SUPREME COURT OF QUEENSLAND

CITATION:	*Sunshine Coast Regional Council v Parklands Blue Metal Pty Ltd & Ors* [2015] QCA 91
PARTIES:	**SUNSHINE COAST REGIONAL COUNCIL** (applicant) **v** **PARKLANDS BLUE METAL PTY LTD** ACN 010 471 548 (first respondent) **THE CHIEF EXECUTIVE ADMINISTERING THE TRANSPORT INFRASTRUCTURE ACT** (second respondent/first co-respondent by election) **CHIEF EXECUTIVE OF THE DEPARTMENT OF ENVIRONMENT AND HERITAGE PROTECTION, AND CHIEF EXECUTIVE OF THE DEPARTMENT OF NATURAL RESOURCES AND MINES (FORMERLY CHIEF EXECUTIVE OF THE DEPARTMENT OF ENVIRONMENT AND RESOURCE MANAGEMENT)** (third respondent/second co-respondent by election) **YANDINA CREEK PROGRESS ASSOCIATION, MALCOLM CHILMAN, CASEY MACNEIL and CHARLIE MACNEIL, ANNIE NOLAN, ADAM KANE and VICTORIA KANE, NEVILLE ENGLISH, LLOYD DAVID BOWTELL and NADIA BOWTELL** (fourth respondents, third, fourth, fifth, sixth, seventh, eighth, eleventh and twelfth co-respondent by election)
FILE NO/S:	Appeal No 5999 of 2014 DC No 247 of 2011
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave *Sustainable Planning Act*
ORIGINATING COURT:	Planning and Environment Court at Maroochydore – [2014] QPEC 24
DELIVERED ON:	22 May 2015
DELIVERED AT:	Brisbane
HEARING DATE:	21 November 2014
JUDGES:	Margaret McMurdo P and Gotterson JA and Dalton J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**The application for leave to appeal is refused with costs.**
CATCHWORDS:	REAL PROPERTY – CROWN LANDS – QUEENSLAND – ADMINISTRATION – APPEAL FROM THE PLANNING

AND ENVIRONMENT COURT – where the applicant refused a development application made by the first respondent for a hard rock quarry in Yandina – where the first respondent successfully appealed to the Planning and Environment Court and the development permits were granted with strict conditions – where the proposed quarry was surrounded by mixed rural and acreage living – where the applicant contends that the primary judge erred in granting the application based on the construction of the relevant planning documents and the assessment of amenity impacts of the proposed quarry – whether the primary judge erred

Integrated Planning Act 1997 (Qld), s 3.5.5, s 4.1.52
Local Government Act 2009 (Qld), s 69
Sustainable Planning Act 2009 (Qld), s 244 s 498, s 802

Flannery v Halifax Estate Agencies Ltd [2000] 1 WLR 377; [1999] EWCA Civ 811, cited
Intrafield Pty Ltd v Redland Shire Council (2001) 116 LGERA 350; [2001] QCA 116, cited
Mirage Resorts Holdings Pty Ltd v Brellen Pty Ltd [2003] QCA 579, cited
Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors [2014] QPELR 479; [2014] QPEC 24, related
Suncoast Quarries Pty Ltd v Council of the Shire of Maroochy & Ors [1992] QPEC 72, cited

COUNSEL: C Hughes QC, with A Skoien, for the applicant
M Hinson QC, with J Houston, for the respondents

SOLICITORS: SCRC Legal Services for the applicant
P & E Law for the respondents

[1] **MARGARET McMURDO P:** The Sunshine Coast Regional Council refused a development application made by Parklands Blue Metal Pty Ltd for a hard rock quarry on Yandina Creek Road, North Arm, Yandina. Parklands successfully appealed to the Planning and Environment Court and the judge adjourned the matter so that conditions consistent with the judge's reasons could be formulated and attached to the development permits. The Council has applied for leave to appeal from that decision under s 498 *Sustainable Planning Act* 2009 (Qld). To succeed it must demonstrate that the primary judge erred in law and also obtain leave to appeal from this Court. Both parties were content for this Court to consider the merits of the Council's proposed appeal in determining its application for leave to appeal.

[2] The Council in its proposed grounds of appeal alleges the judge made errors of law:

- in the construction and application of the relevant planning instruments;
- in considering late and irrelevant issues and assertions not included in the Council's reasons for refusal of the development application;
- in improperly using the joint expert reports;
- in failing to deal with aviation issues;

- in not refusing the development application in the absence of Parklands' commitment to an upgrade of the haul route from the quarry;
- in assessing blasting impacts;
- in assessing need; and
- in failing to provide adequate reasons.

[3] After setting out the background, I will discuss each of the Council's contentions in order, although some contentions overlap and can conveniently be dealt with together.

Background

[4] The following findings of the primary judge setting out the background to this matter are not in dispute.

[5] The proposed quarry was to be developed on a 98.27 hectare site at 953 and 945 North Arm-Yandina Creek Road, Yandina,[1] with frontages to Pryor Road, McCords Road and North Arm-Yandina Creek Road. It included two conical hills rising approximately 80 metres above the surrounding plains. The land was undeveloped but for a single detached dwelling and outbuildings.[2] It was 19 kilometres from Yandina, 18 kilometres from Eumundi and 12 kilometres from Coolum by road. The immediately surrounding area was generally mixed rural and acreage living with houses on many properties. There has been ongoing rural residential growth and development within a two kilometre radius of the site from about 1992.[3]

[6] The development application to the Council was impact assessable and there were 4979 submissions against the proposal, including 230 of the 310 residences within the two kilometre radius.[4] Some submitters joined the appeal. On 1 April 2011, the Queensland Department of Environment and Resource Management (DERM)[5] gave its approval, subject to extensive conditions to the Environmentally Relevant Activity (ERA) aspect of the development application, that is, to the extractive and screening activity associated with the proposed quarry.[6]

[7] As part of the haul route to and from the proposed quarry intersected with and included a state controlled road, (the Yandina-Coolum Road), the Department of Transport and Main Roads (DTMR)[7] also provided conditions to be attached to any permit.[8]

