

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Development Watch Inc & Anor v Sunshine Coast Regional Council & Anor* [2020] QPEC 25

PARTIES: **DEVELOPMENT WATCH INC**
(First Appellant)

SUNSHINE COAST ENVIRONMENT COUNCIL INC
(Second Appellant)

v

SUNSHINE COAST REGIONAL COUNCIL
(Respondent)

And

SH COOLUM PTY LTD (ACN 146 376 972)
(Co-Respondent)

FILE NO/S: D166/18

DIVISION: Planning and Environment

PROCEEDING: Appeal

ORIGINATING COURT: Planning and Environment Court, Maroochydore

DELIVERED ON: 25 May 2020

DELIVERED AT: Brisbane

HEARING DATE: 18 – 30 November and 2 – 6 December 2019 and further evidence received 19 March 2020 and 28 April 2020 and further written submissions received 17 March 2020, 23 and 26 March 2020 and 28 April 2020

JUDGE: Kefford DCJ

ORDER: **I order the Appeals be dismissed. The development application will be approved subject to conditions in due course.**

I further order:

- (a) by 4 pm on 8 June 2020, the Respondent is to deliver a draft Judgment attaching the conditions of approval to the other parties; and**
- (b) the appeal is to be listed for review at 9 am on 15 June 2020 for the purpose of making final orders in the appeal.**

CATCHWORDS: PLANNING AND ENVIRONMENT – APPEAL AGAINST APPROVAL OF DEVELOPMENT APPLICATION – submitter appeal against Council’s decision to approve a development application for a mixed use development – where development application sought preliminary approval for material change of use (request to change the effect of planning instruments) – where the development application sought development permits for reconfiguration of a lot and for material change of use – whether proposed development complies with relevant assessment benchmarks – whether proposed mix of land uses achieves the Planning Scheme’s intention for a tourism focus area – whether the proposed development would involve inappropriate commercial development

PLANNING AND ENVIRONMENT – APPEAL AGAINST APPROVAL OF DEVELOPMENT APPLICATION – where there are no unacceptable impacts in relation to setbacks, overshadowing, overlooking, overbearing or site cover – whether the proposed development is appropriately designed – whether there is an overdevelopment of the subject land reflected in the scale, height and intensity of the proposed development – whether development was of a bulk and scale compatible with the built form intent of the Emerging community zone code – whether the proposed development will have unacceptable impacts on the character and amenity of the area – whether development sensitively transitions to local setting and enhances the character of the area – whether the proposed development accords with reasonable community expectations

PLANNING AND ENVIRONMENT – APPEAL AGAINST APPROVAL OF DEVELOPMENT APPLICATION – where the proposed development is proximate a nesting beach for loggerhead turtles – whether the proposed development poses an unacceptable risk to the loggerhead turtle – whether the purpose of the *Planning Act 2016* is achieved with respect to the risk to the loggerhead turtle – whether the precautionary principle warrants refusal

PLANNING AND ENVIRONMENT – APPEAL AGAINST APPROVAL OF DEVELOPMENT APPLICATION – whether there are relevant matters that support refusal or approval – whether there is an economic, planning or community need for the proposed development – whether there is hotel, residential or retail need for the proposed development – whether the proposed development will provide economic benefits to the locality, region and State – whether the proposed development supports investment in the Sunshine Coast Airport – whether the Hyatt preliminary approval supports approval of the proposed development – whether the locational attributes of the subject land and the

design response to it supports approval – whether the proposed development consistent with objectives and planned outcomes in the South East Queensland Regional Plan 2017, the Regional Economic Development Strategy 2013-2033 and the Tourism, Sport and Leisure Industry and Investment Plan 2014-2018 – whether it is within the public interest for the proposed development to be approved

- LEGISLATION: *Planning Act 2016* (Qld), s 45, s 59, s 60, s 85, s 311
- Planning and Environment Court Act 2016* (Qld), s 10, s 43, s 45, s 47
- Planning Regulation 2017* (Qld), s 31
- CASES: *Acland Pastoral Co Pty Ltd v Rosalie Shire Council* [2007] QPEC 112; [2008] QPELR 342, approved
- Ashvan Investments Unit Trust v Brisbane City Council* [2019] QPEC 16; [2019] QPELR 793, approved
- Baptist Union of Queensland v Brisbane City Council & Anor* [2003] QPELR 61, approved
- Bell v Brisbane City Council & Ors* [2018] QCA 84; (2018) 230 LGERA 374, followed
- Gold Coast City Council v K&K (GC) Pty Ltd* [2019] QCA 132, cited
- Indooroopilly Golf Club v Brisbane City Council* (1982) QPLR 13, approved
- Isgro v Gold Coast City Council* [2003] QPEC 2; [2003] QPELR 414, approved
- Jakel Pty Ltd v Brisbane City Council & Anor* [2018] QPEC 21; [2018] QPELR 763, approved
- JRD No 2 Pty Ltd v Brisbane City Council & Ors* [2020] QPEC 4, cited
- K & K (GC) Pty Ltd v Gold Coast City Council* [2018] QPEC 9; [2018] QPELR 540, considered
- Kangaroo Point Residents Association v Brisbane City Council & Anor* [2014] QPEC 64, [2015] QPELR 203, approved
- K Page Main Beach Pty Ltd v Gold Coast City Council* [2011] QPEC 1; [2011] QPELR 406, approved
- Makita (Australia) Pty Ltd v Sprowles* [2001] NSWCA 305, (2001) 52 NSWLR 705, applied
- Murphy v Moreton Bay Regional Council & Anor; Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor* [2019] QPEC 46, approved

Rainbow Shores Pty Ltd v Gympie Regional Council [2013] QPEC 26; [2013] QPELR 557, approved

The Purcell Family v Gold Coast City Council & Ors [2004] QPELR 521, approved

United Petroleum Pty Ltd v Gold Coast City Council & Anor [2018] QPEC 8; [2018] QPELR 510, approved

Wattlevilla Pty Ltd v Western Downs Regional Council & Anor [2014] QPEC 47; [2015] QPELR 21, approved

Zappala Family Co Pty Ltd v Brisbane City Council [2014] QCA 147; [2014] QPELR 686, followed

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Introduction

- [1] Approximately eight kilometres north of the Sunshine Coast Airport, between the coastal townships of Coolum and Marcoola, there is a vacant parcel of land of approximately 18.5 hectares (“*the subject land*”). It is located between Yaroomba Beach and David Low Way. In the past the subject land was used as part of the Hyatt Coolum Resort facilities, including as part of the golf course. The private resort facilities associated with the Hyatt Coolum Resort have since been demolished, but two waterbodies associated with the golf course remain.
- [2] The land adjoins the privately owned Yaroomba parabolic dune to the north, and the beach and Marcoola Yaroomba Conservation Reserve to the east. To the south is a gated, low-density beachside residential community title development known as “*Coolum Beachside*”. David Low Way separates the subject land from the Palmer Coolum Resort. Although the golf course associated with the Palmer Coolum Resort remains operational, the resort otherwise lies abandoned since its closure in approximately 2015. It has fallen into a state of disrepair.
- [3] The subject land has a history of planning approvals dating back to the 1980s when it was part of the original Coolum Hyatt resort development and golf course. In February 2007, Sunshine Coast Regional Council (“*the Council*”) issued a preliminary approval to vary the effect of the then-current planning scheme (Maroochy Plan 2000) to establish the “*Coolum Hyatt Integrated Resort and Residential Community*” (“*the Hyatt preliminary approval*”). That approval has been implemented in part and remains current. It anticipates development of the subject land for a mix of dwelling types, including multiple dwellings, detached houses and duplexes, as well as retail and commercial uses up to a maximum of 500 square metres.
- [4] SH Coolum Pty Ltd (“*SHC*”) owns the subject land and wants to develop it in a number of stages. In the first stage, SHC wants to develop a five-star resort complex. It is proposed to contain a 220-room hotel, approximately 1 000 square

metres of conference and meeting space¹ and about 133 multiple dwellings (provided as serviced apartments for permanent and temporary accommodation). These uses are proposed to be located across a series of buildings between five and seven storeys in height. In association with the resort, and as part of Stage 1, SHC seeks approval for 2 770 square metres of commercial space (but with no tenant exceeding 300 square metres), an educational establishment, a community use (being Surf Life Saving Queensland amenities), parklands, coastal pathway, boardwalks, public car parking, and a utility installation.

- [5] SHC also seeks to reconfigure the existing ten lots into 13 lots.
- [6] SHC has not designed Stages 2 to 5 in detail. Instead, with respect to those stages, it seeks approval to vary the effect of the Sunshine Coast Planning Scheme 2014 (“*the Planning Scheme*”). This is to obviate the need for public notification of future development applications that seek approval to develop the balance land for a mix of residential dwellings, including houses and dual occupancy dwellings at two storeys, and multiple dwelling units in buildings up to four storeys in height.
- [7] SHC’s development application underwent two rounds of public notification, during which it attracted considerable interest from the local community. Over 11 000 submissions were received, a large portion of which were opposed to the development.
- [8] The Council approved the application and two community organisation submitters, Development Watch Inc and Sunshine Coast Environment Council Inc, each appealed the decision.² In broad terms, the Appellants oppose the development on the basis that it will have an unacceptable impact on the loggerhead turtles that nest on Yaroomba Beach, it will have unacceptable impacts on visual and scenic amenity and views, it involves an overdevelopment of the land, and it involves an inappropriate mix of uses.
- [9] The issue for me to determine is whether SHC’s application should be approved or refused.

The decision framework

- [10] The statutory framework in the *Planning and Environment Court Act 2016* (Qld) and the *Planning Act 2016* (Qld) applies to the appeal.³ In deciding the appeal, the Court must confirm the decision appealed against, change the decision appealed against, or set it aside and either make a decision replacing it or return the matter to the Council with directions the court considers appropriate.⁴

¹ The plans show an interior area of 1 009 square metres and additional external areas as exhibition or marquee function area and function lawn. Condition 81 of the Council’s decision notice required a minimum of 1 000 square metres for the conference or banqueting floor area. SHC did not dispute the imposition of the condition.

² The appeals were consolidated into a single appeal.

³ The appeal against the Council’s decision to approve SHC’s application was filed after the commencement of the *Planning Act 2016*. As such, even though SHC’s application was made under the *Sustainable Planning Act 2009*, the applicable regime is that in the *Planning Act 2016*. See s 311 of the *Planning Act 2016* and *Jakel Pty Ltd v Brisbane City Council & Anor* [2018] QPEC 21; [2018] QPELR 763, [16]–[89].

⁴ *Planning and Environment Court Act 2016* (Qld), s 47.

- [11] The appeal proceeds by way of hearing anew.⁵ SHC bears the onus.⁶
- [12] SHC seeks a number of different types of approval to implement its proposed development, namely:
- (a) a preliminary approval for a material change of use that varies the effect of the Planning Scheme in the manner detailed in the Yaroomba Beach Master Plan Preliminary Approval Document (“*Yaroomba Beach Master Plan*”);
 - (b) a development permit for a material change of use to authorise those uses proposed for Stage 1; and
 - (c) a development permit for reconfiguration of ten lots into 13 lots.
- [13] There is a broad discretion in determining the appeals.⁷ The exercise of the discretion must be based on an assessment that:⁸
- (a) must be carried out:
 - (i) against the assessment benchmarks in the Planning Scheme to the extent relevant;⁹
 - (ii) having regard to, relevantly, the South East Queensland Regional Plan and any development approval for, and any lawful use of, the premises or adjacent premises. In this case, this includes the Hyatt preliminary approval;¹⁰
 - (b) may be carried out against, or having regard to, any other relevant matter, other than a person’s personal circumstances (financial or otherwise); and
 - (c) may give the weight the Court considers appropriate to any amendments to the Planning Scheme. (While there were amendments to the Planning Scheme following the lodgement of the development application, the Appellants did not allege any non-compliance with later versions of the Planning Scheme.¹¹)
- [14] As the application also seeks to vary the effect of the Planning Scheme, the discretion can be exercised to approve all or some of the variations sought; or to approve different variations from those sought; or to refuse the variations sought.¹²

⁵ *Planning and Environment Court Act 2016*, s 43.

⁶ *Planning and Environment Court Act 2016*, s 45.

⁷ *Planning and Environment Court Act 2016*, s 47; *Planning Act 2016*, s 60(3).

⁸ *Planning Act 2016*, s 59 and s 45(5).

⁹ Version 8 of the Sunshine Coast Planning Scheme 2014 was the categorising instrument for the development in effect when SHC’s application was properly made. Any reference to the Planning Scheme is a reference to version 8 unless expressly stated otherwise or unless otherwise apparent from the context.

¹⁰ See s 31(1)(f) of the *Planning Regulation 2016* (Qld).

¹¹ Later versions of the Planning Scheme are only raised as “*contextual provisions*”.

¹² *Planning Act 2016*, s 61(3).

- [15] The exercise of that discretion must be based on an assessment that considers:¹³
- (a) the result of the assessment of that part of the application that sought a preliminary approval for a material change of use;
 - (b) the consistency of the variations sought with the rest of the Planning Scheme;
 - (c) the effect the variations would have on submission rights for later development applications, particularly considering the amount and detail of information included in, attached to, or given with the application and available to submitters; and
 - (d) any other matter prescribed by regulation.
- [16] His Honour Judge Williamson QC comprehensively, and in my view correctly, analysed how impact assessable development applications are to be assessed and decided in *Ashvan Investments Unit Trust v Brisbane City Council*.¹⁴ I have also further considered the approach in *Murphy v Moreton Bay Regional Council & Anor*; *Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor*.¹⁵ All of the parties contend that the approach referred to in those judgments is the correct one.

What is the nature of the proposed development?

- [17] As I have mentioned in paragraph [12] above, SHC seeks:
- (a) a preliminary approval for a material change of use that varies the effect of the Planning Scheme in the manner detailed in the Yaroomba Beach Master Plan;¹⁶
 - (b) a development permit for a material change of use to authorise those uses proposed for Stage 1; and
 - (c) a development permit for reconfiguration of ten lots into 13 lots.
- [18] The development is proposed to be developed over a period of six to ten years.¹⁷
- [19] SHC and the Council propose that any approval be conditioned to comply with an Infrastructure Agreement dated 29 June 2018. That agreement requires SHC to provide infrastructure contributions identified in the Infrastructure Contributions Schedule. The identified contributions benefit the proposed development's local community and the Sunshine Coast Region generally. They include land and works

¹³ *Planning Act 2016*, s 61(2).

¹⁴ [2019] QPEC 16; [2019] QPELR 793, [35]-[86].

¹⁵ [2019] QPEC 46, [12]-[22].

¹⁶ This is now known as a variation approval under the *Planning Act 2016*. That part of the application that seeks the preliminary approval to vary the effect of the planning scheme is referred to in the *Planning Act 2016* as a variation request.

¹⁷ The currency period under s 85 of the *Planning Act 2016* is six years from when the development approval takes effect. Condition 18 of the decision notice stipulates a sunset clause. It states that if development, or an aspect of development to which the approval relates is started but not completed, the preliminary approval, to the extent it relates to the development or aspect not completed, lapses if the Sunshine Coast Planning Scheme 2014 is amended to reflect the provisions of the preliminary approval, or otherwise at the end of ten years starting on the day the preliminary approval takes effect.

contributions for roads, pedestrian and cycle access and public car parking, and financial contributions for road improvements and other improvements to the Mount Coolum public amenities and car park.

What is the effect of the Yaroomba Beach Master Plan?

- [20] The Yaroomba Beach Master Plan includes a map that identifies the area the subject of the preliminary approval. It is described as the Yaroomba Beach Local Plan Precinct. That area contains individual sub-precincts – Yaroomba Beach North, Yaroomba Beach Central, Yaroomba Beach South, Lakeside North and Lakeside South.
- [21] The Yaroomba Beach Master Plan would vary the effect of the Planning Scheme by:
- (a) the Table in s 6.1, which identifies variations to categories of development and categories of assessment for a material change of use for a defined use specified in the Planning Scheme in Table 5.5.17 (Emerging Community Zone) for each sub-precinct;
 - (b) the Table in s 6.2, which identifies variations to the categories of development and categories of assessment for reconfiguration of a lot specified in the Planning Scheme in Table 5.61 (Reconfiguration of a Lot);
 - (c) the Addendum to the Coolum local plan code (Yaroomba Beach), which effectively replaces the purpose and overall outcomes and the performance outcomes and acceptable outcomes for the Coolum local plan code; and
 - (d) the Addendum to the Height of Buildings and Structures Overlay Map OVMIH, which effectively replaces Map OVMIH in the Planning Scheme with Map 3.
- [22] The Yaroomba Beach Master Plan sets the development intensity for the subject land across all stages. It provides for a maximum residential development density of a 220-room hotel and 740 equivalent dwellings. There is a table and plan of residential density for each precinct to ensure the distribution of the proposed density across the subject land. Aside from the units in the serviced apartment building, this density is intended to provide for approximately 537 apartments and 71 townhouses across the future stages of development, subject to the grant of further development permits.
- [23] The commercial and retail uses (bar, food and drink outlet, office, shop and shopping centre) are limited to tenancies not exceeding 300 square metres. The aggregate gross floor area of the village centre is not to exceed 2 770 square metres.
- [24] The Yaroomba Beach Master Plan sets maximum building heights for future dwellings. It provides for buildings with a maximum height of four storeys towards the centre of the subject land, stepping down to three storeys at the western edge of the subject land, and two storeys at the southern edge (adjacent to the existing residential development). Otherwise, the design parameters of the Planning Scheme remain applicable to future development. This includes requirements in the existing applicable Planning Scheme codes for any future proposed development type that

regulate the setbacks, site cover, landscaping, parking and communal or private open space requirements.

- [25] The Yaroomba Beach Master Plan is also to include an incorporated green space masterplan.¹⁸ The green space masterplan will require regular green breaks and identify vegetation to be protected.
- [26] The proposed development will deliver a significant amount of open space. There will be a total of 46 507 square metres of publicly accessible open space. This equates to 25 per cent of the subject land. Of that open space, a total of 17 741 square metres, or 9.6 per cent of the subject land, will be retained vegetation.
- [27] An access and mobility plan shows the proposed public and private pedestrian, cycle and vehicular routes. Access to the proposed development will be gained from David Low Way at only two points. The main entry will be via a new roundabout and there will be a secondary access further to the north. The majority of car parking will be provided underground, but there will be over 105 public parking spaces at grade for beach access. Further at grade car parking will be provided at the northern end of the main entry road and at the eastern boundary (in the order of 28 spaces and 33 spaces respectively).
- [28] The proposed development will be connected (both within and beyond the subject land) by a comprehensive arrangement of pedestrian pathways and roadways in a low speed environment. They will be designed to encourage walkability and a highly pedestrianised environment. The pathways will connect to the existing coastal walkway.
- [29] The proposed development also includes the provision of a new public beach access, a lifeguard tower, and various other infrastructure components.

What is proposed for Stage 1?

- [30] Stage 1 comprises a resort complex, multiple dwellings, short-term accommodation, a shopping centre, education establishment, community use and utility installation.
- [31] The resort complex will include a 220-room hotel. It is proposed that the hotel be conditioned to be operated as a “5-star or higher luxury hotel”. Starwood Australia Hotels Pty Ltd (a division of Marriott Hotels) has expressed interest in being the operator of the hotel and to operate it as a “*Westin*” resort. There will be extensive function and conference facilities, which are intended to serve the growing business traveller and “*MICE*” (meetings, incentives, conferences and events) market. In addition, the resort will contain two restaurants and a lobby bar; a day spa, kid’s club, and gym; pool (including a kid’s pool, spa and recreation area); retail and commercial spaces within the resort complex; and a rooftop bar on the seventh storey.
- [32] Stage 1 will also include a serviced apartment building containing short-term accommodation and multiple dwellings totalling 132 units. The western end of the serviced apartment block of units are “*dual key*” units, with a limited number of “*triple key*” units also provided at the far western end of each level. The dual and

¹⁸ The Council’s decision notice required this amendment to the Yaroomba Beach Village and International Resort prepared by Project Urban (Exhibit 109). SHC accepts this requirement.

triple key units have very limited kitchen facilities and will be used exclusively for short-term accommodation. The eastern end of the serviced apartment block contains larger format units that may be used for either short-term or long-term accommodation.

- [33] A separate building will contain a shopping centre with a maximum gross floor area of 2 770 square metres. It will be comprised of individual shop tenancies that must not exceed a gross floor area of 300 square metres. The centre is intended to accommodate a tenancy mix typical of an integrated tourist and residential precinct.
- [34] An educational establishment, with an area of 327 square metres, will be used for providing information on the ecological surrounds and the indigenous history of the subject land and the locality. There will be community uses in the form of Surf Life Saving Queensland amenities, and a utility installation use (being a waste transfer station).

What is sought as part of the development permit for reconfiguration of a lot?

- [35] SHC seeks a development permit to reconfigure the existing ten lots into 13 lots and an access easement. There are two commercial lots, three park and car park lots, two buffer lots, one lot for the transfer station, two access lots, one principal body corporate lot, two balance management lots and one access easement.

What are the assessment benchmarks?

- [36] Many integers can inform the combination of assessment benchmarks that apply to any particular proposed development. The Sunshine Coast Planning Scheme, like many others that apply throughout Queensland, is a voluminous document. It comprises numerous components, including a strategic framework, zones and precincts (with associated zone codes), local plans (with associated local plan codes), mapping overlays and overlay codes, and use and other development codes. Each of these components contains provisions that may form part of the assessment benchmarks for a particular development application and inform the assessment.
- [37] Here, the Strategic framework sets the policy direction for the Planning Scheme area. It forms the basis for ensuring appropriate development occurs within the Planning Scheme area for the life of the Planning Scheme.¹⁹ For the purpose of articulating the policy direction, the Strategic framework identifies a strategic intent, eight “*themes*” to achieve the strategic intent and specifies strategic outcomes sought for development in the Planning Scheme area for each theme. A list of key concepts is provided at the beginning of each theme to summarise the overarching principles expressed in the theme. Those parts of the Strategic framework are not framed in a manner that directly regulates development. Rather, they assist in identifying the rationale for, and the importance of, the various planning strategies that underpin the provisions that regulate development. Although each theme has its own section, the Strategic framework is to be read in its entirety as the policy direction for the Planning Scheme. The Strategic framework also identifies “*elements*” that refine and further describe the strategic outcomes and stipulates the specific outcomes sought for the elements.²⁰ The elements, specific outcomes and

¹⁹ See s 3.1(1) of the Planning Scheme.

²⁰ See s 3.1(2) of the Planning Scheme.

Strategic framework maps form the implementation framework for the Strategic framework.²¹

- [38] The policy direction in the Strategic framework is supported, at a finer grained level, by other parts of the Planning Scheme. The zones and precincts (and the associated zone codes) organise the Planning Scheme in a way that facilitates the location of compatible land uses.²² The local plans (and associated local plan codes) organise the Planning Scheme area at the local level and provide more detailed planning for the zones.²³ The mapping overlays and overlay codes identify areas in the Planning Scheme that reflect State and local level interests and have a particular characteristic, such as a particular sensitivity to the effect of development.²⁴ The use and other development codes apply to an assessment of development if identified as an applicable code in the table of assessment in the Planning Scheme.²⁵
- [39] In this case, the subject land is mapped on Strategic Framework Map SFM 2 Economic Development Elements as part of the Urban area. Zone Map ZM 11 maps the area as within the Emerging community zone and the Urban Grown Management Boundary.²⁶ The Coolum local plan area is mapped on Local Plan Map LPM 11. The subject land is part of “*Precinct LPP-1 Palmer Coolum Resort and the Coolum Residences*”. It is also subject to a number of overlays that apply to varying degrees. The subject land is in the Native Vegetation Area and Wetlands and Constructed Waterbodies Areas on the Biodiversity, Waterways and Wetlands Overlay Maps and in the Coastal Protection Area on the Coastal Protection Overlay Map. It is within the area subject to the 8.5 metre maximum height of buildings and structures on the Height of Building and Structures Overlay Map. A note on that map records that “*In certain circumstances pre-existing development approvals may override the operation of an overlay*”.
- [40] Each of the proposed uses and the proposed reconfiguration of a lot is impact assessable. It is to be assessed against the entire Planning Scheme, to the extent relevant.

What assessment benchmarks do the Appellants rely on to contend for refusal?

- [41] The Appellants rely on allegations of non-compliance with an imposing list of provisions of the Planning Scheme to contend for refusal.²⁷ On a number of occasions during the hearing, the other parties noted the extensive nature of the list of provisions and queried whether the list, in truth, reflected the real issues in dispute.²⁸ By the end of the hearing, compliance with 63 provisions of the Planning Scheme remained in issue. They are:²⁹

- (a) s 3.2.4, s 3.3.1(a), (i) and (m), s 3.3.2.1(a)(i), (ii), (iii) and (iv), s 3.3.3.1(d)(v), s 3.3.4.1(c), s 3.3.9.1(a), s 3.4.2.1(b)(i), s 3.4.2.1(c)(v),

²¹ See note to s 3.1 of the Planning Scheme.

²² Section 6.1 of the Planning Scheme.

²³ Section 7.1 of the Planning Scheme.

²⁴ Section 8.1 of the Planning Scheme.

²⁵ Section 9.1 of the Planning Scheme.

²⁶ Save for a small area in the southeast part of the subject land, which is in the Low density residential zone.

²⁷ Unless otherwise specified, the allegations and submissions attributed to the Appellants reflect allegations and submissions by the First Appellant. The Second Appellant adopted each of them.

s 3.4.3.1(c), s 3.4.6.1(c), (e)(ii) and (e)(v), s 3.5.1(d) and (i), s 3.7(4), s 3.7.1(f), s 3.7.2.1(a) and (b), s 3.8.1(d), (g) and (h), s 3.8.2.1(c) and (g), and s 3.8.3.1(c) and (d) of the Strategic framework;

- (b) the purpose in s 6.2.17.2(1)(a), (c) and (d) and overall outcomes (2)(c)(i), (v), (vi) and (viii) of the Emerging community zone code;
- (c) overall outcomes (2)(a), (c), (j) and (k), and performance outcomes PO1, PO2, PO3 and PO16 of the Coolum local plan code;
- (d) the purpose in s 8.2.3.2(1)(a), overall outcomes (2)(a), (b), (c) and (d) and performance outcomes PO2 and PO4 of the Biodiversity, waterways and wetlands overlay code;
- (e) the purpose in s 8.2.8.2(1), overall outcomes (2)(a) and (b) and performance outcome PO1 of the Height of buildings and structures overlay code;
- (f) the purpose in s 9.3.1.2(1)(a), overall outcome (2)(a) and performance outcome PO1 of the Business uses centre design code;
- (g) the purpose in s 9.3.11.2(1), overall outcome (2)(b) and performance outcome PO6 of the Multi-unit residential uses code; and
- (h) overall outcome (2)(c) of the Transport and parking code.

[42] The Appellants rely on additional provisions for context, including provisions from version 18 of the Planning Scheme.

[43] SHC and the Council join issue with the Appellants' allegations of non-compliance. They each contend that the outcome of the case will turn on only a handful of provisions. In opening the case for SHC, Mr Gore QC identified those provisions that SHC regard as the key provisions. Mr Gore QC gave examples of provisions that SHC says are self-evidently irrelevant or marginal.³⁰ At the end of the trial, the written submissions provided by SHC and the Council also explained why each of those parties regarded many of the provisions relied on by the Appellants to be irrelevant or marginal. The Appellants did not provide any meaningful response to those submissions. In addition, on many occasions throughout the hearing I asked Mr Hack QC and Mr Skoien to explain the basis on which they allege non-compliance. This was generally to no avail. Despite the opening and submissions of the other parties, and the Appellants inability to explain the basis of the alleged non-compliances, the Appellants did not take up the invitation of the other parties to consider their position and notify any provisions that they no longer wished to pursue. Instead, the Appellants maintain allegations of non-compliance with an exhausting list of provisions.³¹ Although each of the allegations is addressed below, it is convenient for me to deal with them by reference to the topics that they raise.

²⁸ See, for example, T1-14 – T1-18 and T7-111 – 7-114.

²⁹ The provisions relied on can be identified by reference to Exhibit 28G.

³⁰ See T1-18 – T1-24.

³¹ I directed that the written submissions provided by each party address all matters of statutory interpretation that the party seeks to raise in relation to the proper construction of each provision of the Planning Scheme with which the Appellants allege non-compliance and any other matter of statutory interpretation relied on. I also directed that the written submissions provided by each party address the evidence relied on in relation to each assertion made in the submissions. I informed the parties that they should prepare the written submissions on the understanding that they would be

- [44] The assessment benchmarks call for consideration of four issues.
1. Will the proposed uses of the subject land satisfactorily address the Planning Scheme's intention for a tourism focus area?
 2. Will the proposed development involve inappropriate commercial development?
 3. Is the design of the proposed development appropriate?
 4. Will the proposed development pose an unacceptable risk to the loggerhead turtle?³²

Will the proposed land uses satisfactorily address the Planning Scheme's intention for a tourism focus area?

- [45] The Appellants allege that the uses proposed as part of the proposed development do not satisfactorily address the Planning Scheme's intention for a tourism focus area in the vicinity of the subject land. They say the intention for tourist development in the area is for continuation and protection of the existing Coolum Resort on the western side of David Low Way and continuation of residential development (with the potential for visitor accommodation) on the eastern side of David Low Way.
- [46] Another issue that the Appellants put in dispute is whether the proposed development will achieve an appropriate mix of residential and tourist-oriented development. Their written submissions do not clarify their position with respect to this allegation. However, in oral submissions they confirmed that the Council's understanding of their contentions, as outlined in the Council's written submissions, was correct. The Appellants contend:
- (a) that the tourist-oriented components of the proposed development are not intended to be provided on the subject land because only residential

their only opportunity to refer to the evidence they relied on. The parties indicated that there was sufficient time allowed in the timetable to prepare written submissions on that basis. The written submissions provided by SHC and the Council complied with the direction. The written submissions prepared by Mr Hughes QC, Mr Batty and Ms Stephanos on behalf of the Council were particularly helpful. Although I do not accept them in all respects, the written submissions addressed every alleged issue of non-compliance and all of the contentious evidence. Where there was material disagreement between experts, their submissions addressed why the Council says I should prefer the evidence they ask the court to rely on in preference to the other evidence. Despite being delivered late, the written submissions provided by each of the Appellants did not comply with my directions. In many respects, the written submissions by the First Appellant contained no more than bare assertions. Although the written submissions by the Second Appellant did not comply, Ms McCarthy did an admirable job for a non-legally trained individual. Her submissions allowed me to easily appreciate the Second Appellant's position and, importantly, the evidence it relied on in support of its position.

