PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION:	*Highgate Partners Qld Pty Ltd v Sunshine Coast Regional Council* [2020] QPEC 19
PARTIES:	**HIGHGATE PARTNERS QLD PTY LTD (ACN 618 183 761)** (Applicant) v **SUNSHINE COAST REGIONAL COUNCIL** (Respondent)
FILE NO/S:	D28/20
DIVISION:	Planning and Environment
PROCEEDING:	Originating Application
ORIGINATING COURT:	Planning and Environment Court, Brisbane
DELIVERED ON:	31 March 2020 (*ex tempore*)
DELIVERED AT:	Brisbane
HEARING DATE:	31 March 2020
JUDGE:	Kefford DCJ
ORDER:	**The application is dismissed.**
CATCHWORDS:	PLANNING AND ENVIRONMENT – APPLICATION FOR A MINOR CHANGE TO A DEVELOPMENT APPROVAL – where the applicant sought to change an existing development approval to change lot sizes and create further sub-staging – whether the change is a minor change – – whether changes would result in substantially different development – whether the changes were acceptable
LEGISLATION:	*Planning Act 2016* (Qld), s 69, s 78, s 79, s 81, s 81A
CASES:	*Emaaas Pty Ltd v Brisbane City Council* [2014] QPEC 31; [2014] QPELR 579, approved *Heritage Properties Pty Ltd & Anor v Redland City Council & Ors* [2010] QPEC 19; [2010] QPELR 510, approved *Thomco (No. 2087) Pty Ltd v Noosa Shire Council* [2020] QPEC 8, approved
SOLICITORS:	p&e Law for the Applicant Sunshine Coast Regional Council Legal Services for the Respondent

Introduction

[1] The applicant, Highgate Partners Qld Pty Ltd, has a development permit for reconfiguration of a lot (major urban subdivision – 73 lots plus drainage/road reserves) ("*the existing approval*"). It applies to land at 191B and 213 Nambour Mapleton Road, Burnside and 68 Henebery Road, Burnside that is more particularly described as Lot 3 RP 229635 and Lot 1 RP 173438 and Lot 401 CG 5012 ("*the subject land*"). The applicant wants to change its existing approval. It has applied to this Court to make the change. Sunshine Coast Regional Council does not oppose the relief sought.

[2] The land to which the existing approval applies has been subdivided in three stages into 53 residential lots and one balance lot. The proposed changes that are the subject of this application pertain only to the balance lot within stage 3B, being Lot 501 on SP297925 ("*Lot 501*").

Is the application within the Court's jurisdiction?

[3] This proceeding was commenced as an Originating Application. The application was purportedly made pursuant to s 78 of the *Planning Act 2016* (Qld).

[4] Under s 78(2) of the *Planning Act 2016*, an application to change an approval must be made to the "*responsible entity*" for the application. By virtue of s 78A(2), the Planning and Environment Court is the responsible entity if:

(a) the change application is for a minor change to a development approval; and

(b) the development approval was given or changed by the Court; and

(c) a properly made submission was made about—

(i) the development application for the development approval; or

(ii) another change application for the development approval.

[5] The applicant has demonstrated that the existing approval was originally given by this Court by its judgment of 17 October 2008 and changed by the Court on 29 April 2011, 24 June 2016 and 13 April 2017. There were properly made submissions made about the original development application for the approval.

[6] In this case, a threshold issue to be determined is whether the application is for a "*minor change*". The application must be dismissed if it is for a change that does not fall within the description of "*minor change*".

[7] Minor change for a development approval is defined in Schedule 2 of the *Planning Act* 2016 as follows:

> "***minor change*** means a change that—
>
> …
>
> (b) for a development approval—
>
> (i) would not result in substantially different development; and

(ii) if a development application for the development, including the change, were made when the change application is made would not cause—

(A) the inclusion of prohibited development in the application; or

(B) referral to a referral agency, other than to the chief executive, if there were no referral agencies for the development application; or

(C) referral to extra referral agencies, other than to the chief executive; or

(D) a referral agency, in assessing the application under section 55(2), to assess the application against, or have regard to, a matter, other than a matter the referral agency must have assessed the application against, or had regard to, when the application was made; or

(E) public notification if public notification was not required for the development application."

