SUPREME COURT OF QUEENSLAND

CITATION:	*Yorkeys Knob BP Pty Ltd v Cairns Regional Council* [2022] QCA 168
PARTIES:	**YORKEYS KNOB BP PTY LTD** ACN 636 866 147 (applicant) **v** **CAIRNS REGIONAL COUNCIL** (respondent)
FILE NO/S:	Appeal No 3778 of 2022 P & E Appeal No 2376 of 2021
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave *Planning and Environment Court Act*
ORIGINATING COURT:	Planning and Environment Court at Brisbane – [2022] QPEC 6 (Everson DCJ)
DELIVERED ON:	2 September 2022
DELIVERED AT:	Brisbane
HEARING DATE:	22 August 2022
JUDGES:	Bowskill CJ and Morrison and Flanagan JJA
ORDER:	**Application for leave to appeal refused, with costs.**
CATCHWORDS:	ENVIRONMENT AND PLANNING – ENVIRONMENTAL PLANNING – PLANNING SCHEMES AND INSTRUMENTS – QUEENSLAND – GENERALLY – where the applicant wishes to develop land in a rural area in a place called Yorkeys Knob by building a service station, shop, food and drink outlet on the land – where the respondent refused the development application for a development permit for a material change of use and a development permit for reconfiguring a lot, on the basis that the proposed development would represent a "significant and unacceptable encroachment into" the rural character of the site, which is part of a significant "inter-urban break", and is not an appropriate use for the site in circumstances where "a sufficient planning need for it has not been demonstrated to warrant such a comprehensive intrusion into the rural and landscape amenity of the inter-urban break" – where the applicant applies for leave to appeal the decision – where the applicant contends that the decision of the Planning and Environment Court was affected by an error or mistake of law in three respects – whether the court erred in law in applying s 45(5)(a)(i) of the *Planning Act 2016* (Qld) by failing to determine whether the proposed development

complied (or not) with the *Service station and car wash code* – whether the court erred in law by misinterpreting and misapplying the Performance Outcome PO5 of the *Rural Zone Code* and the *Landscape Values Overlay Code* – whether the court erred in law in assessing the need for the proposed development

Planning Act 2016 (Qld), s 45, s 60
Planning and Environment Court Act 2016 (Qld), s 63(1), s 63(2)

Abeleda v Brisbane City Council (2020) 6 QR 441; [2020] QCA 257, cited
Intrafield Pty Ltd v Redland Shire Council (2001) 116 LGERA 350; [2001] QCA 116, cited
Isgro v Gold Coast City Council & Anor [2003] QPELR 414; [2003] QPEC 2, cited

COUNSEL: M J Batty and T D Stork for the applicant
B D Job QC for the respondent

SOLICITORS: Evans Planning Law for the applicant
P&E Law for the respondent

[1] **BOWSKILL CJ:** The applicant wishes to develop land in a rural area in a place called Yorkeys Knob by building a service station, shop, food and drink outlet on the land. The Council refused its development application. The applicant's appeal to the Planning and Environment Court from that refusal was dismissed,[1] on the bases that the proposed development would represent a "significant and unacceptable encroachment into" the rural character of the site, which is part of a significant "inter-urban break", and is not an appropriate use for the site in circumstances where "a sufficient planning need for it has not been demonstrated to warrant such a comprehensive intrusion into the rural and landscape amenity of the inter-urban break".[2]

[2] The applicant applies for leave to appeal the Decision. A party to a proceeding in the Planning and Environment Court may appeal a decision only on the ground of error or mistake in law or jurisdictional error and only with the leave of this Court.[3]

[3] There is no suggested jurisdictional error. For the following reasons, I am not persuaded that the Decision was affected by any error or mistake of law. The appeal to the Planning and Environment Court was dismissed on its merits, on the basis of findings of fact made by the primary judge in the context of uncontroversial application of established legal principles. I would refuse the application for leave.

