) level.”

153. In terms of the proposed finished floor levels, in current terms (that is not including the projected climate change), the level at which over floor flooding might occur in a few houses on the land if developed as proposed is equivalent to a 1 in 1500-year recurrence or a 0.07% annual exceedance probability.²²³
154. The recurrence interval for a probable maximum flood (or PMF) was explained by Dr Johnson in the following terms:²²⁴

“For a catchment of this size, according to the standard method adopted by the Bureau of Meteorology which is the method used to calculate the PMF, the PMF in this case has a recurrence interval of somewhere between 1 million and 10 million years. And that comes directly out of the method which is applied to derive the numbers. I can refer you to the actual procedure method outlined by the Bureau of Meteorology which sets out those numbers. And I probably haven’t said it here but at least in one other document that I have provided to counsel, I’ve stated specifically the recurrence interval of the PMF event is somewhere between 1 million and 10 million years on average. Probably closer to the top level. The method says that at the – with a catchment area of 100 square kilometres, the probability of the PMF is 10 to the minus seventh. Sorry, 10 to the minus sixth, which is 1 million. And that a catchment area of 1000 square kilometres, the catchment, the probability is 1 in 10 million. So somewhere between those figures, because the catchment area of the Maroochy River is 640 square kilometres placing it smack bang in the middle of the two numbers that are provided there. To some extent I don’t necessarily understand why we care about whether it’s 10,000

221 ex.5.22 statement of Dr Johnson p.8 para 8

222 ex.5.23 statement of Mr Molino p.4 paras 16-17

223 T6-53/35-45

224 T6-99/5-40

or 100,000 or 1,000,000 or 10 million. Even at one in 10,000 it is so rare to be a flood of biblical proportions as the judge referred to before. We're not talking about an event that occurs on average once every three or four years. If we look at the longevity of the system, it occurs once every 1,000,000 to 10,000,000 years and the other factor in that regard is the – the PMF has no relationship to climate change. It will not increase as a consequence of climate change. It's already the probable maximum flood as a consequence of the calculation method which is used. It's not going to go up by 20 per cent as a consequence of climate change. It is already deemed the maximum flood that can ever occur within this catchment.

155. The approach taken by Stockland to mitigate any potential flooding issues is threefold involving, floor levels above defined flood events (including some 60 lots that are above the PMF), the ability to evacuate with adequate warning and finally provision of a flood refuge.²²⁵
156. Council's expert Mr Collins ultimately accepted that the proposal is supported by a very good design in that the land slopes away from the river thereby facilitating progressive evacuation and once the land is cut off people can get to the proposed flood refuge which is on land above the PMF.²²⁶
157. Put simply, the proposed approach to mitigating risk to the safety of people from flooding is appropriate and if implemented, the proposed Flood Emergency Management Plan adequately mitigates risk to an acceptable degree.
158. Even Mr Collins did not contend that matters relevant to the adequacy of Flood Emergency Management Plan are impossible to condition.²²⁷

(4) Ecology

159. There are three ecological issues raised in the list of issues in dispute relating to:

- (a) buffers and fauna habitat movement;
- (b) surface and groundwater quality measures; and
- (c) the constructed lake and pipe outlet.

²²⁵ ex.7.41 flood emergency management plan pp.10-11 s.3.1

²²⁶ T7-66/1 – T7-69/5

²²⁷ T7-69/26 – 27

160. The ecological issues related to the construction phase were abandoned as reasons for refusal and no works (other than for the construction of a pipe outlet) are to be carried out within areas with ecological values.

161. The first of the remaining ecological matters for determination requires consideration of:

“Whether:

- (a) adequate buffers have been or can be provided to the wetland on the subject land (Central Wetland);*
- (b) an adequate buffer and linkage has been or can be provided along the south-eastern boundary of the site, linking the Central Wetland and the Maroochy River;*
- (c) the proposal avoids or minimises disruption to threatened fauna and their habitat, or the safe movement of fauna through the site including the Riparian Protection Area, adjacent to the Central Wetland, particularly in respect of the Eastern Grey Kangaroo;*
- (d) the proposal provides an adequate setback from the Major Conservation Area on the Strategic Framework Map 1 Land Use Elements (Lot 509 on NPW594), which is a protected estate for the purposes of the Planning Scheme (“Protected Estate”).”*

162. As to (c), as is dealt with further below, there are no threatened fauna (other than flying foxes) and a Kangaroo Management Plan has been prepared that can be incorporated by condition of approval.