³² Although Exhibit 28D identified seven questions for consideration as part of the assessment against the Planning Scheme, the issues they raise for consideration overlap. They are more conveniently dealt with by considering these four issues. Question 1 will address those issues raised in paragraph 1 and part of the contentions from paragraph 4 of Exhibit 28D. Question 2 will address the issue raised in paragraph 5 of Exhibit 28D. Question 3 will address those issues raised in paragraphs 2, 3, 4 (in part) and 5 of Exhibit 28D. Question 4 will address the issue raised in paragraph 7 of Exhibit 28D.

development consistent with the Coolum Residences is intended for the subject land; and

- (b) the extent of residential development is excessive, resulting in an inappropriate mix of tourist-oriented and residential development.

[47] During final submissions, Mr Hack QC explained that the First Appellant's allegations regarding the inappropriate mix of residential and tourist-oriented development reflects its position with respect to the intentions of the Yaroomba tourism focus area. It is therefore convenient to consider this issue, and the assessment benchmarks relied on in support of it, as part of the question of compliance with the intent for the Yaroomba tourism focus area.

[48] The Appellants say their contentions are supported by the assessment benchmarks in the Planning Scheme, in particular:

- (a) s 3.3.4.1(c), s 3.3.9.1(a), s 3.4.2.1(c)(v), and s 3.4.6.1(c) and (e)(ii) and (v) of the Strategic framework;
- (b) the purpose in s 6.2.17.2(1)(c) and overall outcomes (2)(c)(i) and (v) of the Emerging community zone code; and
- (c) overall outcomes (2)(a) and (j) and performance outcome PO16 of the Coolum local plan code.

What are the tourist-oriented elements of the proposed development?

[49] As I have already noted above, the proposed development includes a range of tourist-oriented elements. The resort complex will include a 220-room hotel that will be operated as a "5-star or higher luxury hotel". In addition to the hotel, the tourist-oriented elements include:

- (a) the serviced apartments, which include short-term accommodation;
- (b) conference and seminar facilities designed to attract the meetings, incentives, conferences and events market;
- (c) food catering premises (i.e. restaurants and food and drink outlets);
- (d) retail facilities, which the economic experts agree will be convenient to and will attract onsite tourist spending, as well as attracting tourists and visitors from surrounding areas;
- (e) public and common area parklands;
- (f) significantly improved beach access, including well in excess of 100 public car parking spaces for public use and lawful vehicular access;
- (g) surf lifesaving amenities to improve tourists' and residents' use of the beach;
- (h) an educational centre providing information on the ecological surrounds and indigenous history of the subject land and locality more broadly.

[50] The resort complex and the associated benefits will be developed alongside a range of residential accommodation, including approximately 608 equivalent dwellings.

Does the proposed development comply with the applicable tourism focus provisions of the Strategic framework?

- [51] The key provisions of the Strategic framework regulating tourism development and development in tourism focus areas are in s 3.4.6.1 of the Strategic framework. It contains the specific outcomes for Element 5 – Tourism and tourism focus areas of the Economic development theme. As such, it is helpful to first consider the Appellants’ allegations of non-compliance with s 3.4.6.1(c) and (e)(ii) and (v).

Does the proposed development comply with s 3.4.6.1?

- [52] Section 3.4.6.1 of the Strategic framework states:

“3.4.6. Element 5 – Tourism and tourism focus areas

3.4.6.1 Specific outcomes

- (a) To support the preferred pattern of settlement, **development provides for tourist oriented activities and services to be concentrated within the tourism focus areas identified conceptually on Strategic Framework Map SFM 2 (Economic development elements) and described in further detail in Table 3.4.6.1 (Tourism focus areas).**
- (b) Tourism, sports, major events and leisure activities provide unique experiences and products in well planned and serviced locations.
- (c) **Tourism focus areas provide for a range of visitor accommodation and tourist services consistent with the intended role of the respective tourism focus area with a particular emphasis on those uses that are well suited to and compatible with existing tourism development.**
- (d) *New tourist attractions* cluster in designated tourism focus areas in a manner consistent with the intended role of the particular tourism focus area.
- (e) **Other opportunities for tourism development may be considered by Council on their merits where such development: -**
 - (i) provides regionally significant tourism investment and employment opportunities to contribute to the Sunshine Coast economy, including positive flow on effects for local communities;
 - (ii) **does not incorporate a range or scale of uses and activities which would compromise the Sunshine Coast Activity Centre Network;**
 - (iii) is located on or with direct access to a *major road*;
 - (iv) provides all of the necessary *infrastructure* for the development;
 - (v) **is compatible with and does not adversely impact upon the character, lifestyle and environment attributes which contribute to the region’s natural (competitive) advantage, including but not limited to impacts on biodiversity, scenic amenity and local character and amenity; and**
 - (vi) would enhance the Sunshine Coast’s tourism brand and reputation.
- (f) A tourism activity is undertaken on a sustainable basis that protects and capitalises upon the natural values and key lifestyle attributes of the Sunshine Coast.”

(emphasis added)

[53] The issue of compliance with specific outcomes in s 3.4.6.1(c) and (e)(ii) and (v) calls for consideration of three questions.

1. Is the proposed development in a tourism focus area?
2. Is the proposed development consistent with the intended role of the Yaroomba tourism focus area?
3. If the proposed development is not consistent with the intended role of the Yaroomba tourism focus area, is it otherwise worthy of consideration as a meritorious opportunity for tourism development?

Is the proposed development in a tourism focus area?

[54] Strategic Framework Map SFM 2 (Economic development elements) identifies tourism focus areas by a green star. The map contains a green star west of David Low Way in about the location of the Palmer Coolum Resort. The notation “*Yaroomba (Palmer Coolum and Sekisui House Beachside)*” appears immediately under the star. The map is at an approximate scale of 1:120 000 if produced at A1 size. A note on the map records:

“This Strategic Framework map graphically represents elements of the Economic Development theme at a conceptual level and is not intended to be interrogated at the cadastre level.”

[55] Table 3.4.6.1 is in the following terms:

Table 3.4.6.1 Tourism focus areas

Tourism focus areas	Location
<p>Coastal tourism focus areas</p> <p>Areas within the coastal urban area accommodating a concentration of visitor accommodation and related tourism services.</p>	<p>(i) Alexandra Headland;</p> <p>(ii) Bokarina Beach;</p> <p>(iii) Bulcock Beach and Kings Beach;</p> <p>(iv) Coolum Beach;</p> <p>(v) Cotton Tree and Maroochydore;</p> <p>(vi) Golden Beach;</p> <p>(vii) Marcoola/Mudjimba;</p> <p>(viii) Mooloolaba;</p> <p>(ix) Twin Waters; and</p> <p>(x) Yaroomba (Palmer Coolum Resort and Sekisui House Beachside).</p>
<p>Nature and hinterland tourism focus areas</p> <p>Areas with a primary emphasis on nature and hinterland/rural based tourism experiences and accommodating low impact visitor accommodation and related tourism services.</p>	<p>(i) Blackall Range (including Maleny and Montville);</p> <p>(ii) Beerwah (along Steve Irwan Way in the vicinity of Australia Zoo or other existing activity nodes);</p> <p>(iii) Eumundi;</p> <p>(iv) Glass House Mountains;</p> <p>(v) Mary Valley (including</p>

	Kenilworth); and (vi) Pumicestone Passage.
Man-made tourism focus areas Areas with a primary emphasis on accommodating major man-made <i>tourist attractions</i> and facilities.	(i) Beerwah (Australia Zoo) (ii) Bli Bli (Sunshine Castle/Go Wake); (iii) Palmview (Aussie World); (iv) Yandina (Ginger Factory); and (v) Woombye (Big Pineapple).

- [56] It is common ground between the parties that the reference to the Palmer Coolum Resort is to be read as a reference to the Coolum Resort. It is also common ground that the reference to “*Sekisui House Beachside*” is a reference to existing residential development to the east of David Low Way and to the south of the subject land that is in the Emerging community zone. That area was developed under the Hyatt preliminary approval. All of the parties agree that the Yaroomba tourism focus area includes the subject land. The Appellants say that the description of the Yaroomba tourism focus area indicates a planning intent that the subject land be developed for residential development. That is a contentious issue.
- [57] There is no dispute that the coastal tourism focus area described in paragraph (x) of Table 3.4.6.1 is coincident with the Emerging community zone on Zone Map ZM11 and Precinct COL LPP-1, Palmer Coolum Resort and The Coolum Residences on Local Plan Map LPM11.
- [58] Having regard to the Planning Scheme maps and the provisions of the Planning Scheme referred to in these reasons, I am satisfied that the subject land is within the Yaroomba tourism focus area.

Is the proposed development consistent with the intended role of the Yaroomba tourism focus area?

- [59] Section 3.4.6.1(c) contains two requirements. First, tourism focus areas are to provide for a range of visitor accommodation and tourist services consistent with the intended role of the respective tourism focus area. Second, there is to be a particular emphasis on those uses that are well suited to and compatible with existing tourism development.
- [60] With respect to the first requirement, the First Appellant says the intended role of the Yaroomba tourism focus area is that identified in the purpose statement, overall outcome (2)(j) and performance outcome PO16 of the Coolum local area plan.³³ On the Appellants’ case, only the Palmer Coolum Resort is intended to satisfy the “*tourism*” aspect of this particular tourism focus area. They say all of the land east of David Low Way is intended to be developed for a residential use only. The Appellants do not explain the basis for their submission. They do not identify those features of the Planning Scheme that they say support such a construction, nor do they identify the evidence on which they rely to support their submission.
- [61] Mr Adamson, the town planner retained by the Appellants, expressed an opinion consistent with the position adopted by the Appellants. The basis of Mr Adamson’s

³³ The First Appellant’s position was clarified on day 10 of the hearing.

opinion is not clear. He notes that the tourism focus area symbol is to the west of David Low Way, coincident with the Palmer Coolum Resort. However, the location of the symbol on the map does not appear to inform Mr Adamson's opinion that the subject land is only to be developed for residential development given he accepts that the subject land is designated a tourism focus area under the Strategic framework. Mr Adamson's opinion appears to be founded only on the fact that the Planning Scheme used a description for the tourism focus area that referenced the existing (or perhaps approved) uses. Mr Adamson does not explain why the words "*Sekisui House Beachside*" should be construed as limiting use of that part of the tourism focus area east of David Low Way to residential accommodation only. He does not explain how his approach can be reconciled with his acceptance that the subject land is part of the identified coastal tourism focus area, which is intended to accommodate "*a concentration of visitor accommodation and related tourism services.*" The Appellants' submissions also provide no clarity about these matters.

- [62] I do not accept the Appellants' construction of the intended role of the Yaroomba tourism focus area. Both s 3.4.6.1(c) and s 3.4.6.1(d) refer to "*the intended role*" of a tourism focus area. The specific outcomes in s 3.4.6.1 are immediately followed by Table 3.4.6.1. The table has two functions. It identifies the location of each tourism focus area for the purpose of s 3.4.6.1(a). It also groups those tourism focus areas into three broad categories – coastal, nature and hinterland, and man-made – and outlines the intended role of each category of tourism focus area.
- [63] This construction sits comfortably with other provisions of the Planning Scheme that deal with tourism focus areas.³⁴ There are two additional features of the Planning Scheme that support such a construction. First, the division of tourism focus areas into the three broad categories has no other apparent function in the Planning Scheme: the Planning Scheme does not otherwise make reference to coastal tourism focus areas, nature and hinterland tourism focus areas, or man-made tourism focus areas. Second, other elements in the Economic development theme of the strategic framework utilise a similar drafting style. For example, s 3.4.3.1 contains specific outcomes for Element 2 – Sunshine Coast activity centre network. Those specific outcomes include a requirement for development to be commensurate with the role and function of the activity centre as specified in the activity centre network. They are immediately followed by Table 3.4.3.1, which contains a description (or role) for each type of activity centre. Similarly, s 3.4.4.1 contains specific outcomes for Element 3 – Employment areas, including a requirement for uses to be aligned to the primary focus of the employment area. Those specific outcomes are immediately followed by Table 3.4.4.1, which groups the various employment areas into different types and contains a description (or focus) for each type of employment area.
- [64] As the Yaroomba tourism focus area is a coastal tourism focus area, its intended role is to accommodate a concentration of visitor accommodation and related tourism services.
- [65] Mr Schomburgk, the town planner retained by the SHC, opines that the proposed development incorporates a number of tourism-focussed elements. He says they include the hotel itself, apartments (for both visitor accommodation and permanent

³⁴ The other provisions include s 3.2.1, s 3.2.2, s 3.2.8, Figure 3.2.8B, s 3.3.4.1(a)(i), s 3.3.4.1(b), s 3.4(9), s 3.4.1(c), (u) and (v), s 3.4.2.1(a)(iii), s 3.4.2.1(b), s 3.4.2.1(c)(v), s 3.4.9 and Strategic Framework Map SFM2, s 6.2.17 and s 7.2.8.2.

occupation), restaurants and food and drink outlets, a tourist shopping area, public and resort parklands, public beach access and public car parking, surf lifesaving amenities and an educational centre. The educational centre will provide information on the ecological surrounds and the indigenous history of the subject land and the locality. Mr Schomburgk says the proposed development is aimed squarely at the tourism market. This aspect of his evidence was unchallenged.

- [66] Mr Perkins, the town planner retained by the Council, gave evidence to similar effect. He opines that the proposed development will provide infrastructure to facilitate the public enjoyment of the nearby beaches. This is evident from the requirements of the Infrastructure Agreement, compliance with which can be secured by a condition of the development approval.³⁵
- [67] I accept the evidence of Mr Schomburgk and Mr Perkins. Their evidence satisfies me that the proposed development is consistent with the coastal tourism focus role intended for the subject land.
- [68] As I noted in paragraph [59] above, in addition to requiring development to be consistent with intended role, s 3.4.6.1(c) of the Strategic framework requires an emphasis on uses that are well suited to and compatible with existing tourism development.
- [69] The economists agree that, in terms of tourism accommodation, the relevant existing tourism development is that within the Coolum, Maroochy North Shore and Peregian South local plan areas. Figure 11 of the Second Economic Need Joint Report maps the location of relevant accommodation facilities, and Table 8 details their size.
- [70] The nearest tourism development is the Palmer Coolum Resort and associated golf course on the western side of David Low Way. Historically, it offered 324 hotel rooms, suites and villas. The golf course component of the resort remains operational, but the balance of the resort is not.
- [71] The largest facilities in the Yaroomba study area are Novotel Twin Waters Resort and the Ramada by Wyndham at Marcoola Beach. Each has over 100 rooms. There are less than 100 rooms in each of the other identified facilities. There is no five-star facility in the locality. All of the existing facilities have a rating of 4.5 stars or less.
- [72] Tourism is, and will continue to be, a major contributor to the Sunshine Coast regional economy and the Coolum local economy. The economists agree that there will be ongoing demand for tourist accommodation. This will be driven by increasing demand in the domestic overnight visitor market as the South East Queensland region continues to grow. The natural attributes of the area, including the world class beaches, are also a driver for the demand. Mr Ganly and Mr Duane, the economists retained by the Council and SHC respectively, opine that the redevelopment of the Sunshine Coast Airport will also drive the demand for tourist accommodation. Whether the Sunshine Coast Airport is a key driver of accommodation demand or not, all of the economists agree that there is a gap in the market for a five-star resort facility. They agree that the subject land has

³⁵ See s 65(2)(c) of the *Planning Act 2016*.

characteristics that differentiate it from other resort facilities on the Sunshine Coast and that would make it popular to the tourist (and conference) market.

- [73] Mr Ganly and Mr Duane opine that the proposed development would enable the Sunshine Coast to compete more effectively with the Gold Coast for the premium international and conference-based markets. At present, it is difficult to compete as the five-star hotels on the Sunshine Coast are typically small boutique developments. They are all less than 200 rooms. The only branded hotel chains are Sofitel Noosa, Peppers Noosa, Spicers Clovelly Estate and RACV Noosa. None are located in the agreed Yaroomba study area. Spicers Clovelly Estate only has ten rooms or units. It is the only five-star facility located in the Sunshine Coast local government area.
- [74] The economists all agree that the area does not presently attract the visitor segment of the tourist market that a five-star resort would attract, including those attracted by facilities for meetings, incentives, conferences and events. The experts agree it is an important sector of the tourism market. The key difference between the economists about the need for a five-star resort on the subject land relates to the prospect that the Palmer Coolum Resort might reopen.
- [75] Mr Brown, the economist retained by the Appellants, considers there is a “*real prospect*” that there would be a redevelopment of the Palmer Coolum Resort. He expressed concern that approval of the proposed resort facilities would militate against refurbishment and redevelopment of the Palmer Coolum Resort as a new resort. I do not accept this evidence of Mr Brown. As was acknowledged by Mr Brown, apart from the golf course, the Palmer Coolum Resort is currently closed and in a state of disrepair. Mr Palmer acquired the resort from Hyatt in about 2011. He closed it in about 2015. While it was operating, the resort was permitted to run-down. Mr Brown acknowledged that even if the Palmer Coolum Resort reopened, it may not be operated as, or managed consistently with the expectations of, a five-star facility. He opines that in order to meet the expectations of a five-star facility, the Palmer Coolum Resort would need to be refurbished. Mr Ganly gave evidence to the same effect. Further, there is no credible evidence that an approval of the proposed development would militate against the reopening of the Palmer Coolum Resort. Mr Brown’s opinion is nothing more than speculation: it is not underpinned by any credible explanation. Mr Ganly and Mr Duane, on the other hand, opine that the proposed development and the Palmer Coolum Resort could operate side by side. They gave credible explanations for the basis of their opinions. I accept their evidence.
- [76] Having regard to the evidence of the economists referred to above, I am satisfied that the proposed development incorporates uses that are well suited to and compatible with existing tourism development.
- [77] For the reasons provided above, I am satisfied that the proposed development complies with s 3.4.6.1(c) of the Strategic framework.

Is the proposed development otherwise worthy of consideration as a meritorious opportunity for tourism development?

- [78] The Council submits that the words “*Other opportunities for tourism development*” indicate that s 3.4.6.1(e) is directed to outlining the circumstances when tourist-oriented development outside of a tourism focus area may be supported. The

Council submits that this construction is apparent from a plain reading of s 3.4.6.1(e) in the context of the provision overall, where s 3.4.6.1(a), (c) and (d) all refer to tourism focus areas and s 3.4.6.1(a) states that to support the preferred pattern of settlement, tourism-oriented development is to be concentrated in tourism focus areas. No other party contended otherwise. I agree with the Council's construction.

- [79] SHC has discharged the onus with respect to compliance with s 3.4.6.1(c). As such, it is unnecessary for it to demonstrate that the proposed development should otherwise be considered on its merits under s 3.4.6.1(e). In any event, I am satisfied that the proposed development complies with s 3.4.6.1(e) for the following reasons.
- [80] The proposed development is located on or with direct access to David Low Way, which is a major road.³⁶ The Appellants do not dispute that the proposed development will provide the entire necessary infrastructure for the development.
- [81] The evidence of the economists demonstrates that the proposed development will provide regionally significant tourism investment and employment opportunities to contribute to the Sunshine Coast economy, including positive flow on effects for local communities.³⁷ The proposed development will enhance the Sunshine Coast's tourism brand and reputation. These matters are not disputed.
- [82] In this case, the only issues the Appellants raise about compliance with s 3.4.6.1(e) relate to:
- (a) whether the proposed development incorporates a range or scale of uses and activities that would compromise the Sunshine Coast Activity Centre Network;³⁸ and
 - (b) whether the proposed development is compatible with and does not adversely impact upon the character, lifestyle and environment attributes that contribute to the region's natural (competitive) advantage.³⁹
- [83] All of the economic experts agree that, with the proposed 300 square metre limit on the size of each individual tenancy, the proposed development will not have an impact on other centres within the hierarchy. I accept their opinions in this regard. They were supported by sound reasons. As such, I am satisfied that the proposed development does not incorporate a range or scale of uses and activities that would compromise the Sunshine Coast Activity Centre Network.
- [84] Further, for the reasons provided in paragraphs [179] to [331] below in relation to the design of the proposed development and in paragraphs [332] to [404] below regarding environmental impacts, I am satisfied that the proposed development is compatible with and does not adversely impact upon the character, lifestyle and environment attributes which contribute to the region's natural (competitive) advantage, including but not limited to impacts on biodiversity, scenic amenity and local character and amenity.

³⁶ Major road is defined to include a road classified as an arterial road. David Low Way is so classified.

³⁷ The relevant evidence is detailed in paragraphs [494] to [505] below.

³⁸ See s 3.4.6.1(e)(ii).

³⁹ See s 3.4.6.1(e)(v).

- [85] The proposed development's compliance with s 3.4.6.1(e) is a matter that supports approval of the development application.

Does the proposed development comply with other provisions of the Strategic framework relevant to the tourism focus area?

- [86] The Appellants allege the proposed development does not comply with s 3.3.4.1(c), s 3.3.9.1(a) and s 3.4.2.1(c)(v) of the Strategic framework.

- [87] Each of s 3.3.4.1(c) and s 3.3.9.1(a) is a specific outcome identified as part of the "Settlement pattern" theme.

- [88] Section 3.3.4.1(c) relates to "*Element 3 – Efficient and functional urban form*". It requires urban consolidation to be "*compatible with and sympathetic to the preferred character of the local area*".

- [89] A footnote to the provision notes that:

"the preferred character of each coastal urban, rural town and rural village community is described in the applicable local plan code."

- [90] Section 3.3.9.1(a) relates to "*Element 8 – Local settings and local planning responses*". It requires:

"The Sunshine Coast is maintained as a community of communities where the character and identity of each community is recognised and protected in accordance with a local plan."

- [91] These provisions are only marginally relevant to the question of whether there is an appropriate mix of residential and tourist-oriented development. Compliance with them, in terms of the appropriateness of the mix of uses proposed, is dependent on compliance with the Coolool local plan.⁴⁰ For reasons explained in paragraphs [109] to [137] below, I am satisfied that the mix of uses proposed is appropriate having regard to the provisions of the Coolool local plan.

- [92] Section 3.4.2.1(c)(v) forms part of the implementation framework for the Economic development theme. In particular, it relates to "*Element 1 – Natural (competitive) advantage and key economic sectors*". It requires that:

"New investment and re-investment in high value industries including ... tourism are supported through the following:-

...

- (v) protection of existing tourism, sport and leisure facilities and encouragement of the establishment of new facilities that contribute to active, healthy living and community wellbeing".

- [93] As I have also noted in paragraph [75] above, there is no credible evidence that the provision of these new facilities fails to adequately protect existing tourism facilities, such as the Palmer Coolool Resort.

⁴⁰ It seems, from the First Appellant's submissions with respect to the nature of the non-compliance, that the First Appellant appreciated this. In those circumstances, it is difficult to appreciate how the Appellants' conduct in alleging non-compliance with these provisions accords with their obligations under s 10 of the *Planning and Environment Court Act 2016* (Qld).

- [94] The subject land has a beachside location. The economists identify this as an attribute that underpins its natural competitive advantage. The proposed development will draw on that attribute to provide new tourism facilities that will contribute to active, healthy living and community well-being. The provision of community facilities (such as the educational centre), improved beach accesses and access to the coastal pathways proposed on the Yaroomba Pedestrian and Cycle Movement Plan are particularly notable in this regard. As such, I am satisfied the proposed development accords with specific outcome s 3.4.2.1(c)(v).
- [95] For the reasons that follow, I am also satisfied that the proposed development complies with the Planning Scheme's intention for tourism focus areas evident in other provisions of the Strategic framework about tourism.
- [96] Consistent with the strategic intent in s 3.2.2, the proposed development will assist in strengthening the region's "*national and international appeal as a visitor destination*". It will be the first major hotel development on the Sunshine Coast in 30 years. The resort complex will include a hotel that will be operated either as a "*Westin*" (a well-known, internationally branded hotel chain by an operator already secured by SHC) or some other five-star hotel.⁴¹ As I noted in paragraph [74] above, the proposed development will cater to a presently unserved segment of the tourism market. Further, community use components such as the educational centre are recognised as contributors to the economic and social fabric of the Sunshine Coast.
- [97] As I have noted above, and consistent with the tourism key concept in s 3.4.1(9) of the Strategic framework, the proposed development will add to the attraction of the Yaroomba tourism focus area. It will offer conference facilities and accommodation types of sufficient size to support major events.
- [98] In accordance with s 3.4.6.1(a), the proposed development will support the preferred pattern of settlement by providing tourist orientated activities and services within the tourism focus areas identified on Strategic Framework Map SFM2 and described in Table 3.4.6.1.
- [99] The Council submits that the proposed development also assists in achieving a "*cluster*" of tourist attractions as sought in s 3.4.6.1(d). "*Tourist attraction*" is defined as "*Premises for providing on-site entertainment, recreation or similar facilities for the general public*". The definition gives examples of theme park and zoo and specifically excludes "*Hotel*". The Appellants say this provision does not support the proposed development. It says the provision is directed at the clustering of man-made tourist attractions at Beerwah, Bli Bli, Palmview, Yandina and Woombye. I accept that the provision applies to those man-made tourist attractions. That does not demonstrate that this provision is not supportive of an approval. The proposed development is for a "*Resort complex*", which is not an excluded use. It includes a range of restaurants, retail and community uses (such as the educational centre, improved beach accesses and access to the coastal pathway) that are all likely to attract tourists and local visitors. It is proximate to an existing tourist attraction, namely the golf course attached to the former Palmer Coolum Resort. Mr Schomburgk was of the view that the proposed development assists in achieving this "*cluster*". I accept his evidence. Even if the proposed development did not

⁴¹ The decision notice contains a condition that secures this.

include things considered to be a “*tourist attraction*” as defined, the clustering of the facilities within the proposed development, as well as proximate to the existing golf course, is nevertheless consistent with the underlying planning policy to cluster uses that provide entertainment, recreation and similar facilities for the general public in a tourism focus area. This is a matter that is supportive of approval of the proposed development.

Conclusion regarding compliance with tourism focus provisions of the Strategic framework

- [100] For the reasons provided above, I am satisfied that the proposed development complies with the applicable tourism focus provisions of the Strategic framework. Compliance with these provisions is a factor that lends support to approval of the proposed development.

Does the proposed development comply with the applicable tourism focus provisions of the Emerging community zone code?

- [101] Zones organise the Planning Scheme area in a way that facilitates the location of compatible land uses. As I have noted already, the subject land is in the Emerging community zone.
- [102] The Appellants submit that the proposed development fails to comply with the Emerging community zone code in that it does not reflect the specific intent for the locality in the Coolum local plan code. They also submit that the proposed development involves an inappropriate mix of uses (tourist or commercial and medium to high density residential) and fails to integrate the uses on the subject land with the Coolum Resort.
- [103] The purpose of the Emerging community zone code is recorded in s 6.2.17.2(1). It states:

“The purpose of the Emerging community zone code is to ensure that development is designed and coordinated to achieve safe, healthy and sustainable new urban communities which:-

- (a) are well integrated with existing communities;
- (b) deliver *affordable living* opportunities;
- (c) **provide an appropriate mix and arrangement of activities**; and
- (d) provide a *best practice* benchmark for ecological sustainability and the implementation of environmental enhancement and rehabilitation programs.”

(emphasis added)

[104] The purpose of the zone will be achieved through the overall outcomes.⁴² They include:

- “(c) development in other areas not subject to **Part 10 (Other plans)** is undertaken in accordance with a plan of development that appropriately addresses the matters identified below, and which is implemented via a preliminary approval pursuant to section 242 of the Act⁴³ or an amendment to the planning scheme:-
- (i) **development reflects any specific intent statements** and local structure planning elements for the area **identified in a local plan code**;
 - (ii) development avoids as far as practicable, or where avoidance is not practicable, minimises and otherwise mitigates, adverse impacts on *ecologically important areas*, including creeks, gullies, *waterways*, *wetlands*, coastal areas, habitats and *vegetation* through location, design, operation and management;
 - (iii) development is designed and sited to sensitively respond to the physical characteristics and constraints of land, including flooding, *steep land*, landslide hazard and bushfire hazard, where applicable;
 - (iv) the scale, density and layout of development facilitates an efficient land use pattern that:-
 - (A) is well connected to other parts of the urban fabric and planned future development;
 - (B) supports walkable neighbourhoods that are well connected to employment nodes, activity centres, open space and recreational areas, community facilities, health and education opportunities;
 - (C) encourages active and public transport accessibility and use; and
 - (D) maximises the efficient extension and safe operation of *infrastructure*;
 - (v) **an appropriate mix of land uses** and housing types **is provided**;
 - (vi) a sense of character and community inclusion is promoted;
 - (vii) a high level of residential amenity, personal health and safety, and protection for property is provided;
 - (viii) development provides for pedestrian, cycle and vehicular movement networks that maximise connectivity, permeability and ease of movement within and to neighbourhoods and other areas;
 - (ix) development is located, designed and operated to be responsive to the Sunshine Coast’s sub-tropical climate and minimises the use of water and energy;
 - (x) development does not interfere with the existing or ongoing use of adjoining rural land for productive agricultural purposes;
 - (xi) development occurs in a logical sequence and facilitates the efficient and timely provision of *infrastructure* and services prior to, or in conjunction with, the first stages of development;

⁴² Section 6.2.17.2(2) of the Planning Scheme.

⁴³ This refers to s 242 of the *Sustainable Planning Act 2009*.

- (xii) development is provided with the full range of urban services to support the needs of the community, including *parks*, roads and transport corridors, pedestrian and cycle paths, reticulated water, sewerage, stormwater drainage and electricity and telecommunication infrastructure; and
- (xiii) development does not adversely impact on the continued operation, viability and maintenance of existing *infrastructure* or compromise the future provision of planned *infrastructure*.

Editor's note—a table of consistent and potentially consistent uses has not been provided for the Emerging community zone as development in this zone is intended to occur in accordance with a master plan. An approved plan of development may provide for a range of uses as appropriate to the *site* or area.”

(emphasis added)

- [105] Those portions of the Emerging community zone code emphasised above reflect the requirements that the Appellants allege give rise to non-compliance relevant to the tourism issue.
- [106] These provisions require development to be undertaken in accordance with an approved plan of development that is to be implemented via a preliminary approval. That is what SHC proposes here. The real issue appears to be whether the plan of development appropriately addresses those matters emphasised above.
- [107] The Emerging community zone code contains no provisions from which one might ascertain what is “*an appropriate mix and arrangement of activities*” or what is “*an appropriate mix of land uses and housing types*”. Overall outcome 2(c)(i) calls up intent statements identified in a local plan code. As such, whether there is compliance with the purpose statement in s 6.2.17.2(1)(c) and overall outcomes (2)(c)(i) and (v) of the Emerging community zone code will depend on a consideration of other provisions of the Planning Scheme.⁴⁴
- [108] For the reasons provided in paragraphs [51] to [100] above and paragraphs [109] to [155] and [158] to [177] below, I am satisfied that the proposed development complies with these provisions. I accept the evidence of Mr Perkins that the proposed development will help ensure development of this significant land holding is planned for as a collective holding. This will enable long-term use of the subject land for urban purposes to come to fruition as intended by its inclusion in the Emerging community zone.

