SUPREME COURT OF QUEENSLAND

CITATION:	*Northern SEQ Distributor-Retailer Authority Trading as Unitywater v Stockland North Lakes Development Pty Ltd & Anor* [2014] QSC 308
PARTIES:	**NORTHERN SEQ DISTRIBUTOR-RETAILER AUTHORITY TRADING AS UNITYWATER** ABN 89 791 717 427 (plaintiff) **v** **STOCKLAND NORTH LAKES DEVELOPMENT PTY LTD** ACN 078 580 408 (first defendant) and **MORETON BAY REGIONAL COUNCIL** (second defendant)
FILE NO/S:	BS 9111 of 2013
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	19 December 2014
DELIVERED AT:	Brisbane
HEARING DATE:	6, 7, 8, 12, 14 August 2014
JUDGE:	Philip McMurdo J
ORDER:	**It is declared that under the Mango Hill Infrastructure Agreement dated 1 April 1999, to which the parties are now the plaintiff and the first defendant ("the Agreement"):** **1. By "the completion of development" as that term is used in cl 6.13.1 of the Agreement, the plaintiff and its predecessors which had been "the Council" under the Agreement, must have received payment of sums of money which total the sum of "(X x S1) – y" as those terms are used in cl 6.13.1 of the Agreement, on account of sewerage headworks contributions payable under the Agreement.**

2. **The first defendant is not entitled to any set-off according to the cost of the design and construction of the sewage transportation infrastructure which would result in any of the total referred to in the preceding paragraph not being received by the plaintiff and its predecessors by the completion of development.**

3. **The first defendant is not entitled to any benefit, by reference to the cost of the design and construction of the sewage transport infrastructure, other than a set-off against sewerage headworks contributions otherwise payable under the Agreement and in accordance with the preceding paragraph.**

CATCHWORDS: CONTRACTS – GENERAL CONTRACTUAL PRINCIPLES – CONSTRUCTION AND INTERPRETATION – INTERPRETATION OF MISCELLANEOUS CONTRACTS AND OTHER MATTERS – where the plaintiff and first defendant are parties to a contract for the development of land at North Lakes – where the contract requires the first defendant to design and construct sewage transportation infrastructure, and the plaintiff to provide sewage treatment infrastructure – where the first defendant is required to pay the plaintiff a 'sewerage headworks contribution' – where the first defendant is entitled to a credit against that contribution for the cost of constructing the sewage transportation infrastructure – whether the entitlement to such a credit is limited or "capped" – if there is such a credit limit, whether that limit can be imposed during stages of the development or at the completion of the development.

ESTOPPEL – ESTOPPEL BY CONDUCT – PROMISSORY ESTOPPEL – PARTICULAR CASES – where the plaintiff and first defendant are parties to a contract for the development of land at North Lakes – where the contract requires the first defendant to design and construct sewage transportation infrastructure, and the plaintiff to provide sewage treatment infrastructure – where the first defendant is required to pay the plaintiff a 'sewerage headworks contribution' – where the first defendant is entitled to a credit against that contribution for the cost of constructing the sewage transportation infrastructure – whether the entitlement to such a credit is limited or "capped" – where, by way of conduct between the parties, the second defendant has not enforced any such credit limit (if one exists) – whether by this conduct, the second defendant has represented that the contract would not be enforced according to its proper construction – whether the plaintiff is estopped from insisting the contract be enforced according to its proper construction.

South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 (Qld), s 77B

Biss v Smallburgh Rural District Council [1965] Ch 335, cited
Electricity Generation Corporation (trading as Verve Energy) v Woodside Energy Ltd (2014) 306 ALR 25, cited
Queensland Independent Wholesalers Ltd v Coutts Townsville Pty Ltd [1989] 2 Qd R 40, cited

COUNSEL: M Hinson QC, with M Johnston, for the plaintiff
S E Brown QC, with N Loos, for the first defendant
C L Hughes QC, with M Williamson, for the second defendant

SOLICITORS: Hopgood Ganim for the plaintiff
Shand Taylor for the first defendant
Morton Bay Legal Services for the second defendant

The case in outline

[1] Between Brisbane and the Sunshine Coast is a large land development called North Lakes. It occupies more than 1,000 hectares and has resulted in the creation of about 6,500 residential lots, most of which have been sold by the developer. About 15,000 people live there. The development of North Lakes, which commenced in 1999, is not yet complete. It has proceeded in stages, each involving development works and the Council's approval of a plan of subdivision.

[2] The developer now is the first defendant ("Stockland") which purchased from the original developers in December 2004.

[3] The development of North Lakes has been governed by several town planning instruments and laws. It was and is also governed by the contract which is the subject of this case, the so-called Mango Hill Infrastructure Agreement dated 1 April 1999 ("the Agreement"). The original parties to the Agreement were two companies, which were together described in the Agreement as "the principal developer", and the then local authority which was the Council of the Shire of Pine Rivers and which the Agreement called "the Council".

[4] When it acquired the land in 2004, Stockland also became substituted as the principal developer under the Agreement.

[5] In 2008, the Pine Rivers Shire Council and two other councils amalgamated to form the Moreton Bay Regional Council, which is the second defendant. From that point until the establishment of the plaintiff on 1 July 2010, the second defendant was the Council under the Agreement.

[6] The plaintiff was established by the *South-East Queensland Water (Distribution and Retail Restructuring) Act* 2009 (Qld), by which relevant rights and liabilities of the defendant Council were transferred to and imposed upon the plaintiff.[1] It is common ground that since its establishment, the plaintiff has been in all respects the party to the Agreement which it describes as the Council.

---

1 s 77B of that Act.

[7] The Agreement provided for several kinds of infrastructure for this development. Relevantly for this case was its provision for what it described as sewerage headworks infrastructure. This was comprised of sewage transportation infrastructure and sewage treatment infrastructure.[2] The Agreement required the principal developer to design and construct the former and the Council to provide the latter.

[8] As parts of the land were progressively developed and subdivided, the developer was required to pay what the Agreement described as a sewerage headworks contribution. But on certain conditions, the developer was entitled to a credit against that contribution for the cost incurred by it in designing and constructing the sewage transportation infrastructure.

