PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION:	*Homeland Property Developments Pty Ltd v Whitsunday Regional Council* [2024] QPEC 30
PARTIES:	**HOMELAND PROPERTY DEVELOPMENTS PTY LTD (ACN 609 399 233)** (appellant) **v** **WHITSUNDAY REGIONAL COUNCIL** (respondent)
FILE NO/S:	830 of 2021
DIVISION:	Planning and Environment
PROCEEDING:	Appeal against conditions
ORIGINATING COURT:	Planning and Environment Court, Brisbane
DELIVERED ON:	12 June 2024
DELIVERED AT:	Brisbane
HEARING DATE:	15, 16, 17 and 19 August 2022
JUDGE:	Williamson KC DCJ
ORDER:	**The appeal is adjourned to 20 June 2024 for review.**
CATCHWORDS:	PLANNING AND ENVIRONMENT – APPEAL – appeal against conditions and advisory notes imposed on a suite of development approvals facilitating the development of land with a master planned community – whether the impugned conditions should be imposed under s 128 rather than s 145 of the *Planning Act 2016*.
LEGISLATION:	*Acts Interpretation Act 1954*, ss 4, 14H & 32AA *Economic Development and Other Legislation Amendment Act 2019*, s 144 *Planning Act 2016*, ss 45, 51, 59, 60, 62, 65, 66, 75, 110, 111, 112, 113, 125, 127, 128, 145, 304 & Schedule 2 *Planning and Environment Court Act 2016*
CASES:	*Allianz Australia Insurance Ltd v GSF Australia Pty Ltd* (2005) 221 CLR 568 *Brisbane City Council v Klinkert* (2019) 236 LGERA 88 *Intrapac Parkridge Pty Ltd v Logan City Council & Anor* [2015] QPELR 49 *Kelly v The Queen* (2004) 218 CLR 216

Traspunt No.7 Pty Ltd v Moreton Bay Regional Council [2020] QPEC 50
Sincere International Group Pty Ltd v Council of the City of Gold Coast [2019] QPELR 247

COUNSEL:	Mr D Gore KC, Mr J Lyons and Mr R Yuen for the appellant Mr B Job KC and Mr N Loos for the respondent
SOLICITORS:	Corrs Chambers Westgarth for the appellant McCullough Robertson for the respondent

Introduction

[1] The appellant (**Homeland**) sought, and obtained, from Council a suite of development approvals, including variations to Council's planning scheme. The development approvals, and approved planning scheme variations, are set out in a Negotiated decision notice dated 11 March 2021 (**the NDN**). This notice facilitates the development of a 234.7 ha site, located south of Bowen (**the site**), with a staged master planned community known as '*Whitsunday Paradise*'. Intended future uses are predominantly residential in nature, but also include retail and commercial facilities. In terms of residential development, 1,757 lots at 600 m^2 in size are anticipated across 10 stages. In addition, 340 dwellings in a medium density format, along with 47 lots greater than 600 m^2, are anticipated in 4 of the 10 stages: Exhibit 31, p. 4. Based on anticipated demand for residential development, the development will likely take more than 20 years to complete.

[2] The NDN sets out a number of conditions for the approvals granted. This is an appeal against 34 of the conditions imposed and two advisory notes. The provisions of the approval subject to challenge are set out in **Annexure A** to these reasons (**the Appealed conditions**): Exhibit 32, pp. 33-37. A review of the Appealed conditions reveals they are about sewerage and water supply infrastructure. The apparent purpose of each advisory note is to record, to the extent the conditions require the delivery of infrastructure, they are imposed under s 145 of the *Planning Act 2016* (**the Act**). This provision of the Act empowers a local government to impose conditions on a development approval about '*non-trunk infrastructure*'.

[3] The primary issue for determination is whether, in the exercise of the Court's discretion, the NDN should be amended so that the infrastructure required by the Appealed conditions is imposed as '*necessary infrastructure*' under s 128 (rather than s 145) of the Act: Exhibit 1, para 1.

[4] The appeal is a hearing anew: ss 43 & 46(1), *Planning & Environment Court Act 2016* (**the Court Act**).

[5] It is for Homeland to establish the appeal should be upheld: s 45(1)(a), the Court Act.

Background

[6] On 15 June 2018, Homeland submitted an impact assessable development application, including a variation request under s 50 of the Act, to Council (**the development application**). The development application sought a suite of development approvals and variations to version 3.5 of Council's planning scheme

for the site. More particularly, the development application comprised five components, namely an application for (Ex. 6, p. 45):

(a) a preliminary approval for a variation request pursuant to s 50 of the Act to allow development to occur in accordance with the Whitsunday Paradise Preliminary Approval document;

(b) a development permit for a material change of use for a food and drink outlet, hotel, outdoor sport and recreation, service station and shopping centre including a child care centre, food and drink outlet, health care services and shop;

(c) a development permit for reconfiguring a lot – 3 into 240 lots, drainage reserve, park, road and access easements;

(d) a development permit for operational works for excavating or filling – bulk earthworks; and

(e) a preliminary approval for excavating or filling – bulk earthworks (overall site).

[7] It was common ground the development application was properly made for the purposes of s 51(5) of the Act on 15 June 2018: Exhibit 15, para 1. At this time, version 3.5 of Council's planning scheme, '*Whitsunday Regional Council Planning Scheme'* (July 2017) **(the planning scheme**), was in force: Exhibit 15, para 5. It did not include an '*LGIP (local government infrastructure plan)*' as defined in Schedule 2 of the Act: Exhibit 16, para 4. Council did however have an Adopted Infrastructure Charges Resolution. The resolution defines trunk and non-trunk infrastructure. It also identifies a Priority Infrastructure Area (**PIA**). A small part of the site was included in the PIA.

[8] On 29 June 2018, two weeks after the development application was properly made, Council's planning scheme was amended to include an LGIP. This is contained in Part 4 of the planning scheme. Section 4.3 identifies the PIA on Local government infrastructure plan map – PAM – 01:06 (Projection area map): Exhibit 16, p. 27. The whole of the site is included in the PIA, which is prioritised for the provision of trunk infrastructure to service existing and assumed future urban development growth up to 2031: Exhibit 16, p. 27, s 4.3(1). On the same day, Council also resolved to adopt a Charges resolution (**AICR 18**).

[9] Amendments made to the planning scheme on 29 June 2018 include the addition of schedule 3, which comprises maps, a schedule of works and a list of planning assumptions. A review of the schedule of works reveals no future trunk infrastructure for the sewerage network was planned to service the site. The same cannot be said for the water supply network. A plan for trunk infrastructure (PFTI WN-04A) identifies that a water reservoir (W8) was planned for the eastern part of the site. Schedule 3.2 provides the following for item W8 (Exhibit 16, p. 271):

Column 1 Map reference	Column 2 Trunk infrastructure	Column 3 Estimated timing	Column 4 Establishment cost
W8	One new 12ML Reservoirs including two new DN500 Mains 1050m long from new Reservoirs to existing trunk Main at Bruce Highway and 60mx100m Land (6000m^2) on Lot 900 SP225370 Mount Bramston, Bowen	2022-2026	$14,684,350

[10] On 14 October 2020, Council resolved to amend its LGIP to remove item W8. The Council officer's report in support of the resolution recommended this amendment because the water reservoir was no longer required within the '*Bowen Water Network*': Exhibit 8, p. 1410. After following the required statutory process, this amendment took effect on 30 November 2020. The amended LGIP, which forms part of version 3.7 of the planning scheme, does not identify future trunk infrastructure for water supply and sewerage networks servicing the site.