[8] Parklands amended its plans and shortly before the hearing in the Planning and Environment Court produced a proposed Activity Based Management Plan (ABMP).[9] This was stated to be a management tool for guiding environmental management at the proposed quarry, identifying potential environmental impacts and ways of managing, controlling and minimising them. The ABMP's principal objective was to address the provisions and requirements of the DERM permit conditions, including protecting the general amenity of the site and surrounds during

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1 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [2].
2 Above, [3].
3 Above, [4].
4 Above, [220].
5 DERM has since become the Department of Environment and Heritage Protection and Department of Natural Resources and Mines. It was both a concurrence and referral agency under the planning scheme.
6 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [5].
7 The DTMR was a concurrence agency under the planning scheme.
8 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [6].
9 Exhibit 8.

and subsequent to extracting operations; protecting the acoustic environment and surrounding residences and minimising the likelihood of complaint; controlling blast emissions to protect amenity and the safety of premises in the vicinity of the proposed quarry; fostering good relationships and co-operation with the local community; and documenting and periodically reviewing and confirming the effectiveness of measures to safeguard the environment including the environmental amenity of residents closest to the proposed quarry.[10]

[9] The proposed quarry was to have an output of 350,000 tonnes per year, with a maximum permitted output of 500,000 tonnes per year in times of peak demand.[11] It was to operate between 6.00 am and 6.00 pm Monday to Friday and 6.00 am to 6.00 pm Saturday. There was to be no production activity Monday to Friday between 6.00 am and 7.00 am and 5.00 pm and 6.00 pm. From 6.00 am to 7.00 am on Saturday there was to be no heavy vehicle activity and production was to be confined from 7.00 am to 12 noon. There was to be no onsite activity on public holidays or Sundays.[12] It was anticipated the quarry would employ about 10 permanent staff members. Material would be transported from the site by either 19 metre articulated vehicles or rigid trucks with dog trailers, with an average load of 50 tonnes generating a maximum 112 heavy vehicle trips a day, 56 of which would be loaded trucks.[13]

[10] An access road was to be established along an easement which would connect with McCords Road. Quarry traffic would then proceed west before turning south along North Arm-Yandina Creek Road connecting to Yandina-Coolum Road via Toolborough Road.[14] The proposed quarry excavation would be limited to an area of about 27 hectares with much of Parklands' site left untouched.[15] Excavation would be by the receding rim method as described in the draft ABMP. This would maintain a buffer between the open pit and the nearest sensitive receptors, keeping the eastern vegetated hillside as a screen.[16] The proposed quarry had estimated reserves of about 17 to 20 million tonnes and was expected to have a life of about 40 years.[17]

[11] The Council owned and operated the Sunshine Coast Airport. A proposed new runway generally orientated east-west had been part of the Sunshine Coast Airport Master Plan since 2007. The airport was in the final stages of preparing for the new runway after 30 years of planning. This was a critical element in the Council's 2013 economic development strategy, the Queensland Aviation Strategy and the recently released Economic Direction Statement – Queensland Airports 2013-2023. The 2007 Master Plan set 2020 as the target for delivery of the new runway[18] which would be used for regular passenger transport.[19] The proposed quarry was located 5.5 nautical miles (13 kilometres) from the new runway threshold and was underneath the flight path of aircraft approaching and departing the new runway from and to the north-west.[20]

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10 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [8].
11 Above, [11].
12 Above, [13].
13 Above, [14].
14 Above, [15].
15 Above, [16].
16 Above, [17].
17 Above, [18].
18 Above, [124].
19 Above, [125].
20 Above, [126].

Construction and Application of Planning Instruments

The Planning Scheme

[12] As Parklands lodged its development application in June 2009, it was governed by the *Integrated Planning Act* 1997 (Qld).[21]

[13] It is common ground that Parklands' development application required the Council to undertake an impact assessment.[22] The Council was required to have regard to the relevant planning scheme, any other relevant local planning instruments,[23] and, if not identified in the planning scheme as being appropriately reflected, State Planning Policies.[24] The site of the proposed quarry was in the Yandina Creek Valley Planning Area (No. 24), General Rural Lands Precinct (No. 3).[25] Part of the site to the east was included in the Rural or Valued Habitat designation. A strip of land along the western boundary was included in the conservation designation.[26]

[14] The relevant planning scheme is the Maroochy Plan 2000. Its Vol 1 deals with Administration and Assessment Requirements.[27] It divides the Maroochy Shire into Planning Areas which provide a link to the Strategic Plan through setting each area's context and role within the Shire.[28] Each Planning Area is further divided into Precincts which establish each locality's context and role within the Planning Area and the desired future local character.[29] Proposals for impact assessable development like the present will be determined in accordance with the Statements of Desired Local Character for the Planning Area and the Statements of Desired Precinct Character for the individual Precinct in which the development site is situated, set out in the Maroochy Plan, Vol 3.[30] Proposals for impact assessable development will also be assessed against the Strategic Plan in Maroochy Plan, Vol 2. The detailed local planning provisions in Vol 3 are intended to be based upon and reflective of the general principles in the Strategic Plan. It is, however, the planning area provisions in Vol 3 which represent Council's specific planning intent for the relevant localities.[31] Where there is no indirect inconsistency between Vols 2 and 3, although Volume 3 constitutes the primary basis for assessment, all elements of the policy or intent in both volumes should be satisfied in order that development does not conflict with the planning scheme. If there is an inconsistency, statements in Vol 3 prevail over inconsistent statements in Vol 2. The provisions in Vol 2 are either broad strategic statements or statements of general principle, whereas Vol 3 provisions state specific and considered planning intents for identified localities.[32]

[15] The Maroochy Plan, Vol 2, establishes the strategic policy to be considered in the assessment of impact assessable development. It includes Desired Environmental Outcomes, Strategic Implementation Measures and more detailed measures to address broad strategic issues. These are to be used as assessment criteria for

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[21] *Sustainable Planning Act* 2009 (Qld) s 802.
[22] *Integrated Planning Act* s 3.5.5.
[23] Above, s 3.5.5(2)(b).
[24] Above, s 3.5.5(2)(c)(i).
[25] AB, Vol 8, 3000 and 3001.
[26] AB, Vol 8, 2990 - 3000.
[27] AB, Vol 5, 1849.
[28] Maroochy Plan, Vol 1, s 2.2(1) and (2), AB Vol 5, 1856.
[29] Above, s 2.2(3), AB Vol 5, 1856.
[30] Above, s 2.2(4), AB Vol 5, 1856.
[31] Above, s 2.2(5), AB Vol 5, 1856.
[32] Above, s 2.2(6), AB Vol 5, 1856.

