SUPREME COURT OF QUEENSLAND

CITATION: *Bunnings Group Limited v Sunshine Coast Regional Council & Ors* [2019] QCA 252

PARTIES: **In Appeal No 11706 of 2018:**

BUNNINGS GROUP LIMITED
ACN 008 672 179
(applicant)
v
SUNSHINE COAST REGIONAL COUNCIL
(first respondent)
RAYMOND BARBER
(second respondent)
BRENNAN CAROLAN
(third respondent)
JENEANE CAROLAN
(fourth respondent)
COOLUM RESIDENTS ASSOCIATION INC
ABN 87 796 991 988
(fifth respondent)
DEVELOPMENT WATCH INC
ABN 53 627 632 278
(sixth respondent)
CAROL GOODWILLIE
(seventh respondent)
AMY-ROSE WEST
(eighth respondent)

In Appeal No 11708 of 2018:

BUNNINGS GROUP LIMITED
ACN 008 672 179
(applicant)
v
SUNSHINE COAST REGIONAL COUNCIL
(first respondent)
DON CAROLAN
(second respondent)
SUSAN CAROLAN
(third respondent)
COOLUM RESIDENTS ASSOCIATION INC
ABN 87 796 991 988
(fourth respondent)
DEVELOPMENT WATCH INC
ABN 53 627 632 278
(fifth respondent)
DIANE GOODWILLIE
(sixth respondent)
RICHARD JAMES KOERNER

(seventh respondent)

FILE NO/S:	Appeal No 11706 of 2018 Appeal No 11708 of 2018 P & E Appeal No 2838 of 2016 P & E Appeal No 4368 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave *Sustainable Planning Act*
ORIGINATING COURT:	Planning and Environment Court at Brisbane – [2018] QPEC 42 (Everson DCJ)
DELIVERED ON:	15 November 2019
DELIVERED AT:	Brisbane
HEARING DATE:	30 May 2019
JUDGES:	Gotterson and McMurdo JJA and Boddice J
ORDERS:	**In Appeal No 11706 of 2018:** **Application for leave to appeal refused with costs.** **In Appeal No 11708 of 2018:** **Application for leave to appeal refused with costs.**
CATCHWORDS:	ENVIRONMENT AND PLANNING – ENVIRONMENTAL PLANNING – PLANNING SCHEMES AND INSTRUMENTS – QUEENSLAND – OTHER MATTERS – where the applicant sought two alternative development permits for a material change of use to establish a Bunnings Warehouse at Coolum – where the relevant council refused to issue either permit and the Planning and Environment Court dismissed appeals against those refusals – where the applicant seeks leave to appeal against the decision of the Planning & Environment Court – whether the judge misconstrued the relevant planning scheme – whether the judge placed undue reliance upon a previous decision of the Court of Appeal that dismissed a similar application – whether the judge failed to give adequate reasons – whether any error of law consequential to the outcome of the judge's decision is demonstrated *Bell v Brisbane City Council & Ors* (2018) 230 LGERA 374; [2018] QCA 84, cited *Coolum Properties Pty Ltd v Maroochy Shire Council & Ors* [2008] QPELR 145; [2007] QCA 351, considered *Coolum Properties Pty Ltd v Maroochy Shire Council & Ors* [2007] QPELR 400; [2007] QPEC 13, considered *Grosser & Anor v Council of the City of the Gold Coast* (2001) 117 LGERA 153; [2001] QCA 423, considered *Kentucky Fried Chicken Pty Ltd v Gantidis & Anor* (1979) 140 CLR 675; [1979] HCA 20, distinguished

Koerner & Ors v Maroochy Shire Council & J T Barnes & L J Barnes [2004] QPELR 211; [2003] QPEC 54, considered

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No appearance for the second, third, fifth, sixth and seventh respondents

SOLICITORS:

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No appearance for the second, sixth, seventh and eighth respondents

In Appeal No 11708 of 2018:
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Sunshine Coast Council Legal Services for the first respondent
Ray Barber Solicitor for the fourth respondent
No appearance for the second, third, fifth, sixth and seventh respondents

[1] **GOTTERSON JA:** I agree with the orders proposed by McMurdo JA and with the reasons given by his Honour.

[2] **McMURDO JA:** The applicant ("Bunnings") sought a development permit for a material change of use to establish a Bunnings Warehouse over land at Coolum on the Sunshine Coast. There were, in fact, alternative proposals by Bunnings: one involving a building with a gross floor area of 8,600 square metres and the other for a building with a gross floor area of 5,850 square metres. The respondent Council refused to issue a permit for either proposal. Bunnings brought two proceedings in the Planning and Environment Court, which were dismissed within the same judgment.[1] There are then two applications by Bunnings for leave to appeal against that judgment.

[3] Each of the development applications was one which had to be heard and determined under the now superseded Maroochy Plan 2000 ("Planning Scheme"). The proceedings in the Planning and Environment Court were filed before the

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1 *Bunnings Group Ltd v Sunshine Coast Regional Council & Ors* [2018] QPEC 042 ("Primary Judgment").

commencement of the *Planning Act* 2016 (Qld), so that the *Sustainable Planning Act* 2009 (Qld) ("SPA") had to be applied.[2] After 10 days of evidence and argument, Everson DCJ delivered a reserved judgment of 27 pages. One of the applicant's arguments, to which I will return, is that insufficient reasons for judgment were given.

[4] His Honour concluded that each of the proposed developments was "equally in serious conflict with the … Planning Scheme in that they opportunistically seek to place a large stand alone Bunnings Warehouse in a location where such a use is not intended to be" and that "[t]he proposed scale, intensity and function of either Bunnings Warehouse … is in direct conflict with the detailed local planning provisions relating to Coolum Beach …"[3] After referring to further reasons why the developments were inconsistent with the Planning Scheme, his Honour held that no grounds had been established which were sufficient to justify the approval of either development, notwithstanding the conflicts with the Planning Scheme, under s 326(1)(b) of the SPA.[4]

[5] This was not the first time that the Planning and Environment Court had been asked to consider a development permit for a Bunnings Warehouse on this site. It had done so in 2007, in *Coolum Properties Pty Ltd v Maroochy Shire Council & Ors*.[5] Dodds DCJ there analysed the same provisions of the Planning Scheme which are relevant to the present applications, and concluded that the then proposed development, which involved a total area of 8,315 square metres, incorporating a Bunnings Warehouse of 5,815 square metres,[6] was in conflict with the Planning Scheme for reasons which included "the type and intensity of the proposed development", and that there were insufficient planning grounds to overcome the conflict.[7]

[6] Nor is this the first time that this Court has had to consider such a proposal, because that judgment was the subject of an application for leave to appeal, which was refused by this Court, in *Coolum Properties Pty Ltd v Maroochy Shire Council & Ors*,[8] where Holmes JA (with the agreement of the other members of the Court) endorsed the analysis of the Planning Scheme by Dodds DCJ.