[11] Two weeks after the resolution to amend the LGIP, on 28 October 2020, Council approved Homeland's development application, albeit in a changed form, and issued a decision notice. The decision notice grants the following approvals:

(a) a preliminary approval for a variation request pursuant to s 50 of the Act to allow development to occur in accordance with the Whitsunday Paradise Preliminary Approval document;

(b) a development permit for reconfiguring a lot – 4 into 198 lots, park, road and access easements;

(c) a development permit for a material change of use for drive-thru takeaways, tavern, sporting ground, club house & park, service station, shopping centre, child care centre, food and drink outlet, medical centre, shops and supermarket; and

(d) a development permit for operational works for excavating or filling.

[12] The approvals were granted by Council subject to conditions, including conditions requiring the delivery of water and sewerage infrastructure at Homeland's cost.

[13] The decision notice was accompanied by 15 Infrastructure charges notices.

[14] On 27 November 2020, Homeland elected to make representations to Council about a number of conditions imposed on the approvals and requested a negotiated decision notice under s 75 of the Act. Homeland also requested negotiated Infrastructure charges notices under s 125[1] of the Act. On 11 March 2021, the former request was granted in part; the latter request was refused.

---

[1] This provision of the Act, which is contained Chapter 4, part 2 applied because at the time the 15 infrastructure charges notices were given, 28 October 2020, Council's planning scheme included an LGIP, engaging s 111 of the Act: see paragraph 73.

[15] The NDN was issued on 11 March 2021. Like the earlier decision notice, it contains conditions requiring the provision of water supply and sewerage network infrastructure. One such condition, which is imposed on the preliminary approval for the ultimate form of development, is in the following terms (condition 7.4):

> "Upon ultimate development, the applicant must construct a 10ML (megalitre) reservoir no higher than RL80.0 metres top water level, in accordance with the requirements of the Whitsunday Regional Council Development Manual. Connection to the reservoir must be via a second DN450mm water main connected to Council's Bulk Supply Water Main. The applicant must provide a minimum 10 metre easement at no cost to Council for the full length of the DN450mm water main."

[16] An advisory note suggests that condition 7.4, along with other conditions of the NDN, are imposed under s 145 of the Act and involve non-trunk infrastructure. The note states:

> "Development infrastructure required to be provided in implementing this development approval is non-trunk development infrastructure as described under section 145 of the *Planning Act 2016*."

[17] It was submitted by Mr Gore KC that the effect of the NDN is to require Homeland to (Exhibit 32, para 16): (1) fully fund and deliver water supply infrastructure (including the construction of water reservoirs) that services the proposed development and existing development to the north (Whitsunday Shores); and (2) fully fund and deliver sewerage infrastructure that services the proposed development and existing development to the north (Whitsunday Shores). This submission can be accepted having regard to the Appealed conditions and the evidence of Mr Natoli, who has particular expertise with respect to infrastructure planning.

[18] A review of the Appealed conditions reveals they can be divided into one of six categories, namely development conditions that: (1) require specific infrastructure work to be completed; (2) require specific infrastructure work to be completed prior to a specified time or during a particular stage of development; (3) identify a requirement for infrastructure to be of a particular size or to comply with Council's Development manual; (4) require the developer to fund the cost of upgrades to existing infrastructure by reason of the development; (5) require the preparation of further analysis, detailed design drawings or a management plan; and (6) require the decommissioning of existing infrastructure.

[19] The first sentence of condition Part A, 8.1 falls into category (1).

[20] The conditions falling into category (2) are:

(a) Part A: 7.2, 7.4, 8.2, 8.3, 8.7, 8.12, 8.13, 8.15; and

(b) Part B: 5.3, 5.28, 6.1, 6.2, 6.6.

[21] The conditions falling into category (3) are:

(a) Part A: Second sentence of 8.1, 8.4, 8.14; and

(b) Part B: 5.6, 5.12, 5.17, 5.22, 5.34, 5.39, 6.3.

[22] The conditions falling into category (4) comprise Part A, 7.3 (second sentence), 8.6 and 8.11. Condition Part B, 6.5 also falls into category (4).

[23] The conditions falling into category (5) are:

(a) Part A: 7.3 (first sentence), 8.5, 8.9, 8.10; and

(b) Part B: 6.4, 6.8.

[24] The conditions falling into category (6) are Part A, 8.8 and Part B, 6.7.

Statutory assessment and decision making framework

[25] It was controversial that the statutory assessment and decision making framework applying to Homeland's impact assessable development application is prescribed by the Act.

[26] An impact assessment is required to be carried out in accordance with s 45(5) of the Act.

[27] Section 45(5)(a) provides that an assessment manager must assess the development application against the assessment benchmarks in a categorising instrument.

[28] Sections 45(6) to (8) of the Act work together to prescribe what must, or may, be considered by an assessment manager when carrying out the assessment required by subsection (5). Subsection (6) states:

> "(6) Subsections (7) and (8) apply if an assessment manager is, under subsection… (5), assessing a development application against or having regard to–
>
> (a) a statutory instrument; or
>
> (b) another document applied, adopted or incorporated (with or without changes) in a statutory instrument."

[29] It is uncontroversial s 45(5)(a) called for an assessment against Council's planning scheme. That document is a statutory instrument. It was amended during the course of the assessment process. Subsection (7) identifies the version of the planning scheme to be examined for the purpose of s 45(5). The provision states:

> "(7) The assessment manager must assess the development application against or having regard to the statutory instrument, or other document, as in effect when the development application was properly made."

[30] For the purposes of s 45(7) of the Act, it is uncontroversial that: (1) Homeland's development application was properly made on 15 June 2018; (2) version 3.5 of Council's planning scheme was in force on 15 June 2018; and (3) version 3.5 of Council's planning scheme did not include an LGIP as defined in the Act.

[31] Section 45(8) of the Act permits an assessment manager to give the weight it considers appropriate, in the circumstances, to new statutory instruments or a statutory instrument that has been amended or replaced. The subsection provides:

> "(8) However, the assessment manager may give the weight the assessment manager considers is appropriate, in the circumstances, to–
>
> (a) if the statutory instrument or other document is amended or replaced after the development application is properly made but before it is decided by the assessment manager – the amended or replacement instrument or document; or
>
> (b) another statutory instrument–
>
> (i) that comes into effect after the development application is properly made but before it is decided by the assessment manager; and
>
> (ii) that the assessment manager would have been required to assess, or could have assessed, the development application against, or having regard to, if the instrument had been in effect when the application was properly made."

[32] Section 46 of the Court Act confirms that section 45 of the Act applies for the P&E Court's decision on appeal as if it were the assessment manager for the development application. Section 46(2)(b) of the Court Act provides:

> "(2) The Planning Act, section 45 applies for the P&E Court's decision on the appeal as if–
>
> …
>
> (b) the reference in subsection (7) of that section to when the assessment manager decides the application were a reference to when the P&E Court makes the decision."