Does the proposed development comply with the applicable tourism focus provisions of the Coolum local plan code?

- [109] Local plans organise the Planning Scheme at the local level. They provide more detailed planning for the zones.⁴⁵

⁴⁴ It seems, from the First Appellant's submissions with respect to the nature of the non-compliance, that the First Appellant appreciated this. In those circumstances, it is difficult to appreciate how the Appellants' conduct in alleging non-compliance with the purpose statement in s 6.2.17.2(1)(c) and overall outcomes 2(c)(i) and (v) of the Emerging community zone code accords with their obligations under s 10 of the *Planning and Environment Court Act 2016* (Qld).

⁴⁵ Section 7.1(1) of the Planning Scheme.

- [110] The purpose of the Coolum local plan code is to provide locally relevant planning provisions for the assessment of development within the Coolum local plan area.⁴⁶ The purpose is to be achieved through the overall outcomes. Overall outcomes (2)(a) and (j) state:
- “(a) The Coolum local plan area remains a low key coastal urban community, with a strong focus on tourism and well serviced by a range of small-medium scale business, community, sport and recreational activities.
 - (j) The Palmer Coolum Resort and The Coolum Residences continues to be developed as an integrated tourist and residential development focussed around an 18 hole championship golf course and large areas of open space. Development is configured in a series of beachside villages and other precincts that sit lightly in the landscape and that are separated by green corridors and lush subtropical landscaping. Development protects the natural vegetated character of the coastal foreshore and foredunes and respects the scale and character of surrounding area and *vegetation*. Dense vegetated buffers are maintained along the David Low Way and surrounding the Palmer Coolum Resort to effectively screen development and protect the scenic amenity of David Low Way and the amenity of nearby residential areas.”
- [111] Paragraph 88 of the First Appellant’s Submissions states:
- “as noted below in respect of the Coolum Local Plan, the Proposed Development is not consistent with the intended role of the tourism focus area in the Locality (which role is for residential facilities on the eastern side of David Low Way to support and complement the existing Coolum Resort on the western side of David Low Way).”
- [112] The First Appellant’s Submissions do not provide a cross-reference to the later part of their written submissions to which they intended to refer. There is no evident further reference.
- [113] The Appellants also contend that the proposed development would establish significant new tourist facilities that fail to protect the existing tourist facilities of the Coolum Resort recognised by the Planning Scheme.
- [114] The Coolum local plan code does not support the assertions made in paragraph 88 of the First Appellant’s Submissions. The code does not require that the land west of David Low Way is intended to be developed for tourist development only and land east of David Low Way is intended to be developed for residential development only. Overall outcome (2)(j) does not regulate the relative extent of the “*tourism resort*” and the “*residential*” components. It does not require that the apparently abandoned Palmer Coolum Resort be protected from competition introduced by approval of further tourism focussed development.
- [115] There is no evident reason to read the limitation contended for by the Appellants into the overall outcomes of the Coolum local plan code. As was observed by Mr Perkins, sub-precincts are utilised elsewhere within this Planning Scheme area to differentiate between uses and built form within a particular precinct (for example, in the Kawana Waters and Sippy Downs local plans). If the Planning Scheme intended to distinguish between the land uses east and west of David Low Way, it is reasonable to expect that the “*Palmer Resort and The Coolum*

⁴⁶ Section 7.2.8.3(1) of the Planning Scheme.

Residences” precinct of the Coolum Local Plan Area would have been further defined into sub-precincts.

- [116] Further, overall outcome (2)(j) of the Coolum local plan code does not contain any apparent distinction between those uses to be located west and east of David Low Way. The first sentence has a single subject, not two subjects (that is “*The Palmer Coolum Resort and The Coolum Residences continues to be developed*”).⁴⁷ The provision describes an “*integrated tourist and residential development*”, where both components are part of a single “*integrated*” development. The requirement for development to be configured in a series of “*beachside villages and other precincts*” does not connote a requirement for permanent residential housing only (or even primarily). It does not exclude tourist or visitor accommodation and other purposes.
- [117] In any event, as I have already noted in paragraph [75] above, approval of the proposed development does not militate against the reopening of the Palmer Coolum Resort. It would add a further integrated tourist and residential development to the area. For the reasons provided in paragraphs [64] to [99] above, I am satisfied that the proposed development will strengthen the tourism focus in the Coolum local plan area and add to the range of small-medium scale business, community, sport and recreational activities as required by overall outcome (2)(a) of the Coolum local plan.
- [118] With respect to overall outcome (2)(j), I accept that the proposed development may not integrate with the Palmer Coolum resort, and it does not focus around an 18-hole golf course. However, I do not regard that this is what the planning intent in overall outcome (2)(j) requires. Read as a whole, the provision seeks three things. First, that the precinct as a whole be developed with tourist and residential development. Second, there be integration between the tourist and residential uses. Third, that the precinct is developed in a manner that emphasises open space and landscaping values.
- [119] The proposed development includes both tourist and residential development. The master plan shows that the development is focussed around significant areas of open space. The open space will include a band of retained vegetation along David Low Way and at other locations within the subject land; a lake through the centre of the subject land; a park on the eastern lake edge near the hotel and proximate the retail area; a linear beachside park adjoining the dune landscape on the eastern edge of the subject land; other parkland spaces; and landscaping along proposed roadways on the subject land. The lake and parkland through the centre of the proposed development and the considered arrangement of pedestrian pathways and roadways provide integration between those areas proposed to be developed for tourist development and the areas to be developed for residential uses.
- [120] Mr Schomburgk says that approximately 25 per cent of the subject land would be publicly accessible open space, with about 9 per cent of the subject land containing retained vegetation. His opinion was formed having regard to the development criteria proposed as part of the preliminary approval for the subject land. I accept it.
- [121] Mr Thompson, the architect retained by SHC, opines that the design outcome appears to have been informed by considered selection of locations for new development to retain the perception externally that the natural environment is

⁴⁷ Emphasis added.

dominant; careful arrangement of the roadways and their connections to ensure a dominant natural environment experience as one moves through the subject land; and carefully designed areas of landscape between and around the buildings. I accept this evidence. It accords with what is shown on the master plan.

[122] For the reasons provided, I am satisfied that the proposed development accords with the planning intent of overall outcome (2)(j).

[123] The Appellants also allege non-compliance with performance outcome PO16. It relates to development in the Emerging Community Zone (Precinct COL LPP-1, Palmer Coolum Resort and The Coolum Residences). It states:

“Development in the Emerging community zone in Precinct COL LPP-1 (Palmer Coolum Resort and The Coolum Residences) identified on **Local Plan Map LPM11**:-

- (a) maintains the primary function of the *site* as an integrated tourist facility;
- (b) provides for the retention of large areas of open space, including the 18 hole championship golf course;
- (c) provides for a range of residential accommodation types set in discrete beachside precincts and separated by greenspace;
- (d) protects the natural vegetated character of the coastal foreshore and foredunes;
- (e) provides for development and building design which respects the scale and character of surrounding areas and *vegetation*;
- (f) provides for retail and commercial development to be limited to resort facilities and local convenience goods only;
- (g) provides for the maintenance and enhancement of public access to the beach and foreshore in a manner that respects the natural foredune and beach character and environmental values;
- (h) minimises and rationalises *access* to David Low Way, Warren Road and other local roads;
- (i) protects the visual amenity of the road network through the maintenance and enhancement of dense vegetated buffers to David Low Way and surrounding the Palmer Coolum Resort; and
- (j) provides for the maintenance and enhancement of the environmental and landscape values of the area including, but not limited to, the Yaroomba Parabolic Dune, rainforest areas on the Palmer Coolum Resort site, and views to and from Mount Coolum and Point Arkwright.”

[124] No corresponding acceptable outcome is provided. An editor’s note⁴⁸ records that development in the Emerging community zone at Palmer Coolum Resort and the Coolum Residences is currently regulated in accordance with an approved Master Plan and Plan of Development.

[125] The Coolum local plan precinct COL LPP-1 (Palmer Coolum Resort and The Coolum Residences) identified on Local Plan Map LPM11 incorporates land both west and east of David Low Way. All of the planning experts agree that “*The Coolum Residences*” (referred to in the description of Coolum local plan precinct COL LPP-1) and “*Sekisui House Beachside*” (referred to in describing the location

⁴⁸ An editor’s note is part of the Planning Scheme – see s 1.3.2.4 of the Planning Scheme.

of the Yaroomba tourism focus area) identify the same area of land. It is the land that is the subject of the Hyatt preliminary approval. I accept this evidence of the town planners. The land in Coolum local plan precinct COL LPP-1 is coincident with the land in the Coolum local plan area that is in the Emerging community zone. It includes the subject land.

- [126] The Appellants say that the reference to “*site*” in performance outcome PO16(a) should be understood to include all of the land in Precinct COL LPP-1.⁴⁹ I agree. This construction is consistent with the heading of the table under which performance outcome PO16 appears. It identifies that performance outcome PO16 only applies to the land in the precinct.
- [127] The Appellants submit that performance outcome PO16(a) requires all of the land in the precinct to be kept in a state where its primary (or most important) function is an integrated tourist facility. In their submissions about the proper construction of performance outcome PO16, the Appellants refer to the following four matters. First, the expression “*integrated tourist facility*” is not defined in the Planning Scheme. Second, there is a definition of “*resort complex*”.⁵⁰ Third, the Hyatt preliminary approval refers to an “*integrated resort and residential community*”. Fourth, the Appellants say that the Maroochy Plan 2000, under which the Hyatt preliminary approval was given, used the phrase “*integrated tourist facility*” as a defined use.⁵¹
- [128] The Appellants do not explain the relevance of the second, third and fourth observations. They submit that the proposed development involves stark and obvious non-compliance with the Coolum local plan because the proposed development does not integrate with the Coolum Resort. It is not obvious to me how a failure to integrate with the Coolum Resort results in non-compliance with performance outcome PO16. The Appellants do not explain the basis of the

⁴⁹ The definition of “*site*” in the Planning Scheme is of no assistance in determining the meaning of the word in this provision. It is “*any land on which development is carried out or proposed to be carried out whether such land comprises the whole or part of one lot or more than one lot if each of such lots is contiguous*”.

⁵⁰ The definition of “*resort complex*” is:
 “Premises used for tourist and visitor short-term accommodation that includes integrated leisure facilities such as:-
 • restaurants and bars;
 • meeting and function facilities;
 • sporting and fitness facilities;
 • staff accommodation;
 • transport facilities directly associated with the tourist facility such as a ferry terminal and air services.”

⁵¹ The Appellants say the definition was in the following terms:
 “*Integrated tourist facility*” means premises which:
 (a) are used primarily for facilities and activities which attract, accommodate and entertain tourists where some facilities are open to the public use; and
 (b) are on a land extensive site; and
 (c) include two or more buildings; and
 (d) are developed in an integrated way, and managed as one entity; and
 (e) may include provision for conference facilities and for permanent residential accommodation.

The term includes integrated tourist resorts, tourist theme parks and the like.”

submission, nor reference any evidence in support of it. The submission is no more than a bald assertion.⁵²

- [129] The provisions of performance outcome PO16 that regulate the mix of land uses seek “*an integrated resort facility*”, “*a range of residential accommodation types*” and limited “*retail and commercial development*”. The only stipulation or guidance with respect to the relative extent of the first two components is that development in the zone is to maintain the primary function of the site as an integrated resort facility.
- [130] Stage 1 of the proposed development includes tourist, residential and limited retail and commercial facilities. The uses are provided in the form of “*an integrated tourist and residential development*”, which are the land uses sought by the specific provisions that regulate development on the subject land, in particular overall outcome (2)(j) and performance outcomes PO16(a), (c) and (f). The extent of visitor accommodation and related tourism services, and their delivery as part of Stage 1, ensures that the proposed development will maintain the primary function of the subject land as an integrated tourist facility. To the extent that the preliminary approval would permit land in Precinct Col LPP-1 to be used for residential development, that residential development would not overwhelm the primary tourism function provided by the proposed resort complex (and the Palmer Coolum resort should it reopen).
- [131] Although the proposed development is not designed to visually integrate with the Palmer Coolum Resort, this is a function of balancing the competing planning goals in performance outcomes PO16(a) on the one hand and PO16(h) and (i) on the other. The design provides a considered arrangement of pedestrian pathways and roadways that would facilitate pedestrian connectivity between the proposed development and the Palmer Coolum Resort (should it reopen).

Conclusion regarding the appropriateness of the proposed land uses in the Yaroomba tourism focus area

- [132] As would be apparent from the provisions considered above, the Planning Scheme does not fix metrics that regulate the appropriate mix of land uses that the Planning Scheme seeks to have provided on the subject land. There are no provisions that define the extent of tourism or residential development within the Yaroomba tourism focus area, or their relativity. The Strategic framework requires that the subject land accommodate “*a concentration of visitor accommodation and related tourism services*”.⁵³ The land use requirements for the subject land identified in the Coolum local plan are that:
- (a) land within Precinct LPP-1 Palmer Coolum Resort and the Coolum Residences is to be developed as an “*integrated tourist and residential*

⁵² As I noted in *Murphy v Moreton Bay Regional Council & Anor; Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor* [2019] QPEC 46 at 268, submissions of this nature do not assist. It is not for the Court to undertake the task of trawling through the evidence to attempt to ascertain what evidence it may have been that the parties had in mind. As I indicated to the parties during the hearing, I do not intend to descend into the arena to ascertain what the Appellants had in mind. To do so would be unfair to the other parties.

⁵³ See s 3.4.6.1(c) and Table 3.4.6.1.

development” that is “*configured in a series of beachside villages and other precincts*”;⁵⁴

- (b) development is to “*maintain the primary function of the site as an integrated tourist facility*”;⁵⁵
- (c) development is to provide “*a range of residential accommodation types*”;⁵⁶ and
- (d) development is to provide “*retail and commercial development to be limited to resort facilities and local convenience goods only*”.⁵⁷ I address this issue in detail later when considering the appropriateness of the retail and commercial aspects of the proposed development. In short, the economists agree that the proposed facilities are consistent with this requirement.

[133] Mr Adamson opines that the proposed density is substantially higher than that expected under either the Planning Scheme or the Hyatt preliminary approval (with the exception of sub-precinct 3F). Mr Adamson’s opinion about the anticipated density under the Planning Scheme is based on the Local Government Infrastructure Plan in version 18 of the Planning Scheme. I do not accept his opinion for four reasons. First, during cross-examination, Mr Adamson accepted that the Coolum local plan code contains the “*key provisions*” for the assessment of development on the subject land. He acknowledged that it does not specify an intended density for development on the subject land. Second, as was also acknowledged by Mr Adamson during cross-examination, the Local Government Infrastructure Plan is not a land use planning document – it is a document that plans the level of infrastructure that the local government will provide. Third, version 18 is not the version of the Planning Scheme against which the development application must be assessed – version 8 is the relevant version. Fourth, as was acknowledged by Mr Adamson, the infrastructure planning document in version 8 of the Planning Scheme (being the Priority Infrastructure Plan) does not include a planned density for the subject land. However, to the extent that it provides any guide, the proposed density of approximately 44 dwellings per hectare across the whole of the subject land is consistent with the range of density planned for infrastructure purposes for the Emerging community zone (Caloundra West), which to have a density of between 25 and 50 dwellings per hectare.

[134] With respect to whether the mix of tourist-oriented development and residential development is appropriate, I prefer the evidence of Mr Perkins and Mr Schomburgk. They are both of the opinion that the proposed mix of residential and tourist-oriented development is not unusual. Mr Perkins gave evidence that the proposed development reflects an obvious tourism focus and there is nothing unusual about the proposed mix of residential and tourism components. He cannot recall any significant tourism development that does not have a component of residential development (much of which is often made available to be managed as part of the overall tourism development). Mr Schomburgk says that residential dwellings and retail components, included in the mix of uses in addition to the hotel,

⁵⁴ See overall outcome (2)(j).

⁵⁵ See performance outcome PO16(a).

⁵⁶ See performance outcome PO16(c).

⁵⁷ See performance outcome PO16(f).

are parts of contemporary tourism projects, particularly for projects at the scale of the proposed development.

- [135] The land uses proposed as part of the resort complex will include a far greater number of rooms or units for accommodation than any of the other five-star hotels on the Sunshine Coast considered by the economic experts. The provision of a 220-room hotel and a serviced apartment building with 133 units equates to a total provision of 353 rooms or units. The largest five-star resort identified by the economic experts was the Peppers Noosa Resort with 198 rooms or units. I am satisfied that the resort complex, including the hotel and the serviced apartments, will be a significant tourist development and the primary function of the subject land.
- [136] In addition to this significant tourist development, the size of the subject land facilitates the delivery of approximately 608 equivalent dwellings within the residential component. For reasons considered in detail below,⁵⁸ I am satisfied that notwithstanding their relatively considerable number, the proposed development will achieve “*a range of residential accommodation types set in discreet beachside precincts and separated by greenspace*”. The types of accommodation include both apartments and townhouses in buildings ranging between two to four storeys. The Master Plan demonstrates that the residential accommodation will be set in various precincts and separated by greenspace. At present, dwelling units in Precinct LPP-1 Palmer Coolum Resort and the Coolum Residences and the Emerging community zone are predominantly large detached houses. The proposed development will provide the “*range*” sought in the Coolum local plan area.
- [137] For the reasons set out in paragraphs [49] to [136] above, I am satisfied that the evidence establishes that SHC’s proposed development (i.e. both Stage 1 and that facilitated by the proposed preliminary approval) involves a mix of land uses that is appropriate in the Yaroomba tourism focus area. It will provide a concentration of visitor accommodation and related tourism services in an integrated tourist resort and residential development that is focussed around large areas of open space. To the extent that the proposed development does not integrate with the Palmer Coolum Resort, this is a function of the need to balance the planning goal of integration against other requirements, such as the protection of the visual amenity of the road network. The proposed development does not unsatisfactorily compromise the planning goals with respect to the primary function of Precinct COL LPP-1. The proposed mix of land uses favours approval.

Will the proposed development involve inappropriate commercial development?

- [138] Stage 1 of the proposed development seeks a shopping complex of 2 770 square metres with no tenant larger than 300 square metres. In addition, the resort complex will include up to 284 square metres of retail space and 421 square metres of commercial space.⁵⁹

⁵⁸ See paragraphs [235] to [245] regarding the design of the proposed development.

⁵⁹ Condition 70 of the decision notice stipulates these maximums for the retail and commercial space related to the resort complex use. SHC does not challenge the conditions.

[139] The Appellants accept that retail uses are appropriate on the subject land as part of the proposed resort complex.⁶⁰ However, they allege the proposed level of retail and commercial development results in non-compliance with:

- (a) s 3.3.1(i), s 3.4.2.1(b)(i), s 3.4.3.1(c) and s 3.4.6.1(e)(ii) of the Strategic framework;
- (b) the purpose in s 6.2.17.2(1)(c) and overall outcomes (2)(c)(i) and (v) of the Emerging community zone code;
- (c) overall outcomes (2)(a), (c) and (j) and performance outcome PO16 of the Coolool local plan code; and
- (d) the purpose in s 9.3.1.2(1)(a), overall outcome (2)(a) and performance outcome PO1 of the Business uses centre design code.

[140] The Appellants say that the non-compliance arises because the scale of the retail and commercial development associated with the shopping complex is excessive and that its location east of David Low Way and outside of the Sunshine Coast Enterprise Corridor is inappropriate.⁶¹

[141] The Council and SHC do not accept that the provisions relied on by the Appellants give rise to the requirements of the nature implied by the Appellants allegations, nor do they accept there is non-compliance with them. It is convenient to deal with each of the allegations in turn.

Does the proposed development comply with the provisions of the Strategic framework that guide commercial development?

[142] The Appellants allege non-compliance with four provisions of the Strategic framework.

[143] First, s 3.3.1(i) of the Strategic framework. It is one of the strategic outcomes sought for the Settlement pattern theme. It states:

“Maroochydore is the principal *regional activity centre* for the Sunshine Coast and provides regional scale business, investment and residential and community activities. Maroochydore is supported by major regional activity centres at Caloundra, Caloundra South, Kawana, Sippy Downs, Nambour and Beerwah. **A network of district and local activity centres also service community needs.**”

(emphasis added)

[144] Despite alleging non-compliance with this provision, the Appellants do not articulate the foundation for their allegation. As I noted in paragraph [37] above, the strategic outcomes are not framed in a manner that directly regulates development. The Appellants do not appear to contend otherwise. In their written submissions they say that the broad strategic outcomes in s 3.3.1 are given specific impetus in the specific outcomes of Element 1 of the implementation framework in s 3.3.2.1(a)(i) to s 3.3.2.1(a)(iv). There is no allegation that the proposed retail and

⁶⁰ This was conceded by Mr Hack QC during final submissions.

⁶¹ The written submissions for the First Appellant do not clearly articulate their case on this point. However, during final submissions, Mr Hack QC acknowledged that the Council’s characterisation of their allegations in paragraph 140 of the Written Submissions on behalf of the Respondent was accurate.

commercial development results in non-compliance with those provisions. The Appellants do not explain how then they can maintain their allegation of non-compliance with s 3.3.1(i). I do not accept the Appellants' bare assertion of non-compliance. There is no clearly identifiable basis on which it could be said that the proposed development fails to comply with this provision. The intent that "*A network of district and local activity centres also service community needs*" does not of itself constrain the ability to deliver other retail development.

- [145] In this case, all of the economic experts agree that, given the proposed 300 square metre limits on the size of individual tenancies, the proposed development will not have an impact on other centres within the hierarchy.
- [146] The second provision relied on is s 3.4.2.1(b)(i). It is part of the implementation framework within the Strategic framework. It is a specific outcome for Element 1 – Natural (competitive) advantage and key economic sectors for the Economic development theme. It states:
- “The traditional sectors of retail, construction, tourism and rural activities are supported through the following:-
- (i) facilitation of development **in appropriate locations as provided for by zoning allocations**, and particularly in regional activity centres and infill and greenfield major development areas **in the Sunshine Coast Enterprise Corridor.**”
- (emphasis added)
- [147] The proposed development involves retail facilities that are not located in the Sunshine Coast Enterprise Corridor. The Appellants submit that, for that reason, it fails to comply with s 3.4.2.1(b)(i) of the Planning Scheme.
- [148] I do not accept that s 3.4.2.1(b)(i) limits the provision of retail activities to the Sunshine Coast Enterprise Corridor. The limitation does not appear in the provision itself. Further, a broader reading of the Planning Scheme does not support such a construction. Each of s 3.2.1 and s 3.3.1(e) indicates that the “*majority*” of new growth is to be located in the Sunshine Coast Environment Corridor: it does not require all new growth to so locate. Likewise, s 3.2.2 states that the Sunshine Coast Environment Corridor is the “*leading*” location for economic development: it is not the only location. Section 3.4.1(e) similarly stipulates that the Sunshine Coast Environment Corridor is the “*key area for economic development and residential growth*”: it is not the only area for such growth.
- [149] Section 3.4.2.1(b)(i) supports the retail and tourism sector by facilitating development in appropriate locations, including as provided by zoning allocations. Although the subject land is within the Emerging community zone, it is apparent from overall outcome (2)(c)(i) of the Emerging community zone code and the Coolum local plan code that the intended outcomes for the land in the Emerging community zone within the Coolum local plan area are identified by reference to performance outcome PO16 of the Coolum local plan code. Relevantly, performance outcome PO16(f) seeks retail and commercial development. Such development is to be limited to resort facilities and local convenience goods only.
- [150] The economists all agree that the likely tenants for the retail and commercial area would be a convenience or food store; a range of food catering outlets including breakfast or lunch café, some night time restaurants together with juice or ice-cream

gelato store; potential pharmacy; liquor store; giftware or souvenir or resort shop containing a range of products such as beachwear; and hair and beauty and spa treatment tenants. During cross-examination, Mr Brown accepted that this likely mix of retail and service outlets falls within the description of retail and commercial development supported by performance outcome PO16(f) of the Coolum local plan code. I agree. I am satisfied that there is no unacceptable departure from the outcome sought by performance outcome PO16(f) of the Coolum local plan code.

[151] For the reasons provided in paragraphs [146] to [150] above, I am satisfied that the proposed development complies with s 3.4.2.1(b)(i).

[152] The third provision raised by the Appellants is s 3.4.3.1(c). It is also part of the implementation framework within the Strategic framework. It is a specific outcome for Element 2 – Sunshine Coast activity centre network in the Economic development theme. It states:

“Development does not undermine or compromise the activity centre network either by inappropriately establishing centre activities outside of a centre or proposing a higher order or larger scale of uses than intended for a particular activity centre”.

[153] The Appellants submit that the proposed development fails to comply with this provision as it would involve the establishment of retail facilities outside of a centre. They say such retail facilities would effectively comprise a new local (not full line) activity centre, when there is already such a centre in the locality to serve the needs of residents. The Appellants did not refer to any evidence in support of their submission.

[154] I do not accept the Appellants’ submission. It is no more than a bald assertion. Although Mr Adamson approached this issue on the assumption that the retail and commercial facilities would constitute a local centre, as was attested to by Mr Brown, the limit on the size of the tenancy will mean the retail and commercial facilities will not become a local centre. In addition, the planning outcome sought by the provision is that development does not undermine or compromise the activity centre network. All of the economic experts agree that, given the proposed 300 square metre limits on the size of individual tenancies, the proposed development will not have an impact on other centres within the hierarchy. I accept the opinions of the economists in this regard. Their opinions were supported by sound reasons and were unchallenged. Accordingly, I am satisfied that approval of the proposed development would not conflict with s 3.4.3.1(c).

[155] As for the fourth provision relied on by the Appellants, s 3.4.6.1(e)(ii) of the Strategic framework,⁶² I am satisfied that there is no relevant non-compliance for the reasons already provided in paragraphs [78], [79], [83], [153] and [154] above.

Does the proposed development comply with applicable provisions of the Emerging community zone code that guide commercial development?

[156] As I have already noted in paragraphs [101] to [107] above, whether there is compliance with the purpose statement in s 6.2.17.2(1)(c) and overall outcomes (2)(c)(i) and (v) of the Emerging community zone code will depend on a

⁶² Set out in paragraph [51] above.

consideration of other provisions of the Planning Scheme relating to commercial and retail development and generally about development of the subject land.

- [157] For reasons provided in paragraphs [51] to [85] and [142] to [155] above and paragraphs [158] to [177] below, I am satisfied that the proposed development complies with the provisions of the Emerging community zone code.

Does the proposed development comply with the provisions of the Coolum local plan code that guide commercial development?

- [158] The Appellants allege the proposed development does not comply with overall outcomes (2)(a), (c) and (j) and performance outcome PO16 of the Coolum local plan code.⁶³

- [159] In Exhibit 28D⁶⁴ the Appellants allege that the proposed development does not provide an appropriate level of commercial development. This is what they say results in non-compliance with overall outcomes (2)(a) and (j). In the First Appellant's Second Further Amended Submissions, the First Appellant says it has highlighted in red the key parts of each provision that it says give rise to non-compliance. That part of overall outcomes (2)(a) and (j) highlighted in red are those words emphasised below:

“(a) **The Coolum local plan area remains a low key coastal urban community**, with a strong focus on tourism and well serviced by a range of small-medium scale business, community, sport and recreational activities.

(j) **The Palmer Coolum Resort and The Coolum Residences continues to be developed as an integrated tourist and residential development** focussed around an 18 hole championship golf course and large areas of open space. Development is configured in a series of beachside villages and other precincts that sit lightly in the landscape and that are separated by green corridors and lush subtropical landscaping. **Development protects the natural vegetated character of the coastal foreshore and foredunes and respects the scale and character of surrounding area and vegetation. Dense vegetated buffers are maintained along the David Low Way and surrounding the Palmer Coolum Resort to effectively screen development and protect the scenic amenity of David Low Way and the amenity of nearby residential areas.**”

(emphasis added)

- [160] The Appellants provide no further assistance about these allegations of non-compliance insofar as they relate to the commercial aspect of the proposed development. (The potential character and amenity impact of the proposed development are dealt with as a separate issue below.)

- [161] I accept the evidence of Mr Schomburgk that with the closure of the Palmer Coolum Resort, the locality lacks any identifiable “*focus*” facility. The proposed development will fill that role. The nature of retail and commercial facilities proposed accord with the planning goal to retain a strong focus on tourism and to ensure that the area will be well served by a range of small-medium scale business,

⁶³ Overall outcomes (2)(a) and (j) and performance outcome PO16 of the Coolum local plan code are set out in paragraphs [110] and [123] above.

⁶⁴ Exhibit 28D needs to be read in conjunction with Exhibit 28F to appreciate those provisions that remained in issue at the end of the trial.

community, sport and recreational activities. As I have already noted above, I accept the evidence of the economists that the proposed development will not have an impact on other centres within the hierarchy. I am satisfied that approval of the proposed development will not detract from the ability of the other centres in the area to deliver the level of service they currently provide. Accordingly, there is no evident non-compliance with overall outcomes (2)(a) or (j) occasioned by the scale of the proposed retail and commercial facilities.

[162] Overall outcome (2)(c) states:

“Centre activities are consolidated within the Coolum Beach Town Centre in the east of the local plan area and generally bounded by Margaret Street, David Low Way (also known as Coolum Esplanade), Elizabeth Street and Sunrise Avenue. The Coolum Beach Town Centre functions as a small district activity centre providing a range of commercial, retail, community and residential uses to service the needs of residents and visitors to the area.

Mixed uses and uses which enhance the beachside character and district level role and function of the Coolum Beach Town Centre are encouraged. **Retail and commercial development does not extend beyond the boundaries of the District centre zone and Tourist accommodation zone.** No new large floor plate retail uses are intended to be established in the Coolum Beach Town Centre. Residents continue to rely upon the nearby larger centres of Maroochydore, Nambour and Noosa Business Centre to fulfil higher order business and retail needs.”

(emphasis added)

[163] The Appellants allege non-compliance with that part of overall outcome (2)(c) emphasised above. Paragraph 138 of the First Appellant’s written submissions states:

“Development Watch submits that the Proposed Development involves stark and obvious non-compliance with the Coolum Local Plan, in that:

- (i) It fails to respect the character of the area;
- (ii) It results in adverse impacts on views and visual amenity generally;
- (iii) It does not integrate uses, in particular, there is no integration with the Coolum Resort;
- (iv) It fails to maintain and enhance the environmental values reflected in the nesting/hatching of Loggerhead Turtles on the adjacent beach;
- (v) It will not minimize access to David Low Way – indeed, it involves the construction of two new accesses; and
- (vi) It does not maintain and enhance the vegetated buffers along David Low Way (which are specifically identified on the Coolum Local Plan Map as forming a buffer along a significant view.”