[7] In the present applications, there are some arguments about the interpretation of the Planning Scheme which were not made in that 2007 case. It is also submitted that the 2007 case involved a development of a much larger scale, and that the presently relevant proposals have to be considered in the facts and circumstances of 2018. Everson DCJ considered that he was bound to follow the reasoning of this Court in the 2007 case, but said that he would have reasoned in the same way without the assistance of those judgments.

The Planning Scheme

[8] The Planning Scheme contained six volumes, the first of which was headed "Administration & Assessment Requirements" and included an explanation of the way in which the Shire was divided for the purposes of the Scheme. It provided

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2 *Planning Act* 2016 (Qld) s 311.
3 Primary Judgment [58].
4 Primary Judgment [58].
5 [2007] QPEC 013.
6 [2007] QPEC 013 at [9].
7 Ibid at [56], [58].
8 [2007] QCA 351.

that the Shire was divided into Planning Areas, which in turn were divided into Precincts. The Planning Areas were said to "provide a link to the Strategic Plan through setting each area's context and role within the Shire."[9] The Precincts were said to "establish each locality's context and role within the Planning Area, and the desired future local character."[10]

[9] That same provision continued as follows:

> "**2.2 Explanation of the Way the Shire is Divided for the Purposes of this Planning Scheme**
>
> …
>
> (4) Proposals for impact assessable development will be assessed against the statements of desired local character (made up of the Location and Role, Vision Statement and Key Character Elements) for the Planning Area and Statement of Desired Precinct Character for the individual Precinct in which the development site is situated which are set out in Volume 3.
>
> (5) Proposals for impact assessable development will also be assessed against the Strategic Plan (Volume 2). The detailed local planning provisions in Volume 3, are intended to be based upon and reflective of the general principles in the Strategic Plan. However, it is the Planning Area Provisions in Volume 3, which represent Council's specific planning intent for the relevant localities.
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> (6) Where there is no direct inconsistency between Volumes 2 and 3, but merely different or additional outcomes or requirements indicated, Volume 3 constitutes the primary basis for assessment, but all elements of the policy or intent in both Volumes are expected to be satisfied in order that development does not conflict with the Planning Scheme. If the different statements in Volumes 2 and 3 are inconsistent, statements in Volume 3 prevail over inconsistent statements in Volume 2. This reflects the fact that Volume 2 provisions are either broad strategic statements or statements of general principle, whereas Volume 3 provisions state specific and considered planning intents for identified localities. It is an incorrect use of the Strategic Plan, and an incorrect interpretation of this Planning Scheme, to rely on anything in the Strategic Plan to support or justify as being consistent with the Planning Scheme, an outcome which is contrary to the Planning Area provisions."

[10] The subject site was designated Urban under the Strategic Plan, which was in volume 2 of the Planning Scheme. The site was located within Precinct 7 in Planning Area 11. Consequently, the primary judge said, this provision of the Strategic Plan was relevant:

> "**3.4.1 Urban**

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9 Planning Scheme volume 1 cl 2.2(2).

10 Planning Scheme volume 1 cl 2.2(3).

> The Urban allocation identifies areas suitable for residential premises of varying densities, but allows for retail, commercial, community services and general industrial activities required to serve the day-to-day needs of local communities and which are of a scale appropriate to these needs."

[11] The Strategic Plan identified the "economic and community advantages" of what was described as a hierarchy of retail and commercial centres within the Shire.[11] In that hierarchy, "Coolum" was described as one of a number of "Tourist centres", which were to "provide a range of commercial, retail, service and entertainment facilities primarily satisfying the needs of tourists."[12] The "existing David Low Way based facilities at Coolum" were designated as a "Village centre", for which it was provided that "[r]etail and commercial activities in Coolum Beach will be concentrated between Beach Road in the south and Margaret Street in the north, to be consistent with the Coolum Beach Village centre Precinct in the Coolum Beach Planning Area in Volume 3 of this Planning Scheme".[13]

[12] His Honour referred to cl 3.5.6 of the Strategic Plan, which provided as follows:

> "Approval is only likely to be granted to development of retail, commercial and service uses which are to be located on a specific site (in a Centre Precinct or site specifically identified) and which offer a service only to local communities (other than in the Maroochydore Principal Activity Centre) and are consistent with the intent for and, and desired character of the Planning Area and Precinct in which it is to be situated."[14]

[13] As I will discuss, Bunnings argues that some of those provisions were not applicable here. But if they were applicable, considered for the moment without the terms of volume 3 of the Scheme, they were a strong indication that a development, of the nature of those proposed by Bunnings, was beyond what was appropriate to service the land within Planning Area 11, and therefore would be inconsistent with the Planning Scheme.

[14] In cl 1.2 within volume 3 of the Planning Scheme, it was explained that the Shire had been divided into 30 Planning Areas, which had been divided into over 300 Precincts, and that those Precincts had been categorised into 18 Precinct Classes. The subject site was within a Precinct categorised as "Master Planned Community". For such a Precinct, cl 2.5(2) within volume 3 included the following:

> "Where the particular Precinct is not subject to an existing development approval, or the approval is to be amended, Council will request a development proponent to carry out master planning for the locality. The outcomes of such planning are intended to be presented as a Local Area Master Plan (LAMP) showing:
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> - major land use areas,
> - any areas with significant environmental values,

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11 Primary Judgment [16] referring to Planning Scheme volume 2 cl 4.2.
12 Planning Scheme volume 2 cl 4.2.
13 Planning Scheme volume 2 cl 4.4.1(23).
14 Primary Judgment [17].

- preferred movement corridors,
- major drainage paths, and
- the relationship of the local area to surrounding areas, services and facilities.

An LAMP is intended to guide future development in the locality to which it applies and is expected to be incorporated into the Planning Scheme pursuant to Schedule 1 of the Integrated Planning Act 1997 or a preliminary approval pursuant to section 3.1.6 (Preliminary approval may override local planning instruments) of the Integrated Planning Act 1997."