163. As to (a), the adequacy of buffers, Mr Caneris relevantly observes:²²⁸

“Although purporting there is a requirement for increased buffers, we have not been given any specific reasons as to why, other than Planning Scheme benchmarks and a broad-brush reliance on selected scientific literature, for which we have found very little direct relevance to the court’s considerations.”

164. In other words, the contentions for increased buffers does not seem to have a specific relationship to protecting ecological values and is based on generic setbacks and inapplicable literature.²²⁹ Neither Dr Daniel or Mr Caneris were challenged on their criticisms of the literature relied upon by Council’s witnesses.

²²⁸ ex.5.18 statement of Mr Caneris p.29 para 191

²²⁹ ex.5.18 statement of Mr Caneris p.30 para 194-197 and ex.5.19 statement of Dr Daniel pp.13-15 paras 28-40

165. In contrast, the focus of Dr Daniel and Mr Caneris was upon an appreciation of the local area including what had occurred as a result of the existing Twin Waters development rather than upon generic literature or generic buffer distances.

166. Further, as was confirmed during cross examination, the non-compliances with the planning scheme asserted by Mr Agnew all relate to performance outcomes or acceptable outcomes.²³⁰ As the Court is aware under this planning scheme there is a choice of complying with either the performance outcomes or acceptable outcomes or the overall outcomes.²³¹

167. As to the adequacy of buffers, there are two important matters to keep in mind.

168. Firstly, the planning scheme definition of a “*buffer*” relevantly provides:²³²

“An area required for ecological, acoustic or scenic amenity protection purposes that incorporates a separation distance and associated landscape, structures and works:-

(a) between different land uses;

(b) from a major noise source;

(c) from a conservation area or a public recreation area; or

(d) from a wetland, waterway or waterbody.”

169. By that definition, the planning scheme expressly contemplates a buffer is an area required for “*ecological protection*” and also that structures and works will be incorporated in that area. The approach of Dr Daniel and Mr Caneris is consistent with this.

170. The second matter is that if the buffer is the area required for “*ecological protection purposes*”; self-evidently, the what comprises the buffer can vary depending on the ecology it is designed to protect.

²³⁰ T10-28/1-40

²³¹ ex.3.01 CEO Certificate p.99 (black numbers) s.5.3.3(3)(a)(iii); see also *Development Watch Inc & Anor v Sunshine Coast Regional Council & Anor* [2020] QPEC 25 at [172] and footnote 67, that proceeding was the subject of an appeal to the Court of Appeal which endorsed the approach to s.5.3.3 set out in footnote 67 see *Development Watch Inc & Anor v Sunshine Coast Regional Council & Anor* [2022] QCA 6 at [29]

²³² ex.3.01 CEO Certificate p.345 (black numbers)

171. Accordingly, the reliance by Council’s experts on the concept of a “*median medium buffer width*” and the use of “*box and whisker plots*” in Appendix D of the 2nd ecology joint report²³³ does not assist for the reasons explained by Dr Daniel²³⁴ and Mr Caneris.²³⁵ Again, neither were challenged in relation to their criticisms of the approach taken by Council’s witnesses.

172. Further, as Dr Daniel explained:²³⁶

“Fortuitously, the development of the original Twin Waters and surrounds has provided us with real world examples of impacts from urban development on the actual Ecologically Important Areas to be protected and similar habitat types within the same landscape context...”

173. As the Court is aware, Dr Daniel’s doctoral studies involved looking at the cycling of nitrogen, phosphorous and carbon through mature melaleuca wetlands not dissimilar to the one on the Twin Waters West site, and particularly with regards to such wetland receiving stormwater and processing that water.²³⁷

174. As Dr Daniel concluded:²³⁸

“It is my experience that planning ordinance buffer widths are identified as ‘fail safes’ usually in combination with requirements to provide a site-specific solution to justify varying the buffer width.

I have provided a reasoned approach and presented heuristic evidence from the local landscape that show that relatively narrow vegetated buffers are sufficient to adequately ameliorate weed invasion and the effects of increased light, temperature and weed, particularly in the structurally complex wetland areas.