[164] These submissions do not advance any clear basis for the Appellants’ allegations of non-compliance with the Coolum local plan code by reason of the proposed retail and commercial aspects of that development. The Appellants did not explain how they say the planning outcome in overall outcome (2)(c) should be reconciled with that in performance outcome PO16(f). The Appellants did not cavil with either SHC’s or the Council’s submission that the planning outcome in overall outcome (2)(c) yields to the more specific guidance for the subject land in performance outcome PO16(f).

- [165] The proper approach to the resolution of potential inconsistency (or conflict) within a statute was considered in *Project Blue Sky Inc v Australian Broadcasting Authority*.⁶⁵ McHugh, Gummow, Kirby and Hayne JJ said:

“*Conflicting statutory provisions should be reconciled so far as is possible*”

- [69] The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The meaning of the provision must be determined “by reference to the language of the instrument viewed as a whole”. In *Commissioner for Railways (NSW) v Agalinos*, Dixon CJ pointed out that “the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed”. Thus, the process of construction must always begin by examining the context of the provision that is being construed.
- [70] A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflicting provisions will often require the court “to determine which is the leading provision and which the subordinate provision, and which must give way to the other”. Only by determining the hierarchy of the provisions will it be possible in many cases to give each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme.
- [71] Furthermore, a court construing a statutory provision must strive to give meaning to every word of the provision. In *The Commonwealth v Baume* Griffith CJ cited *R v Berchet* to support the proposition that it was “a known rule in the interpretation of Statutes that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void, or insignificant, if by any other construction they may all be made useful and pertinent”.”

(footnotes omitted)

- [166] If one accepts the Appellants’ position that there is non-compliance with overall outcome (2)(c), there is tension between overall outcome (2)(c) and performance outcome PO16(f) of the Local plan code. Although the Appellants do not articulate the basis of their allegation of non-compliance, it would seem they contend that the statement in overall outcome (2)(c) that “*Retail and commercial development does not extend beyond the boundaries of the District centre zone and Tourist accommodation zone*” should be read as excluding the potential for retail and commercial development other than on land in the District centre zone or the Tourist accommodation zone of the Coolum local plan area. I do not accept that overall outcome (2)(c) so limits retail and commercial development in the Coolum local plan area.

⁶⁵ [1998] HCA 28; (1998) 194 CLR 355, 381-2 [69]-[71].

[167] As was noted by Morrison JA in *Zappala Family Co Pty Ltd v Brisbane City Council*.⁶⁶

“The fact that planning documents are to be construed precisely in the same way as statutes still allows for the expressed view that such documents need to be read in a way which is practical, and read as a whole and as intending to achieve balance between outcomes.”

[168] Properly construed, overall outcome (2)(c) of the Coolum local plan code is directed at ensuring that the Coolum Beach Town Centre will function only as a small district activity centre. It is not directed at ensuring that there is no retail or commercial development in the Coolum local plan area other than on land in the District centre zone or the Tourist accommodation zone. I say that for three reasons.

[169] First, the construction is supported by reading the sentence relied on by the Appellants in the context of overall outcome (2)(c) as a whole. The provision identifies the Coolum Beach Town Centre by naming the streets that bound the area that is described as the Coolum Beach Town Centre. The provision then stipulates that the Coolum Beach Town Centre is to function as a small district activity centre serving the needs of residents and visitors to the area. The planning goal expressed in the first paragraph of the overall outcome, namely that the Coolum Beach Town Centre is limited to a small district activity centre, is supported by the requirements of the second paragraph of the provision. The second paragraph contains three statements that support the goal of limiting the size of the district activity centre at Coolum. They are the requirement that retail and commercial development does not extend beyond the boundaries of the District centre zone and the Tourist accommodation zone; the stipulation that no new large floor plate retail uses are to be established in the Coolum Beach Town Centre; and the statement that the residents are to continue to rely on the nearby larger centres of Maroochydore, Nambour and Noosa Business Centre to fulfil higher order business and retail needs. The Coolum local plan map supports this construction as it shows that the only land in the Coolum local plan area in the District centre zone and the Tourist accommodation zone is that proximate to the Coolum Beach Town Centre described in the first paragraph of overall outcome (2)(c).

[170] Second, overall outcome (2)(f) lends support to the construction. It states:

“The Coolum West Local Centre, located along the Yandina-Coolum Road and South of Coolum Road, functions as a local (full service) activity centre servicing the convenience needs of nearby residents. Development within the Coolum West Local Centre supports, and does not detract from, the role of the Coolum Beach Town Centre as the district activity centre for the local area and contributes to the establishment of a gateway to Coolum through the provision of streetscape and landscaping treatments. Retail and commercial development in this area does not extend beyond the boundaries of the Local centre zone, other than for the purposes of small scale *office* activities on Lot 26 RP 80884 at 135 Yandina-Coolum Road, Coolum.”

[171] The existence of this provision confirms that the effect of overall outcome (2)(c) is not to limit retail and commercial development in the Coolum local plan area to the District centre zone and the Tourist accommodation zone only. To so construe the

⁶⁶ [2014] QCA 147; [2014] QPELR 686, 700 [56] citing *Westfield Management Ltd v Pine Rivers Shire Council* [2005] QPEC 15; [2004] QPELR 337, 342.

provision would deny overall outcome (2)(f) operation, as retail and commercial development would be prevented from establishing in the Local centre zone. Like overall outcome (2)(c), overall outcome (2)(f) is directed at excluding the spread or creep of retail and commercial development into lots that surround the centre.

- [172] Third, performance outcome PO16(f) of the Coolum local plan code lends support to the proper construction identified above. Performance outcome PO16(f) requires development in the Emerging community zone in the Coolum local plan area to provide for retail and commercial development, albeit limited to resort facilities and local convenience goods only. This provision could have no operation were a construction of overall outcome (2)(c) adopted that supported a finding of non-compliance as alleged, but not explained, by the Appellants. This would offend the principle that a court construing a statutory provision must strive to give meaning to every word of the provision. Also, it would not accord with s 5.3.3(c) of the Planning Scheme, which indicates that a development that complies with the performance outcomes or acceptable outcomes of a code in the Planning Scheme complies with the purpose and overall outcomes of the code.⁶⁷
- [173] For the reasons expressed above, overall outcome (2)(c) is not relevant to an assessment of the development application. If I were wrong about that, I would not ascribe determinative weight to the resultant non-compliance with overall outcome (2)(c). This is because it would result in an inconsistency between overall outcome (2)(c) and performance outcome PO16, which would appropriately be resolved by applying the principle of *generalis specilibus non derogant*.⁶⁸
- [174] Performance outcome PO16 of the Coolum local plan code is a key provision that guides the nature of retail and commercial development considered appropriate on the subject land.⁶⁹ It requires development in the Emerging community zone to provide for retail and commercial development that is limited to resort facilities and local convenience goods only. As I have already noted in paragraph [150] above, I am satisfied that there is no unacceptable departure from the outcome intended under performance outcome PO16(f) of the Coolum local plan code.

Does the proposed development comply with the provisions of the Business uses centre design code?

- [175] The Appellants allege the proposed development does not comply with the purpose in s 9.3.1.2(1)(a), overall outcome (2)(a) and performance outcome PO1 of the Business uses centre design code. They state:

“(1) The purpose of the Business uses and centre design code is to ensure business uses and other centre activities:-

(a) are developed in a manner consistent with the Sunshine Coast Activity Centre Network;

...

⁶⁷ Although s 5.3.3(c) contains the rules for code assessment, the same code applies to impact assessment and there is nothing in the Planning Scheme that suggests that compliance with the code is achieved in a different manner for an impact assessable application than for a code assessable application. The parties all accepted this to be so.

⁶⁸ *Smith v The Queen* [1994] HCA 60; (1994) 181 CLR 338, 348.

⁶⁹ It is set out in paragraph [123] above.

- (2) The purpose of the Business uses and centre design code will be achieved through the following overall outcomes:-
- (a) a business use or centre activity is consistent with the Sunshine Coast Activity Centre Network;
- ...
- PO1 The business use or centre activity is of a type, scale and intensity that is consistent with the Sunshine Coast Activity Centre Network.”

[176] The Appellants submit that as the subject land is not identified as a centre in the Sunshine Coast Activity Centre Network, there is obvious non-compliance with this code. It says the non-compliance arises from the proposed retail component involving approximately 2 770 square metres of gross floor area, which it says is effectively a new local centre. The Appellants do not identify any evidence that support its submission.

[177] I do not accept the Appellants’ assertions for the reasons provided in paragraphs [154] above. I am satisfied that the proposed development complies with these provisions for the reasons provided in paragraphs [83] and [142] to [155] above.

Conclusion regarding acceptability of the commercial development

[178] For the reasons provided above, I do not accept the Appellants assertions that the proposed retail and commercial aspects of the development fail to comply with the assessment benchmarks identified by them.

Is the design of the proposed development appropriate?

[179] The Appellants raise several allegations relevant to the design of the proposed development. They say that the proposed development is an overdevelopment of the subject land when assessed against the Planning Scheme. They also allege that the proposed development is not appropriately consistent with the existing and intended scale and character of the surrounding area and the natural environment. Further, the Appellants say that the proposed development will have an unacceptable impact on visual amenity, scenic amenity, and views to and from locally and regionally significant places. In support of their allegations, the Appellants allege non-compliance with numerous assessment benchmarks, in particular:

- (a) s 3.2.4, s 3.3.1(a) and (m), s 3.3.2.1(a)(i), (ii), (iii) and (iv), s 3.3.3.1(d)(v), s 3.3.4.1(c), s 3.3.9.1(a), s 3.4.6.1(e)(ii) and (v), s 3.5.1(d) and (i), s 3.7.1(f), s 3.8.1(d), (g) and (h), s 3.8.2.1(c) and (g), and s 3.8.3.1(c) and (d) of the Strategic framework;
- (b) the purpose in s 6.2.17.2(1)(a) and (c) and overall outcomes (2)(c)(i), (v), (vi) and (viii) of the Emerging community zone code;
- (c) overall outcomes (2)(a), (j) and (k), and performance outcomes PO1, PO2, PO3 and PO16 of the Coolool local plan code;
- (d) the purpose in s 8.2.8.2(1), overall outcomes (2)(a) and (b) and performance outcome PO1 of the Height of buildings and structures overlay code;

- (e) the purpose in s 9.3.11.2(1), overall outcome (2)(b) and performance outcome PO6 of the Multi-unit residential uses code; and
- (f) overall outcome (2)(c) of the Transport and parking code.

[180] The Council submits that while the Appellants allege non-compliance with an overwhelming number of provisions of the Planning Scheme, the “*real issues*” in dispute between the parties in respect of the overdevelopment issue⁷⁰ requires one to focus on the provisions of the Coolum local plan code. SHC make a similar submission. I agree. As is noted in the Planning Scheme itself, local plans organise the Planning Scheme area at the local level and provide more detailed planning for the zones⁷¹ and, in the case of the Coolum local plan code, the code provides “*locally relevant planning provisions for the assessment of development within the Coolum local plan area.*”⁷² The Appellants’ town planning expert, Mr Adamson, acknowledged this. As such, it is convenient to turn first to the provisions put in issue by the Appellants in respect of the Coolum local plan code before turning to the balance of the provisions on which the Appellants rely.

Does the design of the proposed development comply with the Coolum local plan code?

[181] The provisions in the Coolum local plan code that the Appellants put in issue with respect to an assessment of the acceptability of the design of the proposed development are overall outcomes (2)(a), (j) and (k), and performance outcomes PO1, PO2, PO3 and PO16. They state:

“(2) The purpose of the Coolum local plan code will be achieved through the following overall outcomes:-

(a) **The Coolum local plan area remains a low key coastal urban community**, with a strong focus on tourism and well serviced by a range of small-medium scale business, community, sport and recreational activities.

...

(j) **The Palmer Coolum Resort and The Coolum Residences continues to be developed as an integrated tourist and residential development** focussed around an 18 hole championship golf course and large areas of open space. Development is configured in a series of beachside villages and other precincts that sit lightly in the landscape and that are separated by green corridors and lush subtropical landscaping. **Development** protects the natural vegetated character of the coastal foreshore and foredunes and **respects the scale and character of surrounding area and vegetation. Dense vegetated buffers are maintained along the David Low Way and surrounding the Palmer Coolum Resort to effectively screen development and protect the scenic amenity of David Low Way and the amenity of nearby residential areas.**

(k) **Development is designed and sited to protect significant environmental area, character vegetation and views either to or**

⁷⁰ The same is true of the other issues that relate to the design of the development.

⁷¹ See s 7.1(1) of the Planning Scheme.

⁷² See s 7.2.8.3(1) of the Planning Scheme.

from important landscape features and to reflect the physical characteristics and constraints of the land, including the protection of sensitive slopes, remnant *vegetation* and other *ecologically important areas*.

Performance Outcomes		Acceptable Outcomes	
<i>Development in the Coolool Local Plan Area Generally (All Zones)</i>			
PO1	Development provides for buildings, structures and landscaping that are consistent with, and reflect the low key beachside character of, the Coolool local plan area in that they are integrated with the natural and coastal landscape and skyline <i>vegetation</i> in terms of scale, siting, form, composition and use of materials.	AO1.1	Development for a residential, business or community activity provides for building design which incorporates the following features:- (a) a mix of lightweight and textured external building materials, including timber finishes or masonry construction with variation provided in texture and detailing; (b) articulated, pitched, skillion or curved roof forms; (c) open or transparent balustrades; and (d) landscaping integrated into the building design.
		AO1.2	Development uses understated colour schemes and low-reflective roofing and cladding materials.
		AO1.3	Development provides for existing mature trees to be retained and incorporated into the development design.
PO2	Development contributes to the establishment of attractive and coherent <i>streetscapes</i> and gateways to enhance the sense of entry to and the coastal village character of the Coolool local plan area.	AO2.1	Development adjacent to a primary streetscape treatment area or gateway/entry point where identified on Figure 7.2.8A (Coolool local plan elements) :- (a) incorporates architectural and landscape treatments which enhance the sense of arrival to, and the coastal village character of, the Coolool local plan area and emphasise corner locations; and (b) incorporates building materials such as varied

Performance Outcomes		Acceptable Outcomes	
<i>Development in the Emerging Community Zone (Precinct COL LPP-1, Palmer Coolum Resort and The Coolum Residences)</i>			
PO16	<p>Development in the Emerging community zone in Precinct COL LPP-1 (Palmer Coolum Resort and The Coolum Residences) identified on Local Plan Map LPM11:-</p> <p>(a) maintains the primary function of the site as an integrated tourist facility;</p> <p>(b) provides for the retention of large areas of open space, including the 18 hole championship golf course;</p> <p>(c) provides for a range of residential accommodation types set in discrete beachside precincts and separated by greenspace;</p> <p>(d) protects the natural vegetated character of the coastal foreshore and foredunes;</p> <p>(e) provides for development and building design which respects the scale and character of surrounding areas and vegetation;</p> <p>(f) provides for retail and commercial development to be limited to resort facilities and local convenience goods only;</p> <p>(g) provides for the maintenance and enhancement of public access to the beach and foreshore in a manner that respects the natural foredune and beach character and environmental values;</p> <p>(h) minimises and rationalises access to David Low Way, Warren Road and other local roads;</p> <p>(i) protects the visual amenity of the road network through the maintenance and enhancement of dense vegetated buffers to David Low Way and surrounding the</p>	AO16	<p>No acceptable outcome provided.</p> <p>Editor's Note—Development in the Emerging community zone at Palmer Coolum Resort and The Coolum Residences is currently regulated in accordance with an approved Master Plan and Plan of Development.</p>

Performance Outcomes		Acceptable Outcomes	
	Palmer Coolum Resort; and (j) provides for the maintenance and enhancement of the environmental and landscape values of the area including, but not limited to, the Yaroomba Parabolic Dune, rainforest areas on the Palmer Coolum Resort site, and views to and from Mount Coolum and Point Arkwright.		

(emphasis added)

[182] The emphasis added to these provisions reflects those words that the Appellants say give rise to non-compliance that are relevant to the design issues.⁷³

[183] These provisions raise four factual issues for consideration.

1. Does the proposed development provide for a design that has an appropriate character?
2. Does the proposed development respect the scale of the surrounding area and vegetation?
3. Does the proposed development provide for an appropriate configuration of built form and landscaping?
4. Does the proposed development provide for a design and siting that appropriately protects views and visual amenity?

Does the proposed development provide for a design that has an appropriate character?

[184] The Appellants allege that the proposed development will have a deleterious impact on the character of the locality and, as such, does not comply with the provisions of the Planning Scheme. The Appellants' submissions were of little assistance in appreciating the basis for their allegation and the evidence they rely on to substantiate it. Although not clearly articulated, their position appears to be premised on the proposition that although infill development is contemplated for the subject land, it is intended that such development is to retain the current low-density form that is the predominant existing form of development in the area from Point Arkwright in the north to the Boardwalk in the south. The Appellants say that the reference to "*low key*" character in overall outcome (2)(a) and performance outcome PO1 of the Coolum local plan code should be construed as a reference to unobtrusive, understated development consistent with the existing character of coastal communities. They submit that the provisions of the Height of buildings and structures overlay code indicates that, with regard to height, this "*low key*" characteristic indicates a maximum of two or three storeys for development. During cross-examination of Mr Schomburgk, Mr Skoien suggested that the requirements

⁷³ I deal with the Appellants' allegations about non-compliance with performance outcome PO16(a) and (f) elsewhere in my reasons for judgment.

in overall outcome (2)(a) and performance outcome PO1 of the Coolum local plan code reflect an intention that development have a low-rise built form, no more than two storeys in the main, generally clumped together in urban communities that are separated by mature vegetation. Mr Schomburgk did not accept the proposition. Nor do I.

[185] The term “*low key*” is a relative notion. Whether the proposed development fits the description should be judged in the context of the Planning Scheme in which the terms appear and the area to which they apply.⁷⁴

[186] In this case, a key indication of the intended planning outcome sought by use of the term “*low key*” is evident from the context in which the term is used in performance outcome PO1. It requires new “*buildings, structures and landscaping*” to be:

“consistent with, and reflect the low key beachside character of the Coolum local plan area **in that** they are integrated with the natural and coastal landscape and skyline, vegetation in terms of scale, siting, form, composition and use of material”.

(emphasis added)

[187] The words “*in that*” are a causal transition that is used to explain or define the result intended by the requirement to be “*consistent with and reflect the low key beachside character*”. In terms of scale, the defining feature is not the mapping shown on Height of Buildings and Structures Overlay Map OVM11H, nor the predominant height or density of built form in the surrounding area. Rather, the buildings, structures and landscaping are required to integrate with the natural and coastal landscape and skyline vegetation.

[188] The acceptable outcomes support this construction. They do not refer to the Height of Buildings and Structures Overlay Map OVM11H. They do not otherwise specify a height that provides an acceptable outcome. The requirements contained in these provisions do not refer to metrics such as building height, site cover, plot ratio, or metrics for density: rather, they require a qualitative consideration of the proposed development. Further, the qualitative consideration does not refer to surrounding built form or the predominance of dwelling houses. Consistently with the words that follow the expression “*in that*” in performance outcome PO1, acceptable outcome AO1.1 is concerned with building forms and building materials that will visually integrate with the natural and coastal landscape and the skyline vegetation. Similarly, the requirement in acceptable outcome AO1.2 that there be understated colour schemes and low-reflective roofing and cladding material is consistent with a planning desire to achieve integration between the new built form and the landscape. Acceptable outcome AO1.3 is concerned with the retention of existing mature trees and their incorporation into the development design. Again, this supports a planning intent that new built form integrates with nature.

[189] The predominant maximum height on the Height of Buildings and Structures Overlay Map OVM11H for the Coolum local plan area is 8.5 metres. There is some

⁷⁴ *Rainbow Shores Pty Ltd v Gympie Regional Council* [2013] QPEC 26; [2013] QPELR 557, 574 [66]. In *Zappala Family Co Pty Ltd v Brisbane City Council* [2014] QCA 147; [2014] QPELR 686 at 700 [56]-[57] and *AAD Design Pty Ltd v Brisbane City Council* [2012] QCA 44; [2013] 1 Qd R 1 at 19 [73] the Court of Appeal confirmed that the established principles and canons of statutory construction apply to the construction of planning documents. Planning schemes are to be read as a whole, in a way that is practical, and as intending to achieve balance between outcomes.

land mapped with a height limit of 12 metres (typically at Coolum Beach), as well as a 16 metre limit in the Boardwalk area where there are some existing buildings of four storeys.⁷⁵

- [190] I do not accept the Appellants' submission that the Height of Buildings and Structures Overlay Map OVM11H "*mandates a maximum height of 8.5 metres across the site*". Nor do I accept their submission that the provisions of the Height of buildings and structures overlay code indicate that the reference to "*low key*" in the Coolum local area plan indicates a maximum of two or three storeys for development.
- [191] The Height of Buildings and Structures Overlay Map OVM11H for the Coolum local plan area must be considered in the context of those provisions of the Planning Scheme that call it in aid, namely the Height of buildings and structures overlay code. Of itself, the mapping does not operate as a restriction on development.
- [192] Section 8.2.8.2(1) records that the purpose of the Height of buildings and structures overlay code is to protect the distinctive character and amenity of the Sunshine Coast as a place with a predominantly low to medium-rise built form. The purpose is to be achieved through the overall outcomes. None of the overall outcomes calls up the mapping on the Height of Buildings and Structures Overlay Map. The map is only called into operation by performance outcomes PO1 and PO2. They state:

“PO1

The height of a building or structure does not exceed the maximum height specified on a Height of Buildings and Structures Overlay Map, except where:-

- (a) for one of the following:-
- (i) a structure for an *extractive industry* or *rural industry* in the Rural zone;
 - (ii) a structure for an industrial use in the:-
 - (A) Medium impact industry zone; or
 - (B) High impact industry zone;
 - (iii) a structure for a sport and recreation use in the:-
 - (A) Sport and recreation zone; or
 - (B) Open space zone;
 - (iv) a structure for a *telecommunications facility* in the:-
 - (A) Rural zone;
 - (B) Principal centre zone;
 - (C) Major centre zone;
 - (D) District centre zone;
 - (E) Specialised centre zone;
 - (F) Low impact industry zone;
 - (G) Medium impact industry zone; or
 - (H) High impact industry zone; or

⁷⁵ The land in the High Impact industry zone has a height limit of 15 metres.

- (v) a structure for a *tourist attraction* in the Tourism zone in Precinct TOU-2 (Aussie World); and
- (b) not adversely impacting upon the character of the local area or resulting in a significant loss of amenity for surrounding development.

PO2

Where adjoining land with a lower maximum *building height* as specified on a Height of Buildings and Structures Overlay Map, development provides for a transition of *building height* adjacent to this land to minimise amenity impacts and achieve a greater consistency of character and scale.”

- [193] It is apparent from these provisions that the map does not operate to mandate a maximum building height. There are exceptions in performance outcome PO1, such that greater height is anticipated in specified circumstances. In addition, the operation of performance outcome PO2 may result in a lesser maximum building height for particular land than that contemplated as the maximum on the map.
- [194] Further, although the exceptions in performance outcome PO1 do not apply to the subject land (because it is not within any of the zones identified in sub-paragraph (a))⁷⁶ that does not demonstrate that a height of 8.5 metres is a mandated outcome for the subject land. It was not disputed that compliance with the Height of buildings and structures overlay code can be demonstrated by achieving compliance with any of the overall outcomes, or performance outcomes or acceptable outcomes.⁷⁷ As such, development can achieve compliance with the overlay code if it complies with the overall outcomes. The overall outcomes do not refer to the Height of Buildings and Structures Overlay Map OVM11H, nor otherwise contain metrics that regulate the intended height.
- [195] Overall outcome (2)(a) of the Height of buildings and structures overlay code requires development to contribute to the retention of the preferred built form character for the Sunshine Coast and the local plan in which it occurs. Overall outcome (2)(b) requires the height of buildings and structures to be consistent with the reasonable expectations of the local community. In this case, the assessment against the Coolum local plan code informs compliance with each of these provisions. Overall outcome (2)(c) requires a qualitative consideration of the proposed development in its existing context to ascertain whether it will result in a significant loss of amenity for surrounding development. These overall outcomes lend support⁷⁷ to the notion that the Height of Buildings and Structures Overlay Map OVM11H does not mandate a maximum height of 8.5 metres across the subject land. They do not support the construction of overall outcome (2)(a) and performance outcome PO1 contended for by the Appellants.

⁷⁶ The Appellants submit that sub-paragraph (b) of performance outcome PO1, of itself, operates as an exception to the obligation to comply with the height nominated in the overlay. I disagree. I accept the Council’s submission that sub-paragraphs (a) and (b) are cumulative.

⁷⁷ See s 5.3.3 of the Planning Scheme and *Bell v Brisbane City Council & Ors* [2018] QCA 84; (2018) 230 LGERA 374, 388 [50]. See also *United Petroleum Pty Ltd v Gold Coast City Council & Anor* [2018] QPEC 8; [2018] QPELR 510, 537 [118] and *K & K (GC) Pty Ltd v Gold Coast City Council* [2018] QPEC 9; [2018] QPELR 540, 625 [375] (overturned in *Gold Coast City Council v K&K (GC) Pty Ltd* [2019] QCA 132 but not on this issue).

[196] The Appellants also rely on s 3.2.1 of the Planning Scheme in support of their construction. It says:

“Other opportunities for infill development are provided in selected locations throughout the urban fabric, although many established low density residential neighbourhoods are retained in their current form in recognition of the high quality lifestyle and character offered by these areas.”

[197] The Appellants’ submission ignores that this provision does not require all residential neighbourhoods to be retained in their current form: it refers to “*many*”.

[198] The Appellants also seek to garner support for their position from s 7.2.8.2 of the Coolool local plan code. The Planning Scheme states that this section is extrinsic material under s 15 of the *Statutory Instruments Act 1992*. It is intended to assist in the interpretation of the Coolool local plan code. It provides a description of the existing context and setting. It, relevantly, records:

“The Coolool Local Plan area is located in the central eastern part of the Sunshine Coast between the coastal communities of Maroola and Peregian Beach and includes the coastal township of Coolool Beach and surrounding communities of Point Arkwright, Yaroomba, Mount Coolool and The Boardwalk as well as renowned tourism developments such as the Palmer Coolool Resort ...

The local plan area is traversed by Stumers Creek and framed by a picturesque natural setting, including the South Peregian section of the Noosa National Park to the north, rural land to the west, Mount Coolool National Park in the south and the Pacific Ocean in the east. Other significant environmental and landscape features within the local plan area include the Coolool section and part of the Peregian section of the Noosa National Park, Point Perry, Point Arkwright with its mosaic of significant remnant vegetation and rocky shore ecosystem, Emu Mountain and Eurungunder Hill and the Yaroomba parabolic dune which contribute to the character, identity and sense of place of Coolool.

The local plan area is characterised by predominantly dwelling houses with some multi unit development and tourist accommodation mainly in the beachfront areas of Coolool Beach and to a lesser extent, Point Arkwright and Mount Coolool (The Boardwalk).”

[199] I accept that s 7.2.8.2 assists me to appreciate the low-key coastal urban community character sought to be maintained and the character intended to be respected. As is recorded in the description above, the natural setting and landscape features in the area contribute to the character, identity, and sense of place of Coolool. The Noosa National Park to the north, rural land to the west, Mount Coolool National Park to the south and the Pacific Ocean to the east define the boundaries of the coastal urban community the subject of the Coolool local plan area. The national parks frame area. They separate it from the coastal community of Peregian to the north and Maroola to the south, thereby avoiding undistinguishable tracts of urban sprawl. Consistent with overall outcome (2)(g) of the Coolool local plan code, land to the west of Barns Lane and South Coolool Road provides a natural landscape gateway to Coolool. Further, bare acoustic walls and signage or continuous built form does not flank the key transport corridor that traverses the Coolool local plan area. Rather, provision of vegetated buffers along parts of David Low Way contributes to the “*low key*” coastal character of the area. This is apparent from the numerous photos of the area. The photographs accord with what I viewed during a site inspection. They provide a fair representation of the character of the area.

[200] Mr King, the visual amenity expert retained by the Appellants, recognises the importance of the identified significant environmental and landscape features to the character of the Coolum local plan area. As Mr King notes in the Second Visual Amenity Joint Expert Report, Table 3.8.2.1 of the Planning Scheme identifies Mount Coolum, the beaches, the parabolic high dunes and the coastal headlands as regionally significant landscape features. Section 3.8.2.1 requires these prominent landscape features, and views to them, to be protected from intrusion from buildings and other aspects of urban development. This is consistent with the planning intent that the Coolum local plan area remains a low-key coastal urban community and that built form in the area integrate with the natural and coastal landscape. Mr King emphasises the importance of these landscape qualities to the special character of Coolum in the Second Visual Amenity Joint Expert Report where he notes that the Sunshine Coast Council promotes the area for its special character and landscape qualities in the following terms:

“A laid-back seaside vibe is what Coolum offers, along with patrolled surf beaches all year round. The area is in constant view of Mount Coolum, a grand volcanic dome that presides over the landscape – beckoning you to conquer it. The rocky headlands of Point Perry and Point Arkwright are in stark contrast to the wide-open beaches and provide the perfect viewing platforms.”

[201] In addition to these regionally significant landscape features, landscaping throughout the local plan area contributes to the present low-key character of the area. This is well illustrated by figures 3, 4, 6, 7, 10 to 13, 15, 21 to 30 and 34 to 37 of the Second Visual Amenity Joint Expert Report and the many photographs throughout the local area provided by Mr Elliott and used as a base for his photomontages. For example, as Mr King observes, figures 25 and 27 show there is extensive landscaping along Yaroomba Drive, including well-planted roundabouts and median areas. Mr King says that the vegetation exhibits signs of dieback caused by strong saline winds. Although this may be apparent to his trained eye, the impact is not such as to detract from the impression that vegetation makes an important contribution to the overall character of the area. To the extent that the vegetation in the area looks windswept, it reinforces the impression that one is in a coastal area, where landscape is affected by coastal winds. I accept the evidence of Dr McGowan, the visual amenity expert retained by the Council, that Coolum benefits from a number of attractive landscape features and qualities and that the view to these features are an important contributor to the amenity of the area.

[202] I have the benefit of expert opinion evidence from many experts about the design of the proposed development and the extent to which it is consistent with and reflects the low key beachside character of the Coolum local plan area and maintains the Coolum local plan area as a low key coastal urban community.

[203] As I have already noted in paragraph [121] above, Mr Thompson opines that the design outcome has been informed by:

- (a) considered selection of locations for new development to retain the perception externally that the natural environment is dominant;
- (b) careful arrangement of the roadways and their connections to ensure a dominant natural environment experience as one moves through the subject land; and

- (c) deliberate fragmentation of the building masses where built form is softly feathered or fragmented at the edges, together with:
 - (i) carefully designed areas of landscape between and around the buildings; and
 - (ii) carefully modulated building edges, avoiding long single material planes and reflective materials, to allow the built form clad in natural materials to ultimately merge with the natural environment.