applications for impact assessable development as determined by the Tables of Development Assessment contained in Vols 1 and 5 of the Planning Scheme.[33]

[16] Mining and Extractive Industry is dealt with in Vol 2, s 17. Extractive industries are generally assessable development in the planning scheme and require development approval.[34] The key issues dictating the planning strategy relating to the protection and extraction of minerals and extractive material include the adequate supply of all types of quarry rock; the need for adequate planning protection from extractive material and major haul routes because of the increasing demand for materials due to the high population growth in the Shire and south-east Queensland; considerations of land use, environmental and aesthetic impacts, the transportation of extractive materials and the impact of proposed extractive industry on existing or proposed development; and the potential alienating effects on extractive resources of operations of incompatible developments on or near resources or associated haul routes.[35] The mining and extractive industry strategy is that all known significant deposits of sought after extractive resources considered appropriate for extraction (subject to appropriate controls) be identified on the strategic plan map. Possible haul routes can then be identified, land use decisions made for adjoining areas and adequate buffer zones provided around the resources.[36] The strategy also includes determining appropriate environmental aesthetic and operational controls to limit the impacts of the industry on surrounding communities and environment, and minimising conflict by ensuring compatible development in the vicinity of the mining and extracted material deposits and probable haul routes.[37]

[17] The areas shown as Extractive Industry Resources will be protected from incompatible uses so that they may be utilised for existing or future extraction. Land uses which threaten the viability of these deposits or the effective functioning of designated haul routes are unlikely to be supported. Encroaching urban development of any density represents a significant threat to these areas.[38]

[18] The Maroochy Plan emphasises the maintenance of a high standard of environmental amenity. Extractive industry by its very character has the potential to destroy natural features of the Shire and to degrade ecological systems. This concern must be balanced against community need for extractive material. Appropriate management at the establishment and during the life of the use will be required to ensure any potential impacts are minimised.[39] Extractive industry resources should be used where this is justified and it is demonstrated that extraction and haulage would have minimal detrimental impact.[40]

[19] The Maroochy Plan seeks to protect cane lands within the Yandina Creek Valley for commercial rural production with the steeper lands of the Ninderry Range accommodating environmentally sensitive and sustainable rural residential use and State Forest activities and business and industry land within the Yandina Creek Valley to provide local economic and employment opportunities.[41] This is to be

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33 Maroochy Plan, Vol 2, s 1, p3, AB Vol 5, 1925.
34 Above, s 17.1, AB Vol 5, 1943.
35 Above.
36 Above, s 17.3.1.
37 Above, s 17.3.2.
38 Above, s 17.4.1.
39 Above, s 17.5.2, AB Vol 5, 1944.
40 Above, s 17.5.5, AB Vol 5, 1945.
41 Above, Vol 3, s 3.24.2(1), AB Vol 5, 1962.

achieved by generally preventing the fragmentation or alienation of good quality agricultural land. It does, however, envisage the extraction of sand and gravel which is to be carried out in accordance with best management practices, including effective rehabilitation of disturbed areas.[42] The statements of desired precinct character for the site include an intent that extractive industry activities are allowed where the workings are proven to be commercially and environmentally suitable for exploitation and is carried out in accordance with an approved program of works and restoration. In assessing any application for development, particular consideration will be given to the measures to be used to limit adverse environmental impacts to acceptable levels.[43] Preferred and acceptable uses for extractive industry may also be an acceptable use of land in this precinct where a community benefit and acceptable environmental impacts can be demonstrated by the proponent to Council's satisfaction.[44]

[20] The Maroochy Plan, Vol 4, contains the Planning Scheme Codes including Codes for Industrial Development and Use[45] which in turn includes the pertinent Code for Extractive Industry[46] the purpose of which is to achieve two outcomes. The first is that extractive industry operations occur where the overall community benefits of winning an available resource are not overridden by adverse environmental or amenity impacts.[47] The second is to protect extractive industry operations from the intrusion of sensitive or otherwise incompatible surrounding development.[48]

[21] The relevant State Planning Policy deals with Protection of Extractive Resources.[49] Its Explanatory Statement provides that extractive resources including quarry rock are essential for building homes, hospitals, schools, factories and infrastructure. The main markets are urban communities experiencing high and sustained population growth. This finite resource is determined by geological conditions. It needs to be accessed where it naturally occurs and be close to markets. This can result in conflict between extractive industry and other incompatible land uses such as residential uses that have the potential to sterilize the availability of the extractive resource. The policy identifies extractive resources of State or regional significance where extractive industry development is appropriate in principle and aims to protect those resources from developments that might prevent or severely constrain current or future extraction when the need for the resource arises. As far as practicable, development should be compatible with existing or future extractive industry. There are acceptable circumstances where this outcome might not be achieved, namely where there are existing development commitments or an overriding public interest for another use of the land.[50]

[22] The Policy will influence land use, planning and development decisions and help shape local government planning schemes. Development applications for new extractive industries will be subject to the normal assessment process which will include not only this Policy but also detailed consideration of the relevant environmental, amenity and traffic policies and the requirements in the applicable local government

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42 Above, s 3.24.2(3)(b), AB Vol 5, 1962.
43 Above, s 3.24.4(3) *Intent*.
44 Above, s 3.24.4(3) *Preferred and Acceptable Uses*.
45 Above, Vol 4, 56 AB, Vol. 51.
46 Above, Vol 4, s 6.3, AB, Vol 5, 2033.
47 Above, Vol 3, s 6.3(a), AB Vol 5, 2033.
48 Above, Vol 3, s 6.3(b), AB Vol 5, 2033.
49 State Planning Policy 2/07, AB Vol 6, 2291.
50 *Explanatory Statement*, AB Vol 6, 2294.

planning scheme and other relevant considerations. Submissions made on development applications must be considered in the assessment. The Policy does not guarantee that a particular development application for an extractive industry will be approved. Of the 100 Key Resource Areas (KRAs) listed by the Policy, 90 already have current extractive industry development approvals and the Policy can be used to protect these KRAs from incompatible development where such development is not already committed.[51]

The Council's contentions

[23] The Council contends that the primary judge erred in finding that the use of the proposed quarry site for extractive industry had been supported by relevant planning controls for more than 30 years[52] and that the present planning strategy for this site is to preserve the resource and permit its extraction subject to appropriate management of impacts.[53] The planning documents, the Council contends, do no more than recognise the existence of the quarry rock on this site and the need to preserve its potential for future quarrying. His Honour's starting position was that the quarry should be approved and that his role was to impose conditions to manage its impacts. The judge should have asked whether the development application should be approved at all, having regard to the planning scheme; the evidence of the low level of public and community need; and the evidence of the detrimental impacts of the proposal. This fundamental error has permeated all his Honour's subsequent reasoning.