[9] The subject of this case is a dispute about the extent to which Stockland is entitled to such credits. The plaintiff claims that upon its proper interpretation, the Agreement imposes a certain monetary limitation upon that credit. Stockland disputes the plaintiff's interpretation of the Agreement and says that no such limitation was agreed. There is also a question about the timing of the application of that limitation, or "cap" as the plaintiff describes it, if imposed by the Agreement. And Stockland also argues that by an estoppel by convention or a promissory estoppel, the plaintiff is precluded from enforcing the Agreement according to the plaintiff's interpretation of it.

[10] The plaintiff claims declaratory relief as to the effect of relevant provisions of the Agreement. The defendant Council agrees with the plaintiff's interpretation but only to an extent. It agrees that there is a cap on the amount which can be set off against the sewerage headworks contributions but disagrees with the plaintiff's argument as to the time at which that cap could be imposed.

The required charges and set-offs

[11] Clause 6.6 of the Agreement requires the payment of sewerage headworks contributions. It commences as follows:

> "6.6.1 Sewerage Headworks Contribution
>
> > The principal developer must pay to the Council sewerage headworks contributions (made up of sewage transportation charges and sewage treatment charges) towards the cost of providing sewerage headworks infrastructure to service development in the DCP area. As at 1 July, 1998 that contribution was $731 per EP and is subject to adjustment as provided for in clause 6.10."

[12] Two expressions within that clause require explanation. The "DCP area" means the area of land within the so-called DCP, which is defined to mean the Mango Hill Infrastructure Development Control Plan.[3] In effect, it is the area the subject of the North Lakes development. The term "EP" stands for "Equivalent Person". It is a unit of measurement of domestic sewage.[4] The (original) parties acknowledged in the Agreement that the "final land use and hence demand for sewerage across the

---

2 cl 6.1.

3 cl 2.7 of the Agreement.

4 cl 6.4.1 of the Agreement.

DCP area is not presently known … and will only be known with certainty at the time detailed planning has been undertaken at the sector plan preparation stages".[5] In other words, they acknowledged that the number of EPs for a stage or sector of the overall development would be known only as detailed planning for that sector or stage was completed. By cl 6.4.3, each "precinct plan" was to have the anticipated EP for which provision of sewerage had to be made for that precinct.

[13] Clause 6.6.2 provided for the calculation of the sewerage headworks contribution for each plan of subdivision. It provided as follows:

> "At any relevant time, the sewerage headworks contribution payable shall be calculated for each plan of subdivision as follows:
>
> Sewerage headworks contribution = (S1 + S2) x Total EP's
>
> Where:
>
> | | | |
> |---|---|---|
> | S1 | = | sewage treatment charge per EP at the date of lodging the plan of subdivision, refer clauses 6.6.3(a) and 6.10; |
> | S2 | = | sewage transportation charge per EP at the date of lodging the plan of subdivision, refer clauses 6.6.3(b) and 6.10; |
> | Total EP | = | the total number of EPs assigned to the lots included in the plan of subdivision …" |

[14] Clause 6.6.3 reveals the make up of the agreed contribution of $731 per EP:

> "The contribution of $731.00 per EP referred to in clause 6.6.1 has by agreement been based upon the following:
>
> (a) Sewage Treatment Charge
>
> A charge towards the cost of providing for the treatment of sewage from development in the DCP area equal to $408 per EP which is the sewage treatment charge base rate applicable from 1 July, 1998.
>
> (b) Sewage Transportation Charge
>
> A charge towards the provision of sewage transportation for development in the DCP area equal to $323 per EP which is the sewage transportation charge base rate applicable from 1 July, 1998. This charge was based on the estimated total cost of construction of sewage transportation infrastructure for the SCC[6] of $13,050,949 divided by the estimated total EPs in that catchment of 40,398 EP."

---

5 cl 6.4.2 of the Agreement.

6 A reference to the sewage catchment identified in cl 6.3.2 as the Saltwater Creek Catchment.

[15] The time for payment of the sewerage headworks contribution, in the absence of any contrary agreement, was to be "the date specified in Local Planning Policy LP10".[7] It is unnecessary to discuss what date was there specified because it is common ground on the pleadings that the developer became liable to make contributions upon the sealing of the survey plan.[8]

[16] The Council was obliged by cl 6.11 to provide sewage treatment capacity services for the DCP area up to a maximum of 2920ML per annum in accordance with the rate of development of land in the DCP area.

[17] The transportation infrastructure was to be designed and constructed by the developer according to cl 6.12.

[18] From those provisions it is clear that a sewerage charge, called the sewerage headworks contribution, is to be calculated by reference to both the treatment infrastructure and the transportation infrastructure. Yet the developer was also to design and construct, at its own cost, the transportation infrastructure. Therefore the parties agreed that the developer could set off that cost of design and construction against the sewerage headworks contribution payable by it. But their agreement about the set-off was according to certain terms, the effect of which is at the heart of this case.

[19] This agreement for a set off together with those qualifications, is contained in cll 6.13, 6.14 and 6.15.

[20] It is necessary to set out cl 6.13 in full:

> "6.13 Sewerage Headworks Credits for Construction
>
> When the principal developer designs and constructs sewage transportation infrastructure, it will be entitled to set off the cost of that design and construction against the sewerage headworks contribution payable by it, in accordance with the Headworks Contribution Credit provisions included in Local Planning Policy LP39 Headworks Construction, subject to the following:
>
> 6.13.1 Despite the actual cost of construction the total credit available to the principal developer at the completion of development must not exceed:
>
> the sum of [(X x S2) + y] for all approved sector plans in the DCP area
>
> Where:
>
> X = the number of EPs declared in an approved sector plan;

---

7 cl 6.7 of the Agreement.

8 Defence of the First Defendant, para 4(d) and Reply, para 7, a consensus which was confirmed in argument: T5-40.

S2 = as defined in clause 6.6.2 and varied in accordance with clause 6.10;

y = the amount as determined by clause 6.14.

For the purpose of clarification, the Council must at the completion of development have received:

the sum of [(X x S1) - y] for all approved sector plans in the DCP area

Where:

X = as defined above;

S1 = as defined in clause 6.6.2 and varied in accordance with clause 6.10;

y = as defined above.

6.13.2 The cost of construction shall be based on the agreed final tender price as approved by the Council's Engineer plus an amount equal to twenty per cent (20%) for design, supervision, management and contingency but shall not exceed the cost estimate provided with the application plus an amount equal to twenty per cent (20%) for design, supervision, management and contingency.