The proposed development

[4] In order to understand the context of the Decision, it is convenient to set out the description of the proposed development, the site and surrounding area which appears in the Decision.

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1 *Yorkeys Knob BP Pty Ltd v Cairns Regional Council* [2022] QPEC 6 (the Decision).
2 Decision at [42].
3 *Planning and Environment Court Act 2016* (Qld), s 63(1) and (2).

"[1] This is an appeal against the refusal by the respondent of a development application for a development permit for a material change of use (Service Station, Shop and Food and Drink Outlet) and a development permit for Reconfiguring a Lot (Boundary Realignment) ('the proposed development') on land at 750 Captain Cook Highway and 111L Yorkeys Knob Road, Yorkeys Knob ('the site').

[2] The site is in a rural area, within an inter-urban break and mapped within an area of High landscape value pursuant to the respondent's planning scheme, Cairns Plan 2016 ('the planning scheme'). There is a strong intent running through the planning scheme that the site is not to be developed in a manner contemplated by the proposed development. However, the appellant asserts that there is a significant need for the proposed development which over-rides the non-compliances with the planning scheme.

The site and the surrounding area

[3] The site comprises two allotments with a combined area of approximately 22 hectares located at the north-eastern corner of the intersection of the Captain Cook Highway and Yorkeys Knob Road. The Captain Cook Highway is a state-controlled road comprising four lanes which adjoins the southern boundary of the site. Yorkeys Knob Road is a major rural road consisting of two lanes and is located along the western boundary of the site. It is mostly flat and unimproved. Currently it is not subject to cropping and is covered by grass and weeds.

[4] The site is located amongst low-lying rural land, generally characterised by sugarcane farming. It has been identified as good quality agricultural land but is suited only to sugarcane production, although some adjoining land is now used for equine grazing.

[5] The site is located within the Barron River floodplain between the Coral Sea and the McAlister Range. It is part of a large area in the Rural zone, and within a large area referred to in the planning scheme as an inter-urban break. One of the overall outcomes in the Flood inundation hazards and overlay code of the planning scheme is to 'protect the scenic amenity of this inter-urban break'. The site is mapped in the planning scheme as being within an area of High landscape value. A map showing the built form in the surrounding area confirms the presence of the inter-urban break. Although there are some non-rural uses within this inter-urban break, rural amenity and rural uses predominate in the vicinity of the site. It has significant landscape values which are reflective of this. I agree with the observations of Dr McGowan, the visual amenity expert called on behalf of the respondent that:

> 'The floodplain landscape is characterised by: its sense of openness, which is framed by dramatic slopes of the surrounding ranges; the predominance of agricultural activity and rural landscape; intermittent natural landscape features, particularly riparian vegetation and river crossings; and clear dominance of the rural and natural landscape features over the modest, sporadic clusters of built form.'

The proposed development

[6] The proposed development is intended to be built on a hard stand area of approximately one hectare, taking access from Yorkeys Knob Road. In addition to 58 car parking spaces and six fuel bowsers for cars and other light vehicles, it is also proposed that there will be B-Double parking spaces, two coach parking spaces and three van parking spaces. It is proposed that there will be three fuel bowsers for trucks and other heavy vehicles. The proposed building is intended to be one storey high, 17 metres wide and 69 metres long. It is intended to contain the Service Station operations, two fast food outlets, which are to be 200m^2 and 100m^2 respectively, and a kiosk and a shop as well. The proposed hours of operation are 24 hours per day, seven days a week. In addition to an indoor dining area and amenities, a drivers' lounge facility for heavy vehicle drivers is proposed.