[24] The Council submits that the primary judge erred in stating:

> "[29] The use of the subject site for extractive industry has been supported by relevant planning controls for more than 30 years, including:
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> (a) designation as extractive industry in the 1985 Strategic Plan;
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> (b) designation as extractive industry in the 1996 Strategic Plan;
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> (c) designation as extractive industry under all versions of the Planning Scheme;
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> (d) designation as a Key Resource Area (KRA) under State Planning Policy 2/07 – Protection of Extractive Resources;
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> (e) designation as extractive industry under all versions of the SEQRP;[54]
>
> (f) designation as extractive industry under the Council's Draft Planning Scheme."

[25] The judge misconstrued the planning scheme in that he was satisfied that the conditions to be imposed in relation to "hard" elements of amenity impact (noise, dust, blasting, truck movements and environmental issues and visual amenity) are appropriately and acceptably minimised and limited the impacts on amenity by "having regard to the long term planning support for a hard rock quarry at this

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51 Above, AB, Vol 6, 2295.

52 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [29] and [240].

53 Above, [277].

54 The South-East Queensland Regional Plan (SEQRP) 2009-2031.

site."[55] The designation under a strategic plan, the Council contends, did not give rise to any entitlement to use the land for a quarry; the site was zoned rural under successive planning schemes and was not designated as extractive industry; and designation as a KRA did not entitle the quarrying of the resource without a development application. The judge erred in taking into account "the designations of the site over many years" as a proposed quarry.[56]

Conclusion as to these contentions

[26] The primary judge's careful reasons extend over 88 pages and include an accurate summary of the relevant legislative framework,[57] aspects of the pertinent State Planning Policy,[58] and of the Maroochy Plan.[59] It is true that his Honour did refer to the support given to the subject site being used for extractive industry in relevant planning controls for more than 30 years;[60] to a 1992 decision[61] of this Court allowing an appeal in relation to the proposed site and approving an application to rezone it for extractive industry;[62] and to the present planning strategy for the site being to preserve the resource and permit its extraction subject to appropriate management of impacts.[63] But that does not mean the judge commenced his deliberations by considering Parklands had an entitlement to use the land to quarry resources. These were legitimate matters for his Honour to refer to as part of the planning context for this development application. His Honour also referred to the extraordinarily stringent conditions to be imposed on Parklands and to the detrimental community impact of the proposed quarry and the haul route on residents.[64] His Honour considered and made relevant findings of fact on ecology issues;[65] air quality;[66] blasting (discussed in more detail below);[67] traffic;[68] aviation issues (discussed in more detail below);[69] noise[70]; quarry operations and products;[71] visual amenity;[72] and need (discussed in more detail below).[73] His Honour then related all these findings to the relevant planning issues[74] and concluded that Parklands had persuaded him that the development application, conditioned in accordance with the judge's reasons was not in conflict with the Maroochy Plan.[75]

[27] When the judge's comprehensive reasons are considered as a whole, it is clear his Honour identified all relevant planning provisions and key planning concepts and fully apprehended that the important planning concepts including the balancing up

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55 Above, [277].
56 Above, [231].
57 *Parklands Blue Metal Pty Lt v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [19] – [25].
58 Above, [32] – [39].
59 Above, [40] – [55].
60 Above, [29] and [277].
61 *Suncoast Quarries Pty Ltd v Council of the Shire of Maroochy & Ors* [1992] QPEC 72.
62 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [30].
63 Above, [277].
64 Above, [277].
65 Above, [62] – [68].
66 Above, [69] – [83].
67 Above, [84] – [100].
68 Above, [101] – [115].
69 Above, [116] – [140].
70 Above, [141] – [156].
71 Above, [157] – [195].
72 Above, [196] – [240].
73 Above, [241] – [269].
74 Above, [270 – [279].
75 Above, [280].

of the maintenance of a high standard of environmental amenity against community need for extracted industry on the proposed quarry site.[76] His Honour did not commence his reasoning from the starting position that the proposed quarry should be approved because of the site's planning history. The judge considered whether the development application should be approved in light of the relevant planning policy and evidence before him. This contention is not made out.

Late issues and late assertions

The Council's contentions

[28] The Council contends that the primary judge erred in referring to the Council raising issues at a late stage.[77] As the appeal to the Planning and Environment Court was a hearing anew,[78] his Honour's decision was unfettered by the Council's original reasons and decision so that it was irrelevant whether the Council raised these for the first time in the appeal. All the issues were legitimately before the court below in accordance with the *Planning and Environment Court Rules* 2010 (Qld) and had been raised by the Council many months before the final hearing.

[29] The Council particularly emphasised that the judge wrongly identified the evidence of its quarry expert and the only geologist to give evidence, Mr Rod Huntley, as being raised for the first time in the joint expert report dated 26 June 2013.[79]

[30] Parklands, the Council contends, should have identified the aviation issue in its ABMP in support of its development application because this was clearly an issue under the relevant planning documents. The proposed quarry was within the airport overlay within the planning scheme.[80] The onus was on Parklands, not the Council, to establish that the problems arising out of the aviation issue were met.

[31] Contrary to the judge's view, Council raised the issue as to the upgrade and maintenance of the haul route roads many months before the court hearing.[81] Further, the Council emphasised, the fact that it did not raise need as a reason for refusal in its decision notice was irrelevant.[82] It was also irrelevant that it did not raise in its reasons for refusal the fact that, while a quarry may have been appropriate at the site in 1992, it was now no longer viable given the subsequent extensive residential encroachment.[83]

[32] These errors, the Council contends, infected his Honour's entire assessment of the evidence and his ultimate conclusion. They amount to an error of law warranting the granting of leave and the allowing of the appeal.