6.13.3 The principal developer is entitled to a credit calculated at the completion of each stage of the sewage transportation infrastructure constructed by it (subject to the Council confirming in writing that the relevant works represent a discrete stage of such construction). Such credit will be recorded as the number of equivalent person credits (EPCs) in accordance with clause 6.13.6 below. Such credits accrue to the principal developer on the date upon which the relevant work is accepted by the Council on maintenance for each such stage of the sewage transportation infrastructure.

6.13.4 Any credit to which the principal developer has become entitled in accordance with clause 6.13.3, must be allowed by the Council in respect of a subsequent sewerage headworks contribution payable, by reducing the number of EPs in respect of which EPs are otherwise payable (subject always to the provisions of clause 6.13.1).

6.13.5 If the number of EPCs exceeds the total number of EPs in respect of which charges are payable at any time, the excess number of EPCs must be carried forward to be offset against future EP charges. At no stage (including at the completion of the project) is the Council obliged to pay the amount of any existing credit to the principal developer or any other party.

6.13.6 For the purpose of administering credits under this clause, the cost of construction is to be converted to an equivalent person credit (EPC) by application of the following formula:

$$EPC = \frac{\text{Cost of construction}}{\text{Sewerage headworks contribution per EP current at the time}}$$"

[21] Clause 6.14 is as follows:

"6.14 Payment by Council - External Capacity

6.14.1 The Council acknowledges that the sewage transportation infrastructure which the principal developer is obliged to construct, will facilitate the provision of sewerage services to some land beyond the DCP area, to the extent of approximately 9,500 EPs.

6.14.2 The Council will allow a credit for the additional cost of the sewage transportation infrastructure to service the land beyond the DCP area by deducting from the sewage treatment charge payable by the principal developer the marginal additional cost of the infrastructure. This additional cost will be 13% of the cost of construction as defined in clause 6.13.2."

[22] First I should mention some things which are not controversial. There is no issue as to the quantification of the cost of construction of transportation infrastructure. Nor is there an issue as to the "y" factor, which accordingly is 13 per cent of that cost. It is also common ground that "at the completion of each stage of the construction of the transportation infrastructure," there is to be a consideration of the developers entitlement to a set-off: cl 6.13.3. For some years (both before and after the establishment of the plaintiff), when approving plans of subdivision, the Council would require (or more often not require) a certain payment for the sewerage headworks contribution according to what was claimed by and allowed to Stockland as a set-off for its own construction of sewerage infrastructure. It is that course of conduct which is relied upon for the estoppel arguments which Stockland makes.

The dispute arises

[23] The present dispute can be traced to correspondence which began in July 2012 when Stockland, through its consultants Environmental Resources Management Australia, wrote to the Council. The case which Stockland there put to the Council was, in effect, that it could use the cost of its construction of the transportation infrastructure for this development not only as a set-off against sewerage headworks contributions payable for this development, but also against any headworks contributions payable on any future development outside North Lakes. By that letter, Stockland requested "a transfer of surplus sewer infrastructure credits obtained through the development of trunk infrastructure within North Lakes, to other Stockland owned land within the Moreton Bay region". At one point, the request seemed to be made upon the premise that some further agreement between Stockland, the Council and the plaintiff was required for Stockland to have the benefit of those "credits" in another development. But at another point of the letter, it was said that this would "ensure clarity", consistently with the argument that Stockland now advances which is that there is a portability of these credits (on the proper interpretation of the Agreement).

[24] On 9 October 2012, the Council wrote to Stockland's consultants, rejecting Stockland's claims.

[25] On 29 January 2013, the plaintiff wrote to Stockland rejecting the suggestion that the credits could be used in the way suggested by Stockland. It wrote that the Agreement "… does not provide for total credits for sewage transportation infrastructure to exceed the total of the sewage transportation charges payable plus the marginal additional cost of the infrastructure [being the clause 6.14 'y' allowance], regardless of actual construction costs" and nor did it provide the transfer of credits to another development.

[26] The plaintiff's letter also contended that Stockland was required to pay an amount of $5,798,122.69, which was calculated by deducting, from the suggested "outstanding sewage treatment charge" of $10,424,939, two sums. The first deduction was "the amount of sewage treatment charge offset" (the y amount) which was calculated at $3,722,288.31. The second was an amount of $904,528 as "contributions … previously … made".

[27] On 11 March 2013, the plaintiff issued an invoice for that amount to Stockland, requiring payment by 12 April 2013. On 27 March 2013, Stockland's solicitors wrote to the plaintiff rejecting any liability to pay the invoice.

[28] After a further letter in September 2013, the plaintiff commenced these proceedings, claiming a declaration that on the proper construction of the Agreement, "the credit available to the principal developer under clause 6.13:

(a) is capped and cannot exceed the total of the sewage transportation charges payable plus the amount determined by clause 6.14.2;
(b) can only be set off against the sewage transportation charges payable;
(c) cannot be set off against the sewage treatment charges payable otherwise than by deducting from the sewage treatment charges payable the amount determined under clause 6.14.2;
(d) cannot be paid or transferred to the principal developer".

The arguments about interpretation

[29] The provisos in cl 6.13.1 are each expressed by reference to a set of circumstances at a particular point in time, namely "at the completion of development". The term "development" is undefined in the Agreement. Ultimately the arguments appeared to accept that this is a reference to "the development of the DCP area as a master planned community", as referred to in cl 1.2 of the Agreement.[9] Clearly, that point in time has not yet arrived.

[30] Upon the plaintiff's case, the limitation or limitations upon the developer's right of set-off apply not only at the completion of development, but could apply at an earlier stage. The plaintiff says that there could be (and in fact has been) reached a point in time prior to the completion of development where what it says is cap or limit on the developer's set-off is reached In this respect, the Council's argument parts company with that of the plaintiff. The Council ultimately argues that the limitation or limitations upon the set-off, as expressed in cl 6.13, are to be applied only at the completion of development.

[31] The primary argument by Stockland, as to the proper interpretation of the Agreement, is that the purpose of cl 6.13.1 is "to identify the credit, if any, that would be available at the end of the development" by reference "to a dollar value … that is able to be utilised for other developments".[10] Its argument is that there is effectively no limit or cap upon the use of the "credits", derived from its cost of design and construction, that would prevent those credits from being used on another development. The effect of this argument would be to have the Agreement correspond with the relevant provisions of local planning policy LP39, which is referred to in cl 6.13 and which is discussed below.