[7] The building is to be 130m from the carriageway of the Captain Cook Highway and 90m from Yorkeys Knob Road. Two other roof structures outside the proposed building are contemplated which cover fuel dispensing forecourts. The larger of the two has a height of slightly over 5m, a width of approximately 18m and a length of approximately 28m. There is intended to be another free-standing roof structure to the north of the main building with the same height and the dimensions of 14.5m long and 11.5m wide. In addition, a number of external signs are proposed: a main pylon sign, approximately 20m high and 4.5m wide and smaller signage, one 3.7m high and 2m wide and another, 7.9m high and 2.4m wide. In circumstances where it is uncontroversial that a key locational criterion for the proposed development is a strong visual presence, it is unsurprising that it is being marketed as having unimpeded sightlines to the Captain Cook Highway. The photomontages placed in evidence before me show that the proposed development is intended to be clearly visible in the daytime and it will obviously be well lit at night, albeit in the context of the current highway lighting.

[8] I agree with the observations of Dr McGowan as to the visual impacts of the proposed development in the context of where the site is located:

> 'Apart from some aspects of the landscape (such as the detention basin), there is nothing about the proposed development that would relate it to the rural landscape character… It will present as a disparate and incongruent intrusion into the rural landscape. The building canopy, extensive hardstand, and the high level of concentrated vehicle activity would be at odds with the rural character of the area. The prominent signage would exacerbate this incompatibility, as indicated in the photomontages…'"[4]

The contended errors of law

[5] The applicant contends leave to appeal the Decision ought to be granted, on the basis that the Planning and Environment Court erred in the following three respects:

(a) first, that the court erred in law in applying s 45(5)(a)(i) of the *Planning Act 2016* by failing to determine whether the proposed development complied (or not) with the *Service station and car wash code*;

(b) second, that the court erred in law by misinterpreting and misapplying the Performance Outcome PO5 of the *Rural Zone Code* and the *Landscape Values Overlay Code*; and

(c) third, that the court erred in law in assessing the need for the proposed development:

(i) by taking into account that there were development applications for service stations over other sites in the northern beaches of Cairns; that there was no evidence of residents from the northern beaches of Cairns needing to queue to obtain fuel or of any inconvenience or lack of choice in accessing fuel for their vehicles; and/or that there was no evidence from people involved in the road transport industry or the tourist industry in Cairns; and/or

(ii) in assessing whether there was a latent unsatisfied demand for the proposed development; and/or whether approval of the proposed development would improve the ease, comfort, convenience or efficient lifestyle of the community.

Ground 1 – the *Service Station and Car Wash Code*

[6] For the purposes of the proceeding at first instance, the parties agreed a list of issues.[5] The agreed list of issues included, in paragraph 1, "whether the proposed development is an appropriate use of the subject land by reference to" five separate matters, the last being:

> "[whether] the proposed centre activities, namely the food and drink outlet and shop are not ancillary to the service station use. Accordingly, [whether] the proposed development does not comply

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4 References omitted.

5 AB 43-45.

with: the Service Station and Car Wash Code – Overall Outcome in 9.3.22.2(2)(b); and PO1(a)."

[7] The primary judge set out the "statutory assessment framework", noting that the proposed development was impact assessable, by reference to ss 45 and 60 of the *Planning Act 2016* and the observations of Mullins JA in *Abeleda & Anor v Brisbane City Council* [2020] QCA 257 at [42] and [43] and [77]. There is no suggestion of any error in this regard. Relevantly, as was confirmed in *Abeleda*, the process for a decision-maker under s 60 involves balancing a number of factors to which consideration is permitted under s 45(5) and the weight to be given to each of the facts is a matter for the decision-maker in the circumstances.

[8] The applicant's complaint is that the primary judge failed to make an express finding about whether the proposed development complied with the Service station and car wash code. As a consequence, the applicant submits, the impact assessment was not carried out in the manner required by s 45(5)(a)(i) of the *Planning Act 2016*, which requires that such an assessment "must be carried out … against the assessment benchmarks in a categorising instrument for the development". The Service station and car wash code is an "assessment benchmark". The applicant submits the primary judge could not, as a consequence, lawfully have undertaken the balancing exercise required by s 45(5) and s 60(3) because the requirement under s 45(5)(a)(i) is a mandatory one and, had the primary judge found that there was compliance with the Service station and car wash code, he "may not have found (as he did at [33] of the Decision) that the proposed development is 'completely at odds with the clear planning intent…'."