Conclusion as to these contentions

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[76] Above, [43] and [271].
[77] *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [115], [116], [157], [162], [167] and [174].
[78] *Integrated Planning Act* s 4.1.52(1).
[79] Joint Expert Report Quarry Products and Quarry Operation, 1, AB, Vol 7, 2693 – 2705, especially [29] and [54].
[80] Maroochy Plan 2000, Vol 4 Reg Map 1.8 (1 of 7), AB, Vol 5 2023.
[81] See AB, Vol 1, 26 and AB, Vol 10, 4103.
[82] *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [246].
[83] Above, [27].

[33] The reasons of the experienced primary judge explicitly demonstrate that his Honour was conscious of the fact that this was an appeal by way of the re-hearing.[84] But this did not preclude his Honour from considering the Council's reasons for refusing Parklands' development application as a starting point in identifying the issues in the appeal.[85] His Honour appropriately acknowledged that, in appeals of this nature, issues change and expand.[86] The judge accurately set out the issues in the appeal and then discussed each issue raised by the parties, making reasoned findings and relevant conclusions on each issue.[87]

[34] Many of the Council's contentions in its written outline concern his Honour's findings of fact and are therefore irrelevant to this application. I am unpersuaded that any of the judge's references to the late raising of issues by the Council and its experts amounted to an error of law. His Honour was entitled to consider that the Council should be a model litigant in this area of law, expected to identify the real issues in a development application of this kind at an early stage with a view to saving costs and court time. The only opportunity the judge had to publicly highlight this shortcoming was in his judgment. There is, however, nothing in his Honour's reasons to indicate that the judge's disappointment at the late raising of these issues played a part in his Honour's decision to approve the development application, with stringent conditions, after considering the relevant evidence and planning documents. His Honour made plain that he understood Parklands carried the onus in the appeal.[88] In assessing the evidence of the Council's expert, Mr Huntley, his Honour was entitled to take into account that Mr Huntley's opposition to the proposed quarry had become much more entrenched since he signed the joint expert report on 26 June 2013.[89] He was also entitled to find that Mr Huntley's unfavourable comparison of Parklands' proposed quarry to a proposed quarry at Gympie was tainted by his role as a consultant to the developer of the proposed Gympie quarry which Mr Huntley did not disclose until he gave evidence in the appeal below.[90]

[35] The Council's asserted errors are not made out and did not contaminate his Honour's assessment of the evidence and ultimate conclusion.

The judge's use of the joint expert reports and failure to deal with aviation issues

The Council's contentions

[36] The Council emphasises that the proposed quarry sits directly under the fly path for the final approach and departure path for the proposed new Sunshine Coast airport runway. It contends that the primary judge misconstrued points of agreement in joint expert reports and failed to consider qualifications to opinions expressed by experts in those reports.

[37] It principally relied on the judge's reference to the aviation experts agreeing that "an acceptable level of aviation safety could be provided if there was positive control of

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84 Above, [20].
85 Above, [58].
86 Above, [57] – [61].
87 Above, [62] – [279].
88 Above, [20].
89 AB, 2693.
90 Above, [166].

the blasting activity." This failed to acknowledge that the agreement was based on the implementation of appropriate safety precautions, including positive control of blasting and management of air space. The experts envisaged delegating the issue of aviation safety but there was no agreement between the experts about how to do that. Nor did the experts agree on the nature and extent of interference with operational efficiency of the quarry to achieve aircraft safety. The judge failed to consider the experts' statements qualifying their points of agreement about aircraft safety. His Honour wrongly stated that the Council's aviation experts had agreed upon a protocol to produce an acceptable level of aviation safety when its experts only agreed in a definition for an exclusion area in which such a protocol would apply; they expressly did not agree as to the contents of the protocol. The judge ignored the expert evidence about actual or potential impacts on operational efficiency of aircraft arising from the operation of the proposed quarry. Instead, his Honour found assistance from Parklands' analysis based only on part of the forecast air traffic for the Sunshine Coast airport and which was unsupported by expert evidence.

[38] In relying on the points of agreement in the joint expert report in this way, the Council contends that the judge failed to undertake an assessment of the proposed quarry against the objectives of the planning scheme and the airport's State Planning Policy.

[39] The Council further contends that the judge wrongly considered that the aviation experts agreed that appropriate management of airspace could be achieved; they agreed only that its management would need to avoid safety impacts. The judge did not satisfy himself that the proposed quarry would appropriately manage the airspace and instead improperly delegated that issue to another entity or entities over which the court had no control. It was the judge's duty to deal with, not delegate, safety issues.

[40] Nor did the judge consider whether management of safety issues will or may constrain airport operations. The judge failed to deal with the dispute between the experts as to operational efficiency of the airport. The aviation experts' joint report[91] made clear the experts' many areas of disagreement.[92] In determining these issues the primary judge did not take into account the provisions of the Airport Code or the Aviation State Planning Policy. While the judge had power to impose conditions on the approval of the development application, the Civil Aviation Safety Authority (CASA) had no jurisdiction over the quarry. It was for the judge to determine whether the approval of the development application would have unacceptable impacts on aviation safety and airport proficiency and not to delegate it.

Conclusion on this contention

[41] Again, many of the Council's complaints are alleged errors of fact rather than law and therefore have no relevance to this application. In any case, his Honour carefully considered the evidence on the aviation issue[93] and noted the Council's contention that:

> "Blasting activities at the site of the proposed quarry would involve an unacceptable safety risk to aircraft due to possible dust ingestion into the engines, airframe impact from projectile rocks, shockwaves

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91 Exhibit 10.3, AB, Vol 8 2971.