The proposed development proposes much larger buffers than the original Twin Waters East development and importantly it provides a different approach to buffer design through the inclusion of esplanade roads throughout the development. The provision of esplanade roads is an accepted form of increasing the setback distance and are effective in minimizing human impacts on vegetated buffer quality. The combined setback distance of vegetated buffer and esplanade road results in a minimum setback buffer of 30m between private urban residential and the central wetlands. The vegetated buffer distance to the corridor between the

233 ex.4.24 2nd ecology joint report pp.98-111

234 ex.5.19 statement of Dr Daniel pp.13-15 paras 28-40

235 ex.5.18 statement of Mr Caneris p.30 para 194-197

236 ex.5.19 statement of Dr Daniel p.16 para 43

237 T9-17/20-25

238 ex.5.19 statement of Dr Daniel pp.24-24 paras 77-85

central wetland and the south eastern wetland in the Conservation Park is 35m which is more than sufficient to manage edge effects on this vegetation.

In my view, the combination of larger buffers than previously provided on the Twin Waters East development and surrounds, particularly with the inclusion of esplanade roads, will create a buffer that will be effective in protecting the floristic values and ecological functioning of the retained ecologically important areas.

I have provided what I regard to be evidence of this opinion from the local landscape. Although this evidence has not been accepted by my counterparts, no compelling examples from the local environment, have been provided to counter my opinion, and a general recourse to the scientific literature to support this nonacceptance does not proved useful.

To the degree that some areas of the proposed vegetated buffer is quite narrow in places, these restrictions are limited in extent and located between non-residential land uses and the wetter parts of the wetland areas. These two factors act to decrease weed propagule pressure and human impacts and presents an environment that has proved resilient to weed invasion.

The planting of a dense, narrow band of locally occurring native vegetation around the margins of the ecologically important areas would mitigate the impacts of urbanization on these wetland and terrestrial vegetation communities and in my view should be a condition of approval.

The provision of bioretention basins and infiltration trenches are required to protect the health of the ecologically important areas. They will not take up a significant proportion of the vegetated buffer area and, sympathetically landscaped with native species, they will augment native habitat values.

Fragmentation ecology tells us that, having existed in an unsympathetic matrix for decades, the natural habitats to be retained contain a suite of species that are not dependent upon a sympathetic vegetated buffer. The provision of a buffer in this instance is only required to ameliorate the change in stressors emanating from an urban environment on existing wildlife habitat and wildlife movement which does not otherwise require the reinstatement of landscape connectivity and is addressed in more detail by Adrian Caneris.”

175. Turning to the evidence of Mr Caneris in relation to movement corridors for wildlife, he observed:²³⁹

“I have not been presented, within our two JER reports, any fauna species for which there are specific concerns. This has not assisted me to address specific

²³⁹ ex.5.18 statement of Mr Caneris pp..13-14 paras 68-69, 75-77

concerns. The general position presented is – “that proposed buffers to the central wetland and along the eastern boundary of the site are inadequate in regards to the conservation of the native fauna assemblage – and inconsistent with best practice and planning scheme assessment benchmarks.”

The only specific species on the site for which concerns have been raised within our ecology JER’s is the Eastern Grey Kangaroo *Macropus giganteus*. I certainly have no concerns about the buffer size, as opposed to a buffer size which aligns with the planning scheme benchmarks, for this species in respect to indirect impacts. I address Eastern Grey Kangaroo further in Section 2.5 below.

...

The habitats within the central wetland do not currently have, or require, provision of a fully forested buffer to provide functional habitat for the maintenance of their floristic and faunal assemblages. This is evident based on my review of the site’s history, current condition, and extant fauna assemblages. There has been no specific species identified as expected to be lost from the local landscape as a result of the proposed development, and it is my opinion that no loss is likely.

One threatened species, Grey-headed Flying-fox *Pteropus poliocephalus*, is expected to utilise the central wetland as a foraging resource during localised flowering events. This species is well known to forage within urbanised landscapes, including the Brisbane CBD and residential areas. The proposed development would provide an overall increase in foraging resources for this species and no detrimental impacts are expected.”

176. The proposed buffers identified by Mr Caneris and Dr Daniel are adequate to protect the areas that actually have environmental values.
177. In terms of the kangaroos, the evidence demonstrates that they co-exist within existing Twin Waters residential area²⁴⁰ and more generally are well known to persist within urbanised environments.²⁴¹ Mr Caneris has prepared a Kangaroo Management Plan which is included in Appendix C in the 1st ecology joint report.²⁴² In the event of approval that plan should be incorporated as an approved document.
178. As to the provisions of the planning scheme that deal with the concept of “*protection and enhancement*”²⁴³ it is relevant to observe that this Court and the Court of Appeal have had to consider similar expressions.