[9] The primary judge referred to relevant provisions of the planning scheme, commencing at [17] of the Decision. This included, at [24], reference to the Service station and car wash code. At [25] of the Decision, the primary judge summarised the agreed issues, starting with "Whether the proposed development is an appropriate use of the site by reference to relevant provisions of the planning scheme identified above". At [40] of the Decision, the primary judge records that the applicant had applied for three separate uses, each of which was an impact assessable use in every zone of the planning scheme.

[10] It is correct to say that the primary judge did not make an express finding about whether the Service station and car wash code was complied with. However, given the evidence and submissions before his Honour, that is hardly surprising.

[11] The Service station and car wash code is a "use" code under the Cairns Plan 2016. It is at the bottom of the hierarchy of assessment criteria, with the strategic framework, statewide codes, overlay codes, local plan codes and zone codes all prevailing over use codes.[6]

[12] The stated purpose of the Service station and car wash code "is to establish service stations and car wash facilities that function without adverse impacts on amenity, activity centre hierarchy and road function, and deliver an attractive and complementary service for the community". One of the "overall outcomes" by

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6 Para 1.5 of the Cairns Plan 2016 (AB 58).

which the purpose of the code is to be achieved is where "centre activities[7] are ancillary to the primary vehicle servicing purpose of the service station" (paragraph 9.3.22.2(2)(b)). Performance outcome PO1(a) reflects that overall outcome, and an acceptable outcome (AO1.1) is that centre activities do not exceed 100m^2 GFA (gross floor area). A note to AO1.1 explains that where the floor area for the other uses exceeds 100m^2 GFA a separate development approval for the use will be required.[8] Paragraph 9.3.22.2(2)(b) and PO1(a) were the only provisions of this use code referred to in the agreed list of issues.

[13] In the proceedings at first instance, the Council submitted that the provisions of the Service station and car wash code were not complied with, because the other uses (fast food and shop) were not "ancillary to" the service station.[9] In the applicant's submissions below it was emphasised that separate uses were applied for – service station, shop and food and drink outlet – which, as noted, was accepted by the primary judge (at [40] of the Decision). The applicant submitted that the Service station and car wash code applied only to the assessment of a service station, and had no application to an assessment of those other uses; therefore, any suggestion of non-compliance with the Service Station and car wash code (by the Council) should be rejected.[10]

[14] The town planning experts relied upon by both parties expressed the view that the proposed development was compliant, or generally compliant, with the Service station and car wash code, in this respect.[11] It assumed no significance in their overall consideration of compliance or otherwise with the various other relevant "assessment benchmarks".

[15] Given the primary judge's acceptance that separate uses were applied for, and having regard to the expert evidence in any event, one can readily see why his Honour did not make any express finding about compliance with these provisions of the Service station and car wash code. It was not necessary to do so.

[16] The instruction in s 45(5)(a)(i) of the *Planning Act 2016* that an impact assessment "must be carried out against the assessment benchmarks in a categorising instrument for the development" does not mean that the decision-maker is required, in order to lawfully make a decision, to expressly make a finding about every "assessment benchmark" that might be referred to by a party(ies), particularly where it is said to be of no application by a party, is at the bottom of a hierarchy of provisions, many others of which do not support the development, or is not in dispute on the evidence before the Court.

[17] For the party who contended it had no application, to now contend that the Decision is affected by an error of law because of a failure to make an express finding about it, is a contention not to be encouraged. No error of law has been shown under this ground.

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7 Centre activities are defined in schedule 1.1 (AB 157) to include: adult store, bar, club, food and drink outlet, function facility, health care services, hotel, nightclub entertainment facility, office, service industry, shop, shopping centre, showroom, theatre and veterinary services.