[204] Mr Thompson says this results in the scale, length and height of the buildings being less easily distinguishable. He provides a cogent explanation as to how the proposed design of Stage 1 reflects these design principles.

[205] In terms of the placement of buildings, Mr Thompson explains that place making for people is often less about where buildings are located, and more about where buildings are not located and the quality of the spaces between them. A sense of community ownership develops with respect to that space. He explained that in older style coastal communities there were no or few fences and short distances between buildings. This meant less use of the car and more movement by foot. Children were safe to run and play within and around an imagined community landscape. He says that a similar scenario can develop here, where boundaries between private and public space are more casual. In his view, this loose definition between public and private space is more commonly associated with traditional coastal communities. I accept it will contribute to public perception of a low-key character.

[206] In addition, Mr Thompson opines that the development has been sensitively designed, with careful siting of built form, retention of substantial parts of the existing natural environment, provision for rehabilitation of other parts of the natural environment and substantial landscaping. In Mr Thompson's opinion, the development reads as a village of buildings, each of a height not visible beyond the subject land, apart from those views obtained of it from higher elevations. He says the proposed development will have no visibility on approach from outside of the subject land, whether from David Low Way to the west or from Yaroomba beach to the east. Mr Powell and Dr McGowan, the visual amenity experts retained by SHC and the Council respectively, express similar opinions about the placement of buildings and the impact on the visibility of the proposed development.

[207] Mr Powell says the proposed development will predominantly be concealed, and otherwise will present an unobtrusive view, from nearby locations. He says that when the subject land is experienced from surrounding roads and beaches, impacts of bulk and scale on the road network and foreshore users are minimised by ensuring that the larger buildings are set well back into the subject land, with building height stepping down towards the edges of the subject land. He says this results in the perimeter buildings screening or obscuring views to the larger buildings and perimeter vegetation being capable of appropriately screening and softening the appearance of both. Dr McGowan agrees.

[208] Dr McGowan opines that the proposed development has been sited and designed in a way that is responsive to the natural and landscape features and visual qualities of the local environment. He notes that the vegetation on and around the subject land that makes a contribution to the local character and amenity, or to limiting views

into the subject land, has been substantially retained and enhanced. This includes the vegetated buffer along David Low Way, as well as vegetation across the parabolic dune and the frontal dune to the east of the subject land. A significant extent of the vegetation and natural features within the subject land is to be retained, thereby integrating the proposed development with the landscape.

- [209] With respect to the arrangement of roadways and other connections, Mr Thompson explains that the proposed accommodation is arranged for relatively easy public access to the beach. He says a significant concept underlying the master planning arrangements is a concern for walkability. He anticipates that the inherently well-considered arrangement of pedestrian pathways and roadways, coupled with low speed limits, will encourage a highly pedestrianised environment. In this way, the careful arrangement of the roadways and their connections ensure a dominant natural environment experience as one moves through the subject land.
- [210] With respect to the architectural design and treatment and the landscape design, Mr Thompson says the development will appear as built fragmented forms interwoven with a significant amount of landscaping. He says the vegetation will reduce the building visibility in a number of ways, namely by being overshadowed, by walls not being visible, by glazing being in shade, and by the materials and natural colours combining with the fragmented forms and variations in materials as if an abstract camouflage. He opines that the potential impacts of height, scale and bulk have been ameliorated by the sensitive and careful composition and siting of the built form (including through the use of nonlinear facades broken by steps in plan and section); the use of natural and non-reflective materials; the use of natural earthy colours; considered tectonic details (i.e. how the building is fabricated and how the materials are joined and mixed, including through the use of screening, balustrading, recesses and steps, and the incorporation of other smaller elements of the façade) and sun-shading. He says these design attributes give the external form a seemingly non-repetitious and syncopated irregular pattern similar to that found in the natural landscape. Mr Thompson opines that overall there is a low visual impact on the natural qualities of the subject land.
- [211] Mr Schomburgk and Mr Perkins also opine that the proposed development is of a design that appropriately reflects the desired character for the area.
- [212] Mr Schomburgk says that the proposed development offers a well-vegetated development comprised of discrete sets of buildings separated by natural and manmade features that are predominantly screened from the view of those outside of the development by existing and proposed vegetation. He regards the design to be sensitive, with an appropriate use of building colours, material and articulation. On this basis, he opines that the proposed development exhibits a character that is expected and desirable for this part of the Sunshine Coast.
- [213] Mr Perkins says that there is a clear distinction between the character of the proposed development as it reads external to the subject land and how it reads internal to the subject land. He notes that the built form of the proposed development will be set back from the beach, Yaroomba parabolic dunes and David Low Way. It will be separated from these areas by Public parklands and open space. As such, he says the proposed development will largely retain the present interface of the subject land with these natural environments and public areas. He opines that this design response will assist to deliver a built form that reads external

to the subject land as consistent with the low-key coastal community and low-key beach character of the Coolum local plan area. He considers that the considerable size of the subject land creates an uncommon design opportunity. He says the proposed development seizes the opportunity to deliver a built form that is buffered external to the subject land by a considerable landscape buffer along David Low Way. The size of the land also allows the provision of breaks in built form to provide public parks and landscaped areas between buildings and adjacent to site boundaries; and provides the ability to deliver a building height that transitions down to the boundaries of the subject land. Mr Perkins accepts that the character of the proposed development as viewed from the subject land is intensive relative to existing development in the near locality. He does not regard it as unacceptable because there is a considered building design and evident effort in the design of the public realm elements. In this regard, he approves of the inclusion of a central lake and pedestrian spine, parks and landscaped movement corridors to break up the built form on the subject land, and the placement of an identifiable mixed use village within the north eastern corner of the subject land.

- [214] Mr King and Mr Adamson were of a different opinion to the other experts.
- [215] Mr King does not regard the proposed development to be in keeping with the landscape character of the locality because he considers that the massing of built form and infrastructure and the limited areas of green space between them generates an urban character that overwhelms the natural coastal character on the subject land and in the surrounding area. Mr King's views appear to be premised on three matters.
- [216] First, Mr King says that the bulk and scale of the buildings contrasts with the predominantly one to two storey low-rise dwellings in the locality. Mr King appears to have assumed that the Planning Scheme requires the height of the buildings to be commensurate with the predominantly one to two storey low-rise dwellings in the locality.⁷⁸ For the reasons already provided in paragraphs [184] to [201] above, I do not accept that overall outcome (2)(a) and performance outcome PO1 of the Coolum local plan code reflect an intention that development have a low-rise built form of no more than two storeys in the main.
- [217] Second, Mr King's descriptions of the extent of the development and the limits of the green space are based on his review of the Yaroomba Beach Master Plan revision A,⁷⁹ the Civil Works Overall Bulk Earthworks Plan,⁸⁰ and a Vegetation Plan nominating locations of parks and screening.⁸¹ He says that the Vegetation

⁷⁸ I accept the Council's submission that Mr King is seemingly unaware of the structure of overall outcomes, performance outcomes and acceptable outcomes. That is apparent from his evidence during cross-examination when he was unable to explain whether he has assumed that compliance with acceptable outcomes was mandatory, despite being provided multiple opportunities to do so. Nevertheless, it is clear from his report that he has assumed that the Planning Scheme requires the height of the buildings to be commensurate with the predominantly one to two storey low-rise dwellings in the locality. Regardless of whether that assumption was based on his erroneous understanding about the operation of the Planning Scheme or instructions provided by others, the flawed assumption affects the reliability of the opinions he expressed. In forming his opinions, Mr King also relied on what he accepted were misleading statements about the effect of other provisions of the Planning Scheme.

⁷⁹ See Figure 38 of the Second Visual Amenity Joint Expert Report.

⁸⁰ See Figure 39 of the Second Visual Amenity Joint Expert Report.

⁸¹ See Figure 61 of the Second Visual Amenity Joint Expert Report.

Plan indicates that green space is limited in extent and generally located on the edges of the subject land. I do not accept Mr King's description of the extent of green space. I do not regard it as a fair description of what is depicted on the Yaroomba Beach Master Plan revision A or the Vegetation Plan. The Civil Works Overall Bulk Earthworks Plan is of no utility in understanding the final extent of built form, and open space and landscaping, let alone the character of the development.

- [218] The third matter that founds Mr King's position is his concerns that the photomontages and architectural impressions do not accurately reflect the proposed development. Mr King makes several complaints about the photomontages.
- [219] Mr King, and the Appellants, question the utility of the photomontages prepared by Mr Elliott on the basis that he failed to prepare draft photomontages for consideration by the visual amenity experts prior to their finalisation despite there being agreement between Mr King and Dr McGowan (with no demurrer by Mr Powell) that this should occur. As is apparent from his report, Mr Elliott is an expert in preparation of survey-accurate photomontages. His expertise was not challenged. The photomontages prepared by him are expert evidence. There is no suggestion that Mr King possesses the same expertise as that possessed by Mr Elliott, nor does his curriculum vitae suggest he possess such expertise. There was no obligation for Mr Elliott to provide a draft of his expert evidence for critique by other experts in different disciplines prior to its finalisation, nor can there be any legitimate criticism of him for failing to do so.
- [220] The next criticism levelled at the photomontages by Mr King and the Appellants relates to those photomontages that depict potential development of the subject land in accordance with the Hyatt preliminary approval. Mr King and the Appellants criticise the use of ghosting over the existing developed parts of the Hyatt preliminary approval. Mr King says it is unnecessary. He says that at the meeting of the experts for the First Visual Amenity Joint Expert Report, the experts agreed to "*ghost*" buildings where information regarding their size and location was not available. I do not accept Mr King's assertions in this regard. There is no record of such an agreement in the First Visual Amenity Joint Expert Report. To the contrary, the report records that Mr King and Dr McGowan requested the photomontages to include "*the view showing a ghosted model of the Hyatt preliminary approval (for any viewpoints that it may be visible)*". Mr King also says that the use of ghosting is confusing. The use of ghosting has not caused me any confusion. The existing extent of development under the Hyatt approval is evident in the base photographs used for the photomontages. It is also recognisable within the ghosted blocks. In addition, Mr King says that the ghosting "*appears to be inaccurate*". Mr King provides no elaboration on this. Mr Elliott was required for cross-examination. It was not suggested to him that the ghosting was inaccurate. Mr Elliott explained the process he followed to produce the photomontages of the Hyatt preliminary approval. I am satisfied that they are a fair representation of the maximum extent of the building envelopes that could be developed were the Hyatt preliminary approval implemented.
- [221] Mr King and the Appellants also criticise the failure to provide a photomontage that depicted the proposed development with the existing vegetation removed and with no landscaping included. They say such a photomontage would have demonstrated a "*worst case*" to provide balance to the "*best case*" put forward by SHC. Had the

Appellants considered such evidence to be desirable, they were at liberty to call it. Further, there is no property in a witness. If Mr King did not have the skills, the Appellants could have engaged Mr Elliott to produce the extra photomontages at their cost. In any event, the absence of photomontages does not cause me concern. A photomontage that includes no provision for landscaping is not a “*worst case*”: it is an unrealistic case. SHC proposes to incorporate landscaping and will be required to do so by the conditions of the development approval. Although in the Second Visual Amenity Joint Expert Report Mr King describes the vegetation depicted in the photomontages as misleading, in his oral evidence he accepted it might be achieved just “*Not in a hurry anyway. Or without shelter.*” He also said:

“So the – it is a difficult site from the point of view of plant selection. That doesn’t mean that you can’t address it. But it isn’t a typical landscape site where we have good soils and good plant growth which, you know, you would typically get in many locations. So it – it does require care, and the growth rates which were the growth rates on development to the site – on sites to the south of our site, appear to me to be not great given the ages – knowing the ages of these developments. ... So in a nut shell, it’s – it – it’s windy and it’s affecting plant growth.”

[222] Further, and in any event, I am satisfied that satisfactory growth of the vegetation is achievable. In this respect, I accept the evidence of Dr McGowan that while Mr King was able to identify a number of species in the Beachside estate exhibiting sub-optimal health, there are far more examples of species in reasonably good health. Examples are shown in the photographs in Figures 1 to 4 of the report of Dr McGowan. The vegetation in those photographs accords with what I observed on the site inspection. The decision notice also contains a number of conditions about landscape works, which provide further assurance with respect to this issue. They require all planting media to support the successful establishment and sustainable growth of approved plant species. All landscape works are required to be maintained in a manner that ensures healthy, sustained, and vigorous plant growth. All new plant material must be permitted to grow to full form and is to be refurbished when its life expectancy is reached. These requirements, and the other conditions in the decision notice about landscape works and retention of vegetation, will ensure that the vegetation is adequately maintained to provide effective screening.

[223] Finally, with respect to the photomontages, Mr King says that there were deficiencies in the base data used, omissions of project documentation data, and inaccuracies in the portrayal of proposed vegetation screening. Mr King’s basis for concern was a general belief that some of the heights were inaccurate based on his “*measurements*”. He also believed that some of the photomontages depicted vegetation that is to be removed. Mr Elliott provided a comprehensive report addressing, and refuting, each of the complaints made by Mr King. In cross-examination, when challenged about the accuracy of the photomontages, Mr Elliott accepted that there was an error with respect to one photomontage in that it included vegetation that is to be removed. Despite that, when challenged about other photomontages, Mr Elliott was certain that the existing vegetation shown in the photomontages depicted vegetation in the road reserve that would not be removed. He also was certain of the relative heights of features shown in the photomontages. I accept this evidence of Mr Elliott. It was apparent from Mr Elliott’s report and his oral evidence that he applies a high degree of rigour in the process he follows. His “*measurements*” are made with the benefit of survey data, as compared to Mr

King's estimate based on pacing out distances and estimating height through rough triangulation calculations. Further, given his use of a surveyor, Mr Elliott could speak with conviction about the extent of vegetation in the road reserve as compared to that on site. Mr King was just guessing about such matters.

- [224] I have no hesitation in accepting Mr Elliott's expert evidence, including each of his photomontages. Ultimately, although Mr King expressed concerns about the total accuracy of the photomontages, he was nevertheless of the view that they "*provide a general indication of the likely impacts of the proposed development and those of the Hyatt Master Plan Preliminary Approval.*" Having moved about the locality on a site inspection and considered the photo points compared to what can be seen as one moves about, I accept the evidence of Mr Powell that the existing photomontage provides a large number of representative views looking towards the proposed development. When viewed together, the photomontages reasonably depict the range of views likely to be experienced by an observer moving through the landscape while looking in the direction of the proposed development. They provide a useful indication of how the proposed development will look from the various identified vantage points at a time when the proposed landscaping has had a chance to mature.⁸²
- [225] For each of the reasons provided in paragraphs [215] to [224] above, I do not accept the evidence of Mr King. I also do not regard his opinion as reliable as he has not paid appropriate regard to how the design of the buildings and the colour schemes and materials used contribute to the low-key character of the proposed development.
- [226] Mr Adamson's opinions about the inappropriate character impacts of the proposed development were founded on his assumption that the Planning Scheme requires the subject land to be developed at a density consistent with the Coolum residences and an acceptance of the evidence of Mr King. For the reasons provided in paragraph [133], I do not accept the validity of Mr Adamson's assumption about intended density for the subject land. I also do not accept the opinions expressed by Mr King. Consequently, I do not accept Mr Adamson's opinion.
- [227] I accept the evidence of Mr Thompson, Mr Powell, Dr McGowan, Mr Schomburgk and Mr Perkins with respect to the proposed development's consistency with the character of the surrounding area. Their evidence accords with the depictions of the proposed development in the plans and on the photomontages. Their evidence pays appropriate regard to all relevant considerations,⁸³ including the architectural design and treatment of the buildings. Having regard to their evidence, I am satisfied that the proposed development provides for a design that appropriately reflects the character of the area. It complies with the character requirements in overall

⁸² I accept that there is a difference between a view shed represented in a photomontage and a visual catchment that is experienced as one moves throughout an area. Although the photomontages are representative of a viewpoint only, the visual amenity experts regarded those viewpoints as appropriate locations to appreciate the visual impact of the proposed development. There was an extensive collection of photomontages. See a more detailed explanation of the difference in *JRD No 2 Pty Ltd v Brisbane City Council & Ors* [2020] QPEC 4 at [94].

⁸³ The relevance of architectural design and treatments to the question of character is apparent from the acceptable outcomes AO1.1 and AO1.2. The proposed development complies with each of these acceptable outcomes, and with acceptable outcome AO1.3. With respect to acceptable outcome AO1.3, I do not accept the Appellants' submission that the provision should be read as requiring a substantial proportion of existing mature trees. This reinforces that it is a design with an acceptable character.

outcomes (2)(a) and (j) and performance outcomes PO1, PO2, PO3 and PO16 of the Coolum local plan code. Although the final building design and architectural treatments are not known other than for Stage 1 of the proposed development, the proposed addendum to the Coolum local plan code provides further assurance that an appropriate design will be achieved in those future stages.⁸⁴ As such, sufficient detail has been provided to satisfy me that the proposed development can appropriately address the character requirements in the Coolum local plan code and that a preliminary approval is appropriate for those subsequent stages.

Does the proposed development respect the scale of the surrounding area and vegetation?

- [228] The Appellants allege that the proposed development does not comply with overall outcome (2)(j) and performance outcome PO16(e) of the Coolum local area plan. Those provisions require development in the Emerging community zone to provide for development and building design that respects the scale and character of surrounding areas and vegetation. Performance outcome PO1 also references scale in that it requires the scale to be such that it integrates with the natural and coastal landscape and skyline vegetation in order to reflect the low key beachside character of the Coolum local plan area. I have already addressed the character considerations above.
- [229] With respect to the issue of scale, the Appellants say that the proposed development does not have a height and density “*in keeping with*” the existing built form in the locality or the built form reasonably expected in the locality. For that purpose, the Appellants define the locality as the area from Point Arkwright in the north to the Boardwalk in the south. They say it is that locality, not the whole Coolum local plan area, that is the relevant “*surrounding areas*” to be considered in determining the scale and character that needs to be respected. In support of their submission, the Appellants refer to s 7.2.8.2 of the Coolum local plan code. I accept the Appellants’ submission that the description of the context and setting in s 7.2.8.2 of the Coolum local plan code suggests that Yaroomba is a community that is distinct from the township of Coolum Beach and from the communities at Point Arkwright, Mount Coolum and The Boardwalk. However, the requirement in performance outcome PO16(e) relates to “*surrounding areas*”. This requires consideration of the built form in a greater area than simply the Yaroomba community immediately surrounding the subject land.
- [230] In his report, Mr Thompson explains that scale in architectural terms includes a consideration of the combined effect of height, size or floor area, site coverage, bulk, articulation of built form, modulation of buildings and other nuanced factors, synthesised within an architectural composition seen in the context of the relative scale of the locality.
- [231] In determining whether the proposed development respects the scale of surrounding areas and vegetation, regard may be had to all existing development, even if it was approved under an earlier planning regime. That is so even if it would be discordant with the current regime. To disregard the existing development would be

⁸⁴ The addendum imposes further requirements with respect to the design. They do not replace the need for future development applications to demonstrate compliance with overall outcome (2)(a) and performance outcome PO1 of the Coolum local plan code.

unrealistic and would attribute to the area a scale and character that it simply does not have.⁸⁵

- [232] Coolum is not a sleepy enclave of fibro beach shacks and smaller holiday flats serviced by a small number of strip shops. To the south of the subject land and the immediate surrounds has generally been developed for detached dwellings that are mostly two storeys in height. Further to the south are predominantly dwellings, as well as some dual occupancy buildings and multiple dwelling developments that are primarily two storeys in height. To the north are primarily dwellings on single allotments and a large amount of open space. However, the local plan area also includes development that is taller than 12 metres (or three storeys). There is a pocket of multiple dwellings known as “*Breeze*” south of the subject land that are three and four storeys in height. At Coolum Beach, there are accommodation buildings of between four and thirteen storeys in height. The existence of these taller buildings is recognised on the overlay map relied on by the Appellants: a note on the map records that “[i]n certain circumstances pre-existing development approvals may override the operation of an overlay”. The existing buildings inform the scale and character of the surrounding areas that performance outcome PO16(e) requires be respected.
- [233] The proposed development seeks approval for building heights up to seven storeys in height in part of the central area, up to four storeys in height in the middle ring, three storeys around the perimeter, being behind the frontage to David Low Way and along the eastern boundary, and two storeys along the southern boundary. As such, the proposed development provides for a design where the building height transitions down to the boundaries of the subject land.
- [234] Mr Powell opines that the stepping down of building height towards the edges of the subject land results in perimeter buildings screening or obscuring views to the larger buildings and perimeter vegetation either screening or appropriately softening the appearance of both. As I noted in paragraph [213] above, Mr Perkins similarly opines that the siting of the proposed built form set back from the beach, Yaroomba parabolic dunes and David Low Way, and separated from these areas by Public parklands and open space will largely retain the present interface of the subject land with these natural environments and public areas. Mr Schomburgk and Dr McGowan expressed opinions to similar effect. Mr Powell also opines that, from distant elevated locations, the taller buildings in Stage 1 will not break the line of foreshore vegetation. I accept their evidence. It accords with the photomontages, which I accept as a reasonable representation of the visual impact of the proposed development. The two-storey scale of existing development adjacent the southern boundary of the subject land is respected by providing for development along that boundary to be limited to two storeys. For those reasons, and having regard to the evidence referred to in paragraphs [203] to [213] above, I am satisfied that the proposed development and building design respects the scale and character of surrounding areas and vegetation and protects the natural vegetated character of the coastal foreshore and fore dunes. It complies with overall outcome (2)(j) and performance outcomes PO1 and PO16(d) and (e) of the Coolum local plan code.

⁸⁵ *The Purcell Family v Gold Coast City Council & Ors* [2004] QPELR 521, 524 [20]; *K Page Main Beach Pty Ltd v Gold Coast City Council* [2011] QPEC 1; [2011] QPELR 406, 414 [54]-[56].

Does the proposed development provide for an appropriate configuration of built form and landscaping?

- [235] Overall outcome (2)(j) of the Coolum local plan code requires development on the subject land to be configured in a series of beachside villages and other precincts that sit lightly in the landscape and that are separated by green corridors and lush subtropical landscaping. Performance outcome PO16(c) contains a similar requirement in that it requires development to provide for a range of residential accommodation types set in discrete beachside precincts and separated by greenspace. In their written submissions, the Appellants did not articulate the basis on which they allege there is non-compliance with these requirements.
- [236] Performance outcome PO1 also references configuration of built form and landscaping. It requires the siting, form, composition and use of materials to be such that it integrates with the natural and coastal landscape and skyline vegetation in order to reflect the low key beachside character of the Coolum local plan area. Performance outcome PO3 requires the retention and enhancement of key landscape elements contributing to the setting, character, and sense of place of the Coolum local plan area.
- [237] Mr Adamson says:
- “The proposed development, which includes extensive earthworks, has a scale, intensity and form that does not sit lightly in the landscape and will not result in the intended form of residential development configured in beachside precincts that are separated by green corridors, with buildings that are 2 storeys in height.”
- [238] I reject Mr Adamson’s opinion. He does not clearly articulate the basis of his opinion. As best I can tell, his opinion appears to be premised on his view that there will be extensive earthworks and that there is a requirement that buildings are two storeys in height. I do not accept that the provision does not permit extensive earthworks. The provision is concerned with the end-developed state of the land. I also do not accept that there is a requirement that buildings be limited to two storeys in height.
- [239] It is apparent from the Master Plan that the proposed development would provide a range of residential accommodation types, including a hotel and multiple dwellings. As I have noted in paragraphs [26], [119] and [120] above, the accommodation is configured to sit in a vegetated and landscaped environment, with more than 17 000 square metres of retained vegetation, including vegetation along David Low Way that is protected by a covenant.
- [240] Mr Schomburgk opines that the proposed development will sit lightly in the landscape and achieve the intention of overall outcome (2)(j) and performance outcome PO16(c) of the Coolum local plan code. He says it does so by having a very low site coverage percentage, retaining significant areas of vegetation, offering significant areas of enhanced re-vegetation, providing urban development separated into mini-precincts or “*villages*” throughout the large site, and having buildings constructed of lightweight and visually unobtrusive materials. He notes that the built form of the development is separated into discrete pockets throughout the subject land, each separated by vegetation and/or park or open space areas including the central lake. Mr Perkins expresses a similar opinion. He says the proposed development has been designed to provide breaks in built form through the

provision of roads, significant public parklands and landscaped streetscapes to achieve a development that “*sits lightly in the landscape*”. Their opinions with respect to the lightweight built form accord with the opinions expressed by Mr Thompson.

- [241] During his cross-examination, Mr Thompson explained how the design attributes of the proposed development provide significant vertical and horizontal articulation and heighten an appreciation of the natural landscape in which the architecture sits.
- [242] Dr McGowan and Mr Powell similarly opine that the proposed development utilises effective application of architectural principles such as touching the ground lightly, utilising materials that complement the landscape, softening building edges and integrating landscape with the built form to ensure that the design responds to the planning scheme requirements.
- [243] I accept the evidence of Mr Schomburgk, Mr Perkins, Mr Thompson, Dr McGowan and Mr Powell. Their opinions accords with the plans and drawings (including the Master Plan) and the photomontages.
- [244] In relation to the future stages for which preliminary approval is sought, Mr Thompson says that the proposed preliminary approval sets town planning guidelines to control the height, setback, length of walls, extent of windows and external planting to ensure that the future architecture is generally in accordance with the architecture designed for the first stage of the proposed development. Dr McGowan gave similar evidence. In his Statement of Evidence, Dr McGowan detailed the key parameters that inform design of the future stages. He explained how they would ensure that Stages 2 – 5 of the proposed development would be designed to protect the David Low Way buffer; limited in terms of height and footprint; articulated, separated and accommodating landscaping between built form; and set amongst an open space network and accessed by treed internal roads. I accept their evidence. It is supported by the proposed terms of the preliminary approval.
- [245] Having regard to the evidence referred to in paragraphs [203] to [213], [233], [234], and [239] to [244] above, I am satisfied that the proposed development provide for an appropriate configuration of built form and landscaping. It complies with the requirements of overall outcome (2)(j) and performance outcomes PO1, PO3 and PO16(c) of the Coolum local plan code in this respect.

Does the proposed development provide for a design and siting that appropriately protects views and visual amenity?

- [246] A number of the provisions of the Coolum local plan code require the protection of views and visual amenity. Overall outcome (2)(j) requires dense vegetated buffers to be maintained along David Low Way to effectively screen development and protect the scenic amenity of David Low Way and the amenity of nearby residential areas. Overall outcome (2)(k) requires development to be designed and sited to protect character vegetation and views either to or from important landscape features. The character requirements in performance outcome PO1 refers to integration of development with the natural and coastal landscape and skyline vegetation. Performance outcome PO3 requires development to provide for the retention and enhancement of key landscape elements including significant views and vistas, existing character trees and areas of significant vegetation, contributing

to the setting, character and sense of place of the Coolum local plan area. The associated acceptable outcomes indicates that this includes protecting and emphasising, and not intruding upon, the important sightlines and views to and from Mount Coolum and Point Arkwright and retaining and enhancing existing mature trees and vegetation contributing to the character and vegetated backdrop of the local plan area, including the vegetation along David Low Way. Performance outcome PO16 reinforces these outcomes as they apply to the subject land. Performance outcome PO16(i) requires development to protect the visual amenity of the road network through the maintenance and enhancement of dense vegetated buffers to David Low Way and surrounding the Palmer Coolum Resort. Performance outcome PO16(j) requires development to provide for the maintenance and enhancement of the environmental and landscape values of the area including, but not limited to, the Yaroomba Parabolic Dune, and views to and from Mount Coolum and Point Arkwright.

- [247] The Appellants allege that the proposed development does not comply with these provisions because it will have a deleterious impact on the visual amenity and amenity of the locality. They submit that the proper question is whether the view is impacted in any significant way (i.e. one that is not trivial or negligible) that would not be present if the proposed development had a compliant height.⁸⁶ They also rely on the fact that the proposed development will be visible to a significant degree from various private and public vantage points, including from the water off Yaroomba Beach and from Mount Coolum, as well as from various private residences in the locality; and that the development will not look like any of the nearby two-storey developments. They also criticise the vegetation that the proposed development intends to introduce, which they say will not perform a screening function. Their submissions do not refer to evidence that supports their assertions. In any event, I do not accept the Appellants' approach to this issue. The provisions on which they rely do not support it.
- [248] In assessing the acceptability of the proposed development with respect to impacts on views and visual amenity, I have been assisted by various aspects of the evidence. The plans provide an indication of the likely extent of retained vegetation. There are photographs of existing vegetation. The survey plans and Covenant G on SP23824 allow me to appreciate the extent of protection that will be afforded to vegetation along David Low Way. The decision notice provides an indication of conditions that may be imposed with respect to the protection of vegetation and incorporation of landscaping.
- [249] The plans show that about 4.6 hectares or 25 per cent of the subject land will be publicly accessible open space. That open space includes about 17 740 square metres of retained vegetation (or 9.6 per cent of the subject land). The retained vegetation includes an area of vegetation on the northern boundary adjacent the park and a proposed four-storey apartment building; an area between the lake and Precinct 2 Yaroomba Beach Central; two areas of parkland located in Precinct 3 Yaroomba Beach South; and an area to the north of the apartment building in Precinct 3. The plans also show retention of a linear strip of vegetation located adjacent to David Low Way. Part of this vegetation is protected by a covenant, which extends in width for 20 metres from the road reserve for David Low Way. The covenant covers approximately one hectare of the subject land. It requires,

⁸⁶ The Appellants allege that the Planning Scheme requires a height of no greater than two storeys.

amongst other things, that the owner of the covenant area is to use the area in a manner that protects the indigenous vegetation and native fauna habitat values within the covenant area. I accept the evidence of Mr King that the vegetation along David Low Way on the subject land is largely composed of paperbark trees that appear to be tolerant to the strong saline, generally unidirectional winds.