[15] As I have said, the site was within Planning Area 11, which was named "Coolum Beach". Clause 3.11.1 provided that the Planning Area "*includes* the coastal township of Coolum Beach and land immediately north and south of the township." (My emphasis.) Undoubtedly, the Planning Area, as defined by a map which is part of the Planning Scheme, included the subject land. As the primary judge noted, cl 3.11.2 contained a "Vision Statement" for Planning Area 11, which included these passages:

> "It is intended that … [t]he Coolum Beach township will continue to develop as an attractive coastal village, with a growing number of boutique eateries, shops and tourist facilities. The township will have a compact village centre and will provide only a limited range of goods and services to meet the immediate needs of residents and visitors to the locality.
>
> …
>
> This means that … Coolum Beach will remain a casual, seaside village serving local retail, business, dining and entertainment needs only. The residents of Coolum have indicated they are prepared to forgo the provision of higher order and larger scale retail and commercial services in order to maintain local character and identity. Infill development within the Village Centre … is to be compatible with the small scale function of the centre and contributes to the casual beachside atmosphere of the locality."[15]

[16] His Honour also noted that for the Planning Area, cl 3.11.3 included the following:

> "(1) Location of Uses and Activities
>
> (a) Commercial and business activities will be concentrated in the area north of Beach Road, south of Margaret Street and east of Sunrise Street. This will be a small scale Village Centre, accommodating a mix of boutique retail, business and community facilities. Within this Planning Area, the scale of retail and commercial activities will be limited to serving the immediate catchment area of Coolum and will not serve a district or higher order function.

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15 Primary Judgment [20].

(b) The existing small local centre facilities at the western end of the Yandina-Coolum Road is intended to continue its convenience centre role. Some light industrial uses may also be considered appropriate in this centre."[16]

The subject site was not within either of the locations referred to in those paragraphs.

[17] Clause 3.11.4 was headed "Statements of Desired Precinct Character". It contained description of the desired character for each of the Precincts within Planning Area 11. For the relevant Precinct it provided as follows:

> "Council considers that a Local Area Master Plan, overall master plan or other Development Plan for this precinct is required if the precinct were to be redeveloped.
>
> Showrooms would be an appropriate use for this precinct, provided the following criteria were met to Council's satisfaction:
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> - buildings set within well landscaped grounds;
> - carparking located behind the buildings and not visible from the Sunshine Motorway and the Coolum-Yandina Road which forms the main entrance into the township;
> - a range of goods and services which does not compete with the range of goods and services available in the Village Centre Precinct. Items for sale in this precinct should be restricted to larger scale items such as bulky goods.
>
> …
>
> In this precinct, Council would also support the establishment of a "Government facility" node housing ambulance, police, fire and other necessary functions serving Coolum Beach and beyond.
>
> *Preferred and Acceptable Uses*
>
> Preferred uses within this precinct are those referred to in the Table of Development Assessment (refer Vol 1) for the Master Planned Community precinct class.
>
> The following uses may be considered consistent with the intent and desired character of this precinct, and suitable for inclusion in detailed master planning, where appropriately located, sited and designed:
>
> - showrooms
> - indoor recreation, where an indoor sports centre
> - outdoor recreation
> - government facilities."

[18] In the Planning and Environment Court, and again in this Court, Bunnings argued that either of its proposed developments would be a "showroom", and therefore

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16 Primary Judgment [21].

within the "preferred and acceptable uses" which were specified for this Precinct. The term "showroom" was defined as follows:[17]

> ""Showroom" means the use of premises for the display and/or retail sale of goods (not including food items) primarily of a bulky nature, including agricultural equipment, boats, hardware, electrical goods, bulk stationery supplies, computer goods, caravans, furniture, floor coverings, building supplies, motor vehicles, motor accessories, sporting equipment or the like, wholly or mainly indoors, having a gross floor area of 450m^2 or more. The term includes any area used for the selling of spare parts and the carrying out of repairs, servicing and detailing where such use is incidental to and necessarily associated with the Showroom. The term does not include Shops or Sales and hire yards as separately defined;"

[19] The term "Shop" was defined as follows:[18]

> ""Shop" means the use of premises for the display and retail sale of goods to members of the public, including, hairdressing salons, barber's shops, video libraries, public art galleries and:
>
> (a) premises having a gross floor area of less than 450m^2 that would otherwise be defined as a "Showroom"; or
>
> (b) premises having a Gross floor area of less than 100m^2 that would otherwise be defined as Light industry;
>
> and includes a general store".

The uses of "Showroom" and "Shop" were mutually exclusive. The evident intent of the Planning Scheme was that a Showroom, but not a Shop, would be an acceptable use within this Precinct.

[20] It was therefore necessary for the primary judge to determine a factual question whether a Bunnings Warehouse, under either of these proposals, would be a showroom, in that it would involve the display and retail sale of goods which were "primarily of a bulky nature". His Honour had extensive evidence on the subject, and concluded that he was not satisfied that the goods proposed to be sold at a Bunnings Warehouse on the site would "primarily be of a bulky nature". Consequently, he found that the proposed use was not appropriately defined as a showroom and that therefore it was not a preferred and acceptable use for the site.[19]

[21] Further, his Honour found that if this development was a showroom, it would not satisfy another of the criteria, in that it would offer for sale "a range of goods and services" which would "compete with the range of goods and services available in the Village Centre Precinct." This was because, his Honour found, Bunnings would offer a range of goods and services which would compete with the range of goods and services available in a Mitre 10 hardware store in that Precinct. Indeed his Honour accepted evidence that the development would cause the closure of that hardware store.[20]

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17 Within Planning Scheme volume 1 cl 3.3.
18 Ibid.
19 Primary Judgment [44].
20 Primary Judgment [45].

The reasons of the Primary Judge

[22] His Honour defined the issues as follows:[21]

> "1. The appropriateness of the proposed developments and whether they conflict with the … Planning Scheme in terms of their:
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> (a) proposed scale, intensity and function;
>
> (b) inconsistency with the intended retail hierarchy;
>
> (c) likely impact on existing centres and traders;
>
> (d) impacts on visual amenity and character;
>
> (e) appropriateness as an "entry statement" to Coolum;
>
> (f) absence of master planning for the site.
>
> 2. Whether the proposed developments will result in unacceptable traffic impacts.
>
> 3. The nature and extent of any conflicts with the … Planning Scheme and whether there are sufficient grounds to justify the proposed developments despite the conflicts."

[23] Ultimately, his Honour found that the proposed developments conflicted with the Planning Scheme in the respects referred to in (a), (b), (c) and (f) of that statement of issues. And as already noted, he was unpersuaded that there were sufficient grounds to justify the proposed developments despite those conflicts with the Planning Scheme.