²⁴⁰ ex.5.18 statement of Mr Caneris p.25 photos 1 and 2

²⁴¹ ex.4.13 1st ecology joint report p.66 para 267

²⁴² ex.4.13 1st ecology joint report p.129 and following

²⁴³ see for example ex.3.01 CEO Certificate p.77 (black numbers) s.3.7.1(f), p.189 (black numbers) overall outcome 2(o)(i)

179. In particular, in the *Boral* litigation a relevant provision of the planning scheme in the strategic framework s.3.5.5.1(10) relevantly required that “*matters of environmental significance are conserved, protected, enhanced and managed*”.²⁴⁴ The trial judge observed, consistent with authority, that the provision should not be construed “*too strictly*”.²⁴⁵ In the Court of Appeal Holmes CJ relevantly observed at [57]-[59]:

“The learned primary judge regarded s 3.5.5.1(10) as a provision which is not to be construed or applied too strictly. To similar effect, in *Newing & Ors v Silcock & Ors*, Rackemann DCJ had observed that it should not readily be inferred from the absence of an express qualification that a provision of a planning scheme relevant to a change of use application requires that the proposed use have no impact at all, no matter how insubstantial, trivial or insignificant. A like observation had earlier been made by Quirk DCJ in *Glasshouse Mountains Advancement Network Inc v Caloundra City Council*. Consistently with those observations, his Honour rejected the Council’s submission that this provision should be construed and applied strictly.”

In Lockyer Valley Regional Council, decided in 2011, this Court noted that the primary judge, Rackemann DCJ, had referred to Glasshouse Mountains Advancement Network Inc. Fraser JA (with whom White JA and Douglas J agreed), implicitly endorsed his Honour’s observation made, with reference to authority, that planning schemes should be construed broadly, rather than pedantically or narrowly, and with a sensible, practical approach.

Consistency with the decision in Lockyer Valley Regional Council does not require the interpolation of the words suggested by Boral in order for s 3.5.5.1(10) to operate sensibly and practically. In my view, that is sufficiently achieved by the not too strict manner in which the learned primary judge considered it should be construed and applied...”

180. Given that no development is proposed within the ground truthed areas of ecological value and that the mapped area adjoining the central wetland is a “*rank grass paddock*”,²⁴⁶ the approach endorsed by the Court of Appeal should prevail in the present case.

181. Further, in terms of “*enhancement*”, as Mr Caneris observes:²⁴⁷

“I understand the groundwater experts have agreed the two designated wetlands will become salinised due to climate change (sea level rise) regardless of the development. I understand it is highly likely that the eastern flank of the central wetland will become salinised in the future unless site-specific mitigation is

²⁴⁴ *Boral Resources (Qld) Pty Limited v Gold Coast City Council* (2018) 231 LGERA 50 at [42]

²⁴⁵ *Boral Resources (Qld) Pty Limited v Gold Coast City Council* (2018) 231 LGERA 50 at [43]

²⁴⁶ T9-48/30

²⁴⁷ ex.4.13 1st ecology joint report p.62 para 229-230

designed to offset the transmission of saline water from the existing Twin Waters Lake. The predicted high salinity in this section of the central wetland is not due to the planned development.

If the proposed development and groundwater mitigations are undertaken, as a result of the development, it is predicated (as agreed by the groundwater experts) that the inevitable salinisation of the freshwater ecosystems within the central wetland and the Maroochy River Conservation Park will be delayed.

182. Mr Caneris also observes.²⁴⁸

“Rehabilitation of the site’s ecologically important areas to improve biodiversity, ecological processes and native flora habitats is required by the Planning Scheme and should be conditioned. Revegetation of areas within the buffers, including the bioretention basins would enhance the site’s ecological values and should be included within the site’s Rehabilitation Management Plan where possible.”