[32] An alternative submission for Stockland would accept, as the plaintiff argues, that the set-off is limited to the transportation component of the headworks contribution (plus the y credit), but upon the basis that the treatment component of the headworks contribution could be satisfied either by the payment of money or "by [the developer's provision of] the benefit of sewerage infrastructure [by constructing it]" of a corresponding value. This argument would seem to equate the "value" of the transportation infrastructure with its cost.

[33] In the opening words of cl 6.13, the entitlement to the set-off is said to be "in accordance with the Headworks Contribution Credit provisions included in Local Planning Policy LP39 headworks construction". As already noted, Stockland's argument seeks to find support in that document. It was published in 1995 with a stated purpose on the part of the Pine Rivers Shire Council to allow a developer to carry out the construction of water supply or sewerage headworks, instead of making a payment to the Council for that infrastructure. It set out a procedure to be followed in the implementation of that policy. Of particular relevance to Stockland's argument were these provisions of the policy:

> "4. Where an application is approved the Council and the applicant shall enter into an agreement whereby specified headworks construction shall be carried out instead of payment of headworks contributions. Headworks construction costs shall be based on agreed final tender

---

9 Stockland's written submissions para 99(c)(i), plaintiff's oral submissions T5-46 ll 15-45.

10 Stockland's written submissions para 100.

prices as approved by Council's Engineer, but shall not exceed the cost estimate provided with the application. Headworks contributions shall be calculated in accordance with Council's Local Planning Policy LP10.

…

5. Where the total agreed cost of headworks construction for the development exceeds the total headworks payable for the development (calculated in accordance with Local Planning Policy LP10) then the agreement shall include conditions whereby Council will refund to the developer the 'Headworks Contribution Credit' remaining at the completion of the development at the times specified in the agreement. The payment of the refund by Council will be made within a reasonable time after the completion (acceptance 'off maintenance') of the whole development having due regard to Council's budgetary constraints. Alternatively Council may require 'Headworks Contribution Credits' relating to the land upon which the credits were approved to be transferred to any other development being carried out by the same applicant within the shire.

…

7. Council does not differentiate between transport and treatment components of the headworks contribution for the purposes of crediting or refunding headworks contributions.

8. Where the agreed cost of the headworks construction is less than the headworks contributions payable (calculated in accordance with Local Planning Policy LP10) at the first stage of subdivision or development and the works is constructed at the first stage, then the applicant will be required to pay the difference between the headworks contribution payable and agreed cost of headworks construction at the times specified in Council's Local Planning Policy LP10. Headworks contributions for all subsequent stages shall be calculated and paid in accordance with Local Planning Policy LP10.

9. Where the agreed cost of the headworks construction exceeds the headworks contribution payable (calculated in accordance with Local Planning Policy LP10) at the first stage of subdivision or development and the works is constructed at the first stage then the difference between the agreed cost of headworks construction and the headworks payable will become a 'Headworks Contribution Credit' against headworks contributions payable by the applicant with subsequent stages of the subdivision or development.

> 10. Where headworks construction is proposed to be carried out in other than the first stage of subdivision or development then the applicant shall pay headworks contributions (calculated in accordance with Local Planning Policy LP10) for each stage up to the time that the headworks construction is accepted 'on maintenance'.
>
> …
>
> 13. Council will not be prepared to reimburse the applicant any amount during or at the end of the development unless it has been specifically incorporated in the agreement at the commencement of the development.
>
> 14. Where the 'Headworks Contribution Credit' is reduced to zero before the whole development (all stages) are complete then the applicant shall pay headworks contributions for the balance of the development in accordance with Local Planning Policy LP10."

[34] This policy did provide for the transfer of Headworks Contribution Credits to another development being carried out by the same developer: cl 5. And it did anticipate an agreement between the developer and the Council on terms which would replicate those of the Policy. But, as seems to be accepted by Stockland, the Council was not required to agree in these terms. Clause 2.6 of the Agreement provides that if any of its provisions is inconsistent with a provision of a local policy, then if the Council has a discretion to vary the provision of the policy, it is taken to have exercised that discretion and the relevant term of the Agreement will prevail. Thus in cl 6.13, the reference to this policy was made expressly subject to what was then set out in the balance of the clause.

[35] Clause 6.13.1 contains two provisos to the entitlement to a set-off which is described in the introductory words of cl 6.13. They have been set out in full above but it is convenient to refer again to this part of the first proviso:

> "Despite the actual cost of construction the total credit available to the principal developer at the completion of development must not exceed the sum of [(X x S2) + y] for all approved sector plans in the DCP area …"

[36] This proviso requires the calculation of a *dollar amount*, because S2 is a dollar amount ($323 or as varied), as is y. This proviso thereby requires a comparison to be made, as at the completion of development, of a dollar sum calculated by that formula and the total set-off which, but for the provisos in cl 6.13.1, would be allowed to the developer. In that way, this first proviso does impose a limit or a "cap" upon the set-off to be enjoyed by the developer.

[37] The second proviso within cl 6.13.1 commences with the words "for the purpose of clarification …". Although no clarification may have been required, this second proviso provides an alternative expression of the same limit or cap and in terms which make Stockland's argument yet more difficult to accept. It requires the Council to have received a certain sum as at the completion of development. It requires a comparison to be made, as at the completion of development, between the

sum (in total) received by the Council for sewerage headworks contributions and a dollar amount calculated by multiplying the number of EPs in approved plans by S1 ($408 or such sum as varied) less the dollar sum which is y. By requiring the Council to have received at least this sum, it unambiguously requires the Council to be paid by the developer such part of that sum which the Council had not yet received when successively approving the stages of the development.

[38] Yet Stockland argues, at least in the alternative, that this second proviso requires a comparison of the sum of (X x S1) - y and some aggregation of the amounts paid for sewerage headworks contribution and the value of "the benefit of sewerage infrastructure provided by the developer". It is apparently suggested, in this part of Stockland's argument,[11] that such an interpretation would recognise that the true value of the benefits provided by the developer's construction of infrastructure could be more than the 13 per cent of construction which is allowed to the developer in the "y" component under cl 6.14. This submission cannot be accepted. Clause 6.14 expresses the Council's acknowledgement that the infrastructure to be constructed by the developer will benefit some land beyond the DCP area and contains the parties' agreement as to the extent, expressed as a dollar amount, for which the developer should have a credit against the headworks contributions for the provision of that benefit. Nowhere is there any language which indicates that the developer should be allowed a further credit for the provision of that benefit. Nor could the value of that benefit be quantified by any term of the Agreement (apart from cl 6.14). The requirement in this second proviso that the Council must have received a certain dollar sum is inconsistent with the notion that the proviso could be satisfied by something other than the dollar sum paid to the Council.