[24] The primary judge discussed the previous cases involving this site. The first of them was a judgment of the Planning and Environment Court in 2003,[22] in which a submitter's appeal was dismissed, in respect of a development proposal which included a supermarket. In that case, Wilson SC DCJ (as he then was) said that such a development on this site, Precinct 7, would attract "not only residents of the nearby community but also passersby on the motorway",[23] and made these observations about the provisions for Precinct 7:[24]

> "Otherwise, Precinct 7 does not on its face fit comfortably within the hierarchy envisaged in the retail and commercial strategy. It is specifically promoted for commercial, non-residential activity. At the same time it is a planned precinct of some seven hectares, in an area in which showroom development is encouraged. On any view it is inevitable that showrooms beside a motorway, and with direct access from it will attract customers beyond the immediate local area. Hence if Precinct 7 was developed as it is described in Vol. 3 it would always have a trade area beyond that of a local centre. In context that cannot be described as an unacceptable result but, rather, as an inevitable consequence of the planning decision to promote showrooms on the site."

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21 Primary Judgment [7].

22 *Koerner & Ors v Maroochy Shire Council & J T Barnes & L J Barnes* [2004] QPELR 211; [2003] QPEC 54 ("*Koerner*").

23 Ibid at [30].

24 Ibid at [31]. Footnotes omitted.

Everson DCJ noted that it was relevant in that case that there was a demonstrated need for the supermarket, and that the proposal involved something which "might be considered a master planned development".[25]

[25] The other cases were those to which I have referred already, namely the *Coolum Properties* litigation. Everson DCJ noted that Dodds DCJ had found that a Bunnings Warehouse was not a showroom as defined, because it did not involve the display and/or retail sale of goods primarily of a bulky nature.[26] Everson DCJ expressly adopted these passages from the judgment of Dodds DCJ:[27]

> "[37] When the intent and the statement of preferred and acceptable uses for Precinct 7 is addressed though, it appears that application of the statements I have referred to which may apply across the whole of Planning Area 11, is deprived of its apparent rigour. Showrooms, even indoor and outdoor recreation will by their nature draw from a greater area than Coolum Beach particularly when located beside the Sunshine Motorway and Yandina-Coolum Road. So many a government facility. It is expressly indicated that a police, fire and other necessary functions "may serve Coolum Beach and beyond". That is not to say that the statements are to be ignored. The statements must be read alongside the statements of intent and preferred and acceptable uses. Read together, the provisions of the scheme regarding development in Precinct 7 may be put into context.
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> …
>
> [41] When the provisions for the planning area are read together with the indicated intent and preferred and acceptable uses in Precinct 7 uses of the scale here designed to reach out as widely as disclosed by the evidence are not supported by the planning scheme. The precinct 7 provisions are not a carte blanche to develop the land with showrooms or any other use indicated (or a shop). The precinct is what it is described as in Planning Area 11, a master planned community in prospect in the planning area where certain nominated commercial or administrative uses and node housing subject to certain conditions may be appropriate. Showrooms are one of those uses. One of the conditions is that items for sale "should be restricted to larger scale items such as bulky goods". All uses are required to be appropriately located, sited and designed. A local area structure plan, overall master plan or other development plan is indicated. This implies a need to consider the overall mix or type of uses across the whole site, consideration informed by the key roles, vision and key character elements of the planning area. These have a role to play in understanding the Planning Scheme as it applies to this proposal. So do the provisions of the Strategic Plan.

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25 Primary Judgment [26]-[27].
26 Primary Judgment [28], citing [2007] QPELR 400 at 402 [24]; [2007] QPEC 13 at [24].
27 Primary Judgment [29].

> [42] It is not a correct approach to MP2000 to focus on precinct 7, as a stand alone precinct where according to the planning scheme, showrooms would, amongst other things be an acceptable use and conclude that any extent of showroom development is supportable. A wider consideration of the Planning Scheme is required. An evident intention in the planning scheme for showrooms on the land does not override other provision of the Scheme and imply any level of showroom development."
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> …
>
> [56] When the provisions of the scheme, the vision and the key character elements of Planning Area 11, the intent and preferred uses of Precinct 7, the provisions of the Strategic Plan about land with an urban designation, the provisions in Volume 1 about land use, planning area and precincts, and how they work together, are read broadly and in a way which will best achieve the apparent purposes and objectives of the scheme, then there is no direct inconsistency between the general provisions of the strategic plan and provisions for Planning Area 11 and Precinct 7. The major impediment to the proposal the subject of the appeal is conflict with the planning scheme. The conflict lies in the type and intensity of the proposed development in addition to that already approved particularly with the proposed "Bunnings use"."

[26] In this Court in *Coolum Properties*, Holmes JA approved of that reasoning as follows:[28]

> "[16] His Honour's approach to the construction of the provisions relating to Precinct 7 was entirely unexceptionable. He did not treat the general provisions of the planning scheme as prevailing over the specific provisions; rather he treated the planning scheme provisions as a whole as illuminating the content of the Precinct 7 provisions. There was no direct conflict or inconsistency between the two; that being the case, cl 2.3(6) of Volume 1 required him to approach his task on the basis that conflict with the Planning Scheme was to be avoided by ensuring that "all elements of the policy or intent" in the Strategic Plan (Volume 2) and the statements of intent and desired character and intent for Planning Areas and Precincts (Volume 3) were met.
>
> [17] The relevant references in the Strategic Plan have already been set out; they include, in cl 3.5.6, the indication that approval is likely only for retail and commercial uses offering a service only to local communities and the identification of scale as relevant in the preservation of the community focus and identity. In similar vein, the Planning Area Vision Statement expresses its intent that commercial activities will be limited to serving the immediate catchment area of Coolum. The Precinct

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28 [2007] QCA 351.

> 7 provisions could not be read in isolation from those prescriptions.
>
> [18] His Honour had regard to the policy and intent underlying those provisions, as cl 2.3(6) of Volume 1 required, and properly reached the conclusion that the type and intensity of the proposed development conflicted with the planning scheme provisions."