92 At paras [12] – [23], AB Vol 8 2975-2980, especially paras [14], [17], [18], [20] and [21].

93 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [116] – [140].

from blasting, visual distraction to pilots from explosions and interference with radio and navigation instruments; accordingly

approval of the proposed quarry will have an unacceptable impact on aviation safety, or alternatively, would unacceptably compromise longstanding planning to upgrade the Sunshine Coast Airport for the benefit of all residents of the region generally."[94]

[42] His Honour observed that as the proposed quarry was only 13 kilometres from the airport it was not surprising that the Aviation State Planning Policy and the Code for Development in the Vicinity of the Airport sought to ensure that the proposed quarry did not affect the safety and operational efficiency of the airport.[95]

[43] The judge accepted the joint report of aviation experts which agreed that:

"(a) dust from blasting at the quarry will not pose an unacceptable risk to aviation safety;

(b) interference with radio and navigation instruments from blasting at the quarry will not pose an unacceptable risk to aviation safety;

(c) blasting at the quarry will not pose an unacceptable risk to aviation safety in the form of a visual distraction to pilots;

(d) there is potential for a projectile rock to impact on aircraft overflying the blasting site if blasting operations are unconstrained;

(e) an acceptable level of aviation safety could be provided if there was positive control of the blasting activity and air traffic was managed in order to separate aircraft from the blasting activity. Appropriate control and management arrangements would need to be determined through preparation of an aeronautical study;

(f) an area with defined vertical and horizontal limits, from which aircraft must be excluded during blasting activity at the subject site, could be established to delineate the required separation of air traffic from potential projectile rock created by the blasting activity. Aircraft should be excluded from the defined area, under normal conditions, for a period of approximately 10-15 minutes prior to blasting (when the blast area is secured) until the all clear is given, and approximately 5-10 minutes after the blast, depending upon access to the blast area, proximity of firing and extent of any dust or gases;

(g) conditions which may require this period of exclusion to be extended (as provided by the blasting experts in their applicable joint reports) are listed below:

(1) an initiation system communication problem may extend the period of exclusion prior to blasting up to about one hour;

(2) if a shot is fully or partially loaded, and the site is evacuated due to nearby lightning (within 15

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94 Above, [117].

95 Above, [118].

kilometres), no aircraft should be allowed in the exclusion zone until the lightning threat has passed (as determined by the contractor's lightning warning system);

(3) if a shot produces strong orange-colour fumes (nitrous oxides), no aircraft should be allowed in the exclusion zone until the orange fumes are no longer visible. Dispersion and chemical breakdown of the gasses may take up to about 15 minutes, and is an unusual (though not rare) event; and

(4) a misfire could add a further 20-40 minutes to the clearance time."[96]

[44] His Honour noted that the experts agreed that:

"(a) there is potential for projectile rock, dust, other emissions and/or shockwaves (overpressure front) with a vertical velocity of greater than 4.3 m/sec associated with blasting at the quarry to penetrate the obstacle limitation surfaces (operational airspace) of the proposed new runway 13/31;

(b) the quarry site is located inside the Sunshine Coast Airport Control Zone which extends to 8 NM from the aerodrome reference point, and all aircraft operating within the control zone or associated controlled airspace would be under positive air traffic control while the airspace is active;

(c) uncoordinated blasting has the potential to cause disruptions to the flow of air traffic at and within the vicinity of Sunshine Coast Airport; and

(d) an appropriate Air Traffic Control Agency (to be determined) must hold the final authority (subject to the conditions under which this authority would be granted and exercised) over whether blasting takes place at particular times."[97]

[45] The judge added:

"At paragraph 12 of their joint report, the aviation experts advising Council provided a definition of the exclusion area as agreed to in (f) above. The aviation experts advising Parkland provided a form of management protocol which is Annexure A to the joint report of the aviation experts, which the experts for the Council did not agree is sufficient to properly define the defined vertical and horizontal limits of the exclusion zone during blasting activity as referred to in the points of agreement above. I agree with [counsel for Parklands] that it is not necessary in these proceedings for the court to resolve that disagreement. Those limits will be determined by the appropriate aviation authority (CASA) following the aeronautical study agreed by the experts and input from interested parties. Once the aeronautical

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96 Above, [127].
97 Above, [128].

> study is done and the terms of the protocol (as contemplated in (f) and (g) above) are agreed, its terms should then be incorporated into the ABMP, and the ABMP modified accordingly."[98]

[46] His Honour appreciated that there was a dispute about the limits of an exclusion zone in the airspace over the proposed quarry but was content to have those limits determined by the aviation authorities following the proposed aeronautical study. His Honour did not err in leaving the decision as to the limits of an appropriate exclusion zone around the proposed quarry to the aviation authorities, as the experts all suggested. The judge noted that blasting would only occur in accordance with a protocol to be approved by CASA, separating blasting from air traffic movements, with the Air Traffic Control Authority determining if and when blasting could occur. For that reason his Honour was satisfied that, having regard to the Aviation State Planning Policy and the relevant Code and with appropriate imposed conditions, the blasting operations could occur within acceptable safety limits.[99] His Honour did not err in taking that approach.

[47] The judge also considered the airport's operational efficiency.[100] His Honour's acceptance of Parklands' contentions on this issue, which were not disputed by the Council, was a finding on a question of fact, not law.

[48] The judge did not ignore the air traffic relating to general aviation. His Honour appreciated that the proposed upgraded airport would result in the current runway, which will not be affected by the proposed quarry, being used as "a secondary cross-runway mainly by general aviation aircraft."[101]

[49] Contrary to the Council's contentions, his Honour's assessment of the proposed quarry was undertaken against the objectives of the Airport Code and the Aviation State Planning Policy. Although his Honour did not refer to these matters himself, the judge preferred the evidence of Parklands' aviation experts and their opinion was informed by those planning instruments.[102] In any case, no one contended the development application should be refused because of a conflict with the Airport Code.[103] The onus was on Parklands to demonstrate that the proposed quarry's impact on the operation and safety of the airport could be adequately managed. But the Council's aviation experts accepted that an aeronautical study involving Airservices Australia, Australian Transport Safety Bureau, CASA, Sunshine Coast Airport and aircraft operator representatives would be appropriate to determine blasting arrangements.[104]

[50] The judge's reasons adequately dealt with the aviation issues. These contentions are not made out.

Parklands' failure to commit to the haul route upgrade

The Council's contentions

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98 Above, [129].
99 Above, [132].
100 Above, [118] and [135] – [138].
101 Above, [125].
102 Above, [118].
103 Above, [51].
104 AB Vol 8, 2980, T 4-40 – T 4-41, AB Vol 1, 270-271 and T 7-31 – T7-32, AB Vol 2, 539-540.