- [250] The proposed development will also provide landscape treatments. There is to a park in the north-east portion of the subject land; street trees and planting within the road corridors; and landscape treatments within each stage between the buildings and the boundaries. Planting is proposed on podium, rooftop and walls associated with Stage 1. These landscape treatments will minimise the visual impact of taller buildings and augment the retained vegetated buffer adjacent to David Low Way. As I have noted above, the conditions in the decision notice will ensure that the vegetation will be adequately maintained so it can provide effective screening.
- [251] In addition to the vegetation on the subject land, Mr King identifies, and provides photographs of, vegetation within the road reserve that he says contributes to the vegetative screen along David Low Way. He says dominant plants adjacent to the footpath within the road reserve are cottonwood trees and macaranga trees. They have large leaves and branches that extend to the ground, covering some five to six metres in width and providing good screening. He says other plants in the road reserve include wattle trees and bougainvillea, which weaves through the trees. Mr King says that towards the north of the subject land, the cottonwood and macaranga trees are located on an embankment sloping down from the footpath and are some three and a half to four metres in height. There is also the occasional wattle tree growing in that area, reaching up to five or six metres in height. Towards the south, adjacent the roundabout, paperbark and sheoak trees grow to about six to seven metres in height and the occasional wattle tree grows to between seven and eight and a half metres in height. I accept Mr King's description of the vegetated buffer to David Low Way. It accords with the evidence of Mr Powell and Dr McGowan about the roadside vegetation, and with Mr Elliott's evidence that there is vegetation in the road reserve along David Low Way.⁸⁷
- [252] To assist my assessment, I also have the benefit of opinions expressed by the visual amenity experts – Mr Powell, Dr McGowan and Mr King. They analysed the visual impact of the development having regard to views from roads adjacent to the subject land, such as David Low Way; views from elevated locations to the west and north-west of the subject land; views from the beach and ocean; and views from lookouts and other public viewpoints.
- [253] As was acknowledged by Dr McGowan, there are a number of provisions of the Planning Scheme that seek to protect and maintain significant features and the contribution they make to the landscape, local character and identity of the locality, as well as that seek to maintain important views and vistas. Figure 7.2.8A (Coolum Local Plan Elements) identifies views from Mount Coolum, views south along David Low Way and views from Point Arkwright as significant views near the subject land. It also identifies a landscape buffer along David Low Way adjacent the subject land, but does not identify any character vegetation on the subject land.

⁸⁷

Mr Elliott worked with a surveyor to determine the exact location of the boundary.

- [254] The visibility of the proposed development differs depending on the location of the viewer. It will be clearly visible from the elevated viewpoints on Mount Coolum. From distant elevated viewpoints, such as 120 Eurungunder Lane, the proposed development will add to the agglomeration of buildings in the strip adjacent the coast but will not remove the existing distant ocean views. From less elevated locations, such as 9A Wunnunga Crescent, 36 Toolga Street and 11 Arlington Court, the proposed development will sit within or slightly above the tree line. It will appear as part of the distant landscape. Ocean views and glimpses will still be available. Parts of the proposed development will also be visible from David Low Way proximate the subject land. Having regard to the photomontages, I am satisfied that from many of the viewpoints, such as at Point Arkwright and the beach, the proposed development will either not be visible or will be barely discernible. As such, it will not result in any discernible impact to the existing character or visual amenity experienced at those locations.⁸⁸ Mr Powell and Mr McGowan opine that although the proposed development will be visible from the locations noted above, the visual impact is an acceptable one. Mr King disagrees.
- [255] Mr Powell says that although the proposed development is visible from elevated locations, views to the important landscape features (including the Yaroomba parabolic dune, the beach, and the ocean) are maintained.⁸⁹ He also opines that the visual impacts from these elevated viewpoints will be appropriately mitigated by architectural treatments in terms of materials, colours and building articulation, which allow the proposed built form to respond to the natural colours and textures of the coastal plain and to sit comfortably in the landscape. Mr Powell also opines that the visual impact of Stages 2 to 5 of the proposed development will be less than that depicted in the photomontages. This is because, in addition to the generosity of space that is evident between each of the grey envelopes, there will be amelioration of the visual appearance by the finer grained detail and breaks between built form that will ultimately occur within each of the depicted envelopes.
- [256] Mr Powell acknowledges that there will be short-term visual impacts (within the first five to seven years) from points along David Low Way. He says the impacts will largely be limited to glimpses of the lowest intensity and lowest rise components of the proposed development. Further, the extent of these glimpses will diminish over time. This is because a detailed planting arrangement can be provided that will ensure a combination of retention of existing trees, strategic placement of advanced trees to provide immediate height, and planting of smaller pot-sized specimens that are faster growing and that adapt quickly to local conditions. This planting will add to the retained dense buffers along the vast majority of the subject land's frontage to David Low Way.
- [257] Mr Powell opines that the vegetation on and around the subject land that contributes to the local character and amenity, or that limits views into the subject land, is to be substantially retained and enhanced. This includes the vegetated buffer along David

⁸⁸ Mr King opines that the proposed development will be more visible than represented in the photomontages. His opinion is prefaced on his criticisms of the photomontages, which I do not accept.

⁸⁹ Mr Powell refuted Mr King's suggestion that the proposed development will intrude into views of the Yaroomba Parabolic Dune. He provided a detailed explanation as to why he was of a different opinion. I accept his evidence.

Low Way, the vegetation and landform associated with the parabolic dune and the frontal dune to the east of the subject land.

- [258] Dr McGowan expresses similar opinions to that expressed by Mr Powell. He opines that the proposed development has been appropriately sited and designed to ensure the significant features in the vicinity of the subject land are not affected, and that important views (to these features and generally) are maintained. In particular, he notes that the photomontages show that the proposed development will not obstruct any significant public views towards Point Arkwright, Mount Coolum, the beach, dune system (including the parabolic dune) or the coastline. He notes that the photomontages show no impact on the viewpoint taken from Point Arkwright and the beach near the subject land. The proposed development would be visible from elevated viewpoints, such as from Mount Coolum, but the proposed development will not obstruct views to the beach or the ocean. Dr McGowan opines that the proposed development will also have some impact on views from David Low Way, but says the retained and proposed vegetation will substantially screen the built form along David Low Way. He also notes that it is not unique to have some visible built form along David Low Way.
- [259] Mr King's contribution to the Second Visual Amenity Joint Expert Report⁹⁰ is lengthy. I generally accept Mr King's personal observations about existing vegetation,⁹¹ topography,⁹² density and height of beach dune vegetation,⁹³ and the David Low Way vegetation density and height.⁹⁴ The observations are supported by photographs and are consistent with what I observed during the site inspection. However, I prefer the evidence of Mr Powell and Dr McGowan to that of Mr King in relation to the visual impact of the proposed development.
- [260] The opinions expressed by Mr Powell and Dr McGowan are supported by an extensive set of photomontages prepared by Mr Elliott in June 2019, which depict the development from 24 locations. They are also supported by the further photomontages prepared after the Second Visual Amenity Joint Expert Report as requested by Mr King. Although the photomontages are only representative of the view from those viewpoints selected, I accept that they are representative of a comprehensive range of views to the subject land. They demonstrate that the proposed development would be partially (or wholly) screened by surrounding topography, vegetation and other built form.
- [261] In paragraphs [215] to [225] above I identify a number of reasons I do not regard the opinions expressed by Mr King to be reliable. In addition, I do not accept his opinions for each of the following four reasons. First, although he was given multiple opportunities to do so, Mr King was unable to explain whether he had approached his assessment against the Planning Scheme on the basis that compliance with acceptable outcomes was mandatory. Having given him an opportunity to explain his approach to his assessment against the Planning Scheme in his own words, I was left with the clear impression that Mr King did not

⁹⁰ This is the Joint Expert Report in which each of the experts provided their analysis of the proposed development. The First Visual Amenity Joint Expert Report related to methodology to be applied and photomontages sought by the experts.

⁹¹ Paragraphs 20 and 23 of the Second Visual Amenity Joint Expert Report.

⁹² Paragraph 121 of the Second Visual Amenity Joint Expert Report.

⁹³ Paragraphs 123 to 127 and 129 of the Second Visual Amenity Joint Expert Report.

⁹⁴ Paragraphs 131 to 134 of the Second Visual Amenity Joint Expert Report.

understand the structure of the Planning Scheme or how an assessment should be undertaken against its provisions. Second, in his assessment in the Second Visual Amenity Joint Expert Report, Mr King placed reliance on provisions that were not relied on by the Appellants, and asserted non-compliance with provisions that he misquoted. During cross-examination, when taken to the provisions, he accepted that his position on those provisions was misleading. Third, in his contributions to the Second Visual Amenity Joint Expert Report, Mr King criticised the photomontages showing the Hyatt Preliminary Approval as confusing and misleading and claimed that they were prepared contrary to an agreement in the First Visual Amenity Joint Expert Report. Mr King made this assertion at a time when the First Visual Amenity Joint Expert Report was available. It contains no agreement as claimed by him. To the contrary, the photomontages were prepared in accordance with the agreed requests of the experts in the First Visual Amenity Joint Expert Report. Fourth, viewed overall, the effect of Mr King's evidence was that mere visibility of the part of the proposed development was unacceptable. This does not accord with the requirements set by the Planning Scheme.

[262] Although the proposed development will be clearly visible from elevated locations like Mount Coolum, I accept the opinions of Mr Powell and Dr McGowan that its visual impact will be satisfactorily ameliorated by the proposed architectural treatments. When viewed from Mount Coolum and the other elevated locations, the proposed development will not have the jarring impact that is currently afforded by the sea of light coloured rooves of the existing two storey development in the locality. I am also satisfied that, if approved subject to conditions such as those in the decision notice, the proposed development will comply with the requirements to protect the scenic amenity of David Low Way and nearby residential areas.

[263] For the reasons provided above, I am satisfied that the proposed development provides for a design and siting that appropriately protects views and visual amenity. It complies with the requirements in overall outcomes (2)(j) and (k) and performance outcomes PO1, PO3 and PO16 with respect to impact on views and vistas and visual and scenic amenity.

Conclusion regarding compliance with the Coolum local plan code

[264] For the reasons provided above, I am satisfied that the proposed development complies with the relevant design requirements of the Coolum local plan code.

Does the design of the proposed development comply with the Strategic framework?

[265] The Appellants allege non-compliance with s 3.2.4. It states:

“3.2.4 A community of communities

In 2031, the Sunshine Coast has a strong sense of community identity based upon the retention of its character, lifestyle and environment attributes.

The character and identity of the Sunshine Coast continues to be defined by the diverse range of distinctive and sensitive landforms and landscapes which contain and weave in and around urban and rural residential communities.

The Sunshine Coast's communities are diverse, inclusive and resilient with high levels of community wellbeing.

Communities are focussed around vibrant and attractive activity centres which support business and community needs as well as providing a range of open space, sport, recreation, cultural and other facilities which contribute to and strengthen the community.

Communities within the Sunshine Coast are distinct and separate from each other, with each displaying an individual character and identity. Places reflect their coastal urban, rural town and village, rural residential or rural setting.”

(emphasis added)

- [266] The Appellants submit that this provision of the Planning Scheme specifically records the link between community identity and character; the diverse range of “*distinctive*” and “*sensitive*” landforms and landscapes that make up the overall character of the Sunshine Coast; the diverse range of communities on the Sunshine Coast; and the individual character and identity of the various “*distinct*” and separate “*communities*” on the Sunshine Coast. They say the proposed development fails to recognise the particular and distinct features of the locality and the Yaroomba community (as one of the separate and distinct communities referenced in this provision) and consequentially it does not comply this strategic intent in s 3.2.4 of the Planning Scheme. They say the proposed development will change the character of the locality.
- [267] I do not accept the Appellants’ submissions. Section 3.2.4 forms part of those provisions that identify the strategic intent. It is not part of the implementation framework. It is not framed in a manner that calls for compliance by individual developments. In any event, the proposed development does not cut across this intent. For the reasons provided in paragraphs [181] to [264] above, I am satisfied that the proposed development is consistent with the intended character for the locality.
- [268] Sections 3.3.1(a) and (m) identify strategic outcomes for the Settlement pattern theme. They state:
- “(a) In 2031, the Sunshine Coast is renowned for its range of distinctive and sensitive landforms and landscapes, its large and diverse areas of open space and its unique and well defined communities. **Growth is carefully managed and well-designed to maintain and enhance the character, lifestyle and environment attributes** which make such a significant contribution to the Sunshine Coast’s natural (competitive) advantage.
 - (m) **Communities within the Sunshine Coast are distinct and separate from each other displaying an individual character**, identity, culture and in some cases, strong associations with the past. **Places reflect their coastal urban, rural town and village, rural residential or rural setting.”**
- (emphasis added)
- [269] The Appellants say there is a clear, intentional and significant emphasis in these provisions on the individual character and identity of different communities within the Sunshine Coast. They submit that the proposed development fails to comply with the planning intent identified in s 3.3.1(a) and s 3.3.1(m) with regard to the maintenance and enhancement of character and environmental attributes of the locality and desire for places to reflect the coastal urban setting of the locality. While these provisions allows one to appreciate the strategic planning importance of compliance with character provisions in the Coolool local plan code, it is difficult to

appreciate how non-compliance with these provisions can legitimately be raised as a real issue in dispute. Whether a development cuts across the identified strategic intent will necessarily depend on whether there is compliance with those provisions that outline the desired character of the relevant community. In this case, the relevant provisions are those in the Coolool local plan code. As such, for reasons provided in paragraphs [181] to [264] above, I am satisfied that the proposed development does not cut across this strategic intent.

[270] Sections 3.3.2.1(a)(i) to (iv) contain specific outcomes that form part of the implementation framework for Element 1 – Character, lifestyle and environmental attributes in the Settlement pattern theme. They state:

- “(a) The character, lifestyle and environment attributes of the Sunshine Coast are recognised as essential contributors to the region’s natural (competitive) advantage by:-
- (i) protecting and enhancing the natural environment and undeveloped rural and coastal landscapes that create large, uninterrupted and diverse areas of open space which weave throughout the region and define the boundaries of urban and rural residential areas;
 - (ii) maintaining a settlement pattern and encouraging a built form that is distinct to the Sunshine Coast and which avoids the most prominent symbols and negative attributes of larger metropolitan areas (i.e. undistinguishable tracts of urban sprawl and oversized transport corridors with bare acoustic walls and signage);
 - (iii) maintaining distinct, identifiable towns and neighbourhoods that sensitively respond to their setting and support strong, diverse communities with a sense of belonging; and
 - (iv) maintaining a relaxed lifestyle derived from an appreciation of the character, lifestyle and environment attributes offered by the Sunshine Coast as a place.”

[271] The Appellants assert that the proposed development fails to comply with these provisions. The submission is no more than a bare assertion. I do not accept the assertion for the reasons provided in paragraphs [181] to [264] above.

[272] Section 3.3.3.1(d)(v) is a specific outcome for the implementation of Element 2 – Growth management boundaries and land use categories in the Settlement pattern theme. It states:

“The physical extent of urban development and rural residential development is contained within defined local growth management boundaries **so as to:-**

...

- (v) protect the discrete identities of individual places and communities.”

[273] During the opening of the case for SHC, Mr Gore QC submitted the provision was irrelevant and articulated the basis of the submission. Despite that, the Appellants not only maintained their assertion that the proposed development fails to comply with this provision, they failed to address how the non-compliance arises or otherwise refute the submissions made by Mr Gore QC during the opening. As with many other provisions, their submission of non-compliance is no more than a bare assertion. Although the written submissions of the Appellants provide no elucidation as to the basis of their allegation, it seems from the tenor of their

submissions overall that they assert non-compliance on the basis that the proposed development does not protect the discrete identities of individual places and communities. Such a position ignores the construct of the provision. The provision identifies that this is one of the purposes of the local growth management boundaries. Sub-paragraphs (i) to (vi) provide an appreciation of the planning rationale that informs the policy position that the physical extent of urban development is to be contained within the defined local growth management boundaries. The proposed development is within the defined local growth management boundaries. It complies with this provision.

- [274] Section 3.3.4.1(c) is a specific outcome related to Element 3 – Efficient and functional urban form in the Settlement pattern theme. It states:

“Where urban consolidation occurs, it is compatible with and sympathetic to the preferred character of the local area.”

- [275] A footnote to this provision records that:

“the preferred character of each coastal urban, rural town and rural village community is described in the applicable local plan code”.

- [276] As such, whether the proposed development complies with this provision will depend on whether it is compatible with and sympathetic to the preferred character of the local area identified in the Coolum local plan code. The same is true of s 3.3.9.1(a), which relates to Element 8 – Local settings and local planning responses in the Settlement pattern theme and states:

“The Sunshine Coast is maintained as a community of communities where the character and identity of each community is recognised and protected in accordance with a local plan.”

- [277] For the reasons provided in paragraphs [181] to [264] above, I am satisfied that the proposed development complies with these provisions.

- [278] The Appellants allege non-compliance with s 3.4.6.1(e)(ii) and (v) by reason of unacceptable character impacts. This provision is set out in paragraph [52] above. As I have already explained in paragraphs [78] to [85] above, it is unnecessary for SHC to demonstrate that the proposed development complies with this provisions but, even if it were, I am satisfied that there is compliance.

- [279] Section 3.5.1(d) and (i) are strategic outcomes for the Transport theme. They state:

“(d) The scale of transport corridors and **the design of infrastructure are compatible with the preferred character of coastal urban**, rural town and village, rural residential and rural **communities and incorporate design features and elements that reduce impacts on amenity** and opportunities for community interaction.

...

(i) **Parking is managed in regional activity centres such as Maroochydore, Caloundra, Kawana and Nambour, in tourism focus areas such as Kings Beach, Mooloolaba and Coolum and other places as appropriate to provide adequate parking for local and visitor needs.” ...**

(emphasis added)

- [280] The Appellants submit that these provisions, together with others about transport infrastructure, clearly envisage reduction of impacts from transport infrastructure, including impacts on amenity (e.g. efficiency of movement) and parking provision arising from the need to introduce transport infrastructure.
- [281] I address the traffic issues raised by the Appellants in detail in paragraphs [307] to [330] below. For the reasons provided there, I am satisfied that the proposed development does not cut across these strategic outcomes.
- [282] Section 3.7.1(f) is a strategic outcome for the Natural environment theme. It states:
- “The natural environment is protected and enhanced in a way that maintains and improves biodiversity, ecological processes, habitat and habitat connectivity, landscape character and amenity, economic and community wellbeing, resilience and capacity to evolve and adapt to the predicted impacts of climate change.”**
- [283] The Appellants submit that this provision clearly has its focus on the protection and maintenance, and the enhancement and improvement, of ecological values. As such, it is difficult to appreciate why non-compliance with the provision was identified as a key issue requiring determination with respect to the Appellants’ allegation that the proposed development will have unacceptable impacts on visual amenity, scenic amenity and views to and/or from locally and/or regionally significant places. The Appellants’ submissions do not assist in that regard.
- [284] Section 3.7.1(f) is not part of the implementation framework. It is a strategic outcome sought for the whole of the local government area. Its focus is the protection and enhancement of the natural environment. In any event, I am satisfied that the design of the proposed development does not cut across the planning strategy contained in this provision insofar as it relates to landscape character and amenity. For reasons provided in paragraphs [181] to [264] above, I am satisfied that the design of the proposed development will produce appropriate character and visual outcomes.
- [285] Sections 3.8.1(d), (g) and (h) are strategic outcomes for the Community identity, character and social inclusion theme. They state:
- (d) The Sunshine Coast continues to be renowned for the many important views and vistas which contribute to the identity and attractiveness of the region. **Local views of importance to residents are recognised and respected.**
- (g) **The individual character of urban and rural residential areas is recognised within the context of coastal urban, rural town, rural village and rural residential settings.** The diversity of rural settings and communities is also recognised and respected.
- (h) **Communities continue to value their history and cultural associations and retain a strong sense of place. In 2031 the Sunshine Coast is still a community of communities.”**
- (emphasis added)
- [286] As with many of the other provisions relied on by the Appellants, these strategic outcomes do not form part of the implementation framework. They should be understood with reference to those specific outcomes that are intended to implement

them, including s 3.8.2.1(a), (c), (e) and (g) and s 3.8.3.1(c) and (d). Those specific outcomes state:

“3.8.2 Element 1 – Landscape elements and features

3.8.2.1 Specific outcomes

- (a) The landscape elements identified conceptually on **Strategic Framework Map SFM 6 (Community identity, character and social inclusion elements)** which include regional and sub-regional inter-urban breaks, high value scenic areas, regional gateways and scenic routes are protected and enhanced.
- (c) **Coastal urban and rural town and village communities remain distinct and separated by scenic landscape and inter-urban breaks.**
- (e) The prominent landscape features identified in **Table 3.8.2.1 (Regionally significant landscape features)** and important views to these features are protected from intrusion from buildings and other aspects of urban development.
- (g) **Other views and vistas, including those identified in local plans or which are important in a local context are also protected, particularly from development which exceeds specified building heights.**

3.8.3 Element 2 – Sub-tropical character and locally responsive design

3.8.3.1 Specific outcomes

- (c) **A high standard of urban design and landscaping is provided that:-**
 - (i) **is sensitive to a local setting as described in local plans;**
 - (ii) **enhances the character, identity, and natural and cultural associations of the local area;**
 - (iii) **reinforces the positive elements of character, identity and landscape of the local area;**
 - (iv) responds to relevant topographic and landscape influences;
 - (v) contributes to a sense of place and the creation of pleasant, living environments; and
 - (vi) creates healthy and safe environments that support community activity and participation, healthy lifestyles and the prevention of crime.
- (d) **The height of buildings and other structures recognises the distinctive character and amenity of the Sunshine Coast as a place with a predominantly low-medium rise built form which is intentionally distinct from other places in metropolitan South East Queensland.”**

(emphasis added)

[287] The Appellants submit that there is non-compliance with the strategic outcomes in s 3.8.1(d) because of impacts on views, and with s 3.8.1(g) and s 3.8.1(h), because of impacts on the character of the locality. They say both impacts arise because of the overdevelopment of the site reflected in the scale, height and intensity of the proposed development. The Appellants also allege non-compliance with the specific outcomes in s 3.8.2.1(c) and (g) and s 3.8.3.1(c) and (d).

[288] I have already addressed why I do not accept the Appellants’ position with respect to such matters in paragraphs [181] to [264] above. For those reasons, I am

satisfied that the proposed development will not cut across these strategic outcomes and that it complies with the specific outcomes that are intended to implement the strategic outcomes. It maintains the scenic landscape and inter-urban break currently provided by the vegetation along David Low Way in that it will retain a significant band of vegetation and supplement the buffer with additional plantings. As I have already noted in paragraphs [246] to [264] above, I am satisfied that the proposed development will protect the important views and vistas, even though it will exceed two storeys in height. I am satisfied that it provides a high standard of design that is sensitive to its local setting and enhances and reinforces the character of the local area for reasons provided in paragraphs [184] to [227] above. With respect to the question of compliance with s 3.8.3.1(d), it is unnecessary for me to determine whether the proposed development can be regarded as low-medium rise as opined by Mr Perkins⁹⁵ as the provision does not require the built form to be limited to low-medium rise. Rather, it records that the Sunshine Coast is a place with predominantly low-medium rise built form and otherwise requires the proposed development to recognise the distinctive character and amenity of the Sunshine Coast. I am satisfied that it does so for the reasons provided in paragraphs [184] to [264] above.

Does the design of the proposed development comply with the Emerging community zone code?

- [289] The Appellants allege non-compliance with the purpose in s 6.2.17.2(1)(a) and (c) and overall outcomes (2)(c)(i), (v), (vi) and (viii) of the Emerging community zone code. These provisions are set out in paragraphs [103] and [104] above.
- [290] The Appellants submit that the proposed development fails to comply with the Emerging community zone code in that it does not reflect the specific intent for the locality in the Coolum local plan code and it fails to respect the character of the locality. They also submit that the proposed development does not integrate with existing communities or produce a sense of character and community inclusion. I disagree for the reasons provided in paragraphs [180] to [264] above.
- [291] Further, the proposed development includes approximately 46 000 square metres of publicly accessible open space, equating to about 25 per cent of the subject land. That area will include parkland, a coastal pathway, boardwalks, and public car parking. The design also provides a comprehensive and considered arrangement of pedestrian pathways and roadways that would facilitate pedestrian connectivity between the proposed development and areas beyond the subject land, including by providing connection to the existing coastal walkway. They will be designed to encourage walkability and a highly pedestrianised environment. It will also provide a new public beach access and a lifeguard tower. These aspects of the proposed development will ensure that the proposed development integrates with existing communities and will produce a sense of character and community inclusion.
- [292] For the reasons provided above, I am satisfied that the proposed development complies with the Emerging community zone code.

⁹⁵ Mr Perkins' opinion on this point was formed following a detailed consideration of the Planning Scheme provisions with respect to low rise and medium rise built form. His opinion was unchallenged. It is compelling.

Does the design of the proposed development comply with the Height of buildings and structures overlay code?

- [293] The Appellants allege that the proposed development does not comply with the purpose in s 8.2.8.2(1), overall outcomes (2)(a) and (b) and performance outcome PO1 of the Height of buildings and structures overlay code. I have already addressed many of the Appellants' submissions about these provisions in paragraphs [189] to [195] above.
- [294] As I have noted in paragraph [195] and footnote 76 above, the exceptions in performance outcome PO1 do not apply to the subject land because it is not within any of the zones identified in sub-paragraph (a))z. As such, the proposed development does not comply with performance outcome PO1 because it is not within the excepted uses identified in sub-paragraph (a). This is not fatal to the proposed development as it can demonstrate compliance with the Height of buildings and structures overlay code by showing compliance with any of the overall outcomes or the performance outcomes or the acceptable outcomes.⁹⁶
- [295] I am satisfied that the proposed development complies with overall outcome (2)(a) of the Height of buildings and structures overlay code for the reasons provided in paragraphs [180] to [264] above.
- [296] Overall outcome (2)(b) requires the height of buildings and structures to be consistent with the reasonable expectations of the local community. This Court has addressed the concept of reasonable expectations on many occasions.
- [297] In *Wattlevilla Pty Ltd v Western Downs Regional Council & Anor*,⁹⁷ His Honour Judge Robertson observed:
- “The standard of amenity that residents are entitled to enjoy or expect is to be assessed having regard to the Planning Scheme and its intent for development of the area.”
- [298] In *Acland Pastoral Co Pty Ltd v Rosalie Shire Council*,⁹⁸ His Honour Judge Dodds said:
- “A person’s right to put their land to any lawful use they wish is in these more enlightened times, tempered by town planning considerations, one of which is amenity. Consideration of amenity in a town planning context is not in the abstract. It is informed by the planning controls applying in the area under consideration and the notion of reasonableness. *Bell v Noosa Shire Council* [1983] QPLR 311; *Feldham v Esk Shire Council* [1989] QPLR 91. Proposed development will often affect existing amenity. What is unacceptable is a detrimental effect to an unreasonable extent according to the reasonable expectations of other landowners in the vicinity given the sorts of uses permitted under current town planning controls. While the subjective views of those whose amenity may be affected by a proposed development are not to be ignored, in the final analysis the question must be answered “according to the standards of comfort and enjoyment

⁹⁶ See s 5.3.3 of the Planning Scheme and *Bell v Brisbane City Council & Ors* [2018] QCA 84; (2018) 230 LGERA 374, 388 [50]. See also *United Petroleum Pty Ltd v Gold Coast City Council & Anor* [2018] QPEC 8; [2018] QPELR 510, 537 [118] and *K & K (GC) Pty Ltd v Gold Coast City Council* [2018] QPEC 9; [2018] QPELR 540, 625 [375] (overturned in *Gold Coast City Council v K&K (GC) Pty Ltd* [2019] QCA 132 but not on this issue).

⁹⁷ [2014] QPEC 47; [2015] QPELR 21, 45 [96].

⁹⁸ [2007] QPEC 112; [2008] QPELR 342, 348-9 [40].

which are to be expected by ordinary people of plain, sober and simple notion not effected by some special sensitivity or eccentricity”. The weight to be accorded to subjective views can only be judged in the light of all the evidence about the subject. The views may be supported by other evidence or other independent evidence may show that in an objective sense they are overblown as in *Telstra Corporation Limited v Pine Rivers Shire Council* [2001] QPELR 350.”⁹⁹

[299] In *Baptist Union of Queensland v Brisbane City Council & Anor*,¹⁰⁰ His Honour Judge Brabazon QC said:

“It is natural enough that such residents would wish to maintain the existing, relatively undisturbed nature of the area. However, from a town planning point of view, their expectations must be reasonable in light of all the planning provisions applying to this land. When judged in that way, some concerns might not be maintainable. In principle, expectations should be based on a full and impartial understanding of all the aspects of the planning controls. ... ”

[300] I respectfully adopt the observations of their Honours Judges Robertson, Dodds and Brabazon QC.

[301] In this case, the Appellants provided copies of many submissions that they say are representative of the majority of submissions opposed to the proposed development. Numerous local residents also gave statements. Some of them were cross-examined. Although I am satisfied that the concerns of the local residents about the impact of the proposed development are genuinely held, the other evidence does not support them. Their expectations are out of step with the effect of the Planning Scheme when read as a whole. For example, many assume that the Planning Scheme requires development on the subject land be no higher than two storeys or 8.5 metres.

[302] Further, having regard to the independent evidence referred to in paragraphs [180] to [264] above, in an objective sense the concerns of the local residents can be discounted. They are not evidence of reasonable expectations. The residents could reasonably have in mind that the Height of Buildings and Structures Overlay Map OVM11H shows the subject land as subject to a height parameter of two storeys. However, they should also reasonably expect that development, such as that proposed here, may be approved if it has a height of greater than two storeys but complies with the character and amenity requirements of the Planning Scheme.

[303] For those reasons, I am satisfied that the proposed development complies with the Height of buildings and structures overlay code.

Does the design of the proposed development comply with the Multi-unit residential uses code?

[304] The Appellants allege that the proposed development does not comply with the purpose in s 9.3.11.2(1), overall outcome (2)(b) and performance outcome PO6 of the Multi-unit residential uses code. Those provisions state:

“(1) The purpose of the Multi-unit residential uses code is to ensure multi-unit residential uses are of a high quality design which appropriately responds to local character, environment and amenity considerations.

⁹⁹ Footnotes omitted.

¹⁰⁰ [2003] QPELR 61, 80 [129].

(2) The purpose of the Multi-unit residential uses code will be achieved through the following overall outcomes:-

(b) a multi-unit residential use incorporates building design that responds to the region's sub-tropical climate as well as the character of the particular local area;

PO6 A multi-unit residential use has a *residential density* that is compatible with the intent of the zone and the preferred character for the local area in which it is located."

[305] The Appellants' allegations with respect to non-compliance are premised on its position with respect to impact on the local character and amenity. The Appellants acknowledge that the preferred character of the local area can be determined by reference to the Coolum local plan code. In light of that concession, it is difficult to appreciate why allegations of non-compliance with this code were maintained as real issues that require determination.

[306] In support of their allegation of non-compliance, the Appellants submit that the expected residential density in the Emerging community zone is 20 dwellings per hectare. They again rely on Mr Adamson's analysis of density in support of their submission. As I have already mentioned in paragraph [133] above, I do not accept Mr Adamson's analysis. I am satisfied that the proposed development complies with this code for the reasons already provided in paragraphs [133] and [180] to [264] above.

Does the design of the proposed development comply with the Transport and parking code?