[27] In the present matter, Everson DCJ said that by designating the site as "urban" in s 3.4.1 of the Strategic Plan, the Planning Scheme showed an intention that retail activities should serve the day-to-day needs of local communities and at a scale appropriate to those needs.[29] Referring to the place of Coolum in the so-called Retail and Commercial Centres Hierarchy,[30] he found that "a Bunnings facility was a stand alone outlet" which was "not an outcome contemplated by the Strategic Plan."[31] He said that "[g]iven the size of the trade area for the proposed developments, they are in fundamental conflict with the intended retail hierarchy set out in the Strategic Plan."[32]

[28] His Honour added that this conflict with the Planning Scheme was "even more stark" when the provisions of volume 3 were considered.[33] In his view, those provisions reinforced "the intention that Coolum remain a small scale centre", as could be seen in a number of places in the provisions concerning Planning Area 11.[34]

[29] As to the provisions for Precinct 7, as I have noted already, he found that a Bunnings Warehouse would not be a showroom and that there would be competition with the range of goods and services available in the Village Centre Precinct.

[30] As to the absence of a Master Plan for the development of the site, his Honour said:[35]

> "[T]here is a big difference between a master planned development of the site and a stand alone enormous retail shed which is contemplated by either of the proposals. The failure to [M]aster [P]lan the site results in an unsatisfactory outcome from a planning perspective as the Superseded Planning Scheme does not contemplate a stand alone retail shed, even if it is largely buffered by vegetation, in this prominent location. This also represents a significant conflict with the Superseded Planning Scheme."

[31] Everson DCJ expressed these conclusions as to the conflicts with the Planning Scheme:[36]

> "To the extent that the conflicts identified above relate to provisions discussed by Dodds DCJ in *Coolum Properties* and subsequently by

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29 Primary Judgment [42].
30 Ibid.
31 Ibid.
32 Ibid.
33 Primary Judgment [43].
34 Ibid.
35 Primary Judgment [46].
36 Primary Judgment [47].

> the Court of Appeal, I respectfully adopt their reasoning quoted above. The appellant sought to distinguish these decisions on the basis that the Bunnings the subject of those decisions was part of a much larger proposed development. Whilst it is true that the intensity of that proposed development was much greater when allowing for the uses the subject of the 2003 development approval, the reasoning with respect to the use of a Bunnings Warehouse on the site remains regardless. In terms of scale, on the facts before me, either proposed development will result in the same conflicts with the provisions of the Superseded Planning Scheme identified by Dodds DCJ and confirmed by the Court of Appeal. The type, scale and intensity of what is proposed in either Scheme B or Scheme C is in conflict with the Superseded Planning Scheme for the reasons explained by Holmes JA, which in the circumstances, are binding on me. I have in any event, reached the same view on my own reasoning, which is set out above."

[32] The final part of the Primary Judgment, which was expressed under the heading "Grounds", discussed the arguments for Bunnings in support of the approval of either development, notwithstanding any conflict with the Planning Scheme, under s 326(1)(b) of the SPA. Section 326 relevantly provided as follows:

> "**Other decision rules**
>
> (1) The assessment manager's decision must not conflict with a relevant instrument unless—
>
> …
>
> (b) there are sufficient grounds to justify the decision, despite the conflict; …"

The term "grounds" was defined for s 326(1)(b) to mean "matters of public interest".[37]

[33] Everson DCJ referred to the decisions of this Court in *Lockyer Valley Regional Council v Westlink Pty Ltd*[38] and, more recently, *Bell v Brisbane City Council & Ors*,[39] quoting from paragraphs [66], [68] and [70] of that judgment.

[34] His Honour identified five grounds which were advanced by Bunnings as sufficient to justify the decision for which it contended. The first of them was that the proposed development was of a type which was identified as appropriate in Precinct 7, or was materially similar to that type of development. His Honour rejected that argument, for the reasons that the scale of the proposed developments fundamentally conflicted with the retail hierarchy set out in the Planning Scheme, and that there was no master planning for the site.

[35] The second ground was that the relevant provisions of the Planning Scheme had been overtaken by subsequent events. Everson DCJ observed that "[s]uch an argument is unattractive at first blush when a developer elects to proceed via a development application (superseded planning scheme)".[40] In support of the argument, Bunnings referred to certain approvals which had been granted for two

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37 SPA schedule 3.
38 [2013] 2 Qd R 302; [2012] QCA 370.
39 (2018) 230 LGERA 374; [2018] QCA 84.
40 Primary Judgment [53].

supermarkets and a liquor outlet in the Planning Area, during the life of the Planning Scheme. His Honour concluded that "[t]hese isolated developments are readily explicable as examples of the exercise of sound planning discretion", and were not examples of the Planning Scheme being overtaken by events.[41]

[36] The third ground advanced by Bunnings was that there was a need for the proposed development. Earlier in the judgment, under the heading "Planning need", Everson DCJ discussed this question, but without reference to s 326. His Honour referred to *Bell v Brisbane City Council & Ors*, where I observed that a question of whether there was a need for that development was different from a question of whether the development would satisfy "community and economic needs".[42] I was there discussing an issue of need as it arose under the terms of a particular provision of the planning scheme for the Brisbane City Council.

[37] His Honour accepted that there was a likely *demand* for the proposed development, but added that "[i]n determining whether there is a need for a Bunnings Warehouse on this site, the question must be also asked whether there is a latent unsatisfied demand for one which is not being currently met by other Bunnings Warehouses."[43] He said that there were already Bunnings Warehouses at Noosaville and Maroochydore, each accessible by car within 15 to 20 minutes, a journey which was "not unreasonable for … this type of retail facility".[44] His Honour concluded that there was "not a strong level of planning need for a new Bunnings Warehouse on the site that is not being adequately met by the existing outlets at Noosaville and Maroochydore."[45] Consequently, his Honour rejected this third ground advanced by Bunnings under s 326.[46]

[38] The fourth ground advanced by Bunnings was that the proposed developments would result in "beneficial traffic outcomes" because of the upgrading of surrounding roads. In his Honour's view, any benefits of that kind did not justify "the extreme conflicts" with the Planning Scheme which he had identified.[47]

[39] The fifth ground advanced by Bunnings was that "the proposed developments will provide a community benefit without unacceptable impacts." His Honour rejected that submission, saying that there would be unacceptable impacts including by the undermining of the retail hierarchy under the Planning Scheme, and more specifically by causing the failure of the appropriately located Mitre 10 Store in the Coolum Village Precinct.[48]

The arguments by Bunnings in this Court

[40] By s 63 of the *Planning and Environment Court Act* 2016 (Qld), a party to a proceeding in the Planning and Environment Court may appeal to this Court, but only on a ground of error or mistake in law or jurisdictional error, and only with the leave of this Court. As is customary in these matters, this Court has received full argument from the parties about the merits of the proposed appeals.