8 AB 107.

9 Council's submissions at [31]-[33] (AB 426-427).

10 Applicant's submissions below at [38] (AB 391) and [154] (AB 415).

11 See Ms Morrissy at AB 232 (section 6.1), 244-245 (paras 121(a)(iii) and 122) and Mr Schomburgk at AB 245 (section 6.2) and 249 (para 155(iii) and (iv)).

Ground 2 – *PO5 of the Rural Zone Code and the Landscape Values Overlay Code*

[18] At paragraphs [28] and [29] of the Decision, the primary judge said:

> "[28] The planning scheme makes it very clear that not only is rural land to be protected and used for rural purposes but relevantly, rural areas in certain circumstances provide an inter-urban break or have scenic landscape value and should be retained in their current form from an amenity perspective. The site is within such an area and it is mapped as having High landscape value. It was not suggested that the relevant provisions of the planning scheme are not soundly based. It is apparent that the extent of the rural land in the inter-urban break and its qualities provides a sound basis for this strategy. Contrary to the submissions of the appellant which disparage the state of the site and its landscape values, I accept both that the site has scenic landscape values in its wider context and that the proposed development will have significant impacts upon them as set out in the evidence of Dr McGowan quoted above.
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> [29] The Rural zone code is reflective of this strategy and places even more restrictions on opportunities for non-rural uses. In the purpose, it is stated that they must not only be compatible with agriculture, the environmental features and landscape character of the rural area, but also not compromise the long-term use of the land for rural purposes. Clearly the proposed development with its extensive pad and associated infrastructure will do this. There will also be a fragmentation of Class B Agricultural Land, although I concede that it will not be significant when one has regard to the amount of land in the vicinity of the proposed development. I am satisfied that contrary to PO5 of the Rural zone code that the proposed development will have an intrusive effect on the rural or scenic values of the site despite the presence of the Captain Cook Highway and its attendant infrastructure, including signage and lighting. There will be a similar compromise of the landscape values which are sought to be protected in the Landscape values overlay code. While the appellant emphasises the fact that the land to be repurposed is not currently being used for cropping or any rural activities, it remains suitable caneland that (apart from a small area of filling of approximately 0.45 ha) is readily capable of being cropped in this way. All of the site is suitable for uses contemplated by the Rural zone code."[12]

[19] Performance outcome PO5, of the Rural zone code, provides that:

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12 References omitted. Emphasis added.

> "The site coverage of buildings, structures and associated services does not have an intrusive effect on the rural or scenic values of the site."[13]

[20] No acceptable outcomes are provided.

[21] There is no definition of "site coverage" in the Rural zone code or the planning scheme more generally. There is a definition of "site cover", in schedule 1.2 (administrative definitions for the purpose of the planning scheme), which is as follows:[14]

> "The proportion of the site covered by a building(s), structure(s) attached to the building(s) and carport(s), calculated to the outer most projections of the building(s) and expressed as a percentage.
>
> The term does not include:
> - any structure or part thereof included in a landscaped open space area such as a gazebo or shade structure;
> basement car parking areas located wholly below ground level
> - eaves and sun shading devices."

[22] The applicant points to evidence in the joint report of the town planning experts that the gross floor area of the food and drink outlet, service station and shop (excluding amenities) is 840m^2, which equates to a *site cover* of 2.4% of the overall lot.[15] Having regard to the diagrams and plans included in the material,[16] it is clear that only the buildings have been included in this calculation; it does not include the overall area covered by the service station, including the fairly extensive concrete driveway areas, the area where the bowsers would be located and the (separate) canopies over the bowsers (among other things).

[23] The applicant contends that the primary judge misconstrued PO5 of the Rural zone code in that, rather than limiting the assessment only to site coverage (which the applicant submits should be construed as having the same meaning as "site cover"), as required by the words of PO5, his Honour assessed whether the proposed development *as a whole* would have an intrusive effect on the rural or scenic values of the site.