[51] The Council contends that, in the absence of a commitment by Parklands to construct and maintain an upgraded haul route providing an acceptable level of safety and amenity, the application for the proposed quarry ought to have been refused. The primary judge acknowledged that the upgrade to the haul route was required but failed to reach a final conclusion as to who should be responsible. As the judge found that there was no evidence justifying a contribution from the Council to the upgrade of the haul route, his Honour should not have found the evidence was insufficient to conclude (from a traffic perspective) that the condition attached to the development permit should prevent Parklands from seeking to have discussions with Council as to payment for it.[105] His Honour should have found that the approval be conditional upon a requirement that Parklands undertake necessary road works and enter into a road maintenance agreement at Parklands' expense. The judge was mischievous in suggesting that, despite the lengthy hearing before him involving evidence from traffic experts, in the absence of agreement, there should be a further hearing in respect of such a condition.[106] As all the safety experts considered that the proposed quarry would require the upgrade of the haul route, in the absence of Parklands' commitment to construct and maintain it, the judge should have refused the development application.

Conclusion on this contention

[52] The Council's evidence in the appeal below identified problems with the haul route as a reason for its refusal of Parklands' development application.[107] Parklands raised as an issue in the appeal below the question of who should bear the cost of the upgrade to the haul route.[108] It was common ground between the parties' traffic engineering experts that the proposed quarry could not proceed in the absence of an upgrade of the proposed haul route which included a Council controlled road.[109] His Honour observed that the limited evidence did not suggest any basis to require the Council to contribute to the upgrade but was inconclusive. This was a determination of fact. Accordingly, the judge determined that he should impose a condition on the development point leaving this matter to be determined at the conditions stage.[110] His Honour accepted that an upgrade was essential for both traffic safety and amenity impacts[111] and found that, if the parties could not resolve the matter, a conditions hearing should take place as to its maintenance.[112]

[53] A condition forms part of any development application approval[113] and failure to comply with it is a development offence.[114] The Council has not demonstrated any legal error in the primary judge leaving the resolution of these issues to the conditions stage. This contention is not made out.

The assessment of blasting impacts

The Council's contentions

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105 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [114].
106 Above, [115].
107 Above, [58].
108 AB, Vol 12, 5170.
109 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [101].
110 Above, [114].
111 Above, [110].
112 Above, [115].
113 *Sustainable Planning Act* 2009 (Qld) s 244.
114 Above, s 580.

[54] The Council contends that the judge erred in assessing the blasting impacts associated with the proposed quarry and failed to provide adequate reasons. His Honour wrongly relied on the joint expert report of Drs Heilig and McKenzie[115] as it did not take into account other evidence from Dr McKenzie and the fact that the Ecoaccess Guidelines 2006 have nothing to do with aviation safety. The Council emphasises that Dr Heilig conceded in cross-examination that the blasting plan in Parklands' ABMP covered standard blasting once the quarry was established but did not provide for the original blasting establishing the proposed quarry.[116]

[55] The Council submits that his Honour also failed to explain how the giving of 24 hours' notice to residents (or some other condition) could ensure that either or both of the two residences within 250 metres of the currently identified blasting areas would not be occupied when blasting occurred.[117] The judge failed to identify any evidence supporting the contention that, if necessary, the quarry could be shrunk to comply with a 250 metre blasting limit.[118]

[56] Further, the Council contends that his Honour failed to explain how a condition of development approval could ensure that regulation of public use of an existing public road within the 250 metre blasting buffer (North Arm-Yandina Creek Road) could ensure an appropriate level of safety when blasting.[119] The judge wrongly considered Parklands' ABMP provisions about blasting were "strict".[120] His Honour did not deal with the submitters' and Council's concerns about blasting issues and did not take into account Mr Huntley's evidence.

Conclusion as to these contentions

[57] The Council's first contention seems to be a question of fact rather than law. But in any case, the judge was entitled to find there was no significant, relevant dispute between the evidence of Dr McKenzie and that of Dr Heilig. The parties' aviation experts agreed that aircraft should be excluded from a zone in the blasting area for approximately 10 to 15 minutes before blasting and five to 10 minutes afterwards.[121] They did not identify blast over-pressure as a relevant aviation safety risk.[122] His Honour appreciated the effect of the Ecoaccess Guidelines.[123] His Honour decided to impose conditions to ensure that blasting was not permitted at times when aircraft had access to the airspace above the blasting area.

[58] The Council also contends that the ABMP failed to identify a plan for initial blasting as discussed by the Council's expert, Mr Huntley, and that, as a result, his Honour erred in law in failing to deal with issues properly raised by Council and the submitters on the blasting issue and failed to provide adequate reasons for the conclusions reached. His Honour gave detailed and sound reasons for not accepting evidence of Mr Huntley[124] who was not a blasting expert. The blasting experts, Dr McKenzie and Dr Heilig, both agreed that quarry blasting activities for the initial stage for the proposed pit development could be safely conducted.[125] Dr Heilig explained that

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115 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [139].
116 AB, v1, 75– 76, T2-23 – T2-24.
117 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [94] – [97].
118 Above, [97].
119 Above, [98].
120 Above, [99].
121 Above, [127(f)].
122 Exhibit 10-3, [10], pages 3-4, AB, V8 2973-2974.
123 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [139].
124 Above, [166] – [186].
125 Above, [91], especially [5.5] of the Joint Experts Report there quoted.

the blasting to establish the proposed quarry would require constant expert review and management at that time and was not something that could be specified in detail in the ABMP beforehand. His Honour found that the risk could be managed by conditions ensuring the physical and temporal separation of aircraft and blasting.[126] This was not an error of law. His Honour's reasons for so concluding appropriately dealt with the issues raised by the Council and the submitters. The Council's first contention has not been made out.

[59] As to the Council's second contention, his Honour's reasons made clear that blasting will never be permitted within 250 metres of occupied housing. The judge recognised that this may mean that blasting cannot occur in some parts of the quarry in the later stages of the quarry's life, but that will not be for many years.[127] The Council has not established any error of law.