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41 Primary Judgment [54].
42 (2018) 230 LGERA 374 at 386 [43]; [2018] QCA 84 at [43].
43 Primary Judgment [35].
44 Ibid.
45 Primary Judgment [37].
46 Primary Judgment [55].
47 Primary Judgment [56].
48 Primary Judgment [57].

[41] For Bunnings, it is argued that there were errors of law which fall into three categories. Firstly, it is said that the primary judge erred, in a number of respects, in misconstruing the Planning Scheme. Secondly, it is said that he erred in law, by misstating some matters of principle. Thirdly, it is said that there was an error in law by a failure to give adequate reasons for judgment. As part of that argument, it is said that the primary judge failed to deal with arguments which had been presented for his determination. It is argued that the combination of these errors resulted in the judge making erroneous findings as to the extent of any conflict with the Planning Scheme, and as to the insufficiency of grounds to approve either application, despite such a conflict.

Errors in the interpretation of the Planning Scheme

[42] The first of these errors is said to have been a treatment of the subject land as being part of "Coolum Beach" or part of the "Coolum Beach township", and to read provisions of the Planning Scheme which were intended to apply to the Coolum Beach Village Centre as if they were applicable to the subject land. In essence, it is said that his Honour failed to distinguish "Coolum Beach" from other parts of "Coolum", more specifically the Coolum West Gateway Precinct".[49] In the course of oral argument,[50] counsel for Bunnings identified the provisions of the Planning Scheme which were wrongly applied to the subject site as being those to which I have referred above at [10], [11], [12], [15], and [16].[51] The argument thereby complains about his Honour's application of provisions of the Strategic Plan, as well as certain provisions within volume 3 of the Planning Scheme.

[43] Clause 2.2 of volume 1 of the Planning Scheme, which I have set out above at [9], provided that the detailed provisions in volume 3 were intended to be based upon, and reflective of, the general principles in the Strategic Plan. It provided that the provisions in volume 3 were to constitute the primary basis for assessment of a development, but that all elements of policy or intent, in both volumes 2 and 3, were "expected to be satisfied in order that development does not conflict with the Planning Scheme". It was only in the event of an inconsistency between the two that statements in volume 3 were to prevail over those in volume 2. The relevance of the provisions of volume 2, in the application of the provisions of volume 3, was understood by the primary judge consistently with the views at first instance and in this Court in the *Coolum Properties* case. In particular, I agree with the reasoning of Dodds DCJ in the passages which I have set out above. Importantly, the hierarchy of retail and commercial centres, according to the Strategic Plan, described "Coolum", and not "Coolum Beach", as a "Tourist Centre".

[44] The argument criticises the judge's interpretation of the vision statement in cl 3.11.2 and the key character elements of cl 3.11.3 for Planning Area 11, which I have set out above at [15] and [16]. The effect of the argument is that these provisions were irrelevant to the subject site, which was not within "the Coolum Beach township", the "casual, seaside village" or the areas specified by those provisions for commercial and business activities. However, his Honour did not misunderstand where the subject site was in relation to other parts of the Planning Area, nor did he

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49 Applicant's amended outline of argument, paras 17-18.

50 Transcript 1-14.

51 The same complaint was made about his Honour's reference to the "Visual Amenity Strategy" in s 7.2 of the Strategic Plan, which I have not set out because it appears not to have affected his Honour's reasoning.

wrongly attribute a significance to those provisions. Where it was said that "Coolum Beach will remain a casual, seaside village serving local retail, business, dining and entertainment needs only",[52] this was an apparent reference to the whole of Planning Area 11 of that name.

[45] His Honour's reference to the provision that dealt, more specifically, with the intentions for "the Coolum Beach township" was less relevant, but nevertheless that provision was consistent with the stated intention for "Coolum Beach" in cl 3.11.2(2). His Honour's reference to the locations for and scale of commercial and business activities (cl 3.11.3(1)) was relevant because it was a further description of the intended character of the Planning Area as a whole. It is true, as Dodds DCJ observed in *Coolum Properties*, that the statement of preferred and acceptable uses for Precinct 7 deprived some of these statements of their "apparent rigour".[53] But as he said, they provided a context into which a proposed development for Precinct 7 might be put.

[46] The argument for Bunnings challenges, as it must, the primary judge's statement that the proposed developments were "in fundamental conflict with the intended retail hierarchy set out in the Strategic Plan",[54] and that the conflict was "even more stark" when the Planning Area provisions in volume 3 were considered.[55] What I have said already is sufficient to reject that submission, even before the provisions dealing with Precinct 7 are considered. And further, an evident intention from the provisions for Precinct 7 is that shops, as distinct from showrooms, would not be an appropriate use, and that a showroom in this Precinct should not compete with the carefully controlled commercial and retail uses in other precincts of the Planning Area.

[47] The arguments for Bunnings include a specific challenge to his Honour's finding that the proposed developments were not a "showroom". Clearly this involved a finding, or findings, of fact. But it is submitted that his Honour erred in law by failing to deal with the arguments which, by seven pages of written submissions, Bunnings had addressed to him on that question.

[48] It is argued that within the definition of "showroom", the meanings of the word "bulky" and the expression "goods … primarily of a bulky nature" take their meaning from the collection of retailing examples given in the same definition, which I have set out above at [18]. A related submission is that the meaning of "shop" as defined is similarly affected by the examples of retailing contained within that definition. It may be accepted that, in each definition, those examples are relevant. But his Honour did not say otherwise, and there is nothing within the Primary Judgment which reveals a legal error in his interpretation of these provisions. It is said that this was the result of inadequate reasons being given by his Honour. However his Honour did refer to his consideration of the evidence of the floor plan of the Bunnings Warehouse at Noosaville and the photographs of each of the aisles at that place. His Honour did reveal his reasoning, which was that, upon this evidence, he was not persuaded that the things which would be sold from this site would be "primarily of a bulky nature." The present question is not whether that factual determination was correct, it is whether it was wrong in law. It

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52 Planning Scheme volume 3 clause 3.11.2(2)(a).
53 [2007] QPELR 400 at 407 [37]; [2007] QPEC 13 at [37].
54 Primary Judgment [42].
55 Primary Judgment [43].

is not submitted that this was a case where there was no evidence by which the impugned finding of fact, namely that the goods to be sold would not be primarily of a bulky nature, could have been made by the judge.[56]

[49] The argument for Bunnings challenges the judge's rejection of an alternative argument, that a Bunnings Warehouse was sufficiently similar to a showroom as to make any difference immaterial. That was an argument for the development to be approved under s 326 of the SPA. As I have said, that argument was rejected by his Honour because the development fundamentally conflicted with the retail hierarchy set out in the Planning Scheme and because the development was not part of a Master Plan for the Precinct.[57] There was no legal error in that reasoning, once it is accepted, as it must be, that the retail hierarchy was relevant.