[33] The reference to subsection (7) above is to be read as subsection (8). This follows, in my view, as a consequence of four things: (1) s 144 of the *Economic Development and Other Legislation Amendment Act 2019* omitted ss 46 and 47 of the Act as adopted and inserted ss 45(6) to (8) in the form they now appear in paragraphs [28], [29] and [31]; (2) the amendments to the Act had the effect of renumbering s 45(7) to be subsection (8); (3) s 14H(2)(b) of the *Acts Interpretation Act 1954* provides that a reference in an Act to a provision is to be read as, among other things, a reference to the provision as remade after amendment; and (4) s 45(7) of the Act in its present form is about '*assessing*' rather than '*deciding*', which sits uncomfortably with s 46(2)(b) of the Court Act.

[34] Amendments were made to Council's planning scheme after 15 June 2018 to include an LGIP. This occurred on 29 June 2018. The LGIP was itself amended on 30 November 2020. The amended version of the LGIP is contained in version 3.7 of the planning scheme. Homeland submits the LGIP in its original and amended forms may be given weight in the assessment here, with the original given determinative effect: Exhibit 32, para 52. This is said to be explained by the content of the LGIP as adopted on 29 June 2018; it makes allowance in schedule 3.2 for item W8. This item was removed from the LGIP adopted on 30 November 2020.

[35] Homeland's impact assessable development application is to be decided in accordance with ss 59(3) and 60(3) of the Act. Each of these provisions are contained in Chapter 3, part 3, division 2. Section 59 of the Act explains what this division '*is about*'. Section 59(3) states:

> "Subject to section 62, the assessment manager's decision must be based on the assessment of the development carried out by the assessment manager."

[36] Section 62 of the Act has no application to this appeal.

[37] Section 60(3) of the Act states:

> "(3) To the extent the application involves development that requires impact assessment, and subject to section 62, the assessment manager, after carrying out the assessment, must decide–
>
> (a) to approve all or part of the application; or
>
> (b) to approve all or part of the application, but impose development conditions on the approval; or
>
> (c) to refuse the application."

[38] Section 60(3)(b) permits an assessment manager, and this Court on appeal, to approve an application subject to '*development conditions*'. This is a defined term in the Act:

> "***development condition*** means a condition that a development approval is subject to, including a condition–
>
> (a) the assessment manager imposes under section 60; or
>
> (b) directed to be imposed under section 56 or 95(1)(d); or
>
> (c) taken to have been imposed under section 64."

[39] There are constraints on the power to impose a development condition under s 60 of the Act. For this appeal, constraints are to be found in ss 65 and 66 of the Act.

[40] Section 65 provides for '*permitted development conditions*'. They are conditions satisfying s 65(1), which states:

> "(1) A development condition imposed on a development approval must –
>
> (a) be relevant to, but not be an unreasonable imposition on, the development or the use of premises as a consequence of the development; or
>
> (b) be reasonably required in relation to the development or the use of premises as a consequence of the development."

[41] It is well established there is no requirement for an assessment manager, or this Court on appeal, to impose each and every condition that passes one of the tests prescribed in s 65(1) of the Act. The conditions power is a broad, residual discretion to be

exercised for a proper planning purpose: *Sincere International Group Pty Ltd v Council of the City of Gold Coast* [2019] QPELR 247, [24] citing *Intrapac Parkridge Pty Ltd v Logan City Council & Anor* [2015] QPELR 49, 55.

[42] Section 66 of the Act prescribes when a development condition is prohibited. Relevantly for this appeal, s 66(1)(c)(i) provides:

> "(1) A development condition must not–
> …
> (c) other than under chapter 4, part 2 or 3, require a monetary payment for the establishment, operating or maintenance costs of, works to be carried out for, or land to be given for –
>
> (i) infrastructure." (emphasis added)

[43] '*Infrastructure*' is defined for the Act in this way:

> "***infrastructure*** does not include land, facilities, services or works for an environmental offset."

[44] The Act recognises two categories of infrastructure, namely trunk and non-trunk. They are defined as follows:

> "***trunk infrastructure***, for a local government, means–
>
> (a) development infrastructure identified in a LGIP as trunk infrastructure; or
>
> (b) development infrastructure that, because of a conversion application, becomes trunk infrastructure; or
>
> (c) development infrastructure that is required to be provided under a condition under section 128(3)."

And:

> "***non-trunk infrastructure*** means development infrastructure that is not trunk infrastructure."

[45] Each of the above definitions speak of '*development infrastructure*'. This too is a defined term for the Act. The definition is, in part, as follows:

> "***development infrastructure*** means –
>
> (a) land or works, or both land and works, for–
>
> (i) water cycle management infrastructure, including infrastructure for water supply, sewerage… but not water cycle management infrastructure that is State infrastructure;"

[46] Section 66(1)(c)(i) of the Act does not prohibit the imposition of all conditions touching upon '*infrastructure*' as defined in the Act. The prohibition, properly construed, is directed towards particular development conditions that require any one,

or a combination, of three things, namely: (1) a monetary payment for infrastructure; (2) the carrying out of infrastructure works; and (3) land to be given for infrastructure. If a development condition about infrastructure does not require any one, or a combination of these things, it is not prohibited by s 66 of the Act. Rather, it is a development condition that may be permitted where it satisfies s 65(1) of the Act. This is relevant to a number of the Appealed conditions, particularly those identified in paragraphs [21] to [23].

[47] Section s 66(1)(c) prescribes an exception to the prohibition on development conditions about infrastructure. The exception is where a condition is imposed under Chapter 4, part 2 or part 3 of the Act. Sections 128 and 145, which are the focus of this appeal, are included in Chapter 4, part 2 of the Act.

[48] Chapter 4, part 3 of the Act does not assist in the resolution of the primary issue in dispute.

[49] Section 111 provides when Chapter 4, part 2 of the Act applies. The provision states:

> "This part, other than section 112 and division 5, applies to a local government only if the local government's planning scheme includes a LGIP."

[50] Section 112 of the Act does not assist the resolution of the primary issue in dispute.

[51] Chapter 4, part 2, division 5 of the Act is of relevance to this appeal. It contains only one provision, namely s 145. This provision is relied upon by Council to impose the Appealed conditions, and to include the associated advisory notes. Section 145 is in the following terms:

> "**145 Conditions local governments may impose**
>
> A development condition about non-trunk infrastructure that a local government imposes–
>
> (a) must state–
>
> (i) the infrastructure to be provided; and
>
> (ii) when the infrastructure must be provided.
>
> (b) may be about providing development infrastructure for 1 or more of the following–
>
> (i) a network, or part of a network, internal to the premises;
>
> (ii) connecting the premises to external infrastructure networks;
>
> (iii) protecting or maintaining the safety or efficiency of the infrastructure network of which the non-trunk infrastructure is a component.
>
> *Example of a condition for subparagraph (iii)–*
>
> *A condition that works near transport infrastructure must not adversely affect the infrastructure's integrity.*"

[52] Section 145 of the Act permits a '*development condition*' to be imposed about '*non-trunk infrastructure*'. Such a condition '*must*' state the matters identified in subsection (a). No consequence is stated in the Act for a condition that purports to be imposed under s 145 but does not comply with subsection (a).

[53] The balance of Chapter 4, part 2 of the Act is engaged where a local government's planning scheme includes an LGIP, and permits, in specific circumstances, the imposition of development conditions about '*necessary infrastructure*'. The phrase '*necessary infrastructure*' is defined in s 127(2) of the Act, which states:

> "(2) Section 128 provides for the local government to be able to impose particular development conditions (each a ***necessary infrastructure condition***) on the development approval."