[39] Clause 5 of the policy, upon which Stockland's argument relies, provides for the circumstance that the cost of headworks construction undertaken by a developer exceeds the total headworks payable by the developer to the Council. In that circumstance, it provides for two possibilities. The first is the payment of the excess as a refund by the Council upon completion of the whole development. The second is that the Council may instead require that the headworks contribution credits be transferred to another development. Stockland's submissions acknowledge that the first of those possibilities was excluded by the Agreement, at least by the second sentence of cl 6.13.5 which provides that at no stage, including at the completion of the project, is the Council obliged to pay the amount of any existing credit to the developer or any other party. But Stockland argues that the second possibility was not excluded by the terms of the Agreement. On that premise, it argues that the provisos within cl 6.13.1 must be interpreted in a way which allows for the use of such an excess in another of its developments. By this approach, the argument seems to suggest that the expression "total credit available to the principal developer at the completion of development" refers to an amount of credit which is "available" in a sense of being portable to another development.

[40] Stockland's argument at this point is not easy to express shortly. It is necessary to set out this part of Stockland's written submissions:

> "100. The interpretation which SNL contends best accords with the commercial purpose of the parties is that clause 6.13.1 was to identify the credit, if any, that would be available at the end of the development. While that would require the

[11] It's written submissions para 182.

> implication of the words at the end of clause 6.13.1 of 'the cost of construction less the following amounts', such an interpretation would be consistent with the introductory words which refer to 'the total credit available to the principal developer' (which is terminology that is used for credits which are able to be used and not credits that have been used in the case of a cap). Such an interpretation would also accord with the fact that it is serving as a qualification to the application of the policy LP39 and in particular clause 5. It is to ensure that the credit available at the end of the development does not exceed the dollar amount:
>
> (a) for the transportation component of the contribution charge plus the amount of the 'y' credit to take account of the sewage transportation infrastructure that is external to the DCP area and only for the benefit of the Council;
>
> (b) for the sewage treatment component of the charge less 'y' …"

The first thing to note about this submission is that it concedes that the contractual effect for which Stockland contends requires the addition of further words. The second is that the addition of those words would result in obscurity and ambiguity, rather than clarity. In particular, what would be "the following amounts"? In their oral submissions, counsel for Stockland said that those words would appear after the expression "must not exceed" in the first proviso of cl 6.13.1. But only one amount, rather than "amounts", would then follow within that proviso. Counsel for Stockland then submitted that "the following amounts" would be a reference to the sum referred to in the first proviso and the sum referred to in the second proviso.[12] The aggregation of those amounts would be a figure which is the number of EPs across the development multiplied by the headworks contribution charge of $731.

[41] The end point of this submission is that there is no limit upon the set off and that there could be a credit available for another development at the completion of this development. In other words, these provisos within cl 6.13.1 should be understood as for the benefit of the developer, allowing it (if the cost of construction exceeded the headworks contributions) to pay nothing by way of those contributions and to have the benefit of the excess on another development.

[42] That suggested effect of the agreement is undoubtedly attractive to Stockland. But on no view is it consistent with the terms of the Agreement. Not only does it require the importation of further words, but also it is impossible to reconcile it with the words of the second proviso which requires the Council to have received a certain sum.

[43] These provisos in cl 6.13.1 are expressed to be qualifications to the developer's entitlement to set off the cost of design and construction of its transportation infrastructure against the sewerage headworks contribution payable by it *under the*

---

12 T5-12.

Agreement, which is the entitlement referred to in the immediately preceding words of cl 6.13.

[44] The set-off allowed by cl 6.13, subject to those provisos, has an evident commercial purpose, which moreover, is also expressed by the "Statement of Intent" in cl 6.1 of the Agreement. It provides that the intent of this section 6 of the Agreement, governing the subject of sewerage, is to:

> "6.1.1 define the scope of works of the sewerage headworks infrastructure included in this agreement;
>
> …
>
> 6.1.3 prescribe the method for the calculation and payment of sewerage headworks contributions and charges in respect of development in the DCP area;
>
> …
>
> 6.1.5 provide for the principal developer's obligations in relation to the construction of sewage transportation infrastructure;
>
> 6.1.6 provide for credits to the principal developer for the cost of constructing sewage transportation infrastructure *against the sewage transportation charge* unless otherwise provided in this agreement;
>
> …
>
> 6.1.10 to ensure the Council will suffer no financial disadvantage in facilitating sewerage services to the DCP area by:
>
> (a) requiring the principal developer to design and construct all relevant sewage transportation infrastructure; and
>
> (b) *providing that the total of credits allowed in respect of sewage transportation infrastructure constructed by the principal developer does not exceed the total of the sewage transportation charges payable, regardless of actual construction costs.* …"
>
> (emphasis added)

The expressed intention is to allow the developer the benefit of the cost of its construction of the sewage transportation infrastructure but only to a certain extent. Clause 2.3 of the Agreement provides that each provision which is headed "Statement of Intent" is "designed to explain the background to and intent of the substantive provision which follows it" and the "interpretation of a substantive provision which furthers the stated intent of any part must be preferred to one which does not".

[45] I am persuaded therefore to accept the plaintiff's argument as to the effect of the Agreement as at the point of the completion of the development. In my view, the

developer's entitlement to set off the cost of construction (and design) of the transportation infrastructure is limited (or capped), at least at that point in time, to a set off which is quantified according to the formula which is in the first proviso of cl 6.13.1. The corollary of that limitation is expressed in the second proviso. And there is nothing within the Agreement which could entitle Stockland to any benefit, according to the cost of the design and construction of the transportation infrastructure, other than a set-off, with that limitation, against sewerage headworks contributions otherwise payable by it under the Agreement.

Capping the set-off during the development?

[46] What must now be considered is the plaintiff's further argument that the limitation on this entitlement of set-off is to be applied in some way during the course of the development rather than simply at its completion. That argument requires some discussion of the other provisions which I have set out as well as the content of Table 6/3 of the Agreement.

[47] The starting point is that the Agreement provides for a single sewerage headworks contribution, albeit one which has expressed and quantified components. In the same way the set-off is expressed to be applied, subject to the limitations just discussed, to that sewerage headworks contribution.