183. In the 2nd ecology joint report Dr Daniel and Mr Caneris made the following statement:²⁴⁹

“The two large patches of remnant intact habitats (central wetland and Maroochy River Conservation Park) are separated by a relatively short (approx. 180m) corridor (Plan 1). The current habitats provide a functional corridor for fauna movement, (...) for wetland-dependent (...) species and there is no requirement for the buffer to perform this function. The revegetation of areas within the buffer will enhance connectivity for wetland-dependant species such as frogs.”

184. Put simply, the buffers are appropriate to protect the areas of actual ecological value and consistent with the approach endorsed by the Court of Appeal in the *Boral* litigation, the proposal appropriately protects and enhances those areas.

185. And as Dr Daniels identified²⁵⁰:

“With regards to requirements to protect and enhance significant environmental and riparian areas as a performance outcome of the Local Plan, the retention and rehabilitation of the entire mapped Conservation and Rehabilitation Area would not significantly increase the protection and enhancement of the ecologically important areas over that which is proposed.”

²⁴⁸ ex.4.13 1st ecology joint report p.82 para 372

²⁴⁹ ex.4.24 2nd ecology joint report p.25 para 82

²⁵⁰ ex. 5.19 Dr Daniel’s individual statement at para 91

186. The next ecological issue for determination provides:

“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 caused by changes to:

- (a) surface water quantity (high and low flow recharges) and quality of surface water inputs;*
- (b) groundwater regimes (recharges) and groundwater characteristics (saline intrusions); and*
- (c) the water quality impacts referred to in 3 above.”*

187. In terms of these matters in the 2nd ecology joint report it is agreed by the experts that:²⁵¹

“...based on the additional detail provided in WQJER2 and ongoing discussions with the relevant water quality experts, it is now agreed that:

...

- b. If the quality of water discharged from the lake is as described in paras 181, 182 and 184 of JER1, there will be no unacceptable impacts to the Maroochy River and associated tidal wetlands.*
- c. Aquatic weeds should not be a problem in the estuarine lake, if freshwater flood events are relatively short-lived, as predicted by the modelling.*
- d. Once the proposed stormwater diversion channel is stabilised, the periodic discharge of stormwater from external catchments during flood events, diverted around the development site to the estuarine wetlands of the Maroochy River, is unlikely to result in an ecologically-significant impact.*
- e. The impacts to marine plants associated with construction of the lake outlet pipe will be addressed when permits are sought to remove/disturb marine plants, and ultimately that these impacts can be effectively managed/mitigated.”*

188. It is important that there were no points of disagreement recorded by the groundwater and hydrogeology experts in exhibit 4.17 at pages 6 to 8 where the experts agree (in summary) that:

- (a) the groundwater system is conceptualised adequately for the purpose of assessing probable effects on that system due to altered hydraulic processes;

²⁵¹ 2nd ecology joint report p.52 para 240

- (b) Dr Merrick’s model (which for the operational phase is described in exhibit 7.35²⁵²) is an adequate representation for the purpose of quantifying probable groundwater impacts;
- (c) it will be necessary to implement control measures such as recharges trenches and/or injection wells, supplied with stormwater run-off, to maintain groundwater salinity beneath the wetlands to near predevelopment conditions;
- (d) Dr Merrick’s model illustrates feasible mitigation of salinity impacts where they are intended to be mitigated;
- (e) ongoing groundwater management using recharges trenches and/or injection wells will require careful engineering design and ongoing maintenance;
- (f) a feasible schedule of water supply will need to be devised and the concept of managed aquifer recharge should be investigated;
- (g) the central wetland on the land and the groundwater dependent wetland in the conservation park (to the south-east) will become salinised due to climate change irrespective of development on the land;
- (h) development on the land is likely to provide a marginal benefit to those wetlands by delaying natural impacts of climate change.

189. That summary reflects the points of agreement otherwise set out in sections 4.2.1 at p. 17, 4.3.1 at p. 18, 4.4.1 at p. 20 and 4.5.1 at p. 22.

190. Importantly, there is agreement that the proposed mitigation works could be satisfactorily conditioned (at lines 180 to 187 on p. 16 and lines 207 to 210 on p. 17) and that refinement of the management approach to mitigation should occur “*in the future as part of the more detailed design to be done before development commences*” (at lines 359 to 363 on p. 20).