[307] The Appellants allege that the proposed development will not comply with overall outcome (2)(c) of the Transport and parking code. It states:

"transport *infrastructure* is designed and constructed to acceptable standards and operates in a safe and efficient manner that meets community expectations, prevents unacceptable off-site impacts and reduces whole of life cycle costs, including reduced ongoing maintenance costs."

[308] The Appellants submit that the Planning Scheme provisions with respect to transport infrastructure clearly envisage reduction of impacts from such infrastructure, including impacts on amenity (for example in terms of efficiency of movement) and parking provision arising from the need to introduce such infrastructure. They submit that the proposed development will not achieve those planning intents because it will generate increases in traffic on the road network (including a 70 per cent increase on David Low Way – north and south bound); and will require introduction of additional traffic devices, which they say will impose obstacles to efficient road use. The Appellants did not refer to the evidence that it says supports its submissions. The Appellants also say that the proposed development will require the removal of 11 public car parks in order to facilitate the intersection upgrade works in Coolum. They say those impacts are symptomatic of the overdevelopment of the subject land.

[309] The Appellants' allegations raise three issues for consideration.

1. Will the proposed development involve unacceptable traffic generation?
2. Does the proposed external roadworks militate against approval?

3. Does the proposed development provide sufficient car parks?

- [310] With respect to these issues, I was assisted by evidence from traffic engineers Mr Healey and Mr Douglas, who were retained by SHC and the Council respectively. The Appellants did not engage a traffic engineer.

Will the proposed development involve unacceptable traffic generation?

- [311] The proposed development will gain access to and from David Low Way, which is a State-controlled arterial road corridor. That access will be limited to a three-way roundabout on David Low Way; and a secondary right-in/left-in/left-out priority-controlled intersection to be located approximately 240 metres to the north of the proposed primary three-way roundabout access.¹⁰¹
- [312] David Low Way presently carries approximately 11 929 vehicles per day near the subject land. There are approximately 907 vehicles per hour in the morning peak and approximately 1 002 vehicles per hour in the afternoon peak.
- [313] The traffic engineers agree that, when completed in about a decade, the proposed development is estimated to generate in the order of 7 000 vehicles per day – about 3 500 to and from the north and about 3 500 to and from the south. This will increase the total volume of vehicles on David Low Way from about 12 000 vehicles per day at any nearby point to about 15 600 vehicles per day. That is an increase of about 30 per cent (not 70 percent as alleged by the Appellants). The peak hour demand will be around a maximum of 750 to 800 vehicles per hour.
- [314] Relative to the existing traffic volumes, the increase in traffic generation appears significant. However, the traffic engineers agree that the use of David Low Way for traffic associated with the development is appropriate because of that road's arterial function.
- [315] As David Low Way is under the jurisdiction of the Queensland Department of Transport and Main Roads, the experts agree that it is reasonable to assume that the State will continue to commit funds to ensure that the safety and efficiency of the corridor is maintained. Further, the Department of Transport and Main Roads will have the additional benefit of contributions from development proponents such as SHC via conditioned upgrading. For example, the conditions imposed by the concurrence agency that are attached to the decision notice will result in upgrading works at two intersections along the relevant corridor, namely at the intersection of David Low Way and Suncoast Beach Boulevard and at the intersection of David Low Way and Beach Road.¹⁰² In addition, the traffic engineers agree that upgrading works should be undertaken at two further intersections, namely at the intersection of David Low Way and Warran Road and at the intersection of David Low Way and Seaside Boulevard.

¹⁰¹ Having regard to the evidence of the traffic engineers, I am satisfied that this minimises and rationalises access to David Low Way in accordance with performance outcome PO16(h) of the Coolool local plan code.

¹⁰² The Department of State Development, Manufacturing, Infrastructure and Planning was consulted with respect to the proposed development in its role as a concurrence agency because of the proximity of the proposed development to a State-controlled road and due to its potential impact on State transport infrastructure. The decision notice issued by the Council attached an amended concurrence agency response by the Department dated 1 June 2018.

- [316] The experts' proposed upgrade works for two further intersections follows a change in the assessment requirements. New guidelines now require development proponents to effectively offset the impact of development, requiring upgrading to negate the impacts upon the State network capacity. The further proposed roadworks will meet that requirement and the relevant state agency has agreed to the upgrade works.
- [317] The traffic engineers opine that the proposed upgrade works will involve net benefits to the community, particularly in terms of safety for vehicles entering and leaving David Low Way and for pedestrians crossing it. This is because the proposed signalisation of the two further intersections will provide gaps in the traffic flow to provide for right turns out of residential streets nearby that intersect with David Low Way. It will also improve opportunities for pedestrians to cross, and will provide gaps to improve the operation of adjacent unsignalised intersections.
- [318] The traffic engineers agree that the intersection upgrade works will mitigate the delays arising from the additional traffic generated by the proposed development.
- [319] I accept these opinions of the traffic engineers. They detailed their foundations and explained them well in their reports. Having regard to their evidence, I am satisfied that the increased traffic generation is not a matter that warrants refusal of the proposed development.

Does the proposed external roadworks militate against approval?

- [320] The intersection upgrades that the traffic engineers agree are appropriate, and which SHC and the relevant road authorities agree should be conditioned, are:
- (a) signalisation of the David Low Way and Suncoast Beach Drive intersection incorporating localised widening of the intersection approaches. (These works have already been undertaken pursuant to the conditions of approval attached to the Hyatt preliminary approval);
 - (b) lane reconfiguration and lengthening of the auxiliary turn lanes at the David Low Way and Beach Road intersection;
 - (c) signalisation of the David Low Way and Warran Road intersection; and
 - (d) signalisation of the David Low Way and Lorraine Street intersection.
- [321] The upgrade to the David Low Way and Warran Road intersection and the David Low Way and Lorraine Avenue intersection are additional requirements not originally required by the conditions to the decision notice. SHC has corresponded with the Department of Transport and Main Roads (through the relevant Department of State Development, Manufacturing, Infrastructure and Planning) regarding the additional works, including providing road safety audits. The Department of Transport and Main Roads has agreed to issue an amended concurrency agency conditions of approval incorporating the upgrade to the additional two intersections.
- [322] Mr Douglas opines that the intersection improvements, particularly those at the Warran Road and David Low Way intersection and at the Lorraine Avenue and David Low Way intersection, will provide greater benefits for the local transport

network than the impacts arising from the subject development. In particular, he says the signalisations will provide controlled right-turn movements onto David Low Way and signalised pedestrian crossings in proximity to bus stops. During his oral testimony, Mr Douglas explained in detail the benefits that the upgrade of these two intersections will have for traffic safety and efficiency. Having regard to his evidence, I am satisfied that the additional upgrades recommended by the traffic engineering experts will benefit the local community.

[323] As I have already mentioned, the signalisation of the David Low Way and Suncoast Beach Drive intersection has already occurred. Mr Douglas expects that it, as well as all other upgrades, will also provide some safety benefits to pedestrians and motorists.

[324] The upgrading of the David Low Way and Beach Road intersection will involve widening that will result in a loss of 12 car parks, being 11 car parks along David Low Way and a car park from Beach Road. This is an impact that is of significant concern to the community, which has expressed considerable concern about existing parking problems in this locality. Despite that community concern, I am satisfied that the loss is acceptable. It is a loss of 12 from 247 public car parks already available in the general area. Having regard to the evidence of the traffic engineers, I am satisfied that there are opportunities to replace at least some of those car parks through a minor redesign of existing car parking areas in the locality, should the Council consider it appropriate. Further, I am satisfied that the proposed development may assist in the re-distribution of demand for car parking spaces, given the new offer as part of the proposed development. The subject land will provide in excess of 100 spaces for beach access to Yaroomba Beach, plus additional public parking within the subject land for those accessing the hotel, retail and other uses.

[325] For the reasons provided in paragraphs [320] to [324] above, I am satisfied that the external roadworks support approval of the proposed development. Although the public might be concerned about loss of car parks, it is reasonable for them to expect that the number of car parks available may fluctuate from time to time because of upgrade works that improve the safety or efficiency of the road network.

Does the proposed development provide sufficient car parks?

[326] In the documents that identified the issues in dispute in the lead up to the hearing, the Appellants alleged that the proposed development will create a demand for public parking that will exceed the supply. This allegation does not appear to be maintained in its submissions. In any event, the traffic engineers satisfactorily address it.

[327] The traffic engineering experts analysed the parking requirements for the proposed development using a first principles assessment methodology. Their joint expert report details the key input assumptions and provides their calculations. They were not challenged about either. Based on their analysis, the experts opine that the proposed development results in a total supply of 569 spaces, which the traffic engineers agree results in a surplus of two spaces for the overall development. The traffic engineers agree that the overall provision will be sufficient to meet the normal design scenarios (that is outside holiday peak periods).

[328] Subsequent to the joint expert meeting, Mr Healy further refined the Hotel basement parking allocation to ensure that no shortage arises during peak periods. The Council conditions also require the implementation of a management system to ensure that demand for hotel parking is properly monitored. Condition 126 of Council's approval conditions requires:

- (a) an additional 100 overflow car parking spaces to be provided on undeveloped land parcels as part of the delivery of Stage 1;
- (b) a car parking study, which must be peer reviewed, to determine if additional parking spaces are required in the long term; and
- (c) additional car parking to be delivered in later stages of the development if the car parking study regime identifies any shortfall.

[329] Having regard to the matters identified in paragraphs [327] and [328] above, I am satisfied that the proposed development makes adequate provision of public car parks and car parks for the development.

Conclusion regarding compliance with the Transport and parking code

[330] I accept the evidence of Mr Douglas that the transport infrastructure is designed and will be constructed to acceptable standards and will operate in a safe and efficient manner to prevent unacceptable off-site impacts. It will meet reasonable community expectations. No issue arises concerning the ongoing maintenance costs of the transport infrastructure. As such, for those reasons (and the reasons provided in paragraphs [307] to [329] above), I am satisfied that the proposed development complies with the requirements of overall outcome (2)(c) of the Transport and parking code.

Conclusion regarding the acceptability of the design of the proposed development

[331] For the reasons provided above, I do not regard the proposed development as an overdevelopment of the subject land when it is assessed against the requirements of the Planning Scheme. This is further evidenced by the absence of traditional indicia of overdevelopment. The Appellants do not point to any meaningful hard impacts. It was not disputed that the proposed development would not result in any unacceptable impacts in terms of setbacks, overshadowing, overlooking, overbearing or site cover. Further, for reasons provided above, I am satisfied that the proposed development would not result in any unacceptable impacts in terms of visual amenity and traffic.

Will the proposed development pose an unacceptable risk to the loggerhead turtle?

[332] The Appellants allege that approval of the proposed development would pose an unacceptable risk to the loggerhead turtle. In support of their allegations, the Appellants allege non-compliance with numerous assessment benchmarks. In particular, they allege non-compliance with:

- (a) s 3.7(4), s 3.7.1(f) and s 3.7.2.1(a) and (b) of the Strategic framework;
- (b) the purpose in s 6.2.17.2(1)(d) of the Emerging community zone code;

- (c) overall outcomes (2)(k) and performance outcome PO16(j) of the Coolum local plan code; and
- (d) the purpose in s 8.2.3.2(1)(a), overall outcomes (2)(a), (b), (c) and (d) and performance outcomes PO2 and PO4 of the Biodiversity, waterways and wetlands overlay code.

[333] The Appellants say that the assessment benchmarks that deal specifically with environmental impacts are in the Biodiversity, waterways and wetlands overlay code. The Appellants say that the intent to protect, maintain, and enhance environmental value is also reflected in the other provisions of the Planning Scheme with which they allege non-compliance. Given those other provisions reflect the planning requirements and intent that is set out with greatest focus in the Biodiversity, waterways and wetlands overlay code, it is convenient to turn first to the provisions of that code, before turning to the balance of the provisions put in issue by the Appellants.

Does the proposed development comply with the Biodiversity, waterways and wetlands overlay code?

[334] The purpose of the Biodiversity, waterways and wetlands overlay code is to ensure that “*ecologically important areas are protected, rehabilitated and enhanced*”.

[335] This purpose is intended to be achieved through the overall outcomes, which include:

- “(a) development protects and enhances *ecologically important areas* and ecological connectivity;
- (b) development protects and establishes appropriate *buffers* to waterways, *wetlands*, native *vegetation* and significant fauna habitat;
- (c) development protects known populations and supporting habitat of rare and threatened flora and fauna species, as listed in the *State Nature Conservation Act 1992*, *Nature Conservation (Wildlife) Regulation 2006* and the *Commonwealth Environmental Protection and Biodiversity Conservation Act 1999*;
- (d) development is located, designed and managed to avoid or minimise adverse direct or indirect impacts on ecological systems and processes;”

[336] Performance outcomes PO2 and PO4 of the Biodiversity, waterways and wetlands overlay code contain similar requirements for the management of impacts on ecologically important areas. They state:

“PO2

Development on or adjacent to land containing an *ecologically important area* is designed and constructed to:-

- (a) prevent any direct or indirect impacts on the *ecologically important area*;
- (b) enhance and restore the *ecologically important area*;
- (c) retain, enhance and restore known populations and supporting habitat of significant flora and fauna species;
- (d) minimise the impacts of construction and ongoing use on native fauna.

PO4

Effective measures are implemented during the construction and operation of developments on or adjacent to land containing an *ecologically important area*, to protect fauna that is sensitive to disturbance from noise, vibration, dust or light.”

- [337] The term “*ecologically important area*” is defined in the Planning Scheme. It is common ground between the parties that the coastal dunes at Yaroomba adjacent the subject land are an ecologically important area as defined. They are an area that contains or is likely to contain the loggerhead turtle, which is a listed migratory species under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).
- [338] With respect to issues of ecological impact on loggerhead turtles, I was assisted by evidence from a number of marine biologists, namely Ms Thorburn, Dr Thorogood and Associate Professor Hamann (retained by SHC, the Council and the Appellants respectively). They prepared three joint expert reports in conjunction with Mr Paul King and Ms Adams, who were retained by SHC and the Council respectively for their expertise in lighting and noise. It is common ground that there is no unacceptable impact occasioned by noise associated with the proposed development.
- [339] I also had the benefit of statements from a number of local residents who volunteer with Coolum and North Shore Coast Care, including Ms Warneminde, Ms Holford, Ms Phillips, Mr Pearce and Ms Richards. Coolum and North Shore Coast Care is an incorporated association. Its aim is to protect and conserve the natural values of the coastal area between South Peregian and Maroochy River, encourage the preservation of the area’s biodiversity and encourage active participation of the community and governing bodies. Its activities include dune revegetation, marine turtle monitoring, attending to marine turtle stranding, and attending to dead turtles. Its members include volunteers who are accredited through a training program for turtle monitoring conducted at Mon Repos under the guidance of a well-respected turtle expert, Dr Limpus. The detailed data collected by volunteers of Coolum and North Shore Coast Care is shared with the Department of Environment and Science, the University of the Sunshine Coast and Dr Limpus for use in their research about turtles in Queensland. The statements provided by the association’s volunteers contained their personal observations about turtle nests in the area, behaviour of hatchlings, and local conditions in terms of light glow, vegetation condition on the dunes and the extent of foot traffic on the beach and through the dunes.
- [340] There was no controversy between the marine biologists about many issues relevant to the loggerhead turtle, including its conservation status, distribution and habitat, movement and migration, mating and nesting habits, and key threats to the species.
- [341] The marine biologists agree that there are ten genetically distinct stocks (or subpopulations) of loggerhead turtles globally. Two of them nest in Australia. One of those is the South Pacific stock, which nests primarily in southern Queensland. The conservation status of the South Pacific subpopulation is listed as critically endangered due to declining population numbers. There has been a population decline of more than 80 per cent since the mid 1980s. The decline is continuing. The causes are not completely understood.

- [342] Approximately four per cent of the total loggerhead turtle nesting population of eastern Australia nests on the beaches of the Sunshine Coast. The Sunshine Coast beaches are considered to be minor nesting sites. The major nesting areas (or rookeries) occur on the mainland coast from Mon Repos to Wreck Rock (on the Woongarra Coast), Wreck Island, Tyron Island and Erskine Island. There are also significant rookeries on Heron, Masthead and Lady Musgrave Islands and in the Swains Reef cays. More than 80 per cent of the nesting beaches for loggerhead turtles in Queensland are within protected estates such as national parks and conservation parks. Nevertheless, the experts agree that the Sunshine Coast beaches are important to the broader south-west Pacific population due to their endangered status. It is also considered that the Sunshine Coast beaches have the potential to become more important nesting beaches with increased temperatures under a changing climate.
- [343] The real issue in dispute is whether the proposed development will pose an unacceptable risk to the loggerhead turtle when females are nesting and when hatchlings are dispersing because of the potential light impact of the proposed development. The Appellants' case is founded on the opinion of Dr Hamann that:
- “... the level of darkness on the beach is integral for the breeding and hatchling behaviours of the loggerhead turtles. In particular, light pollution, even at low levels, is known to (1) influence the on-beach orientation, and nest site selection, of adult female turtles, (2) influence the on-beach orientation and sea finding behaviour of hatchling turtles and (3) influence the at-sea dispersal of hatchling turtles. In addition to directly visible lights, sky glow arising from artificial light, without the actual light sources being visible, will be disruptive to ocean finding behaviour of turtles and directly visible can be disruptive to ocean finding behaviour.”
- [344] SHC and the Council refute the Appellants' allegation. They say that the Court would be satisfied that the proposed development would not cause any unacceptable impacts on the loggerhead turtle on the basis of the conditions of approval imposed by the Council (as refined during this appeal) and the Master Sea Turtle Management Plan and Master Sea Turtle Lighting Plan.

What measures are proposed to address potential impacts on turtles?

- [345] Several aspects of the design of the proposed development address the potential impacts on turtles. First, the proposed development maintains a significant buffer between the tallest building and the dunes. The boundary of the subject land is about 120 metres landward of the toe of the vegetated frontal dune. In addition, the built form proposed in Stage 1 is further separated from the landward edge of the frontal dune by a beachside park and road, such that the buffer between the resort building and the toe of the frontal due will be approximately 180 metres. Second, it is proposed that existing beach access paths will be used so that there will be no new disturbances to the frontal dune. Further, the paths will not be lit at night. This will discourage night-time access to the beach. Third, the proposed development includes an education centre, at which educational material will be available in relation to the importance of the dune systems and dune vegetation and about marine turtles. The proposed development will also include educational signage along a coastal discovery trail, including at the beach access points. That material will be made available for residents via the body corporate and will be provided to hotel guests.
- [346] In addition, the decision notice issued by the Council includes the following conditions with respect to turtles:¹⁰³

- “44. At all times, the development must demonstrate that they maintain the existing established sky glow values for Yaroomba South as follows:
- (a) for Whole Sky and zenith, between 20 – 21 magnitudes/arcsec² (typical rural night sky horizon),
 - (b) for Horizon between 19 and 20 magnitudes/arcsec² (Typical suburban night sky horizon), and
 - (c) this is representative of results, under clear sky conditions with light levels measured at Yaroomba South on the Sunshine Coast.
45. As part of the first Operational Works application, a Master Sea Turtle Management Plan and Master Sea Turtle Lighting Plan must be submitted to Council for approval. The Master Sea Turtle Management and Lighting Plan must be prepared by a qualified Sea Turtle expert (tertiary qualified marine turtle biologist and member of IUCN Marine turtle specialist group) and must include the following:
- (a) at each stage of construction, the developer is to engage a consultant to prepare a pre and post construction Artificial Light at Night Survey to determine changes to light emissions from the development to the adjacent turtle nesting beach using the methodology and equipment described in Sunshine Coast Council and Moreton Bay Council’s Benchmark Artificial Light at Night Survey 2017.

The pre-construction Light Survey is to be undertaken prior to any site works commencing on site. The post-construction Light Survey is to be undertaken by the Master Developer’s on completion of each stage of the development. The Light Surveys

¹⁰³ Conditions 44, 45 and 46 are included as part of the preliminary approval. Conditions 157 and 158 are included as part of the development permit and are in similar terms to conditions 44 and 45 but with appropriate adjustments that reflect the fact that the condition is one attached to a development permit, rather than a preliminary approval.

are to be submitted to Council officers for their review and assessment. Should the post construction ‘as built’ audit identify that correctional actions are required, these are to be undertaken by the Developer.

- (b) the Developer must engage a contractor to incorporate biological data (hatchling sea finding behaviour) into the Artificial Light at Night Survey in order to demonstrate the impact to Marine Turtle Sea finding behaviour. This data can be accessed through a data request to the existing local turtle monitoring group.
 - (c) the Developer must engage a qualified Sea Turtle expert (tertiary qualified marine turtle biologist and member of IUCN Marine turtle specialist group) to develop in conjunction with the lighting engineer, a turtle friendly street lighting design that achieves the minimum light requirements for road traffic and pedestrian safety, and that meets the required skyglow requirements of this decision notice;
 - (d) development of compliance measures with which the development must comply.
 - (e) within the Master Sea Turtle plan, detail how the development will
 - (i) develop a public education program
 - a. to raise awareness and understanding of marine turtle nesting, impacts of artificial light at night, predators and human disturbance;
 - b. to work in partnership with Council and the local turtle monitoring group in the development of the Nature Trail
 - c. Support of the existing long term marine turtle monitoring program on the local coastline and including beaches from Point Arkwright to Tanah Street West of the project are, including a commitment to support local groups to continue to monitor Marine Turtle Sea finding behaviour
 - (f) ensure the Rooftop bar mitigates vertical light spill and reduces sky glow in accordance with the standards, in the condition immediately preceding, between October – May;
 - (g) no light directly visible from the beach both opposite the development and along the beach to the north and south;
46. All lighting within the site must be maintained in accordance with the approved Master Sea Turtle Management Plan and the approved Master Sea Turtle Lighting Plan. These plans must be included in the Community Management Statement for any body corporate for the subject site.”

[347] After the Second Marine Turtle Ecology (Including Lighting and Noise Impacts) Joint Experts’ Report, Ms Thorburn prepared a draft Master Sea Turtle Management Plan and Mr King prepared a draft Master Sea Turtle Lighting Plan. Their drafts were revised by all of the experts during the course of the third joint expert meeting. The revised plans are appended to the Third Marine Turtle Ecology (Including Lighting and Noise Impacts) Joint Experts’ Report. All of the experts agree that the plans respond to the conditions in the decision notice.

- [348] In the Third Marine Turtle Ecology (Including Lighting and Noise Impacts) Joint Experts' Report, the experts also considered the content of the conditions. All of the experts agree that the conditions should be amended in two respects. First, they recommend that the conditions be amended to require the collection of additional baseline data representative of conditions experienced during the turtles' nesting season, and with a sufficient sample size to provide a statistically relevant baseline. They recommend this be undertaken in accordance with the artificial light at night monitoring program outlined in the Master Sea Turtle Management Plan prepared by Ms Thorburn. They say this will more reliably describe the existing sky glow values. Second, the experts consider the expert qualifications required by the conditions are unduly restrictive. They recommend the conditions be amended to require the Master Sea Turtle Management Plan to be prepared by a tertiary qualified ecologist with a minimum of five years current experience in marine turtle or marine fauna assessment and management, quantitative ecology and design of monitoring programs. They say the Master Sea Turtle Lighting Plan should be prepared by a tertiary qualified engineer with a minimum of five years current experience in the field of lighting impacts on the environment and lighting design.
- [349] None of the parties suggested that the two suggested changes should not be made. I accept that the changes are appropriate. The conditions, as so amended, form part of the measures through which the proposed development will address potential impacts on turtles.

Does the design of the proposed development and the proposed conditions and management plans satisfactorily address potential impacts on turtles?

- [350] In forming their respective opinions about whether the proposed development satisfactorily addresses the potential risk to loggerhead turtles, the ecologists were informed by:
- (a) the conditions contained in the decision notice issued by the Council approving the proposed development, and the amendments to them that the experts agree are appropriate;
 - (b) assessments prepared by Mr Paul King, and reviewed by Ms Adams, in relation to:
 - (i) the potential impact of vehicle lights on levels of artificial light at night and hatchling behaviour at Yaroomba Beach;
 - (ii) site specific lighting screening. This assessment includes drawings, (sections and plans) that represent the built form of the proposed development relative to the frontal dune, beach and ocean. It facilitated assessment of potential for "line-of-sight" from turtles to the proposed development, specifically in relation to visibility of lighting and the physical screening available;
 - (c) the Master Sea Turtle Lighting Plan prepared by Mr Paul King, and Ms Adams' review of that plan;
 - (d) Dr Hamann's overview of current threats to loggerhead turtles;

- (e) turtle clutch data aggregated by beach prepared by Dr Hamann based on the combined dataset provided by Coolum and North Shore Coast Care and the Council;
- (f) an Updated Assessment of Impacts to Loggerhead Turtles prepared by Ms Thorburn; and
- (g) the Master Sea Turtle Management Plan prepared by Ms Thorburn.

[351] Having regard to that information, Ms Thorburn opines that the proposed development can be designed, constructed, and operated in a manner that avoids, minimises, and mitigates significant impacts to turtle nesting success and hatchling sea-finding and dispersal behaviour. She notes that the conditions provide for monitoring and triggers for corrective actions. Annual review of the plans will enable the incorporation of emerging knowledge of the ecology of loggerhead turtles. Dr Thorogood is of the same opinion.

[352] Dr Hamann acknowledges that the Master Sea Turtle Management Plan and the Master Sea Turtle Lighting Plan appended to the Third Marine Turtle Ecology (Including Lighting and Noise Impacts) Joint Experts' Report responds to the Council's conditions. He says that it guides how the development can be designed, constructed, and operated in a manner that reduces impacts to turtle nesting success, and hatchling sea-finding. He acknowledges that the plans and conditions detail proposed monitoring and triggers for corrective actions. He accepts that an annual review of the plans will enable the incorporation of emerging knowledge of the ecology of loggerhead turtles, monitoring techniques and incorporation of new lighting technology. However, Dr Hamann opines that the assessment is insufficient to demonstrate that the proposed development does not pose an unacceptable risk to the loggerhead turtle. He opines that the combined impacts and cumulative effects of increased light levels and human beach use arising from the proposed development will lead to reduced nesting success and increased rates of mis-orientation and dis-orientation of hatchlings emerging from clutches laid at Yaroomba Beach. He says that impact is unacceptable because there is a real chance that it will add to the existing pressures on turtles laying at Yaroomba and on the broader population of loggerhead turtles. He says the proposed development will impede the long-term maintenance of the species and interfere with local, State, national and international efforts to recover the species.

[353] Dr Hamann's opinion is informed by his concern about dune height and vegetation profiles. He says the plans prepared by Mr Paul King assume that the dune height and vegetation profile are high enough to prevent direct light spill and sky glow from being visible on the beach and out to sea for 100 metres. Dr Hamann does not believe the assumption to be valid. He says that the dune and vegetation profiles have not been adequately mapped and their heights have not been established using suitable technology. He says it is clear from visiting the beach that vegetation density is variable, dune height is not consistent along the development area, and re-vegetation work would take decades to establish. In addition, he says that sand dune systems are dynamic and can be strongly influenced by local and regional events that alter vegetation structure and health and lead to changes to dune height and structure. Dr Hamann considers that the absence of monitoring of dune profiles and vegetation density and heights is a shortcoming of the Master Sea Turtle

Management Plan and the Master Sea Turtle Lighting Plan. He considers that quantifying and improving vegetation density are important aspects of monitoring.

- [354] Dr Hamann's observations about variability in the dune height and vegetation profile is consistent with the photographs of the area and with what I viewed during a site inspection. Despite that, I prefer the evidence of Mr King to that of Dr Hamann about the adequacy of the existing dune height and vegetation profile to prevent direct light spill impacts.
- [355] The existing buffer between the subject land and the beach is presently over 100 metres in width. It provides a physical buffer comprising sand dunes with vegetation cover, including trees and dense foliage. Mr King opines that this buffer provides a significant degree of protection to light spill or visibility of light from the beach and near beach areas out to sea. Mr King illustrates the basis of his opinion in Figure 5 in Appendix C to the Marine Turtle Ecology (Including Lighting and Noise Impacts) Joint Experts' Report. As noted by Dr Hamann, that figure shows the dune and vegetation canopy at a particular assumed height.
- [356] Subsequent to the production of the joint expert reports, Mr Paul King prepared an individual statement of evidence. It provides further detail about dune height and vegetation. In Attachment 2 to his statement, Mr King includes a long section prepared from available LIDAR topographic data to demonstrate the height of the existing dune along the frontage of the subject land to Yaroomba Beach. It also maps the heights of vegetation on the dune areas between the Stage 1 development area and the beach. That mapping was prepared from point cloud LIDAR information. Mr King also provides 3D renders to demonstrate the dune and vegetation heights relative to the natural surface of the development site adjacent. Mr King opines that this further information demonstrates that the existing dune and vegetation provides a continuous, solid screen between the beach and the Stage 1 development site.
- [357] I accept Mr King's analysis, and his opinion that the dune height and vegetation profile prevent direct light spill and sky glow from being visible on the beach and from near beach areas. His evidence in this regard is consistent with Mr Elliott's photomontages, which demonstrate that the proposed built form, including the seven-storey hotel, will not be visible from the beach due to the intervening dune and vegetation. Although the photomontages show that the proposed development will be slightly visible from 50 metres out to sea and will be visible from 100 metres out to sea, it assumes a vantage point two metres above the line of the water. This does not demonstrate a direct light impact to turtles, which will be at or below the surface of the water. Having regard to the evidence of Mr King, I am satisfied that the height of the dunes themselves provide physical screening of light impact. The vegetation is ancillary to that.
- [358] I am assisted with respect to the dynamic nature of sand dunes by the evidence of Dr Thorogood. In his individual statement of evidence, Dr Thorogood examines historical beach profile data for the beaches and dunes of the Sunshine Coast. He also considers the erosion potential of the area and its capacity to recover from erosion events. Based on his analysis of historical beach profile data and historical aerial imagery, Dr Thorogood opines that the beaches and dunes of the Sunshine Coast in general, and the Yaroomba Beach region in particular, have been essentially stable over time. He identifies a long-term trend of minor erosion and

predicts shoreline recession of approximately 1.1 metres by 2060 near Yaroomba. He says that climate change and sea-level rise are likely to result in increased erosion of the beach and frontal dune system but says that because of the width of the dune system and its historical stability, the dunes are unlikely to be lost this century. Dr Thorogood opines that where the dune system is lost, the issue of light impacting turtle nesting habitat will be academic as it would be unlikely that any such habitat would remain. Dr Thorogood's opinions on this issue were supported by his analysis, which was unchallenged. I accept his opinions.