[8] The applicant describes the changes it seeks to stage 3B of the existing approval as:

(a) reshuffling lot boundaries within approved stage 3B to facilitate the inclusion of two new lots;

(b) amending the layout plan to include Lot 37 and Lot 38 approved under REC 17/0064 and Lot 3 on SP299289 and Lot 38 on SP299289 approved and created under RAL 17/2053;

(c) minor changes to the lot sizes and boundaries to facilitate the inclusion of the lots described in (a) and (b) above;

(d) further sub-staging of land within approved stage 3B as follows:

Stage 3B: Lots 14-20 and the partial dedication of Reserve Lot 101 including the first road crossing over the waterway and vehicle turn-around in front of Lot 23;

Stage 3C: Lots 21-25 and the dedication of Drainage Reserves (Lot 100 and the remainder of Lot 101) including the associated stormwater infrastructure required for the second waterway crossing;

Stage 3D: Lots 26-35 and Lots 37-38 including the completion of a road crossing over the second waterway and the dedication of Lot 102 as Drainage Reserve; and

(e) consequential changes to the conditions of the existing approval and the list of approved plans, which include amending the reference to the approved number of lots from 73 to 77.

[9] In summary, the proposed changes result in an increase in lot yield and sub-staging. The applicant contends that the increase in lot yield will ensure the efficient use of available land and maintain the financial viability of the project. The additional sub-staging is apparently sought because stage 3B involves significant upfront costs, including the costs associated with the internal road network (which includes

two waterway crossings) and the construction of stormwater management infrastructure and essential services such as water, sewer, telecommunications, and electricity. The applicant says that the sub-staging will aid the practical delivery of infrastructure work and better align with the demand for residential lots in Nambour/Burnside.

[10] I am satisfied that there is no difficulty with respect to subparagraph (ii) of the minor change definition in Schedule 2 of the *Planning Act 2016*. The original development application was impact assessable and required public notification. The affidavit of Mr Bell, the town planner retained by the applicant, satisfies me that the change requested in this case would not cause any of the things referred to in sub-paragraph (ii) of the definition.

[11] The change will therefore be a minor change if the applicant discharges its onus and establishes that the change would not result in substantially different development.

[12] Schedule 1 of the Development Assessment Rules, promulgated by the Minister under s 68 of the *Planning Act 2016*, provides guidance in relation to what may result in substantially different development. It states:

> "**Schedule 1: Substantially different development**
>
> 1. An assessment manager or responsible entity may determine that the change is a minor change[1] to a development application or development approval, where – amongst other criteria – a minor change is a change that would not result in 'substantially different development'.
>
> 2. An assessment manager or responsible entity must determine if the proposed change would result in substantially different development for a change—
>
> (a) made to a proposed development application the subject of a response given under section 57(3) of the Act and a properly made application;
>
> (b) made to a development application in accordance with part 6;
>
> (c) made to a development approval after the appeal period.[2]
>
> 3. **In determining whether the proposed change would result in substantially different development, the assessment manager or referral agency must consider the individual circumstances of the development, in the context of the change proposed.**
>
> 4. A change may be considered to result in a substantially different development if the proposed change:
>
> (a) involves a new use; or
>
> (b) results in the application applying to a new parcel of land; or
>
> (c) dramatically changes the built form in terms of scale, bulk and appearance; or
>
> (d) changes the ability of the proposed development to operate as intended;[3] or

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1 For a definition of minor change, see schedule 2 of the Act.

2 For changing development approvals, see chapter 3, part 5, division 2, subdivision 2 of the Act.

3 For example, reducing the size of a retail complex may reduce the capacity of the complex to service the intended catchment.

(e) removes a component that is integral to the operation of the development; or

(f) significantly impacts on traffic flow and the transport network, such as increasing traffic to the site; or

(g) introduces new impacts or increase the severity of known impacts; or

(h) removes an incentive or offset component that would have balanced a negative impact of the development; or

(i) impacts on infrastructure provisions."

(emphasis added)

[13] There is no stated legislative requirement to consider these matters. They are also not an exhaustive statement of the circumstances that might be relevant to the determination of whether something is substantially different development. Nevertheless, applying a purposive approach to the reading of the planning legislation, I accept that it is appropriate to have regard to them.