[54] The power to impose a necessary infrastructure condition is engaged when s 127(1) of the Act is satisfied. Section 127(1) states:

> "(1) This subdivision applies if–
>
> (a) trunk infrastructure–
>
> (i) has not been provided; or
>
> (ii) has been provided but is not adequate; and
>
> (b) the trunk infrastructure is or will be located on –
>
> (i) premises (the ***subject premises***) that are the subject of a development application, whether or not the infrastructure is necessary to service the subject premises; or
>
> (ii) other premises, but is necessary to service the subject premises."

[55] Section 128 of the Act is in the following terms:

> **128 Necessary infrastructure conditions**
>
> (1) If the LGIP identifies adequate trunk infrastructure to service the subject premises, the local government may impose a development condition requiring either or both of the following to be provided at a stated time—
>
> (a) the identified infrastructure;
>
> (b) different trunk infrastructure delivering the same desired standard of service.
>
> (2) If the LGIP does not identify adequate trunk infrastructure to service the subject premises, the local government may impose a development condition requiring development infrastructure necessary to service the premises to be provided at a stated time.
>
> (3) However, a local government may impose a condition under subsection (2) only if the development infrastructure services

development consistent with the assumptions in the LGIP about type, scale, location or timing of development.

(4) A necessary infrastructure condition is taken to comply with section 65(1) if—

(a) generally, the infrastructure required is the most efficient and cost-effective solution for servicing other premises in the general area of the subject premises; and

(b) for a necessary infrastructure condition that requires the provision of the infrastructure located on the subject premises—

(i) the provision is not an unreasonable imposition on the development; or

(ii) the provision is not an unreasonable imposition on the use of the subject premises as a consequence of the development.

(5) To remove any doubt, it is declared that a necessary infrastructure condition may be imposed for infrastructure even if the infrastructure will service premises other than the subject premises."

[56] The power to impose a necessary infrastructure condition may also arise under s 304 of the Act. This is a transitional provision with a heading of '*Infrastructure charges resolutions*'. Section 304(1) provides:

"(1) This section applies in relation to a local government's planning scheme that—

(a) did not include a PIP (as defined under the old Act) before 4 July 2014; and

(b) does not include a LGIP on the commencement."

[57] At the time Homeland's development application was properly made, the planning scheme did not include an LGIP. A charges resolution was however in effect. With this in mind, ss 304(3) and (4) are to be considered. They provide as follows:

"(3) A charges resolution, whether made before or after the commencement, may do either or both of the following despite sections 113 and 114—

(a) identify development infrastructure as trunk infrastructure for the local government area;

(b) state the required standard of service, and establishment costs, for the trunk infrastructure identified.

(4) The local government may do the following as if the matters under subsection (3) were part of a LGIP, despite section 111—

(a) adopt charges under section 113;

(b) give an infrastructure charges notice under section 119;

(c) impose conditions about trunk infrastructure under section 128 or 130." (emphasis added)

[58] Section 304 of the Act ceases to have effect when one of a number of identified events occur:

> "(5) This section stops having effect on the earlier of the following days—
>
> (a) the day the local government—
>
> (i) amends the planning scheme to include a LGIP; or
>
> (ii) adopts a new planning scheme that includes a LGIP;
>
> (b) if the local government's cut-off date under the old Act, section 975A, is after the commencement—the cut-off date."

[59] Subsection (5)(a)(i) has application to this appeal. Council amended its planning scheme to include an LGIP on 29 June 2018. Section 304 ceased having effect on and from that date in so far as it relates to the exercise of a power by Council in reliance on subsection (4).

The disputed issues

[60] The parties prepared an agreed list of disputed issues: Exhibit 1. The document divides the disputed issues into two categories; the primary issue and associated issues. The former is a single question in the following terms (footnote omitted):

> "Whether, in the exercise of the Court's discretion, the Negotiated Decision Notice ought to be amended to identify the infrastructure in the **Appealed Conditions** as necessary infrastructure conditions under s. 128 of the PA (rather than s. 145)."

[61] The emphasised phrase '*Appealed conditions*' is a reference to the development conditions identified at paragraph 8 of the Appellant's Further Amended Notice of Appeal, filed on 18 May 2022, excluding condition Part A, 13.1. A helpful schedule setting out the disputed conditions and advisory notes was attached to Homeland's written submissions. This schedule is attached to these reasons and marked **Annexure A**.

[62] To answer the primary issue in the affirmative, it is first necessary to determine whether the conditions power in s 128 of the Act can be exercised by the Court in this appeal. For the reasons that follow, it is my view that s 128, be it directly or through s 304 of the Act, is not available as a source of power to impose the Appealed conditions.

Is s 128 or s 304 available as a source of power to impose the Appealed conditions?

[63] Section 128 of the Act is an exception to a prohibition. The prohibition is stated in s 66(1)(c) of the Act. To engage the exception, a number of pre-conditions must be met, namely: (1) the assessment manager, who is a local government, must seek to

impose a condition otherwise prohibited by s 66(1)(c)(i) of the Act; (2) s 111 or ss 304(1) and (3) of the Act must be satisfied; and (3) s 127(1) of the Act must also be satisfied. Satisfaction of these pre-conditions does not mean a development condition must be imposed under s 128. The power to impose such a condition is discretionary. The condition must comply with the requirements of s 128(1) or ss 128(2) and (3) taken in combination.

[64] The submissions advanced by both parties proceeded on the footing that precondition (1) in paragraph [63] was met by the Appealed conditions. For reasons that are given later, I do not accept this is correct for each and every one of the Appealed conditions.

[65] The parties did not agree the second precondition in paragraph [63] was met. To resolve this point of difference, ss 111, 304(3) and (4) of the Act need to be examined. For the reasons that follow: (1) s 111 is engaged in this appeal; and (2) s 304(3) is not engaged in this appeal.

[66] Dealing with s 111 first, this provision is contained in Chapter 4, part 2 of the Act. This part of the Act is '*introduced*' by s 110(1), which states:

> **110 What chapter is about**
>
> (1) Part 2–
>
> (a) authorises local governments to do either or both of the following for development approvals in relation to trunk infrastructure–
>
> (i) adopt, by resolution, charges for development infrastructure and levy the charges;
>
> (ii) impose particular conditions about development infrastructure; and
>
> (b) authorises local governments, for non-trunk infrastructure, to impose particular conditions about development infrastructure; and
>
> (c) provides for a regulation to govern local government adopted charges and charges by distributor-retailers under the SEQ Water Act for trunk infrastructure.

[67] It can be seen from s 110 that Chapter 4, part 2 is not limited to the grant of a conditions power about trunk or non-trunk infrastructure (be it works or monetary contributions). Section 110(1), read with ss 112 to 145, reveals this part of the Act traverses a number of topics, including adopting charges, charges resolutions, levying charges by way of an Infrastructure charges notice, payment of charges, changing charges during an appeal period and the making and deciding of conversion applications. This, in my view, is important context for s 111, which must be satisfied for Chapter 4, part 2 to have application. I will return to this point at paragraph [76].

[68] Section 111 of the Act states:

> "This part, other than section 112 and division 5, applies to a local government only if the local government's planning scheme includes a LGIP."