[50] It is argued that the primary judge took too narrow a view of the criterion in cl 3.11.4(7), when he held that the development would provide competition for a range of goods and services available at the Mitre 10 store in the Village Centre Precinct. The submission is put in these terms:[58]

> "[T]he criterion is concerned with the full range in the whole of the Village Centre Precinct; in keeping with authority, the criterion should not be taken as an absolute, but subject to a qualifying adverb such as "unacceptably"; the criterion specifically contemplates the sale of bulky goods (which the Applicant plainly sells); the primary judge did not address the Applicant's detailed submissions that, on all the evidence, the impact on the Village Centre was extremely low."

One proposition within that submission is that the extent of competition with retailers in the Village Centre Precinct as a group, rather than an individual retailer within that group, was the relevant consideration. Therefore, it is said, a competition with the Mitre 10 hardware store was insufficient to put Bunnings on the wrong side of this criterion. Another proposition is that it is only an unacceptable level of competition which would do so. I would not accept the first proposition: the range of goods and services offered by the proposed development might compete with the range of goods and services "available" in the Village Centre, although not offering everything which was offered in the Village Centre. As to the second proposition, whether the extent of the competition was "unacceptable" was a question of degree, which the primary judge did answer. His Honour did not say that *any* competition would have put the proposals in conflict with the Scheme.

[51] It is submitted that there was inconsistent reasoning by the judge, on this question of competition with the Mitre 10 store, when his Honour said that:[59]

> "Although the loss of the Mitre 10 will be made good by a Bunnings Warehouse on the site applying the principles in *Kentucky Fried Chicken Pty Ltd v Gantidis* [(1979) 140 CLR 675 at 687], the significant conflict with the outcomes envisaged in the intent for Precinct 7 remains."

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56 cf. *Hope v Bathurst City Council* (1980) 144 CLR 1 at 8 per Mason J; [1980] HCA 16.
57 Primary Judgment [52].
58 Applicant's amended outline of argument, para 31. Footnotes omitted.
59 Primary Judgment [45].

The passage in that judgment of the High Court, to which the primary judge was referring, was as follows in the judgment of Stephen J:

> "The learned primary judge described one submission urged before the Tribunal, namely that the establishment of the appellant's proposed fried chicken shop would "adversely affect existing food shopping facilities" in the neighbourhood as being just such a consideration as I had earlier held, in *Spurling v. Development Underwriting (Vic.) Pty. Ltd*. [[1973] V.R., at pp. 12-13], to be a proper planning consideration. I would with respect, agree with his Honour; the significant word, quite vital to the nature of the submission to which his Honour referred, is "facilities". If the shopping facilities presently enjoyed by a community or planned for it in the future are put in jeopardy by some proposed development, whether that jeopardy be due to physical or financial causes, and if the resultant community detriment will not be made good by the proposed development itself, that appears to me to be a consideration proper to be taken into account as a matter of town planning. It does not cease to be so because the profitability of individual existing businesses are at one and the same time also threatened by the new competition afforded by that new development. However the mere threat of competition to existing businesses, if not accompanied by a prospect of a resultant overall adverse effect upon the extent and adequacy of facilities available to the local community if the development be proceeded with, will not be a relevant town planning consideration."

[52] The primary judge's reference to that passage is understandable, in that his Honour was making it clear that he was not saying, that as "a matter of town planning" in the general sense, the effect on the Mitre 10 store was relevant. His Honour was making the point that the inconsistency with the stated intent for Precinct 7 was a different issue, which was unaffected by what was said in that passage. There was no inconsistent reasoning as the argument suggests.

[53] It is submitted that the primary judge was wrong to hold that there was a significant conflict with the Planning Scheme because of the absence of a Master Plan. The argument refers to provisions of the Planning Scheme which contemplate that the Council will request a development proponent to carry out master planning for a locality, and points out that no such request had been made in the present case. More generally, it is said that it was impossible to incorporate a Master Plan into an instrument that no longer existed, namely the Planning Scheme (which had become a superseded scheme). That argument cannot be accepted. The provisions for this Precinct consistently required a Master Plan if this Precinct was to be redeveloped under this scheme. In particular, there was the unambiguous statement that:

> "Council considers that a Local Area Master Plan, overall master plan or other Development Plan for this precinct is required if the precinct were to be redeveloped."[60]

If that had become impossible, because the Planning Scheme had been replaced by another scheme, it did not follow that these provisions were to be ignored. Rather,

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60 Planning Scheme volume 3 cl 3.11.4(7).

the opportunity to redevelop land within this Precinct, consistently with this Planning Scheme, had been lost unless a case could be made for departing from the scheme under s 326. There was no error in his Honour's finding that the development was in conflict with the Planning Scheme in this respect.

Errors in the consideration of matters of principle

[54] Next, it is submitted that the primary judge placed undue reliance upon the judgment of this Court in *Coolum Properties*. That judgment resulted in a refusal of leave to appeal, so that, it is submitted, it did not bind his Honour. That may be accepted, but the judgment was of persuasive authority and the primary judge could hardly have disregarded it. As it happens, in his own words, he reasoned in the same way as this Court had endorsed.

[55] As I have said, it is submitted that the development in question in *Coolum Properties* was significantly larger than in the present case, and that the primary judge incorrectly thought otherwise. His Honour considered that the subject application in that case involved a development with a total floor area of 8,315 square metres. It is said that the correct figure was 17,515 square metres. It is true that the application for a material change of use in *Coolum Properties* was to add four showrooms, with a total area of 8,315 square metres, to a development which had been already approved (and which was the subject of the *Koerner* appeal), which would have meant a development overall of that scale. But his Honour did not misunderstand the position.[61] The interpretation by Dodds DCJ of the same provisions of the Planning Scheme was what mattered, and that interpretation was just as relevant if the overall scale of the proposed development was less than the total development which would have resulted from an approval in *Coolum Properties*.