[14] Whether the proposed change is a "*minor change*" is a matter of fact and degree. It should be considered broadly and fairly,[4] with guidance found in Schedule 1 of the Development Assessment Rules. Both quantitative and qualitative matters may be of relevance.[5]

[15] Stage 3 is located on steeply sloping land. Proposed lots 16 and 17 have a slope of 25 per cent and are proposed to be 1 500 square metres. The applicant's written submissions say that the proposed lots do not meet what it describes as the minimum lot size of 2 000 square metres for land with slope of 25 per cent that applied under Maroochy Plan 2000 (21 January 2005 version). Maroochy Plan was the planning scheme in force at the time of the original application. The applicant submits that the lot sizes are, however, consistent with the current requirements of the Reconfiguration of a lot code in the Sunshine Coast Planning Scheme 2014. It further submits that the changes will not introduce new geotechnical impacts or increase the severity of known geotechnical impacts. I was not taken to any of the provisions of either planning scheme. In support of its submission, the applicant relies on the opinion of the town planner Mr Bell.

[16] At paragraph 13 of Mr Bell's second affidavit, Mr Bell opines that the reason for requiring a large lot size on steep land is to ensure that there is sufficient area for a suitable building envelope, vehicle access and usable open space and to maintain the safety of people and property from the risk of landslide. Mr Bell also opines that proposed lots 16 and 17 will provide a sufficient area for a building envelope, vehicle access and usable open space despite not meeting the 2 000 square metre minimum lot size requirement under the superseded Maroochy Plan. The applicant acknowledges that a revised geotechnical assessment has not been carried out for the revised layout, but relies on Mr Bell's opinion that compliance with safety objectives can be met having regard to the existing geotechnical reports and the requirements for further detailed assessment to be carried out once the operational works design is complete.

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4 *Heritage Properties Pty Ltd & Anor v Redland City Council & Ors* [2010] QPEC 19; [2010] QPELR 510, 512.

5 *Emaaas Pty Ltd v Brisbane City Council* [2014] QPEC 31; [2014] QPELR 579, 583 [15].

[17] In *Makita (Australia) Pty Ltd v Sprowles*[6], Heydon JA made the following pertinent observations about expert evidence:

> 59 **If Professor Morton's report were to be useful, it was necessary for it to comply with a prime duty of experts in giving opinion evidence: to furnish the trier of fact with criteria enabling evaluation of the validity of the expert's conclusions**. In *Davie v Lord Provost, Magistrates and Councillors of the City of Edinburgh* 1953 SC 34 at 39–40, Lord President Cooper, in a case concerning liability for damage to dwelling houses allegedly caused by blasting operations in the course of constructing a sewer, said:
>
> > "The only difficulty experienced by the Lord Ordinary and developed before us arose from the scientific evidence regarding explosives and their effect. This evidence was given by Mr Teichman, one of the technical staff of the ICI, with whom a fellow employee, Mr Sheddan, was taken as concurring. Mr Sheddan was cross-examined on his qualifications with considerable effect, and the point was taken that Mr Teichman was truly uncorroborated. I do not consider that in the case of expert opinion evidence formal corroboration is required in the same way as it is required for proof of an essential fact, however desirable it may be in some cases to be able to rely upon two or more experts rather than upon one. The value of such evidence depends upon the authority, experience and qualifications of the expert and above all upon the extent to which his evidence carries conviction, and not upon the possibility of producing a second person to echo the sentiments of the first, usually by a formal concurrence. In this instance it would have made no difference to me if Mr Sheddan had not been adduced. The true question is whether the Lord Ordinary was entitled to discard Mr Teichman's testimony and to base his judgment upon the other evidence in the case.
> >
> > Founding upon the fact that no counter evidence on the science of explosives and their effects was adduced for the pursuer, the defenders went so far as to maintain that we were bound to accept the conclusions of Mr Teichman. This view I must firmly reject as contrary to the principles in accordance with which expert opinion evidence is admitted. **Expert witnesses, however skilled or eminent, can give no more than evidence. They cannot usurp the functions of the jury or Judge sitting as a jury, any more than a technical assessor can substitute his advice for the judgment of the Court. Their duty is to furnish the Judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the Judge or jury to form their own independent judgment by the application of these criteria to the facts proved in evidence. The scientific opinion evidence, if intelligible, convincing and tested, becomes a factor (and often an important factor) for consideration along with the whole other evidence in the case, but the decision is for the Judge or jury. In particular the bare *ipse dixit* of a scientist, however eminent, upon the issue in controversy, will normally carry little weight, for it cannot be tested by cross-examination nor independently appraised, and**

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6 [2001] NSWCA 305, (2001) 52 NSWLR 705, 729-30 [59]-[60].