²⁵² which conveniently provides an executive summary at p. 3 and conclusions at pp. 17 to 18, and includes a report as to model set up and calibration commencing at p. 53 which at line 6 reinforces that the key to numerical modelling is adequate conceptualisation with the conclusion (at p. 61) confirming the performance statistics meet the expectations of national groundwater modelling guidelines

191. There is also recognition that during dry periods a supplementary water supply could be derived from a number of alternative sources (at lines 364 to 370 at p. 21)
192. Consistent with these agreements, the evidence of Dr Johnson and Dr Merrick confirmed that there are solutions available to resolve any issues. The “triangles” shown on Dr Merrick’s figures are merely symbols and there is considerable flexibility as to where the trenches are actually located.²⁵³
193. The proposed final design of mitigation works will need to be considered and determined as part of operational works applications which will be assessed against, amongst other things, the provisions of the Stormwater Management Code.²⁵⁴
194. Relevant provisions of the Stormwater Management Code include:
- (a) overall outcome 2(a) which provides:²⁵⁵
- “development is located, designed, constructed and operated to protect and enhance the environmental values and flow regimes of both constructed and natural waterways, wetlands, lakes, ground waters and drainage systems;”*
- (b) PO8 provides:²⁵⁶
- “Development ensures adequate surface and sub-surface water to maintain the environmental values of water dependent ecosystems, including downstream in stream and off stream aquatic, riparian, wetland and terrestrial ecosystems.”*
195. Given the need for future operational works applications and the agreement that mitigation solutions are available that can be managed in the future as part of the more detailed design to be done before development commences, the Court would neither act on the basis that is a “clear futility”, nor “pre-empt other applications by assuming that they will fail.”²⁵⁷

²⁵³ ex.4.17 groundwater joint report p.20 lines 345-360, ex.5.22 statement of Dr Johnson p.14 paras 34-39, T6-103/5-20, T7-8/35-45, T8-12/40 – T8-14/40, T8-17/25 – T8-18/30

²⁵⁴ ex.3.02 CEO Certificate pp.187-189 (table of assessment for operational work for the Emerging Community Zone)

²⁵⁵ ex.301 CEO Certificate p.276

²⁵⁶ ex.301 CEO Certificate p.277

²⁵⁷ *Walker v Noosa Shire Council* (1983) 2 Qd R 86 at 89

196. The final ecological issue for determination provides:

“Whether the proposed constructed lake with a pipe outlet to the Maroochy River will cause unacceptable impacts upon ecological values.”

197. A constraint on the location of the pipe outlet relates to the water mouse and the temporary disturbance from constructing the outlet (through land that for the most part has been previously disturbed).²⁵⁸

198. However, the location of the pipe avoids identified water mouse nests and water mouse capture sites.²⁵⁹

199. It is also relevant to observe that the State has imposed conditions to protect the water mouse.²⁶⁰

200. The Court is also reminded that the areas of agreement in the 2nd ecology joint report which includes agreement that with suitable rehabilitation and management of potential threats the proposed setback to the Maroochy River, which includes water mouse habitats, is suitable.²⁶¹

201. This aspect can be resolved by conditions.

(5) Settler’s Park

202. The next remaining issue for determination provides:

*“Whether the proposed access intersection:
(a) will involve unacceptable impacts for Settler’s Park as a recreation park, cultural heritage site and/or gateway entry feature; and
(b) acceptably provides for the protection and enhancement of Settler’s Park.”*

203. In considering this issue, again the starting point is the local plan which intends for the primary access to be located through Lot 8 on SP812125. This can be seen in particular by reference to PO29, AO30 and Figure 7.2.18A.²⁶²

²⁵⁸ ex.4.13 1st ecology joint report pp.73-74 paras 314-322 and ex.4.24 2nd ecology joint report pp.45-46 paras 199-206

²⁵⁹ ex.4.24 2nd ecology joint report p.56

²⁶⁰ ex.1.08 decision notice pp.24-25 condition 4

²⁶¹ ex.4.24 2nd ecology joint report p.52 para 240

²⁶² ex.3.01 CEO Certificate pp.196-197 and 199 (black numbers)

204. Settler's Park is identified as Lot 8 on SP812125 and part of it (together with part of the State controlled road reserve that was dedicated when Lot 8 was created²⁶³) is identified on the Heritage and Character Areas Overlay Map²⁶⁴ (as also depicted on Figure 7.2.18A).²⁶⁵ Settler's Park contains two Mango Trees, with two adjoining Mango Trees located in the State controlled road reserve.²⁶⁶