[24] The applicant's argument should be rejected. First, it is far from clear, from the extracts of the planning scheme included in the material, that the definition of "site cover" is interchangeable for "site coverage". In any event, there are two respects in which the words used in PO5 demonstrate that the performance outcome has a broader scope than the defined term "site cover":

(a) first, the reference to "structures" in PO5 is not qualified by the words "attached to the building(s)" which appear in the definition of "site cover" – as a result of which the (unattached) canopies over the fuel bowsers would be

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13 AB 89.
14 AB 171.
15 AB 211 (paras 45-46).
16 For example, at AB 313, 314 and 378.

captured by the "site coverage", even if not within the meaning of "site cover"; and

(b) second, PO5 also contemplates consideration of "associated services", in addition to buildings and structures.

[25] In addition, I do not accept that, properly construed, PO5 has such a narrow focus, as to call for a quantitative analysis, rather than a qualitative analysis. Even where the "site cover[age]" of buildings, facilities and other services may, expressed as a numerical percentage, seem low, the effect on the "rural or scenic values" of the site could, nevertheless be intrusive. It is a qualitative analysis that is called for by PO5, which was undertaken by the primary judge. Having regard to the findings made by the primary judge at [7] and [8] of the Decision (set out above), his Honour's conclusion, at [29], that the proposed development will have an intrusive effect on the rural or scenic values of the site, was well supported. No error of law in this respect has been shown.

[26] It follows that the second part of the applicant's complaint, about the sentence immediately following this in [29] of the Decision, in relation to the Landscape values overlay code, does not demonstrate any error either. The consideration of the relevant parts of that code also called for a qualitative analysis of the impact of the proposed development on, for example, the landscape values (noting that the particular area had been designated as having High landscape value). Accordingly, there was no error in the primary judge, economically, dealing with this issue in the manner that he did in [29] of the Decision.

Ground 3 – *need*

[27] The applicant's third ground (which is articulated by reference to two grounds in the application for leave to appeal, but dealt with as one) seeks to challenge the finding made by the primary judge at [41] of the Decision that the applicant had:

> "… not discharged the onus of demonstrating a sufficient level of need for the proposed development to overcome the fundamental and serious inconsistencies with the planning strategy evident in the provisions of the planning scheme… which, quite simply, is to keep the site in a rural state in order to preserve the rural amenity of the inter-urban break in which it is situated".

[28] There are essentially two respects in which the applicant attempts to clothe a factual challenge to this conclusion in the cloak of an error of law. First, that the primary judge failed to apply the principle that "need does not mean a pressing or critical need".[17] The primary judge did not suggest that it did. The applicant seeks to make good this point by highlighting one sentence in [38] of the Decision in which the primary judge records that "no evidence was placed before me of residents of the northern beaches catchment needing to queue to obtain fuel or of any inconvenience or lack of choice in accessing fuel for their vehicles". This was but one factor among a number referred to by the primary judge. It is artificial to read this divorced from the balance of his Honour's reasons on the issue of need, from which

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[17] Referring to the principles summarised in *Isgro v Gold Coast City Council & Anor* [2003] QPELR 414 at [20]-[26], in particular, in this regard, at [20].

it is apparent that his Honour applied the established principles, correctly referred to in [34] of the Decision, without legal error.