> **the parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert.**"
>
> Lord Carmont expressed "complete agreement" with those views. Lord Russell said (at 42):
>
> > " **The opinion expressed by an expert witness in any branch of technical science depends for its effect on, inter alia , his qualifications, skill and experience in that science. If it appears to be based on a sufficiency of research directed accurately and relevantly to a particular issue and to be so supported as to convince a Court of its fundamental soundness and applicability to the particular issue, a Court is entitled, although not obliged, to accept it, even if unsupported by any corroborative expert opinion**. Secondly the defenders argued that in the absence of any counter evidence of expert opinion in the science professed by Mr Teichman the Court is bound to take his opinion as conclusive, and as decisive of the issue. I am clearly of opinion that that argument must be rejected as being contrary to the principles by which the rules of evidence are regulated, and as constituting an unwarrantable encroachment on the judicial function of the Court. I respectfully agree with your Lordship's observations on that topic."
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> Lord Keith concurred with all the opinions expressed.
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> 60 *Davie's case* is not to be read as reflecting only a principle peculiar to Scottish law. Before it was decided, in *R v Jenkins; Ex parte Morrison* [1949] VLR 277 at 303, Fullagar J said that **an expert witness must "explain the basis of theory or experience" upon which the conclusions stated are supposed to rest**, for, as Sir Owen Dixon said in an extra-judicial address quoted by Fullagar J, "**Courts cannot be expected to act upon opinions the basis of which is unexplained**"."
>
> (emphasis added)

[18] As was noted by Heydon JA at 733 [68], the trier of fact must arrive at an independent assessment of the opinions and their value. This cannot be done unless their basis is explained.

[19] The Council did not oppose the admission of Mr Bell's evidence, nor was his evidence tested. No other expert contradicted Mr Bell's evidence. Nevertheless, I do not accept Mr Bell's evidence about the absence of any geotechnical or safety impacts that are new or of increased severity. Mr Bell does not explain the basis for his opinion about the purpose for requiring large lot size on steep land. In addition, he has no geotechnical engineering qualifications. As such, I am not satisfied that he is qualified to express an opinion about the ability to comply with safety objectives. His evidence in this regard appears to be no more than his non-expert understanding having read reports prepared by appropriately qualified experts at an earlier stage about differently configured lots. When invited to address my concerns, the applicant submitted that his opinions about the absence of new or additional geotechnical impacts was not admissible as expert opinion evidence.

[20] The applicant did not adduce any evidence from an expert with respect to geotechnical engineering.

[21] For the reasons provided above, the applicant has not adduced sufficient evidence to demonstrate that the proposed change does not introduce new geotechnical impacts or increase the severity of known geotechnical impacts. As such, I do not accept its submission to that effect. For those same reasons, the applicant has not discharged its onus of establishing that the proposed change is a minor change.

[22] In addition, I am not persuaded that the proposed change to the staging of the reconfiguration constitutes a minor change. Under the proposed staging arrangements, lots 100, 101 and 102 will only be created and dedicated to the Council in stages 3C and 3D.

[23] In *Thomco (No. 2087) Pty Ltd v Noosa Shire Council*[7] His Honour Judge Rackemann observed:

> "[15] An approval can only result in development if it is acted upon to some extent. The question of whether the applicant has established that the proposed change would not result in substantially different development must therefore be answered on the assumption that the changed approval would be acted upon to some extent and by considering the resulting development.
>
> [16] A comparison between pre and post change development scenarios often involves considering the whole of the development authorised by the existing approval and proposed to be authorised by the changed approval. That is because approvals will often be for a particular form of development to occur as a whole at the one time and will not authorise development of parts of a proposal at different times, in a piecemeal way. Where however, approvals permit development to occur in stages, the comparison becomes more complex, because such approvals may generally be acted upon to carry out:
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> (i) the whole of the development at the one time;
>
> (ii) different parts of the development in different stages at different times, or
>
> (iii) one or some stages of development irrespective of whether the approval is acted upon to develop any subsequent stages.
>
> [17] Unsurprisingly, given the third of those possibilities, approvals which permit development to occur in stages often require important components, works or other matters to be incorporated into, or provided prior to, or in conjunction with, the first stage. That ensures that those things are provided if the approval is acted upon. …"

[24] I respectfully agree with those observations.

[25] In this case, the conditions provide a mechanism to ensure the drainage reserve function proposed to be served by lots 100, 101 and 102 is facilitated even if stages 3C and 3D do not proceed. However, in its written submissions, the applicant notes that those lots also provide favourable environmental outcomes to address concerns expressed by nearby residents by ensuring dedication to the Council of land along the vegetated watercourses. These benefits will not be realised should the holder of the development approval choose not to proceed with proposed stages 3C and 3D.