[60] As to the Council's third contention, the judge did not have to explain how a condition could regulate use of a public road to ensure safety as it is self-evident. The temporary regulation of road traffic to ensure the safety of road-users is a common occurrence on public roads. Traffic management staff would stop traffic and other road users at a safe point or points for the short time before, during and after blasting.[128] These constraints would only apply to a small area of public road during stages three and four of the proposed quarry. The Council has not demonstrated any error in this contention. The Council also contends that his Honour erred in characterising the conditions in the ABMP as "strict." Whilst I am unpersuaded that this was an error of any kind, it is certainly not an error of law.

[61] None of these contentions are made out.

Assessment of need and failure to provide adequate reasons

[62] The Council's contentions as to assessment of need and the failure to provide adequate reasons are particularly interlinked and for that reason are conveniently dealt with together.

The Council's contentions

[63] The primary judge found that Parklands established that there was a future need for the proposed quarry, with some community benefit. The level of need was between modest and significant.[129] The Council, however, contends that his Honour's reasons failed to disclose how he reached these conclusions which were in conflict with the planning documents. The judge failed to give reasons as to why the need for the proposed quarry was sufficient to over-ride its detrimental amenity impacts and the conflict with the planning documents.[130] His Honour was obliged to resolve the issues canvassed before him and explain why he preferred Parklands' case over the cases of the Council and the submitters: *Flannery v Halifax Estate Agencies Ltd*.[131]

Conclusion as to these contentions

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126 Above, [140].
127 Above, [97].
128 See *Local Government Act* 2009 (Qld) s 69(2).
129 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [269].
130 Above, [271].
131 [2000] 1 WLR 377, 382.

[64] His Honour identified and dealt with the issue of need at some length,[132] recognising it as an important primary issue and identified as such in the Maroochy Plan.[133] Citing *Intrafield Pty Ltd v Redland Shire Council*,[134] his Honour stated that need is a relative concept to be given a greater or lesser weight depending on the relevant circumstances.[135] Need is to be decided from the community perspective.[136] The experts were in dispute as to whether there was need for the proposed quarry[137] but both parties' experts agreed that presently there was no demand, as opposed to need, for products from a new quarry, even though the Sunshine Coast was a net importer of quarry products.[138] A slow, steady recovery for the property and construction sectors in the region was predicted.[139] Both experts forecast population growth and increasing future demand in the Shire, although at different levels.[140] Disagreements between the parties' experts were really matters of degree.

[65] His Honour accepted Parklands' expert as to the substantial increased transport costs resulting from bringing rock from more distant quarries outside the region.[141] Transport costs typically averaged around 30 to 40 per cent of the delivered cost of quarry products; products transported 70 kilometres or more effectively double in price.[142] His Honour considered the experts' competing contentions as to the relevance of a number of existing quarries within a 40 kilometre radius of the proposed quarry,[143] and noted that increased competition may put downward pressure on prices.[144] Another dispute between the experts was whether the future demand could be met by existing quarries increasing their production.[145] His Honour accepted Parklands' expert evidence that it was unclear on the evidence in the appeal whether existing quarries had the ability to increase production to this level.[146] There could be commercial constraints on increasing production, such as insufficient infrastructure and/or remaining reserves. It was therefore more realistic to gauge production potential of existing quarries based on their actual production rather than on designated production limits.[147]

[66] In the joint economic report the parties' expert economists agreed that with the closure of two other regional quarries (the Toolborough Road Boral quarry and the Parklands quarry at Nambour) within the next two years, existing quarries in the region could meet only low demand between 2016 and 2019. After 2019 demand (whether low or high), will exceed maximum total production in the region. By 2023 annual demand will exceed maximum annual production by between 300,000 and 1.6 million tonnes.

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132 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [241] – [269].
133 Above, [241].
134 (2001) 116 LGERA 350, [20].
135 *Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors* [2014] QPEC 24, [244].
136 Above, [245].
137 Above, [246] – [250].
138 Above, [251].
139 Above, [254].
140 Above, [255].
141 Above, [256].
142 Above, [257].
143 Above, [258].
144 Above, [259].
145 Above, [261].
146 Above, [262].
147 Above, [263].

This gap will continue to increase from 2023 to 2031 because of continuing population growth.[148]

[67] His Honour correctly identified that relevant State Planning Policy marked the area in which the proposed quarry was located as being strategically placed to provide construction aggregates and armour stone for a large part of the northern Sunshine Coast. Relevant planning policy identified that extractive resources are of interest to the State and are "essential" to the health of the construction industry. It was generally necessary to source extractive resources close to markets. There can be conflicts with encroaching development and it is important to maximise opportunities for co-existence between resource extraction and other development types where possible.[149] Parklands' expert stated that the proposed quarry site was the only undeveloped KRA in the Shire available for hard rock products.[150] It would be speculative and inappropriate to consider proposed KRAs elsewhere when assessing need in relation to this development application.[151]

[68] His Honour's reasoning summarised above sufficiently explained why he was satisfied there was a future need for the proposed quarry and that it would provide some future benefit so that there was no conflict with the relevant town planning scheme.[152] The Council's contentions on the failure to provide adequate reasons in large part turned on their success on one or more of their earlier contentions, particularly that the judge erred in construing the planning scheme. As I have explained earlier in these reasons, the Council's earlier contentions were not made out. His Honour found there were no unacceptable detrimental amenity impacts and was not in conflict with the planning documents.

[69] The Council has failed to prove the judge erred in assessing the question of need or in not providing adequate reasons, either for that conclusion, or for the other conclusions impugned by the Council in this application. The judge's reasons appropriately dealt with the evidence relating to each issue identified by the Council and the submitters in the appeal before him.[153]

[70] None of these contentions are made out.

Conclusion

[71] The Council has not made out any of its multifarious contentions. It has not demonstrated any error of law on the part of the primary judge. It follows that the application for leave to appeal must be refused with costs.

[72] **GOTTERSON JA:** I agree with the order proposed by McMurdo P and with the reasons given by her Honour.

[73] **DALTON J:** I agree with the reasons of the President and with the proposed order.

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148 Above, [265].
149 Above, [266].
150 Above, [267].
151 Above, [268].
152 Above, [240], [269] – [281].
153 *Mirage Resorts Holdings Pty Ltd v Brellen Pty Ltd* [2003] QCA 529 and the cases there stated.