[29] The same conclusion applies to the applicant's complaint that the primary judge did not address the question whether approval of the proposed development would improve the ease, comfort, convenience or efficient lifestyle of the community, and did not consider whether approval of the proposed development would satisfy a latent unsatisfied demand.[18]

[30] As the authorities make clear, the assessment of "need" in this context is a flexible process, informed by the principles discussed in cases like *Isgro v Gold Coast City Council & Anor* [2003] QPELR 414 (referred to by the primary judge at [34]), but not constrained by those principles as though they were a "checklist" that must be ticked off by a decision-maker in every case.[19] As the court said in *Intrafield Pty Ltd v Redland Shire Council* (2001) 116 LGERA 350 at [20], "need is a relative concept to be given a greater or lesser weight depending on all of the circumstances which the planning authority was to take into account".[20]

[31] The second error of principle sought to be made out arises from a sentence in paragraph [40] of the Decision, which is as follows:

> "The appellant has applied for three separate uses. They are all impact assessable on the site and a service station is an impact assessable use in every zone of the planning scheme. While there are plenty of food and drink outlets in the catchment and plenty of locations for shops, I accept that as an integrated facility the proposed development has attractions over and above those which are evident on a separate analysis of each of the discreet (*sic*) uses. It is clear, by virtue of the three current applications for service stations in the northern beaches corridor, that there are other sites where the need for the various components of the proposed development, including the service station use, could be met. I am satisfied that there are ample opportunities to meet this need outside the Barron River Delta, with its attendant restrictions on non-rural development. So much is evident by the approved, but not yet operating service station at Smithfield, and two proposed service stations at Trinity Beach and Clifton Beach."[21]

[32] The applicant submits the primary judge made an error of law by taking account of development applications (rather than development approvals) in assessing need, which "involves speculation and is not the correct test".

[33] It may be accepted that development *applications*, as opposed to *approvals*, are not a sure guide of what may be expected to occur in the future. However, this sentence must be read in the context of the primary judge's reasons as a whole:

(a) first, on the basis of the primary judge's critical analysis of the evidence of the economist called by the applicant, Mr Stephens (at [35]-[36] of the

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18 Referred to in paragraph 3(b)(ii) of the notice of appeal, although not addressed in the applicant's outline of oral argument, or oral submissions.

19 Cf [32] of the applicant's submissions on the application for leave to appeal.

20 See also *Abeleda & Anor v Brisbane Cit Council* [2020] QCA 257 at [51].

21 References omitted. Emphasis added.

Decision), leading to the conclusion that the appellant had not, on the evidence, demonstrated any need for the proposed development from the perspective of either the requirements of the road transport industry or tourist industry in the Cairns region (at [37]); and

(b) next, on the basis that the evidence of the economists did not support a finding of a need for the proposed development from the perspective of residents of the northern beaches taking into account, among other things, that 68% of those residents travel south outside the catchment for work and that there is an additional service station just to the south of the southern boundary of the catchment and many other service stations on commuter routes outside the identified catchment (at [38] and [39]).

[34] Paragraph [40] followed on from those findings, addressing the point that the proposed development was not just a service station, but involved application for three separate uses. It was in that context that the primary judge made the point that he accepted that, as an integrated facility, the proposed development had attractions over and above those which are evident on a separate analysis of each of the discrete uses. And it was in that context only that the primary judge referred to the applications for service stations in the "northern beaches corridor", as showing that there are other sites where the need for the various components of the proposed development, including the service station, *could* be met.

[35] This is not a case where the court had reached the view that the proposed development suitably filled an identified need, but rejected it because another or better site was (or could be) available;[22] in that context referring to development applications. Rather, the court had reached the view that a sufficient level of need for the proposed development had *not* been established and, in [40], was simply making the additional point that to the extent there might be attractions to an integrated facility such as the proposed development, it was apparent there were other sites where a need for this, should it be established, *could* be met.

[36] No mistake or error of law in the approach adopted by the primary judge to the issue of need has been shown.

[37] I would refuse the application for leave to appeal, with costs.

[38] **MORRISON JA:** I agree with the reasons prepared by Bowskill CJ and the order her Honour proposes.

[39] **FLANAGAN JA:** I agree with Bowskill CJ.

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22 Cf *Luke & Ors v Maroochy Shire Council & Watpac Developments Pty Ltd* [2003] QPELR 447 at [32].