[69] Before construing s 111, the first step is to recognise that two definitions in Schedule 2 of the Act apply, namely '*planning scheme*' and '*LGIP*'. They must be read into the provision: *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd* (2005) 221 CLR 568, [12] citing *Kelly v The Queen* (2004) 218 CLR 216. The former is defined as a planning instrument that sets out the matters in s 4(c) of the Act. A planning instrument is defined in s 8 of the Act to include, among other things, a planning scheme. The definition of LGIP is as follows:

> "***LGIP (local government infrastructure plan)*** means the part of a local government's planning scheme that–
>
> (a) has been prepared under the Minister's rules; and
>
> (b) does any or all of the following–
>
> (i) identifies a PIA;
>
> (ii) states assumptions about population and employment growth;
>
> (iii) states assumptions about the type, scale, location and timing of future development;
>
> (iv) includes plans for trunk infrastructure;
>
> (v) states the desired standard of service for development infrastructure."

[70] At the time the development application was properly made on 15 June 2018, the planning scheme (version 3.5) did not include an LGIP as defined in the Act.

[71] At the time this appeal was heard, the planning scheme in force included an LGIP as defined in the Act.

[72] An issue of contention is whether the '*planning scheme*' referred to in s 111 is: (1) the planning scheme in force at the time the development application was properly made; or (2) the planning scheme in force at the time the power conferred by s 128 is exercised. Item (1) represents Council's position and assumes the Court considers s 111 as if it were limited to, or constrained, as a matter of implication, by ss 43 and 45(7) of the Act and ss 43 and 46(2) of the Court Act. Item (2) represents Homeland's position and assumes the Court considers s 111 at the time the conditions power is to be exercised, and by reference to the material that must, or may, be considered under ss 45(7) and (8) of the Act.

[73] In my view, the '*planning scheme*' for the purpose of s 111 is that in force at the time the power conferred by Chapter 4, part 2 is exercised. This is so for five reasons taken in combination.

[74] First, s 111, construed in its extended form, requires the identification of a planning instrument that sets out the matters stated in s 4(c) of the Act. The planning scheme

in force at the time the appeal was heard meets this definition. That same planning scheme includes an LGIP as defined.

[75] Second, s 111, construed in its extended form, does not include a temporal element qualifying the phrase '*planning scheme*'.

[76] Third, that s 111 does not include a temporal element qualifying the phrase '*planning scheme*' is readily explained by context in Chapter 4 of the Act, namely s 110 and the content of ss 112 to 145. As I observed in paragraph [67], s 110(1) of the Act makes clear that Chapter 4, part 2 may arise for consideration at different times and in relation to different circumstances. Not all of the circumstances relate to the imposition of conditions about trunk or non-trunk infrastructure. This is readily apparent from ss 112 to 145 of the Act. By way of example, s 113 goes to the adoption of charges by resolution. This has no relationship to a development application; ss 45(6) to (8) of the Act have no application to s 113. Once this is appreciated, it is difficult to accept the phrase '*planning scheme*' in s 111 is qualified by circumstances that apply only to development applications.

[77] Fourth, the parties each placed considerable emphasis, for different reasons, on context provided by ss 45(6) to (8) of the Act. While I accept these provisions form part of the context to be considered, it is asking too much to suggest they resolve the construction issue at hand. In simple terms, this is because: (1) they are located in a different chapter of the Act, applying to the assessment of a development application; and (2) to apply ss 45(6) to (8) of the Act as a qualification or constraint on s 111 sits uncomfortably with the context discussed in paragraphs [67] and [76].

[78] Finally, for s 111 to be construed as contended by Council, in my view, requires one of two things to occur, namely: (1) words be inserted into s 111, namely the phrase '*in force at the time a development application was properly made*' after '*planning scheme*'; or (2) a meaning be given to '*planning scheme*' (for s 111) that is different to the definition in Schedule 2 (i.e. by adding the words '*in force at the time a development application was properly made*'). The insertion of words, be it in s 111, or in the definition in Schedule 2, is not supported by:

(a) s 110(1) of the Act, for the reasons discussed in paragraph [76];

(b) ss 45(6) to (8) of the Act, which apply to the assessment of development applications and not the full range of matters traversed in Chapter 4, part 2 of the Act; and

(c) ss 4 and 32AA of the *Acts Interpretation Act 1954,* which require a definition in an Act to be given the same meaning throughout the entirety of the Act, save where a contrary intention appears – there is no such intention in my view.

[79] Against the background of s 111 and paragraphs [70] to [78], I am satisfied Chapter 4, part 2 applies to this appeal. This finding is relevant to the point taken in relation to s 304 of the Act, which has a relationship with s 128.

[80] Turning to s 304, it is set out at paragraphs [56] to [58]. It is a transitional provision that provides for a local government to do particular things despite ss 111, 113 and 114 in Chapter 4, part 2 of the Act. The provision applies when subsection (1) is satisfied, which is set out in paragraph [56]. Where subsection (1) is satisfied, a local government may turn to consider subsections (3) and (4) in relation to a charges

resolution, infrastructure charges notices and trunk infrastructure conditions. Subsections (3) and (4) are set out in paragraph [57]. As I have already observed, s 304 has a limited life. It ceased to have effect for the purposes of this appeal when Council amended its planning scheme to include an LGIP.

[81] Is s 304(1) satisfied here?

[82] This is resolved in the negative. Section 304(1) includes the same phrase as s 111, namely '*a local government's planning scheme*'. Given the absence of any reference to ss 45(6) to (8) of the Act, and given the matters to which s 304 applies by virtue of subsection (4), the phrases should be given the same meaning; it is a reference to the planning scheme in force at the time each provision is considered. When approached in this way, s 304 does not have application to this appeal. It ceased to apply by operation of s 304(5)(a)(i), which is set out in paragraph [58]. This, as I have already observed, occurred when Council amended its planning scheme to include an LGIP. The relevant amendment took effect on 29 June 2018.

[83] For completeness I would observe that, even assuming s 304(1) was satisfied, I was not persuaded that s 304(4) was applicable to this appeal in any event. The conditions power in s 304(4) is engaged when subsection (3) of the provision is complied with. Compliance is not demonstrated with this provision by AICR 18 or any earlier resolution to which my attention was drawn. These charges resolutions state, in general terms, the trunk infrastructure networks to which the documents apply (e.g. Exhibit 29, p. 5, s 7) and the '*required standard of service for each trunk infrastructure network*' (e.g. Exhibit 18, p. 29), but do not purport (for the purposes of s 304(3)) to: (1) '*identify'* development infrastructure as trunk infrastructure; or (2) state the '*required standard of service, and establishment costs*' for infrastructure identified for item (1).

[84] The last precondition mentioned in paragraph [63] is to be found in s 127 of the Act.

[85] Section 127(1) identifies when Chapter 4, part 2, division 3, subdivision 1 applies, namely when s 128 is an available source of power to impose a necessary infrastructure condition on an approval.

[86] Subdivision 1 applies where s 127(1)(a) and (b) are satisfied. At the risk of repetition, subsection (1) is in the following terms:

> "(1) This subdivision applies if–
>
> (a) trunk infrastructure–
>
> (i) has not been provided; or
>
> (ii) has been provided but is not adequate; and
>
> (b) trunk infrastructure is or will be located on –
>
> (i) the premises (the ***subject premises***) that are the subject of a development application, whether or not the infrastructure is necessary to service the subject premises; or
>
> (ii) other premises, but is necessary to service the subject premises."