[48] The sewerage headworks contribution is to be paid in respect of each lot as the development proceeds: cl 6.7. The cost of design and construction of the transportation infrastructure is to be brought into account, during the course of the development, "at the completion of each stage of the sewage transportation infrastructure constructed by [Stockland]": cl 6.13.3.

[49] During the course of the development, the cost of this design and construction is brought into account by the recording of a credit, not as a dollar sum, but as the number of "equivalent person credits" or EPCs: cl 6.13.3. The dollar amount of the cost of design and construction is converted to an EPC by the formula in cl 6.13.6. Those EPCs are to be credited against the number of EPs for which a headworks contribution is otherwise payable: cl 6.13.4.

[50] If the number EPCs exceeds the number of EPs for which a headworks contribution would otherwise be payable, then the excess EPCs are carried forward to be offset against future EPs: cl 6.13.5.

[51] For the purpose of "the administration of contributions and credits", the parties agreed to keep a "statement of account generally in the form contained in Table 6/3" and to have that statement certified by them as being correct once they agree to its contents: cl 6.15.

[52] Table 6/3 is set out as an example of a statement of account to be maintained under cl 6.15. However, it uses some terms which are not found within the text of the Agreement. In particular, it refers to an "Assumed EPC cap" and quantifies it at "14140".. A note to Table 6/3 provides that the Assumed EPC cap "is calculated from a predicted final EP and has been included to minimise the amount of the final adjustment required to satisfy the condition check in clause 6.13.1. The note continues "the EPC cap is equivalent to the Transportation component of the total Headworks Charge for this predicted EP (ie predicted EP x $323/$731). It is

envisaged that the cap will need to be reviewed at 2 yearly intervals to ensure it is consistent with the development scenario".

[53] The "predicted final EP" is shown in Table 6/3 as 32,000 EPs. That amount is referred to in the text of the contract. In cl 6.4.1, the parties agreed that in designing infrastructure for the provision of sewerage in respect of the DCP area, the capacity of the sewerage system would be sufficient to service a certain number of EPs in certain parts of the DCP area, which total 32,000 EPs.[13]

[54] Therefore the calculation of the Assumed EPC cap was according to the predicted EPs of 32,000 and the relative contributions of the treatment charge and the transportation charge to the headworks contribution amount of $731.

[55] The apparent reason for this Assumed EPC cap was to indicate approximately the point in the progress of the overall development at which the developer have received as much of a set-off against headworks contributions as it could enjoy for the entire development. This calculation was not precisely consistent with cl 6.13, at least because it ignored the effect of the "y" component under cl 6.14. But putting that to one side, and upon an assumption that ultimately the development would result in 32,000 EPs, the calculation indicated that the set-off could not be employed against more than 14,140 EPs. If and when the point was reached, the suggestion from Table 6/3 is that further EPs and their corresponding headworks contributions would not be subject to a set-off.

[56] The parties envisaged, within that note to Table 6/3, that "the cap will need to be reviewed at 2 yearly intervals to ensure it is consistent with the development scenario". This is more consistent with an intention that the parties would not be *bound* to employ this Assumed EPC cap as the development progressed their other indications to the same effect. Clause 6.15 required a statement of account to be "generally in the form contained in Table 6/3", rather than describing a certain form which itself could affect the time at which the limitation or limitations under the developer's set-off would be imposed. And the disregard of the "y" component in this calculation of an Assumed EPC cap is at odds with the terms of cl 6.14.

[57] Table 6/3 does support the plaintiff's case, which I have accepted, for a limitation upon the set-off at the completion of the entire development. It contains further notes under the heading "Condition checks as per Clause 6.13.1" which set out calculations, based upon the hypothetical sums in Table 6/3, which correspond with the interpretation of cl 6.13 which I have accepted. In particular, those calculations represented an hypothesis under which, on the circumstances existing at the time of that Statement of Account, the developer would have made less payments than required by cl 6.13.1 and express the deficiency as a "Final Adjustment Owing". Counsel for the plaintiff appeared to accept that this reference to a "Final Adjustment" was more consistent with an adjustment to be made at the completion of the development rather than at the time of the preparation of and agreement upon the Statement of Account.

[58] In my view, cl 6.15 of the Agreement required the parties to maintain a continuous record in a form indicated by but not necessarily and precisely according to Table 6/3. The basis for imposing a limitation on the set-off, consistently with cl 6.13.1, must be found (if at all) within the text of the Agreement.

---

[13] Although with the acknowledgement, in cl 6.4.2 referred to above, that this was an estimate only.

[59] The plaintiff's submissions on this point emphasise the words in parenthesis at the conclusion of cl 6.13.4, namely "subject always to the provisions of clause 6.13.1. The developer is entitled to a credit, according to cl 6.13.3 by using its EPCs to reduce the number of EPs on which the headworks contribution would otherwise be payable. The fact that the operation of cl 6.3 is made expressly subject to the provisions of cl 6.13.1 does not mean that, in some way, the provisos in cl 6.13.1 are to be adapted, if possible, to the context of a time prior to the completion of the development. Rather, the rider about cl 6.13.1 within cl 6.13.4 is to preclude any suggestion that the ultimate limitation upon the set-off, to be employed at the completion of the development according to cl 6.13.1, is not compromised by the terms of cl 6.13.4.

[60] As already discussed, each of the provisos in cl 6.13.1 is unambiguously expressed as operative "at the completion of development". Those provisos define the extent to which the developer's entitlement to a set-off is limited. There is no provision, other than cl 6.13.1, which contains such a limitation and, in particular, which qualifies the entitlement to a set-off through the operation of the scheme set out in cll 6.13.3 to 6.13.6.

[61] The plaintiff submitted that any credit to which the developer has become entitled will only reduce a headworks contributions "payable to the extent to which the stated cap or limit in clause 6.13.1 has not already been exhausted". It submits that where "the stated cap in clause 6.13.1 has been reached", the developer can enjoy no further set-off and "to this extent, the cap [on the set-off] applies along the way during the development".[14] This submission cannot be accepted, essentially because the limit in cl 6.13.1 is not encountered until the completion of the development.

[62] As already noted, the arguments accepted that the expression "the completion of development" in cl 6.13.1 refers to the entire development rather than the development for a particular stage or subdivision. It was not submitted that the expression could be read in that latter sense. That is understandable in the context of the entirety of cl 6.13 together with cl 6.14. Had the parties intended that the limit or cap would apply at each stage, the structure of cl 6.13 would be quite different. It would not have required the calculation of EPCs to be put against EPs. Instead the parties could have agreed simply that the available set-off was the cost of construction of the development for that stage, subject to a limit as per the formula in cl 6.13.1 (where "y" would be 13 per cent of the cost of construction of the development for that stage).