205. The proposal contemplates the following for Settler's Park:

- (a) an intersection design that allows for the retention and protection of 4 Mango Trees (including the two within the road reserve);²⁶⁷
- (b) an increase in the size of the park from 2563m² to 5784m²;²⁶⁸
- (c) an increase in the turfed areas and an increase in the planting;²⁶⁹
- (d) the retention of the existing shelter and interpretive signage;²⁷⁰ and
- (e) by reference to the landscape concept plan, a series of various embellishments.²⁷¹

206. As Dr Bell observed:²⁷²

"The proposed development is designed to avoid any adverse impacts on Settler's Park and in particular, the mango trees. It will protect and enhance the Park and its trees. The proposed roadworks will have no adverse impact on the trees. A cycle and walking track will divert traffic around them. New plantings will make the Park more attractive and increase public amenity. The new Settler's Park will be more clearly defined, more attractive in appearance, and protected from traffic impacts."

207. Put simply, the proposal will protect and enhance Settler's Park as a recreation park (i.e. responding to PO30 which requires consideration of its existing function as a recreation park).

²⁶³ ex.5.25 statement of Dr Bell at p.30, and midway down left column on p.31

²⁶⁴ ex.3.01 CEO Certificate p.565 (black numbers)

²⁶⁵ ex.3.01 CEO Certificate p.199 (black numbers)

²⁶⁶ ex.5.25 statement of Dr Bell p.5 para 4.1

²⁶⁷ ex.5.20 statement of Mr Healey p.20 and ex.4.23 joint report of the arborists pp.4-5 paras 4.1-4.6

²⁶⁸ ex.5.16 statement of Dr McGowan p.75

²⁶⁹ ex.5.16 statement of Dr McGowan p.75

²⁷⁰ ex.5.16 statement of Dr McGowan p.75

²⁷¹ ex.7.03 landscape concept plan p.14 (by reference to the asterisk, Settler's Park is identified as a pocket park and the embellishments for such a park are listed

²⁷² ex.5.25 statement of Dr Bell p.11 para 10.1

208. The Council’s recent approach seems to suggest a requirement that Settler’s Park be enhanced to a Recreation Park (of the kind identified in the LGIP). That is not what PO 30 requires and the LGIP was not identified as a relevant assessment benchmark in the Agreed Issues).
209. Compared to the existing situation the proposal will add substantially to the available area of park, continue to enable the heritage values to be appreciated and provide for the park to function as an “*entry feature*” for the Twin Waters and Pacific Paradise communities. This can be readily appreciated in the imagery prepared by Mr Elliott.²⁷³
210. Mr Elliott was not required for cross examination, although there was the faint hint during the cross examination of Dr McGowan to suggest that the montages did not consider acoustic barriers and fill levels.²⁷⁴ However as can be seen from Mr Elliott’s individual statement, the documents relied upon by him included the earthworks plans,²⁷⁵ and the noise joint report showing the acoustic barriers.²⁷⁶ Mr Elliott’s report also confirms that “*the location of the picnic shelters, the mango trees and the ground terrain are survey accurate...”²⁷⁷*
211. The effect of the proposal on Settler’s Park is not a reason for refusal.
212. If anything, the intended changes to Settler’s Park speak in favour of approval of the proposal and will certainly result in a better outcome than currently exists.

(6) Community expectations

213. The next issue for consideration provides:

“Whether the expectations of the community reflected in the level and content of adverse local submissions favour refusal of the proposal (save that the content of adverse local submissions is not relied upon except to the extent that it is an issue raised in this document).”

²⁷³ ex.5.16 statement of Dr McGowan pp.76-77

²⁷⁴ T3-57/5 – T3-60/35

²⁷⁵ ex.5.15 statement of Mr Elliott p.7 para 5(c)(i)

²⁷⁶ ex.5.15 statement of Mr Elliott pp.10-11 noting in particular on p.11 the reference to the figure from the noise joint report (which is ex.4.18 .23) showing the barriers for stages 1 and 2 of the proposed development