[56] Another suggested "error in principle" is in his Honour's rejection of the argument that the Planning Scheme had been overtaken by events, more specifically the approval of certain other projects. It is submitted that "[e]ach of these events stood in stark contrast to the restrictions intended by [the Planning Scheme]".[62] The effect of this argument is that the primary judge ought to have been persuaded that the character of Planning Area 11 had significantly changed from that which his Honour identified as intended by the Planning Scheme, as a consequence of the development of several sites for larger retail uses than those contemplated by the scheme. This was a factual question for his Honour, and, again, the case for Bunnings must identify an error of law, which it has not done. It is argued that his Honour's determination of this factual question is inconsistent with what he decided in a case involving this Planning Scheme but concerning a development at Buderim, in 2017.[63] To say that the facts and circumstances of the two cases were indistinguishable is not to say, in the present case, that the determination of this question was incorrect, let alone that it involved an error of law.

[57] The argument cites a statement by White J (as she then was) in *Grosser & Anor v Council of the City of the Gold Coast*[64] that "[i]t is well recognised that a town planning appeal court may depart from the planning intent of the local government if the

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61 Primary Judgment [28].
62 Applicant's amended outline of argument, paras 36-37.
63 *Harvest Investment Co (No 2) Pty Ltd v Sunshine Coast Regional Council* [2017] QPEC 61.
64 (2001) 117 LGERA 153 at 165 [44]; [2001] QCA 423 at [44].

local government has itself departed from that intent or the subject land has been given a designation that was and remained invalid". To say that a planning appeal court may depart from the planning intent is not to say that this *should* happen if the local government has done so. In any case, it is the language of s 326 which must be applied here.

[58] It is argued for Bunnings that it was wrong in principle for the primary judge to place no weight upon the 2003 approval which was the subject of the *Koerner* case. His Honour said that this approval[65] "cannot be considered [as evidence that the Planning Scheme had been overtaken by events] as it had lapsed well prior to the … Planning Scheme ceasing to have effect."[66] There was no error in that observation. His Honour's point was that the development had not occurred, so that there had been no effect on the character of the Coolum Beach Planning Area which departed from the Planning Scheme. It is then said, apparently in the alternative, that the 2003 approval "demonstrated that the development approved was consistent with what was intended by [the Planning Scheme] for the subject land".[67] Undoubtedly that was the assessment of the Council and of the Planning and Environment Court. But that provided no basis for a conclusion that either of the present proposals was consistent with the Planning Scheme.

[59] A further suggested error in principle is in the primary judge's view that the 2003 approval "might be considered a Master Planned Development".[68] His Honour may or may not have been correct in that respect, but the comment was not significant to his reasoning and for his conclusion.

[60] It is said that there was an error in principle by his Honour regarding a stand-alone Bunnings Warehouse in the Precinct as "not an outcome contemplated by the Strategic Plan", without acknowledging that the Strategic Plan, by cl 3.5.6 within volume 1, contemplated approval of retail use in an urban area on a "site specifically identified".[69] This provision, relevantly, was in these terms:

> "Approval is only likely to be granted to development of retail, commercial and service uses which are to be located on a specific site (in a Centre Precinct or site specifically identified) and which offer a service only to local communities (other than in the Maroochydore Principal Activity Centre) and are consistent with the intent for, and desired character of the Planning Area and Precinct in which it is to be situated."

It can be seen that this emphasised the importance of all of the provisions in *the* relevant Planning Area and Precinct. It is argued that Precinct 7 was specifically identified "for a (potentially) freestanding retail use (showrooms)".[70] That is correct, but, as should appear from this judgment, that particular statement for Precinct 7 was not to be taken in isolation from what was otherwise expressed for Precinct 7 and for Planning Area 11.

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65 Incorrectly described in the Primary Judgment at [54] as "the 1993 development approval".
66 Primary Judgment [54].
67 Applicant's amended outline of argument, para 40.
68 Applicant's amended outline of argument, para 41(a).
69 Applicant's amended outline of argument, para 41(b).
70 Ibid.

[61] It is argued that there was an error in principle by his Honour regarding the "centres strategy" in the Planning Scheme as "designed to mirror that in the SEQRP", which his Honour had earlier identified as the South-East Queensland Regional Plan in force when the Planning Scheme ceased to have effect in May 2014.[71] The point is that this was incorrect, because the SEQRP which was then in force was made in 2009 and therefore post-dated the Planning Scheme by about a decade. However if that observation was incorrect, it was inconsequential because it appears not to have mattered to the essential reasoning and conclusion of the primary judge.

[62] The last of these suggested errors in principle is from his Honour's references to this Court's decision in *Bell v Brisbane City Council & Ors*.[72] The submission for Bunnings correctly points out that what was said in *Bell* related to the proper interpretation of a certain provision of Brisbane City Plan 2014, rather than to some general issue of "need". However it is far from clear that what was said in *Bell* has no relevance to the question of whether sufficient grounds has been shown under s 326.

Error by failing to give adequate reasons for judgment

[63] It is argued that the primary judge failed to give adequate reasons for judgment. This argument focusses upon what is described as the issue of "need". It is said that the submissions for Bunnings to the primary judge on that question were extensive, but the treatment by his Honour of the issue was superficial. The submissions to his Honour in that respect involved contentions that:

(a) the Coolum Village Centre and the Coolum West Local Centre had already reached a scale much larger than intended by the Planning Scheme;

(b) the principal impact of the proposed developments would fall on the existing Bunnings stores at Maroochydore and Noosaville;

(c) the impact on the Coolum Beach Village Centre was insignificant;

(d) the trade area had experienced significant population growth, and, at least on one analysis, the future increase in demand was roughly equivalent to the gross floor area proposed in the development;

(e) access to the existing Bunnings facilities involved considerable travel distances and inconvenience.

[64] The contentions in (a), (b) and (c) do not appear to have been material to the question of whether there was such a need for a Bunnings Warehouse at this site that it should be approved under s 326. The contention in (d) appears to have been that there would be a future increase in demand, resulting in a future need for the development; but his Honour was considering whether there was an existing need which required a departure from the Planning Scheme. As to the contention in (e), his Honour found that each of the Bunnings Warehouses at Noosaville and Maroochydore could be readily accessed by road in 15 to 20 minutes, which he assessed was not unreasonable for this type facility.[73] His Honour referred to evidence in support of that finding. It cannot be said that he did not explain his reasons for rejecting that contention.

Conclusion and Orders

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71 Primary Judgment [11].
72 (2018) 230 LGERA 374; [2018] QCA 84.
73 Primary Judgment [35].

[65] In my conclusion, no error of law, which mattered for the outcome of this case, is demonstrated. I would order that in each of these proceedings, the application for leave to appeal be refused with costs.

[66] **BODDICE J:** I agree with McMurdo JA.