[87] Section 127(1) needs to be read with the definition of '*trunk infrastructure*'. The definition is set out at paragraph [44]. It means any one of three things, namely development infrastructure: (1) identified in an LGIP as trunk infrastructure; or (2) that, because of a conversion application, becomes trunk infrastructure; or (3) that is required to be provided under a condition under s 128(3) of the Act. The definition has the following consequence in my view: s 127(1) is engaged, and s 128 of the Act is available for the imposition of conditions where Homeland can identify '*trunk infrastructure*' (as defined) that has not been provided, or inadequately provided, on the site or other premises necessary to service the site.

[88] Has Homeland identified '*trunk infrastructure*' that has not been provided, or adequately provided?

[89] I was not satisfied this question is resolved in favour of Homeland. This is so having regard to the submissions advanced on behalf of Council, which I accept.

[90] I agree with the submissions made by Mr Job KC. Homeland did not identify development infrastructure that: (1) was in the LGIP in force at the time of the hearing, which follows from paragraph [70]; (2) is trunk infrastructure by reason of a conversion application – no such application has been approved for the site; and (3) is trunk infrastructure by reason of a condition of an approval imposed under s 128(3) of the Act – there is no approval including a relevant condition of this kind attaching to the site. This has the consequence that s 128 is not available to condition the development approval sought, and obtained, by Homeland.

[91] For completeness, it can be observed that Homeland's case in relation to s 127(1) was not a persuasive one. It contended, in effect, that s 127(1) of the Act was satisfied here because the Appealed conditions require development infrastructure on the site, which should be treated as trunk infrastructure – that is, the conditions require infrastructure works that go beyond servicing the development. This can be accepted as a general proposition; however, approaching s 127(1) in this way ignores that not all of the Appealed conditions call for the provision of infrastructure, particularly those conditions falling within categories 3 and 4 discussed above. Further, to approach '*trunk infrastructure*' as including infrastructure that an applicant wishes to have treated as such departs from the definition of 'trunk infrastructure' in the Act. This is, in my view, impermissible because Homeland did not establish, nor do I accept, there is a proper basis to proceed in this way when considering s 127(1) of the Act. In particular, Homeland did not establish there is a statutory intention to displace the assumption that the definition applies to the entirety of the Act. This was required for it to succeed given, at the very least, ss 4 and 32AA of the *Acts Interpretation Act 1954*.

[92] Homeland did not persuade me the conditions power in ss 128 or 304 of the Act can be exercised in this appeal. The question posed as the 'primary issue' in Exhibit 1 is therefore resolved in the negative.

Discretionary issues

[93] If, contrary to the above, it is assumed the Appealed conditions (to the extent they require development infrastructure) may be imposed under s 128 of the Act, that does not resolve the primary issue in favour of Homeland. As was correctly conceded by

Homeland, the decision to impose conditions under this provision of the Act is discretionary.

[94] I was not persuaded the discretion, in so far as it was open in relation to some of the Appealed conditions, should be exercised as Homeland contends. This is so having regard to the following matters taken in combination.

[95] First, to grant an approval inclusive of the Appealed conditions on the footing they are imposed under s 128 is not a decision based on the assessment carried out under s 45 of the Act. It would be a decision, in my view, that sits uncomfortably with s 59(3) of the Act. This is so by reason of the following.

[96] The decision to approve Homeland's development application and impose conditions is one contemplated by s 60(3)(b) of the Act. To decide a development application in this way is not without constraint. A relevant constraint is to be found in s 59(3), which requires the decision to be based on the assessment carried out by the assessment manager (and this Court on appeal). The assessment of the development application here must proceed in accordance with, among other things, ss 45(5) to (8).

[97] It is uncontroversial that s 45(7) of the Act applies to this appeal and mandates assessment of Homeland's development application against, or having regard to the planning scheme in effect when the development application was properly made. This, as I have already observed, is version 3.5 of the planning scheme, which does not include an LGIP as defined. That the planning scheme in force at the time the development application was properly made did not include an LGIP means ss 111 and 128 of the Act were not engaged at the time the development application was properly made. For reasons given in paragraph [83], s 304 of the Act was also not engaged. Various charges resolutions do not satisfy s 304(3) of the Act.

[98] If the examination of this point is paused here, it can be said that the material against which Homeland's development application must be assessed did not found a basis for imposing the Appealed conditions under ss 128 or 304 of the Act. This is not however the end of the matter. It is necessary to consider the matter through the lens of s 45(8) of the Act.

[99] Section 45(8) of the Act permits this Court on appeal to give the weight it considers appropriate to, among other things, a planning scheme amendment that occurs after a development application was properly made, but before it is decided. Here, the planning scheme was amended after 15 June 2018. First, on 29 June 2018 to include an LGIP. The LGIP identified trunk infrastructure item W8 in a schedule of works. Second, on 30 November 2020, the planning scheme was amended to remove item W8 from a schedule of works. From this time onwards, the development infrastructure known as W8 was no longer identified as '*trunk infrastructure*'.

[100] I was not satisfied that the first planning scheme amendment should be given weight in this appeal. As a starting point, and as correctly submitted by Council, there is no identifiable mechanism in the Act for weight to be given to a version of the LGIP that was not in force at the time the development application was properly made, or now. Even if weight could be given to the LGIP in its original form, there is a good reason to not do so in any event; it has been overtaken, in part, by events. That event is the introduction of a later version of the LGIP in November 2020. It is this later document that represents Council's planning as an infrastructure provider and planning

authority. To give the original LGIP weight, indeed decisive weight as contended by Homeland, would have the effect of displacing this planning with a position Council, as infrastructure provider and planning authority, elected to change. This change, which is embodied in the current LGIP, is not appealable in this proceeding.

[101] As to the later version of the LGIP, it was uncontroversial that it took effect on 30 November 2020 and does not identify trunk infrastructure (particularly water supply and sewerage) for the site. Given this, and given Council's decision to delete item W8 from the schedule of works is not appealable in this proceeding: for what purpose would the amended LGIP be given weight? The answer to this question is not, in my view, to be found in any particular planning consideration. Rather, the Court was pressed to give weight to the LGIPs for the purposes of engaging ss 111, 127 and 128 of the Act. The impetus for doing so has little to do with the infrastructure required by the conditions, but rather a desire by Homeland to ensure future credits and offsets for the development infrastructure works required by the Appealed conditions are secured now. While this motivation is understandable in the light of the not so insignificant infrastructure requirements imposed by a number of the Appealed conditions, I was not prepared to give the November 2020 amendments to the planning scheme weight for this purpose.

[102] In circumstances where no weight is given in the assessment to the planning scheme amendments made in June 2018 and November 2020, I do not accept the Appealed conditions could be imposed on the development approval under s 128 of the Act. A decision to do otherwise would not be based, in my view, on an assessment of the development application as is required by s 59(3) of the Act.

[103] Second, the Appealed conditions could only be imposed under s 128 of the Act where weight is given to the planning scheme amendments of June 2018 and November 2020 under s 45(8) of the Act. Indeed, the former would need to be given its '*full force and effect*' on Homeland's case. To proceed in this way (under s 45(8) of the Act) is not supported by authority.