[63] But instead what was agreed was the process involving EPCs. The application of cll 6.13.4 and 6.13.5 would be problematical at least, if the limit expressed in cl 6.13.1 were adapted and applied in the context of each development stage. Take the case of a stage which would be within cl 6.13.5. That clause treats all EPCs up to the total number of EPs as having been used at that stage. Yet the development would not have had the benefit of all of those EPCs if the set-off was at that stage limited according to cl 6.13.1. In some way that limitation would have to be reflected by an adjustment to a number of EPCs which were carried forward for future EP charges under cl 16.13.5. But that would be quite inconsistent with the terms of that clause.

---

[14] Written submissions para 35(i).

Conclusions as to interpretation

[64] The result is that the entitlement to a set-off at the completion of development is limited in the way in which both the plaintiff and the Council suggest. But contrary to the plaintiff's further argument, there is no limit resulting from cl 6.13.1 which affects the operation of other clauses within cl 6.13 at any time prior to the completion of development.

[65] This result may not be what the original parties contemplated when making the Agreement. The provisions for payments of headworks contributions and the set-offs against those contributions were always going to operate over many years of development. At least with hindsight, it could be said that the parties were more likely to have intended that this limitation on the set-off should have some operation before the ultimate day of reckoning at the completion of the entire development. Perhaps the situation which has arisen is in part explained by an unforseen increase in the developer's costs of the provision of the transportation infrastructure. A commercial contract is to be construed so as to avoid it making commercial nonsense or working commercial inconvenience.[15] I do not understand the plaintiff to suggest that the interpretation which I have accepted would have either of those consequences. The consequence that the plaintiff must wait for some years to receive a multi-million dollar adjustment is somewhat unusual in a commercial sense. However, the court must apply the words which the parties chose for their contract rather than speculating about what they would have wished to happen in the circumstances which have developed.

[66] The remaining questions are whether, by either of the estoppels for which Stockland argues, the plaintiff is precluded from requiring the contract to be performed according to my interpretation of it.

An estoppel?

[67] Stockland pleads and argues for an estoppel by convention or alternatively a promissory estoppel. Each of those defences relies upon essentially the same facts. It relies upon the course of dealings between the Council and Stockland, over many years, by which credits were claimed by Stockland and allowed by the Council against sewerage headworks contributions in a way which was inconsistent with the effect of the Agreement upon what the plaintiff says is its proper interpretation. Stockland says that the parties (then the Council and Stockland) thereby conducted relations between them on the basis of an assumed effect of the Agreement which both would be estopped from now denying.

[68] The argument also refers to conduct of the same kind on the part of the plaintiff after it became the contracting party in 2010. From that point, it was still the Council, and not the plaintiff, which continued to deal with Stockland or its representatives in respect of the approval of stages of the development and the recording of the then current EPs and EPCs. It is unnecessary to consider Stockland's argument that the Council acted as the plaintiff's agent in these dealings. That is because the plaintiff concedes that if the Council became estopped prior to the establishment of the plaintiff, then the plaintiff as its successor would be

---

15 *Electricity Generation Corporation (trading as Verve Energy) v Woodside Energy Ltd* (2014) 306 ALR 25 at 33-34 [35].

bound by the estoppel. There is no conduct after July 2010 which Stockland suggests has resulted in an estoppel if none had arisen previously.

[69] Alternatively, the same conduct on the part of the Council is relied upon for the defence of promissory estoppel. It is said that by the Council's conduct in those respects, it effectively represented that the Agreement would not be enforced in the way in which the plaintiff says it should be interpreted.

[70] There is no part of Stockland's argument which relies upon anything which was said between the Council and Stockland or between the plaintiff and Stockland. Each estoppel is argued entirely upon the basis of the documents which passed between Stockland and the Council, as Stockland sought approval for a stage of the development.

[71] There is no real dispute as to the relevant facts about the dealings between the parties. At each stage of the development the developer has undertaken certain construction, including the construction of sewerage infrastructure. At the conclusion of a stage, the developer sought to have a survey plan for that stage sealed by the Council as a step towards the creation of new lots. It is common ground on the pleadings that under the Agreement, the sewerage headworks contribution for a plan of subdivision was to be paid upon sealing of the plan. At that point, Stockland through its consultants, submitted a document in the form of a spreadsheet which was called a Statement of Account. A more recent example, provided in October 2013, was exhibited as "GBG-1" to an affidavit of Mr G B Greenhalgh.[16] He is a director of a firm of consulting engineers engaged by Stockland from January 2005 to provide services which included the administration of the Agreement so far as it concerned payments and credits for sewerage infrastructure. The respective arguments accept that this document was representative of the statements of account provided to the Council over several years.

[72] According to the uncontested evidence in this respect of Mr Greenhalgh, a total of 28 such applications were made on behalf of Stockland for headworks credits, of which 25 have been approved by the Council and three were still being assessed. The Council has issued approval letters for credits totalling $16,904,625 or 23,125.35 EPCs and $2,197,601.64 of "y" credits.

[73] Mr Greenhalgh also referred to an example of the Council's letters of approval.[17] That letter advised Mr Greenhalgh's firm that "in accordance with the [Agreement] Section 6.13 the following Sewer Headworks Credits for Construction, as detailed in your submissions of the above, have been allowed …". The letter then described the relevant construction by Stockland of transportation infrastructure and advised of the dollar sum allowed for that construction. This was followed within the letter by a request "to provide the respective credit calculations for the … EPCs as per the relevant clauses of the [Agreement]".

[74] In response to such a letter, Mr Greenhalgh's firm would send an updated Statement of Account to the Council. On most occasions, it appears that the available EPCs exceeded the relevant number of EPs, in which case no amount was paid towards the sewerage headworks contribution. Where there were fewer EPCs available than

---

16 Court document 5.

17 Exhibit GBG-5 to his first affidavit.

the EPs required on approval of the survey plan, a sewerage headworks contribution was paid which was upon the difference.

[75] These Statements of Account largely followed the form of Table 6/3 in the Agreement. Table 6/3 contained a column headed "Cumulative EPCs (Capped)" which represented, stage by stage, a then current total of EPCs. But in the example in Table 6/3, once that total reached the "Assumed EPC cap" of 14,140 EPCs, it was shown in the column, line by line for subsequent stages, at that amount of 14,140. In other words, it showed the way in which a Statement of Account could indicate the stage at which the "Assumed EPC cap" of $14,140 EPCs was reached.