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7 [2020] QPEC 8.

[26] There was no suggestion that, in the event that the holder of the development permit acted on proposed stage 3B that there would be any obligation to proceed with stages 3C and 3D. The existing approval permits the reconfiguration of all of the land within proposed stages 3B, 3C and 3D, such that the dedication to the Council along of the vegetated watercourses is assured if any additional lots are created on that balance land. In comparison, the approval as changed would permit the reconfiguration of all of the balance land at one time, without staging or the reconfiguration of just stage 3B while maintaining the land that forms stage 3C and 3D as a balance lot and without providing any land dedication to the Council. That is not possible under the existing approval.

[27] In its written outline of submissions, the applicant submitted that there is no sense of risk or prospect that the development, or aspect of the development, that is integral might not be completed. No evidence was cited to support the submission. I am not persuaded by the bare assertion. The history of the development approval demonstrates that the development intentions with respect to the subject land have changed over time.

[28] Further, I am not persuaded that the deferral of dedication of the land along the vegetated watercourses to subsequent stages is inconsequential, nor that its deferral does not result in a substantially different development. As was noted in the applicant's written submissions, five of the eight properly made submissions received in relation to the original development application raised concerns about environmental impacts of the proposed development, particularly the lack of dedicated parkland and impacts to vegetation and wildlife. The applicant itself submits that when one considers all of the stages in the approved layout, there are favourable environmental outcomes to address those concerns by dedicating land to Council along the vegetated watercourses. The introduction of staging does not ensure all stages will proceed.

[29] For the reasons given, the applicant has not established that the change it requests is a minor change because it has not established that the change would not result in substantially different development. The application should be dismissed due to the applicant's failure to discharge the onus with respect to this matter. Even if that were that not the case, I would not be minded to allow the application for the reasons provided below.

Are the premises excluded premises for s 79(1A) of the *Planning Act 2016*?

[30] Section 79 of the *Planning Act 2016* outlines further threshold requirements of a change application. It states:

> "**79 Requirements for change applications**
>
> (1) A change application must be—
>
> (a) made in the approved form; and
>
> (b) accompanied by—
>
> (i) the required fee; and
>
> (ii) for an application for a minor change—a copy of any pre-request response notice for the application.

(1A) Also, a change application **must be accompanied by the written consent of the owner of the premises the subject of the application to the extent**—

(a) **the applicant is not the owner**; and

(b) **the application is in relation to**—

(i) a material change of use of premises or **reconfiguring a lot**; or

(ii) works on premises that are below high-water mark and outside a canal; and

(c) the premises are **not excluded premises**.

(2) The responsible entity—

(a) must accept an application that the responsible entity is satisfied complies with subsections (1) and (1A); and

(b) must not accept an application unless the responsible entity is satisfied the application complies with subsection (1A); and

(c) may accept an application that does not comply with subsection (1)(a) or (b)(ii); and

(d) may accept an application that does not comply with subsection (1)(b)(i) to the extent the required fee has been waived under section 109(b)."

(emphasis added)

[31] Schedule 2 of the *Planning Act 2016* defines excluded premises as follows:

"***excluded premises*** means—

…

(b) **for a change application** or extension application—premises in relation to which 1 or more of the following apply for the application—

…

(iii) **the responsible entity** or assessment manager **considers the application does not materially affect the premises and** that **because of the number of owners, it is impracticable to get their consent.**

Example of when owners' consent may be impracticable—

Since the development approval was given, the **premises have been subdivided** and now has many owners."

(emphasis added)

[32] The applicant is the owner of Lot 501. It is the undeveloped area in the current stage 3B. There is evidence of written consent of the applicant to the making of the Originating Application. However, the applicant is not the owner of the whole of the premises the subject of the application. As such, it is relevant to consider whether the application materially affects the premises and whether, because of the number of owners, it is impracticable to get their consent.

[33] During oral submissions, the applicant acknowledged that the proposed changes materially affect the lot layout in Lot 501. However, it submits that the application does not materially affect any other land that has been subdivided and sold under

the existing approval because the proposed changes specifically concern Lot 501. The applicant contends that the changes will not result in substantially different development and will not affect the amenity of the developed lots. For reasons given above, I do not accept this submission.