[104] The interplay between the predecessors to ss 45(7) and (8) and s 60(2) of the Act was considered in *Brisbane City Council v Klinkert* (2019) 236 LGERA 88. Gotterson JA, with whom Phillipides JA agreed, observed (noting ss 45(7) and (8) were originally numbered ss 45(6) and (7) respectively):

> "[1] I agree with the orders proposed by Boddice J and his Honour's reasons for them. I would add the following brief observations.
>
> [2] The meaning intended for s 45(7) of the *Planning Act 2016* (Qld) is unclear. It follows a provision, s 45(6), which mandates that an assessment of an application that is carried out against a statutory instrument or other document which is applied, adopted or incorporated, must be carried out against such instrument or document as is in effect when the application was properly made.
>
> [3] Section 45(7) operates if the statutory instrument or other document is amended or replaced before the application is decided. The section implies that when there is such an amendment or replacement, the assessment which is to precede

> determination of the application may be carried out having regard to the terms of the amendment or the replacing document.
>
> [4] However, as I have noted, the immediately preceding provision, s 45(6), expressly stipulates that the assessment must be carried out against the statutory instrument or other document as in effect when the application was properly made; that is to say, the statutory instrument or other document as it is in effect prior to the amendment or replacement.
>
> [5] Within the framework for which s 45(6) provides, it is quite unclear how the assessment manager might "give weight" to the amendment or replacement. Section 45(7) gives no guidance as to what is meant by that expression. Moreover, the provision confers a discretion to give weight but throws no light on when, or for what purpose, the discretion is intended by the legislature to be exercised.
>
> [6] Despite this lack of clarity, it is, I think, tolerably clear from the emphatic terms in which s 45(6) is enacted, that s 45(7) is not a vehicle for displacement or modification by the assessment manager of the statutory instrument or other document as in effect when the application was properly made."
>
> (emphasis added)

[105] In my view, to impose the Appealed conditions in reliance upon the amendments made to a planning scheme after the development application was properly made is to use s 45(8) of the Act here as a vehicle for displacement or modification. This is because the planning scheme amendments introducing the LGIP would be used to impose conditions that could not have been imposed under ss 128 or s 304 of the Act at the time the development application was properly made on 15 June 2018.

[106] Third, the imposition of conditions under s128 of the Act at this time is, in my view, premature in any event. This is because: (1) the Appealed conditions require the provision of infrastructure work that conceivably comprise a combination of works serving a trunk and non-trunk function; (2) the identification of infrastructure in this context that serves a trunk and non-trunk function requires, in my view, the preparation and review of a detailed design – this design does not yet exist; and (3) absent a detailed design (item (2)), an attempt to identify infrastructure as trunk or non-trunk at this point in time involves speculation and has the potential to prejudge or pre-determine the function that infrastructure works may perform in the future – particular care with respect to prejudgment is necessary here given the requirements in respect of future infrastructure appear fluid having regard to conditions Part A, 7.3, 8.6 and 8.10.

[107] Finally, a decision to impose an Appealed condition under s 145 of the Act does not preclude Homeland from making a conversion application/s to Council in the future. Given this, and given item (3) above, I have the same reservation in this case as that identified by her Honour Judge Kefford in *Traspunt No.7 Pty Ltd v Moreton Bay Regional Council* [2020] QPEC 50, [49]. The reservation is one that goes to the risk of prematurely prejudging the characterisation of infrastructure works under the Act

prior to the making, and proper assessment, of a conversion application based on detailed information.

The Appealed conditions and s 145 of the Act

[108] The arguments advanced on behalf of both parties assume the outcome of the appeal is binary, that is, the Appealed conditions are imposed either under s 145 or s 128 of the Act. I am not satisfied this is correct. Amendments are required to the conditions to deal with the following matters.

[109] At paragraphs [18] to [24], I observed the Appealed conditions can be divided into one of six categories. Some of the categories do not perform well when examined against s 145(a) of the Act.

[110] I am not satisfied the first sentence of Appealed condition Part A, 8.1 (category (1)) and Part B, 5.28, to the extent they require works for infrastructure and engage s 66(1)(c), comply with s 145(a)(ii) of the Act. These conditions do not state when the required infrastructure must be provided. The conditions need to be amended, in my view, to comply with s 145(a). While no amendment was proposed by Homeland or Council, the final approval granted by the Court should include amended versions of the conditions to correct this short coming.

[111] I am also not satisfied the Appealed conditions falling into categories (3), (4) and (5) engage s 66(1)(c) of the Act. These conditions, properly construed, do not require a monetary payment, works or land for infrastructure. As a consequence, I was not satisfied they are prohibited conditions. The source of the conditions power in each case, in my view, appears to be s 60(3), constrained by s 65(1) of the Act. I will hear from the parties about this to ensure any necessary amendment is made to the conditions before an approval is granted by the Court.

[112] For my part, the disputed issues in this appeal are explained in large measure by the Advisory notes. The notes are unhelpful. They do not speak to any specific condition and leave it to the reader to determine which, if any, condition the note/s apply to. Given this, and given the notes, in my view, beg more questions then they provide answers, they are to be deleted from the approval. In their place, each condition imposed under s 145 will need to be identified as such on a condition-by-condition basis to avoid ambiguity.

Disposition of the appeal

[113] Exhibit 1 sets out the primary issue to be determined in this appeal.

[114] The primary issue has been resolved adversely to Homeland.

[115] The appeal will be listed for review on 20 June 2024.

Annexure A

Schedule 1 Conditions of approval under the NDN challenged by HPD

141. Conditions 7.2, 7.3, 7.4 of the Part A (Preliminary Approval) and conditions 5.3, 5.6, 5.12, 5.17, 5.22, 5.28, 5.34 and 5.39 of Part B (Reconfiguration of a Lot) of the NDN deal with water infrastructure, which are provided as follows:

No.	Condition
Part A – Preliminary Approval	
Stage 3	
7.2	Prior to sealing the first plan of survey for Stage 3, the applicant must construct a minimum 2ML (megalitre) reservoir no higher than RL80.0 meters top water level, in accordance with the requirements of the Whitsunday Regional Council Development Manual. Connection to the reservoir must be via a DN450mm water main connected to Council's Bulk Supply Water Main. The applicant must provide a minimum 10 metre easement at no cost to Council for the full length of the DN450mm water main.
Stages 4, 5, 6, 7, 8, 9, 10	
7.3	A detailed water network analysis (prepared at no cost to Council) must be undertaken and submitted with any application for Reconfiguring a Lot to demonstrate the proposed demand can be adequately serviced by the reticulated water network. Should the capacity of the 2ML reservoir be exceed the applicant at its cost is to provide additional storage.
Ultimate Development	
7.4	Upon ultimate development, the applicant must construct a 10ML (megalitre) reservoir no higher than RL80.0 meters top water level, in accordance with the requirements of the Whitsunday Regional Council Development Manual. Connection to the reservoir must be via a second DN450mm water main connected to Council's Bulk Supply Water Main. The applicant must provide a minimum 10 metre easement at no cost to Council for the full length of the DN450mm water main.
Part B – Reconfiguration of a Lot	
Stage 3.1	
5.3	Prior to sealing the first plan of survey for Stage 3, the applicant must construct a minimum 2ML (megalitre) reservoir no higher than RL80.0 meters top water level, in accordance with the requirements of the Whitsunday Regional Council Development Manual. Connection to the reservoir must be via a DN450mm water main connected to Council's Bulk Supply Water Main. The applicant must provide a minimum 10-meter easement at no cost to Council for the full length of the DN450mm water main.
5.6	Water infrastructure installed as part of this stage of development must be sized accordingly to service future stages.
Stage 3.2	
5.12	Water infrastructure installed as part of this stage of development must be sized accordingly to service future stages.
Stage 3.3	
5.17	Water infrastructure installed as part of this stage of development must be sized

	accordingly to service future stages.
	Stage 3.4
5.22	Water infrastructure installed as part of this stage of development must be sized accordingly to service future stages.
	Stage 3.5
5.28	Separate dedicated fire main must be constructed so as to provide sufficient fire coverage to all lots and proposed uses.
	Stage 3.6
5.34	Water infrastructure installed as part of this stage of development must be sized accordingly to service future stages.
	Stage 3.7
5.39	Water infrastructure installed as part of this stage of development must be sized accordingly to service future stages.