[76] However, Mr Greenhalgh's Statements of Account, such as the corresponding column in GBG-1 showed an accumulating total of EPCs without the figure at any stage being limited to a cap and in particular that Assumed EPC cap of $14,140. In particular, the column in GBG-1 showed the accumulated EPCs exceeding 14,140 for the first time in November 2008 and thereafter increasing.

[77] I have rejected the plaintiff's case that upon the proper interpretation of the Agreement, the set-off was limited or capped not only at the completion of the development but also (potentially) at each stage. Had I accepted that argument, it could be concluded that the parties acted towards each other, by what was or was not paid on the basis of these Statements of Account, in a way which is inconsistent with that interpretation. Stockland has established that by this course of dealings, the Council allowed Stockland to set off the cost of construction (translated to EPCs) without at the same time enforcing any limitation or cap on the amount of the available set-off. As I have noted, the Council has allowed Stockland to use more than the "Assumed EPC cap" of 14,140 EPCs.

[78] However, it is another thing to say that the parties have acted inconsistently with the Agreement, as I have interpreted it, for a limitation or cap to be imposed *at the completion of construction*.

[79] I have mentioned that these Statements of Account largely followed the form of Table 6/3. In particular, they contain the same references to the "Assumed EPC cap" and the explanation of that term in the note to the document. They also contained the same provision for "condition checks as per clause 6.13.1" with the elements of the calculations to be made under the provisos in that clause. Those formulae thereby refer to a "required contribution to PRSC" and to the "Maximum Credit Allowed".

[80] None of the Statements of Account was completed by inserting the numbers for the calculations under cl 6.13.1. Nevertheless, these frequent references to cl 6.13.1 and to the "Maximum Credit Allowed" as well as to the "Assumed EPC cap" cannot be ignored when considering whether there was a common understanding or representation which could found an estoppel. Statements of Account in this form were not inconsistent with the operation of the Agreement as I have interpreted it. Nor was the course of payments and credits inconsistent with that interpretation. Put another way, the dealings between the parties, on an objective view, would not indicate that either had an understanding that was inconsistent with the true effect of cl 6.13.1.

[81] Therefore the alleged estoppel by convention fails at least because there was no *relevant* convention which the parties adopted. To produce an estoppel by

convention, "the acts or conduct relied upon must point plainly, if not unequivocally, to the assumption put forward as the conventional basis of relations [and] a course of dealing that is explicable by reference to some other equally plausible assumption inevitably falls short of establishing that the parties accept as the basis of their relations the particular assumption contended for".[18]

[82] Similarly, there was no relevant representation which could found a promissory estoppel. By its conduct in responding to these Statements of Account by allowing credits without any limitation by reference to cl 6.13.1, the Council did not represent that there would be no "final adjustment" at the completion of the development. And in any case, it far from appears that if Stockland held that view about cl 6.13.1, it was upon the basis of legal advice and reasonably held.

[83] There was a further difficulty for Stockland's argument insofar as it sought to prove that Stockland itself adopted the alleged convention. Mr Greenhalgh gave evidence that he believed, at least until April 2013, that there was no cap. But he was an external consultant. Another witness was Mr Edwards, who was also an external consultant. He was a town planner providing planning and survey services for the North Lakes development. But he was involved in this process of seeking sealing of plans of subdivision only since sometime in 2013.[19]

[84] There was evidence from Mr K J Andrew who was not a director or officeholder of the first defendant but who is an employee of Stockland Corporation Limited.[20] Until this dispute arose, he had not read the Agreement.[21] He did not know of any limit or cap on the right of set-off. He did not give evidence (as Mr Greenhalgh did not) that he knew that the plaintiff held what are the alleged common assumptions or that he was induced to believe anything by the conduct of the Council or the plaintiff, save that he thought that the Council had accepted the calculations which were presented to it.[22]

[85] The outcome is that the estoppel arguments must be rejected, as counsel for Stockland in their oral submissions appeared to accept in the event that the contract was interpreted as I have done in this judgment.[23]

Orders

[86] The plaintiff should have declaratory relief substantially as it has sought. Counsel for Stockland submitted that if I held that there was some limitation upon the set-off according to cl 6.13.1, but thought that the declarations sought by the plaintiff should not be made, then the plaintiff should not be granted any relief. That submission sought support from what was said by Harman LJ in *Biss v Smallburgh Rural District Council*[24] in this passage:

> "… I think that he who seeks a declaration must make up his mind and set out in his pleading what that declaration is.

---

18 *Queensland Independent Wholesalers Ltd v Coutts Townsville Pty Ltd* [1989] 2 Qd R 40 at 46-47.
19 T2-64 ll 44-46.
20 T4-6.
21 T4-10.
22 T4-14.
23 T5-25.
24 [1965] Ch 335 at 361.

> In my judgment a plaintiff ought not to be allowed to ask the court to make a declaration covering whatever area the court shall after an inquiry conclude ought to counted as within the Act. This might be a legitimate method of conducting an inquiry before an inspector appointed by the Minister after service of an enforcement notice, but I think it is not legitimate here."

[87] However, the present case is not one of that kind. The parties ultimately joined issue according to the respective arguments about the possible interpretations of the Agreement. The interpretation which I have accepted is not outside the scope of their submissions.

[88] It will be declared that under the Mango Hill Infrastructure Agreement dated 1 April 1999, to which the parties are now the plaintiff and the first defendant ("the Agreement"):

1. By "the completion of development" as that term is used in cl 6.13.1 of the Agreement, the plaintiff and its predecessors which had been "the Council" under the Agreement, must have received payment of sums of money which total the sum of "(X x S1) - y" as those terms are used in cl 6.13.1 of the Agreement, on account of sewerage headworks contributions payable under the Agreement.
2. The first defendant is not entitled to any set-off according to the cost of the design and construction of the sewage transportation infrastructure which would result in any of the total referred to in the preceding paragraph not being received by the plaintiff and its predecessors by the completion of development.
3. The first defendant is not entitled to any benefit, by reference to the cost of the design and construction of the sewage transport infrastructure, other than a set-off against sewerage headworks contributions otherwise payable under the Agreement and in accordance with the preceding paragraph.

[89] I will hear the parties as to any further relief and costs.