[34] The application fits the example provided in the definition of "*excluded premises*" in Schedule 2 of the *Planning Act.* The applicant submits that the number of lots created as part of stages 1, 2 and 3A has made it impracticable to obtain the written consent of each owner for this application as required by s 79(1A) by reason of the number of owners involved. This, of itself, is not necessarily sufficient in all cases to demonstrate that it is "*impracticable*" to obtain written consent. It is unnecessary for me to determine whether it was impracticable in this case as the applicant has not discharged its onus with respect to minor change, nor satisfied me that the application should be approved having regard to an assessment under s 81 of the *Planning Act 2016*.

Should the application be approved having regard to the assessment under s 81 of the *Planning Act 2016?*

[35] Pursuant to s 78A(4) of the *Planning Act 2016*, if the Court was the responsible entity, it would be obliged to assess the merits of the application and decide the application. Section 81 of the *Planning Act 2016* sets out those matters that the Court must consider in assessing any such application. It states:

> "**81 Assessing change applications for minor changes**
>
> (1) This section applies to a change application for a minor change to a development approval.
>
> (2) In assessing the change application, the responsible entity must consider—
>
> (a) the information the applicant included with the application; and
>
> (b) if the responsible entity is the assessment manager—any properly made submissions about the development application or another change application that was approved; and
>
> (c) any pre-request response notice or response notice given in relation to the change application; and
>
> (d) if the responsible entity is, under section 78A(3), the Minister—all matters the Minister would or may assess against or have regard to, if the change application were a development application called in by the Minister; and
>
> (da) if paragraph (d) does not apply—all matters the responsible entity would or may assess against or have regard to, if the change application were a development application; and
>
> (e) another matter that the responsible entity considers relevant.
>
> (3) Subsections (4) and (5) apply if the responsible entity must, in assessing the change application under subsection (2)(d) or (da), consider—
>
> (a) a statutory instrument; or
>
> (b) another document applied, adopted or incorporated (with or without changes) in a statutory instrument.

(4) The responsible entity must consider the statutory instrument, or other document, as in effect when the development application for the development approval was properly made.

(5) However, the responsible entity may give the weight the responsible entity considers is appropriate, in the circumstances, to—

(a) the statutory instrument or other document as in effect when the change application was made; or

(b) if the statutory instrument or other document is amended or replaced after the change application is made but before it is decided—the amended or replacement instrument or document; or

(c) another statutory instrument—

(i) that comes into effect after the change application is made but before it is decided; and

(ii) that the responsible entity would have been required to consider if the instrument had been in effect when the development application for the development approval was properly made."

[36] As is apparent from the provisions above, under s 81(2)(da) of the *Planning Act 2016*, for a minor change to a development approval, the Court is required to assess the application against all matters the responsible entity would or may assess against or have regard to, if the change application were a development application. When questioned about the issue, the solicitor advocate was unable to direct my attention to evidence about such matters, other than the evidence of Mr Bell referred to in paragraph [16] above and evidence about the contents of the submissions. The applicant indicated that evidence addressing all matters the responsible entity would or may assess against or have regard to, if the change application were a development application had not been put before the court. The solicitor advocate unable to assist the court by identifying the provisions of Maroochy Plan that would apply.

[37] The first affidavit of Mr Bell attached a report that had been prepared when seeking a pre-request response from the Council. In the report, it was asserted that the proposed "*minor change*" remained compliant with the provisions of Maroochy Plan. The report did not explain why it was considered that the proposed change to the approval was not material to the question of compliance with Maroochy Plan.

[38] Other than asserting that Maroochy Plan set a minimum lot size, the affidavits of Mr Bell did not identify, even in summary form, the applicable provisions of Maroochy Plan, or the nature of the applicable requirements, nor did the report attached to Mr Bell's affidavit. It was not apparent from the evidence whether, for example, there were provisions that addressed land stability issues, or that required protection of the environment, or that required the provision of public open space as part of a proposed reconfiguration. The evidence placed before me was insufficient to satisfy me that, with the proposed change, the development was compliant with Maroochy Plan or that the proposed change should be approved.

[39] The solicitor advocate for the respondent Council indicated that the position of the Council was one of support. Having listened to the questions asked by the Court, including with respect to potential geotechnical issues, the Council's advocate noted that he thought the applicant should seek an adjournment to address the Court's

queries. The solicitor advocate for the applicant did not take up this suggestion. No adjournment was sought. The application had been brought on for hearing at the request of the parties on the basis that they were ready to proceed and had filed all evidence that they considered necessary for hearing the application.

[40] Given the paucity of evidence addressing the considerations referred to in s 81 of the *Planning Act 2016*, even if I were satisfied that the application was for a minor change, I would have refused the application.

Conclusion

[41] The application is dismissed.