142. Conditions 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14 and 8.15 of Part A (Preliminary Approval) and conditions 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7 and 6.8 of Part B (Reconfiguration of a Lot) of the NDN deal with sewerage infrastructure, which are provided as follows:

No.	Condition
Part A – Preliminary Approval	
8.1	All lots created as a result of an approval for Reconfiguring a Lot or Material Change of Use are to be connected to Council's Sewerage Infrastructure. Detailed design drawings must be provided with any application for Reconfiguring a Lot or Material Change of Use demonstrating compliance with Council's Development Manual (current at time of development).
	Stage 3
8.2	Prior to the sealing the first plan of survey for Stage 3, the applicant must connect all existing lots as shown on Concept Master Plan Dated February 2020 Rev 01 and all proposed lots in Stage 3 to Council's reticulated sewer network via a DN225mm rising main in accordance with the requirements of Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual.
8.3	Prior to sealing the first plan of survey for Stage 3, the applicant must construct an adequately sized sewer pump station on the subject land to service all flows from the existing lots as shown on Concept Master Plan Dated February 2020 Rev 01 and all proposed lots in Stage 3, in accordance with Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual.
8.4	All sewage pump station switchboards must be constructed in accordance with the requirements of the Construction Specification for Electrical Switchboards section of the Whitsunday Regional Council Development Manual.
8.5	A detailed sewerage reticulation network analysis (prepared at no cost to Council) must be undertaken and submitted as part of the first Operational Works permit, to determine: a) The impact of the proposed development on the existing sewerage reticulation

	network in Bowen from the connection point at Sewer Pump Station No. 13 to Lot 186 B6624 Pump Station No. 1; and b) The extent and timing of any external works which will be required to be undertaken to ensure the Bowen reticulated sewerage network has capacity to accommodate the development prior to the establishment of the sewer network connection.
8.6	If as a result of the network analysis it is determined that works are required to upgrade the Bowen reticulated sewerage network, to accommodate the additional demand on the existing system by the development, then such work must be carried out at the applicant's cost prior to the connection of the site into the Bowen reticulated sewerage network.
8.7	The applicant must provide in accordance with Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual a non-corrosive pipe installed for the length of sewer to the next downstream manhole and will require the provision of an inert lining to all internal surfaces of all rising main discharge manholes.
8.8	Prior to the sealing of the first plan of survey or commencement of operational works (whichever occurs first), the applicant shall decommission the existing onsite Sewerage Treatment Plant.
8.9	The applicant is to provide to Council a Decommission and Remediation Management Plan, which is to include a Contaminated Land Assessment and temporary effluent disposal solution with the first operational works application.
Stages 4, 5, 6, 7, 8, 9, 10	
8.10	A detailed sewerage reticulation network analysis (prepared at no cost to Council) must be undertaken and submitted with any application for Reconfiguring a Lot, to determine: a) The impact of the proposed development on the existing sewerage reticulation network in Bowen from the connection point at Sewer Pump Station No. 13 to Lot 186 B6624 Pump Station No. 1; b) If the proposed demand can be adequately serviced by the sewer pump station and DN225 rising main constructed in Stage 3; and c) The extent and timing of any external works which will be required to be undertaken to ensure the Bowen reticulated sewerage network has capacity to accommodate the development.
8.11	If as a result of the network analysis it is determined that works are required to upgrade the Bowen reticulated sewerage network, to accommodate the additional demand on the existing system by the development, then such work must be carried out at the applicant's cost prior to the connection of the site into the Bowen reticulated sewerage network.
Ultimate Development	
8.12	Upon ultimate development, the applicant must connect all existing Stage 1 lots as shown on Concept Master Plan Dated February 2020 Rev 01 and all proposed lots in to Council's reticulated sewer network via a DN225mm and DN300mm rising main

	in accordance with the requirements of Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual.
8.13	The applicant must construct an adequately sized sewer pump station on the subject land to service all flows from the existing Stage 1 lots as shown on Concept Master Plan Dated February 2020 Rev 01 and all proposed lots, in accordance with the requirements of Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual.
8.14	All sewage pump station switchboards must be constructed in accordance with the requirements of the Construction Specification for Electrical Switchboards section of the Whitsunday Regional Council Development Manual.
8.15	The applicant must provide in accordance with the requirements of Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual a non-corrosive pipe installed for the length of sewer to the next downstream manhole and will require the provision of an inert lining to all internal surfaces of all rising main discharge manholes.
Part B – Reconfiguration of a Lot	
Stage 3.1	
6.1	Prior to the sealing the first plan of survey for Stage 3 the applicant must connect all existing lots as shown on Concept Master Plan Dated February 2020 Rev 01 and all proposed lots in Stage 3 to Council's reticulated sewer network via a DN225mm rising main in accordance with the requirements of Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual.
6.2	Prior to sealing the first plan of survey for Stage 3 the applicant must construct an adequately sized sewer pump station on the subject land to service all flows from the existing lots as shown on Concept Master Plan Dated February 2020 Rev 01 and all proposed lots in Stage 3, in accordance with Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual.
6.3	All sewage pump station switchboards must be constructed in accordance with the requirements of the Construction Specification for Electrical Switchboards section of the Whitsunday Regional Council Development Manual.
6.4	A detailed sewerage reticulation network analysis (prepared at no cost to Council) must be undertaken and submitted as part of the first Operational Works permit, to determine: a) The impact of the proposed development on the existing sewerage reticulation network in Bowen from the connection point at Sewer Pump Station No. 13 to Lot 186 B6624 Pump Station No. 1; and b) The extent and timing of any external works which will be required to be undertaken to ensure the Bowen reticulated sewerage network has capacity to accommodate the development prior to the establishment of the sewer network connection.
6.5	If as a result of the network analysis it is determined that works are required to upgrade the Bowen reticulated sewerage network, to accommodate the additional demand on

	the existing system by the development, then such work must be carried out at the applicant's cost prior to the connection of the site into the Bowen reticulated sewerage network.
6.6	The applicant must provide in accordance with Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual a non-corrosive pipe installed for the length of sewer to the next downstream manhole and will require the provision of an inert lining to all internal surfaces of all rising main discharge manholes.
6.7	Prior to the sealing of the first plan of survey or commencement of operational works (whichever occurs first), the applicant shall decommission the existing onsite Sewerage Treatment Plant.
6.8	The applicant is to provide to Council a Decommission and Remediation Management Plan, which is to include a Contaminated Land Assessment and temporary effluent disposal solution with the first operational works application.

143. Advisory Notes 17.1 of Part A (Preliminary Approval) and 14.6 of Part B (Reconfiguration of a Lot) of the NDN provide:

> "*Development infrastructure required to be provided in implementing this development approval is non-trunk development infrastructure as described under section 145 of the Planning Act 2016*".