²⁷⁷ ex.5.15 statement of Mr Elliott p.9 para 16

214. As a starting point, it is relevant to observe that the issue is limited to the content of the “*adverse local submissions*” and the issue does not raise any assessment benchmarks for consideration.
215. The Court would also recall Council’s concessions that this issue does not “*add anything to the issues*” that are elsewhere raised in the list of issues²⁷⁸ and that if Council and the Co-respondents don’t succeed on the other issues, they will not succeed on the community expectations issue.²⁷⁹
216. In terms of considering the submissions, whilst the number of objections to a development application is relevant, this Court (and its predecessor) has consistently taken the approach that the more important fact is the substance of the objections, and the basis upon which they are founded.²⁸⁰
217. Further, the weight to be given to an objection depends upon the degree of the objector’s appreciation of what is precisely involved in the proposal,²⁸¹ and the Courts have tended to diminish the weight to be given to *pro forma* objections.²⁸² That is because it is difficult to know whether the signatories have strong views about the development, or whether they have been persuaded into signing a standard form of objection.²⁸³
218. Turning to the submissions, as can be seen from the 1st planning joint report, the development application attracted 417 submissions of which 285 were objections to the proposal and 132 were in support of the proposal.²⁸⁴
219. The adverse submissions have been reviewed and considered by Mr Reynolds and the Court is referred to his observations in the 2nd planning joint report at pages 33-36.²⁸⁵

²⁷⁸ T4-3/20-25

²⁷⁹ T4-4/11-14

²⁸⁰ *K Page Main Beach Pty Ltd v Gold Coast City Council* (2011) 180 LGERA at [2]; for example, applicant appeals have been allowed, despite a high number of objections in cases see *Indooroopilly Golf Club v Brisbane City Council* [1982] QPLR 13, 39 (where there were more than 4000 objections); *Baglow v Livingstone Shire Council* [1983] QPLR 352, 354 (where there were over 500 objections); *Telstra Corp v Cairns Regional Council* [2010] QPLR 128 (more than 400 submissions)

²⁸¹ eg. *Black v Brisbane City Council* (1970) 21 LGRA 159, 163

²⁸² eg. *Aldred v Beaudesert SC* (1978) 37 LGRA 404, 408; *Baglow v Livingstone Shire Council* [1983] QPLR 352, 354; *Wilson v Logan City Council* [1990] QPLR 197, 201 (d)–(e); *Queensland Adult Deaf & Dumb Society v Brisbane City Council* (1972) 26 LGRA 380, 384

²⁸³ *Aldred v Beaudesert Shire Council* (1978) 37 LGRA 404, 408

²⁸⁴ ex.4.19 1st town planning joint report p.7 para 20

²⁸⁵ ex.4.27 2nd town planning joint report pp.33-36 paras 107-114

220. Put simply and having regard to that analysis, matters related to community expectations as “*reflected in the level and content of adverse local submissions*” do not favour refusal.

(7) The relevant matters support approval

221. The final issue for consideration is whether the relevant matters support approval of the proposal.

222. The relevant matters relied upon by Stockland can be grouped into the following categories:

- (a) the locational benefits of developing the land for residential purposes;
- (b) the very high degree of compliance with the planning documents and its aspirations for the development of the land; and
- (c) the community benefits that arise from approval.

223. As to each of these matters:

- (a) obviously, there is limited land suitably designated for residential development in the local area²⁸⁶ and the subject land is well located in close proximity to the Maroochydore Principal Regional Activity Centre, employment opportunities, recreation and shopping facilities, existing and planned infrastructure networks and the Sunshine Coast Airport,²⁸⁷
- (b) there is, for the reasons addressed above (and having regard to the nature of the type of approval proposed – particularly the preliminary approval), a very high level of conformity with the applicable planning documents, particularly the local plan which seeks for a master planned lake based residential development that addresses the suite of constraints; and
- (c) there are numerous aspects of the proposal including the provision of choice and diversity of residential product,²⁸⁸ the provision of parks (including improvement of Settler’s Park) and other public open space, and the provision cycling and

²⁸⁶ ex.4.27 2nd planning joint report p.39 para129

²⁸⁷ ex.4.27 2nd planning joint report p.42 para 138, see also ex.4.19 1st planning joint report p.6 para 14

²⁸⁸ ex.4.27 2nd planning joint report p.41 paras 132-133

pedestrian connectivity (including publicly accessible walkable waterfronts) that benefit the community at large.

224. Those relevant matters speak strongly in favour of approval.

Conclusion

225. For the reasons set out above, the appeal should be allowed and the matter adjourned so that a conditions package can be prepared.

R.S. Litster QC
J.G. Lyons
On behalf of Stockland
11 August 2022