- [359] I accept that vegetation density will vary over time. As was noted by Dr Thorogood during his cross-examination, as a living community, the vegetation on the dunes is constantly changing. Consequently, while the pandanus trees are currently suffering a form of dieback, that provides resources, spaces, nutrients and light for other species to take advantage, providing a continual regeneration of vegetation communities. He opines that there are not circumstances present that indicate that it is likely that there will be diminution of the vegetation on the dunes. I accept this evidence.
- [360] Dr Thorogood's evidence about vegetation on the dunes causes me to doubt Dr Hamann's view that re-vegetation work would take decades to establish. So does Dr Hamann's comment during cross-examination that he is not a coastal geologist, nor an expert in botany or geomorphology. Dr Hamann said he does not know about dunes and vegetation in exact terms.
- [361] Dr Hamann's views about the dunes and the vegetation also do not appear to take account of the measures proposed by the development to maximise protection of the dunes and dune vegetation in the State reserve. Those measures include planting of additional screening vegetation (using appropriate tree species) between the dune and the development, such as along the eastern edge of the proposed beachside park and coastal pathway. It also includes and the reporting of any breakages or problems with dune fencing or beach access paths to the Council to facilitate their timely repair and to discourage people from accessing the dunes other than via the two designated access paths. These positive aspects of the proposed development will enhance this ecologically important area.
- [362] In any event, as I have noted above, I am satisfied that it is the height of the dunes, rather than the vegetation on them, that provide the significant screening of light impact, and that the dunes are relatively stable.
- [363] Having regard to the evidence of Mr King and Dr Thorogood outlined in paragraphs [353] to [362] above, which I accept, I do not share Dr Hamann's concerns with respect to potential variability of dune height and vegetation profiles.
- [364] Dr Hamann also questions the adequacy of the light assessment. He says the assessment is not quantitative and is not statistically robust. He notes that the assessment does not present data on expected wavelength and intensity of both the expected direct light level or expected sky glow from the proposed development and activities associated with it. He says that the existing studies of artificial light levels along the Sunshine Coast do not provide a robust analysis of existing light levels. As such, he says there is no empirical basis to support statements by Mr King and Ms Adams that light pollution from the proposed development will be low, within existing levels, similar to other development and that they can be managed.

- [365] Dr Hamann is not supportive of the rooftop bar in particular. It is a covered area on level 5 of the hotel building, which links to two terrace areas via a feature walkway. The terrace areas are open to the sky. They are to be used for functions and for a viewing terrace. The architectural design identifies that a roof element above the rooftop bar area will be a pergola type structure that will be lined with glass or similar material to provide shelter from the weather whilst allowing natural light to penetrate during the day. The use area of the covered rooftop bar is approximately 157 square metres. The uncovered terrace areas comprise 105 square metres and 80 square metres. The rooftop bar and associated terraces are located towards the western edge of the resort, in part separated from the beach by the taller main hotel building. Those areas are proposed to be subject to restrictions on upwards light spill. Dr Hamann says increased sky glow resulting from the bar will be challenging to avoid. He regards elevated lights as one of the main contributors to sky glow 100 metres out to sea.
- [366] I do not accept the evidence of Dr Hamann about the adequacy of the lighting assessment or about the impact of the proposed development (including the rooftop bar) on sky glow. He has no qualifications or experience in relation to lighting engineering. He is not an expert with respect to such matters.
- [367] I was assisted by the evidence of Mr Paul King and Ms Adams with respect to the lighting impact of the proposed development on the beach and on sky glow. They consider each of the potential lighting sources within the proposed development, including lighting associated with vehicle headlights, street lighting, outdoor lighting, and indoor lighting. Their evidence also considers the proposed management and control of each source, and the effectiveness of such measures. The Master Sea Turtle Lighting Plan prepared by Mr King addresses each potential light source.
- [368] In the Second Marine Turtle Ecology (Including Lighting and Noise Impacts) Joint Experts' Report, Mr King and Ms Adams each opine that the proposed development can be designed, constructed, and operated to control lighting impact on sky glow. They say it can be controlled to maintain lighting levels within the background levels for the Sunshine Coast and to prevent direct light being visible from the beach and near beach areas. Mr King and Ms Adams opine that the proposed mitigation measures are not impractical, nor difficult to enforce.
- [369] Mr King specifically addressed the lighting considerations associated with the rooftop bar in his individual statement of evidence. In that report, Mr King addresses Dr Hamann's concern that the lighting impact associated with the rooftop bar will result in unacceptable impacts, particularly due to its contribution to sky glow. Mr King opines that these level use areas can be lit in a manner that controls sky glow and prevents direct light visibility from the beach or near beach area. He says this can be achieved through appropriate design measures such as use of surface finishes with low light reflectance and use of lighting that comprises distributed luminaires of low luminance with low blue light components. Task lighting can be required to be down lit and, if necessary, opaque roof elements can be incorporated to prevent upward light spill and sky glow contribution.
- [370] In his individual report, Mr King opines that the design requirements reflected in the conditions and required through implementation of the Master Sea Turtle Lighting Plan will ensure that sky glow measured from the beach will be maintained within

the ambient ranges that presently occurs. Mr King notes that as part of the design process, the conditions and the Master Sea Turtle Management Plan and Master Sea Turtle Lighting Plan will require detailed field measurements of sky glow to be undertaken prior to development. This will establish the baseline values that will then inform the design elements required to be incorporated into the built form and lighting systems so that sky glow is maintained within current ambient ranges. Mr King opines that suitable monitoring can be conducted to ensure that minimal sky glow impact is achieved and managed at all times. He explains the basis of that opinion. In particular, he notes that the monitoring provides measurable outcomes that then inform the operational parameters for lighting. The Master Sea Turtle Lighting Plan provides a mechanism to ensure that any necessary changes are made to lessen potential impact.

- [371] The Appellants submit that Mr King's evidence should not be accepted as he is not a marine turtle expert. I accept that is a basis not to accept his opinion that there will be no unacceptable adverse impacts on marine turtles. However, it is not a basis to reject his opinion about impact on sky glow or direct light visibility from the beach or from the sea near the beach. These are matters about which he and Ms Adams are eminently qualified to express opinions, and about which Dr Hamann is not so qualified. I also do not accept the Appellants' assertion that Mr King's ability to form an opinion was hampered by the fact that he did not have access to the lighting standards required by the Westin. Although the Westin may be a likely operator of the resort, the development approval is not so confined. Further, and in any event, whichever entity operates the resort, it will be obliged to comply with the conditions of the development approval.
- [372] Ms Adams opines that the memorandum prepared by Mr Paul King that is appended to the turtle impact assessment report is based on practical science and demonstrates that direct light will not reach the beach or adjoining waters for approximately 100 metres seaward of the beach. She also says the proposed control measures to minimise glare and sky glow are predicted to maintain lighting levels within the background levels for the Sunshine Coast. As such, she says the proposed development will not adversely affect the lighting levels at Yaroomba Beach.
- [373] I accept the evidence of Mr King and Ms Adams. Their opinions are informed by their considerable knowledge and experience with respect to such matters, and their careful and considered review of the design and operation of lighting. Having regard to their evidence, I am satisfied that the proposed development will not adversely impact the lighting levels at Yaroomba Beach, nor will it have a significant impact on sky glow. For the reasons provided in paragraphs [364] to [372] above, I do not share Dr Hamann's concerns with respect to the adequacy of the assessment of lighting impact. Although the baseline measures have not yet been ascertained, I am satisfied that the proposed development can satisfactorily address impact on those baselines, whatever they are. Further, as was conceded by Dr Hamann, his concerns about the monitoring program (assuming they were valid) could be satisfactorily addressed by the imposition of conditions. I am not persuaded that it is necessary to change the conditions, but I also see no reason not to if the Council and SHC agree that it is appropriate to change the conditions to address Dr Hamann's concerns.
- [374] Dr Hamann's opinion is also premised on his view that the proposed development will result in an increased human population of both residents and visitors at

Yaroomba Beach. He says that it is likely that people will disturb or interfere with female turtles nesting (resulting in a decrease in nesting success) and with hatchlings as they emerge. I do not accept that the proposed development materially increases the prospect of interference with female turtles nesting or with emerged hatchlings for two reasons.

- [375] First, during cross-examination, Dr Hamann accepted that nesting activity generally occurs between dusk and midnight. It is less likely that the proposed development will increase the number of people on the beaches during those hours, particularly as there will be no increase in the number of accesses to the beach and the existing accesses will not be lit.
- [376] Second, while the turtle hatchlings might emerge at any time, the proposed development satisfactorily addresses the risk of interference with hatchlings by residents and visitors through its education program referred to in paragraph [345] above.
- [377] For the reasons provided in paragraphs [353] to [376] above, I do not accept Dr Hamann's opinion that the combined impacts and cumulative effects of increased light levels and human beach use arising from the proposed development will lead to reduced nesting success and increased rates of mis-orientation and dis-orientation of hatchlings emerging from clutches laid at Yaroomba Beach.
- [378] Even if I accepted Dr Hamann's views about those matters, I do not accept his opinion that the proposed development will have an unacceptable impact on loggerhead turtles by impeding the long-term maintenance of the species and interfering with local, State, national and international efforts to recover the species for five reasons.
- [379] First, even if Yaroomba Beach were to experience direct light impacts as a result of the proposed development (which for the above reasons is not accepted), I do not accept that such an impact would result in a failure of turtles to nest on Yaroomba Beach and the Sunshine Coast. During cross-examination, Dr Hamann acknowledged that nesting activity has occurred at Yaroomba Beach adjacent to urban development.
- [380] Further, Ms Thorburn opines that there is no obvious relationship between nest beach selection for loggerhead turtles and the density of adjacent development. She also opines that there will not be any unacceptable impact on turtle hatchling orientation posed by the proposed development as there will be no lights visible on the beach and sky glow will be conditioned to be within background levels. I accept her opinion. The evidence in her individual statement of evidence supports it. In that statement Ms Thorburn provides a detailed analysis of some of the most popular beaches for turtle nesting on the Sunshine Coast, being Shelly Beach, Buddina Beach, and Sunshine Beach. She also provides a detailed analysis of Dicky Beach, Yaroomba Beach, Discovery Beach, and Peregian Beach. With respect to each beach, Ms Thorburn records the buffer distance between the toe of the frontal dune (where loggerhead turtles nest) and the adjacent development, the nature of the development, and the extent to which direct lights were visible and sky glow was evident. Ms Thorburn provides photographs of each of the beaches that show the extent of foot traffic, and photographs taken at night to assist in explaining her evidence about the relative extent of light impact for each of the beaches.

Ms Thorburn also considers available turtle nesting data, including available data about nest fans.¹⁰⁴ Her analysis demonstrates that the popular nesting beaches at the Sunshine Coast either experience direct light impacts or have the potential to experience direct light impacts. They also experience significant foot traffic. Despite this significantly greater degree of lighting impact and foot traffic than I would expect associated with the proposed development, Shelley Beach and Buddina Beach are two of the most popular turtle nesting beaches on the Sunshine Coast. From 2007 – 2018, Shelley Beach had 149 recorded successful nesting attempts, Buddina North had 103 and Buddina South had 77. In comparison, Yaroomba Beach had 14 successful nesting attempts.

- [381] Dr Thorogood also presented evidence to similar effect. He provided photographs of Shelley Beach and Buddina Beach that show those beaches have a significant degree of urban development immediately adjoining (and far more proximate to the beach than the proposed development). At Shelley Beach, there is no buffer between houses and the dunes. There is a slightly greater degree of separation between the dunes and the built form at Buddina North, but at that location, the residential towers would shed direct light onto the beach. Dr Thorogood's photographs of those beaches show that Shelley Beach and Buddina Beach experience significant foot traffic. Dr Thorogood's evidence was consistent with that of Ms Thorburn. It supports the opinions expressed by Dr Thorogood and Ms Thorburn.
- [382] Unlike Ms Thorburn and Dr Thorogood, in forming his opinions Dr Hamann undertook no analysis of the relative light impacts or the relative extent of foot traffic on the beaches of the Sunshine Coast. During cross-examination, he confirmed that he had only visited the subject land on two different days and two different nights. He did not inspect Yaroomba Beach at night during nesting season. He also had not visited Shelley Beach or Buddina Beach at night, nor visited Sunshine Beach at all for the purposes of preparation for the appeal. He had made no attempt to ascertain the extent of impact from direct light and sky glow at the beaches on the Sunshine Coast. Instead, he claims that it is not possible to opine, as Ms Thorburn does, that the proposed development will have a negligible impact on sky glow as compared to light visible at other places such as Coolum, Maroochydore, Mooloolaba and Caloundra. His opinion in this respect rests on the absence of baseline data about measured artificial light. I do not accept his evidence. I accept it may be possible to assess the relative "darkness" of areas from observations alone and that such an assessment is possible for the beaches of the Sunshine Coast. I accept the evidence of Ms Thorburn about the relative "darkness" of Yaroomba Beach. Her evidence accords with that contained in the statements of the locals.
- [383] The second reason I do not accept Dr Hamann's opinion is because it does not accord with his acceptance that the proposed development is consistent with the approach identified as appropriate in relevant literature. Dr Hamann accepts that relevant literature identifies that artificial light does not need to be eliminated, only minimised. Development can proceed with proper light management. That approach is reflected in the Commonwealth Government's *Recovery Plan for*

¹⁰⁴ Nest fans indicate how far hatchlings fan out from the nests. It provides an indication of mis-orientation and disorientation.

Marine Turtles in Australia.¹⁰⁵ During cross-examination, Dr Hamann accepted that the Master Sea Turtle Management Plan and the Master Sea Turtle Lighting Plan accord with the goals in the *Recovery Plan for Marine Turtles in Australia*. He also accepted that, consistent with the *Recovery Plan for Marine Turtles in Australia*, the measures proposed by Mr King are best practice light management techniques that will be reviewed regularly. Dr Hamann also accepted that Mr Paul King's work complied with the performance outcomes in the *Sea Turtle Sensitive Area Code: A Model Code for Local Government* released by the Queensland Government in May 2019. Dr Hamann also took no issue with compliance with the *DRAFT Light Pollution Guidelines: National Light Pollution Guidelines for Wildlife*,¹⁰⁶ which Mr King refers to in his individual statement of evidence.

- [384] Third, Dr Hamann's opinion seems exaggerated and out of step with facts agreed by the turtle experts. The experts agree that a relevant factor for recovering the loggerhead turtle is increasing survivorship and recruitment. In this respect, 70 per cent of nests producing 70 per cent of hatchlings is considered appropriate to retain a stable population. Currently, the Sunshine Coast hatchling success rate is at 74 per cent. Further, Yaroomba Beach and the Sunshine Coast generally play a relatively small role in maintaining the stocks of loggerhead turtles in this part of the world. Yaroomba Beach only supports approximately 0.2 per cent of the clutch's lay in any given year for the South-West Pacific stock of loggerhead turtles. I accept the opinion of Dr Thorogood that whatever happens at Yaroomba Beach is unlikely to, in any substantive way, affect the state of the stock for the loggerhead turtle in the South-West Pacific. In fact, the overall number of clutches recorded in each nesting season north of the Maroochy River and for the Sunshine Coast generally has improved over the last decade.
- [385] Fourth, I do not accept the submission by Mr Hack QC that Dr Hamann's opinions should be accepted because he is the best qualified turtle expert from whom I heard evidence. He is a marine biologist specialising in turtles. Ms Thorburn and Dr Thorogood do not have the same degree of specialisation, but they are qualified to express the opinions that they have. The relative extent of Dr Hamann's experience as compared to that of Ms Thorburn and Dr Thorogood does not of itself make his opinion more compelling. As was observed in *Makita (Australia) Pty Ltd v Sprowles*,¹⁰⁷ expert witnesses, however skilled or eminent, can give no more than evidence. Their evidence need not be accepted if the expert does not persuade the Court that it is based on a sufficiency of research directed accurately and relevantly to a particular issue. The Court needs to be convinced of the fundamental soundness of the opinion. I am so persuaded in relation to the opinions expressed by Ms Thorburn and Dr Thorogood, but not with respect to the opinions expressed by Dr Hamann.
- [386] For the reasons already provided in paragraphs [340] to [385] above, I am persuaded that the opinions of Ms Thorburn and Dr Thorogood are founded on

¹⁰⁵ Department of Environment and Energy, 2017, 'Recovery Plan for Marine Turtles in Australia', Commonwealth of Australia, Canberra.

¹⁰⁶ Department of the Environment and Energy, 2019, 'DRAFT Light Pollution Guidelines: National Light Pollution Guidelines for Wildlife: Including marine turtles, seabirds and migratory shorebirds', Commonwealth of Australia, Canberra.

¹⁰⁷ [2001] NSWCA 305, (2001) 52 NSWLR 705, 729-30 [59]-[60] citing Lord President Cooper and Lord Russell in *Davie v Lord Provost, Magistrates and Councillors of the City of Edinburgh* 1953 SC 34 at 39-40 and 42 respectively.

research directed accurately and relevantly to the impact of the proposed development, whereas I am not so persuaded with respect to Dr Hamann's opinions. I am also persuaded in this regard by the fact that the opinions of Ms Thorburn and Dr Thorogood accord with the quantitative assessment of residual risk posed by the proposed development taking account of the proposed management measures undertaken by Ms Thorburn in her individual statement of evidence, which I accept for the following reasons.

- [387] Ms Thorburn prepared the risk assessment in response to Dr Hamann's criticism that she did not include a quantitative risk assessment in her report "*Updated Assessment of Impacts to Loggerhead Turtles, Yaroomba Beach*". The Second Marine Turtle Ecology (including Lighting and Noise Impacts) Joint Experts' Report reviewed that assessment. Ms Thorburn subsequently prepared a qualitative risk assessment in accordance with the Commonwealth *Matters of National Environmental Significance – Significant Impact Guidelines 1.1*,¹⁰⁸ the Queensland *Environmental Offsets Policy, Significant Residual Impact Guideline* (Section 5, Protected Wildlife Habitat),¹⁰⁹ and the recently published Draft National Light Pollution Guidelines. She appended it to her individual statement of evidence. It identifies the hazards associated with each activity associated with the proposed development, and their likelihood and consequence in the context of the South-West Pacific population of loggerhead turtles. The key impacting processes assessed are direct disturbance of nesting habitat, light pollution (including the potential for directly visible light and increased sky glow), increased human population, and increased predation of clutches. Ms Thorburn classifies the risk as low. Dr Thorogood reviewed Ms Thorburn's assessment and opines that once the proposed mitigation measures are in place, the inherent risks of an unmitigated development will be modified so that the residual risk is low. Ms Thorburn was not challenged about that quantitative analysis. Dr Hamann did not point to any defect in the risk assessment.
- [388] The opinions of Dr Hamann do not accord with Ms Thorburn's risk assessment. During cross-examination, Dr Hamann accepted that he has not undertaken any quantitative risk assessment, despite having agreed in the first joint expert report that it was appropriate to address the risk by reference to the Commonwealth *Matters of National Environmental Significance – Significant Impact Guidelines 1.1* and the Queensland *Environmental Offsets Policy, Significant Residual Impact Guideline* (Section 5, Protected Wildlife Habitat).¹¹⁰ Rather, his opinions are based on his subjective assessment. As is recorded at paragraph 12 of the Second Marine Turtle Ecology (including Lighting and Noise Impacts) Joint Experts' Report, Dr Hamann regards the proposed development as posing an unacceptable risk to the

¹⁰⁸ Department of Environment, 2013, 'Matters of National Environmental Significance – Significant Impact Guidelines 1.1, *Environmental Protection and Conservation Act 1992*', Commonwealth of Australia, Canberra.

¹⁰⁹ Department of Environment and Heritage Protection, 2014, 'Queensland Environmental Offsets Policy, Significant Residual Impact Guideline: *Nature Conservation Act 1992, Environmental Protection Act 1994, Marine Parks Act 2004*', December 2014, State of Queensland, Brisbane.

¹¹⁰ The substance of these guidelines was summarised in Table 4.1 and each item in the guidelines was assessed by Ms Thorburn in her Updated Assessment of Assessment to Loggerhead Turtles, Yaroomba Beach that as appended to the Second Marine Turtle Ecology (including Lighting and Noise Impacts) Joint Experts' Report. As I have noted above, in her individual statement of evidence, Ms Thorburn then undertook a quantitative risk assessment using the matrix developed under the Commonwealth guidelines and consistently with the recently published Draft National Light Pollution Guidelines

South Pacific stock of the loggerhead turtle “*because the stock has declined by 80% since the mid 1980s.*” He notes that the decline is continuing. Dr Hamann’s contributions to the joint expert reports, his individual statement of evidence, and his oral testimony left me with the indelible impression that Dr Hamann’s opinion that the risk is unacceptable was, in large measure, underpinned by the very existence of the decline, rather than a meaningful heightened risk attributable to the proposed development.

[389] Fifth, there is evidence that the proposed development would provide benefits to the habitat of the loggerhead turtle. As I have already identified in paragraph [345] above, the proposed development will provide education to guests and residents about the importance of the dune systems and dune vegetation as part of the education material that contributes to the proposed development’s advanced ecotourism rating. It will also result in the planting of additional screening vegetation of appropriate tree species between the dune and the proposed development, for example along the eastern edge of the proposed beachside park and coastal pathway. In addition, the proposed development will facilitate the reporting of any breakages or problems with the dune fencing or beach access paths to the Council to facilitate timely repair and discourage people from accessing the dunes other than via the two designated access paths. The developer will complete any necessary repairs to the dune fencing on the boundary of the subject land immediately. Dr Hamann acknowledges that each of these matters is a positive aspect of the proposed development. I agree. The oral testimony of Mr Arno King highlighted the importance of education and monitoring fencing and access paths. He gave evidence of having walked over the privately owned Yaroomba parabolic dune because he assumed that it was there for public access – a view encouraged by local residents.

[390] Having regard to the matters outlined in paragraphs [379] to [389] above, I do not accept Dr Hamann’s opinion that the proposed development will pose a significant risk to loggerhead turtles and will adversely impact habitat critical to the survival of the species.

Conclusion regarding compliance with the Biodiversity, waterways and wetlands overlay code

[391] For the reasons provided in paragraphs [334] to [390] above, I am satisfied that the proposed development complies with the purpose of the Biodiversity, waterways and wetlands overlay code and overall outcomes (2)(a) to (d) and performance outcomes PO2 and PO4.

Does the proposed development comply with the environmental impact requirements of the Strategic framework?

[392] The Appellants allege that the proposed development does not comply with s 3.7(4), s 3.7.1(f) and s 3.7.2.1(a) and (b) of the Strategic framework.

[393] Section 3.7(4) states:

“Avoidance of, or if avoidance is not practicable, minimisation and mitigation of, the individual and cumulative impacts of development on the natural environment.”

- [394] That provision forms part of the summary of the key concepts contained in Part 3.7 of the Strategic framework. It acknowledges that complete avoidance of the individual and cumulative impacts of development on the natural environment is not mandated. For the reasons provided in paragraphs [338] to [390] above, the proposed development does not cut across this key concept.
- [395] Section 3.7.1(f) is set out in paragraph [282] above. I refer to my observations in paragraphs [283] and [284] above about it. For the reasons provided in paragraphs [338] to [390] above, I am satisfied that the proposed development complies with the planning intent that the natural environment is protected and enhanced in a way that maintains and improves biodiversity, ecological processes, habitat and habitat connectivity.
- [396] Section 3.7.2.1(a) and (b) of the Strategic framework are specific outcomes. They form part of the implementation framework. They state:
- “(a) Development is located, designed and constructed and operated to avoid, as far as practicable, or where avoidance is not practicable, minimise and mitigate, adverse impacts on the *ecologically important areas* identified conceptually on **Strategic Framework Map SFM5 (Natural environment elements)** which include remnant and regrowth native vegetation, riparian areas and natural *waterways, wetlands* and waterbodies.
 - (b) Habitat for endangered, vulnerable, rare and other regionally and locally significant flora and fauna species is protected and enhanced with mitigations measures for species recovery implemented.”
- [397] I do not accept the Appellants’ submission that the proposed development will not enhance the natural environment as the subject land is a derelict site. I identify further means by which the proposed development enhances the natural environment in paragraph [389] above.
- [398] I also do not accept that SHC’s approach is that it does not matter if harm is done to the nesting habitat of the endangered loggerhead turtle at Yaroomba Beach because the turtles can use other beaches. This allegation by the Appellants is unsubstantiated. In addition, I do not accept the Appellants’ assertions that the proposed development will have an adverse impact on the loggerhead turtle or its habitat for reasons already provided.
- [399] For the reasons provided in paragraphs [393] to [398] above, and the matters identified in paragraphs [338] to [390] above, I am satisfied that the proposed development complies with the environmental impact requirements of the Strategic framework with which the Appellants allege non-compliance.

Does the proposed development comply with the environmental impact requirements of the Emerging community zone code?

- [400] The Appellants allege that the proposed development does not comply with the purpose in s 6.2.17.2(1)(d) of the Emerging community zone code. It is set out in paragraph [103] above.
- [401] For the reasons provided in paragraphs [338] to [390] above, I am satisfied that the proposed development will provide a best practice benchmark for ecological sustainability and the implementation of environmental enhancement and

rehabilitation programs. The turtle and lighting experts all agree that the proposed development is superior to that which was proposed in the Hyatt preliminary approval. That the proposed development provides a best practice benchmark is also indirectly supported by a comparison between the proposed measures and conditions for the subject development and those for the proposed residential and tourism development at Beach Drive, Nicklin Way and Wurley Drive at Bokarina Beach.¹¹¹

Does the proposed development comply with the environmental impact requirements of the Coolum local plan code?

[402] The Appellants allege that the proposed development does not comply with overall outcomes (2)(k) and performance outcome PO16(j) of the Coolum local plan code. They are set out in paragraph [181] above.

[403] For the reasons provided in paragraphs [338] to [390] above, I am satisfied that the proposed development complies with the requirements of these provisions.

Conclusion regarding the risk the proposed development poses to the loggerhead turtle?

[404] For the reasons provided above, I am satisfied that the proposed development would not pose an unacceptable risk to the loggerhead turtle, and that it complies with the relevant assessment benchmarks in this regard.

What are the relevant matters relied on by the parties?

[405] The Appellants raise a number of relevant matters that they say support their position that the development application should be refused. SHC and the Council raise relevant matters to contend the development application should be approved. Together, those relevant matters raise an additional thirteen questions for consideration.

1. Will there be an unacceptable traffic impact by reason of the amount of traffic generated, the design of the external roadworks and the quantum of parking proposed?
2. Will the scale, bulk and nature of the proposed development exceed reasonable community expectations?
3. Does the extent of community opposition, and the substance of it, support refusal of the proposed development?
4. Does the loss of submission rights for future stages support refusal of the proposed development?
5. Will the proposed development advance the purpose of the *Planning Act 2016* having regard to the risk to the loggerhead turtle?
6. Is the proposed development supported by an economic, planning or community need?

¹¹¹ That development was determined to be a ‘not controlled action’ under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

7. Will the proposed development provide economic benefits to the locality, region and State that support its approval?
8. Will the proposed development increase tourism and economic activity in the locality and the region that supports the investment in the Sunshine Coast Airport?
9. Can the proposed development be provided without any unacceptable impacts?
10. Does the Hyatt preliminary approval support an approval of the proposed development?
11. Do the locational attributes of the subject land and the design response to it support approval?
12. Is the proposed development consistent with objectives and planned outcomes in the South East Queensland Regional Plan 2017, the *Regional Economic Development Strategy 2013-2033* and the *Tourism, Sport and Leisure Industry and Investment Plan 2014-2018*?
13. Is it within the public interest for the proposed development to be approved?

[406] I address each of these issues below.

Will there be an unacceptable traffic impact?

[407] The Appellants allege that the proposed development will have an unacceptable traffic impact because of the amount of traffic generated, the design of the external roadworks and the quantum of parking proposed.

[408] I address the traffic issues raised by the Appellants in detail in paragraphs [307] to [330] above. For the reasons provided therein, I am satisfied that the proposed development will not have an unacceptable traffic impact. To the contrary, I am satisfied that the proposed intersection upgrades will mean that the proposed development will result in net benefits to the community that support approval of the proposed development.

Will the scale, bulk and nature of the proposed development exceed reasonable community expectations?

[409] The Appellants submit that the proposed development exceeds the reasonable community expectations due to its size, bulk, and nature. They accept that the reasonable expectations of the community regarding amenity should be informed by an objective reading of the applicable town planning controls.¹¹² I agree.

[410] In paragraphs [297] to [300] above, I outline the relevant principles with respect to reasonable community expectations.

[411] The Appellants submit that regard should also be had to the Hyatt preliminary approval and the planning controls contained therein, as it is a development

¹¹² *Ashvan Investments Unit Trust v Brisbane City Council* [2019] QPEC 16; [2019] QPELR 793, 824 [153].

approval that overrides the Planning Scheme that is current for the subject land. I agree. I have addressed the relevance of it in paragraphs [517] to [524] below.

- [412] I do not accept the submission of the Appellants that the lay witness statements tendered by the First Appellant make it clear that the proposed development is inconsistent with the reasonable expectations of the community for the reasons provided in paragraphs [297] to [303] above and otherwise because of my findings that the proposed development complies with the assessment benchmarks.

Does the loss of submission rights for future stages support refusal of the proposed development?

- [413] One component of SHC's development application seeks to vary the effect of the Planning Scheme in the manner outlined in paragraphs [20] to [29] above. In paragraphs [14] and [15] above, I outline the Court's decision making powers with respect to that part of the application, and the matters that are relevant to the exercise of the Court's broad discretion. One of the factors relevant to the exercise of discretion is:

“the effect the variations would have on submission rights for later development applications, particularly considering the amount and detail of information included in, attached to, or given with the application and available to submitters.”

- [414] Here, in the document identifying relevant matters in support of refusal, the Appellants rely on an alleged loss of submission rights pursuant to s 61(2) of the *Planning Act 2016* should the proposed development be approved. They made no submissions in support of their allegation.
- [415] If SHC's development application is approved, including its application for a preliminary approval (or variation request), future applications for development to facilitate use of the subject land for a mixed use hotel, commercial and residential development will not be subject to the public notification process associated with an impact assessable development application. As such, it will not be subject to further input from the public. I do not consider that this is sufficient to warrant refusal of SHC's variation request for three reasons.
- [416] First, the application now being considered by the Court is in materially the same terms as that which was publicly notified. Throughout both the development application process and this appeal, SHC has always sought approval for a mixed use hotel, commercial and residential development. SHC's publicly notified application also made it clear that it proposed to vary the Planning Scheme such that the detailed design of the development, for Stage 2 onwards, would be subject to code assessment only. That continues to be the case.
- [417] Second, the detail provided was sufficient to permit the community to appreciate the nature and extent of changes proposed. It is apparent from the submissions put before me that there was an appreciation of the nature of the proposed development that may occur as code assessable development, and the community took the opportunity to make submissions about whether such development was appropriate.
- [418] Third, there is a degree of commonality between the assessment benchmarks against which the proposed development has been assessed, and those against which a future code assessable development application would be assessed. A decision to approve that part of the development application that seeks a preliminary approval

that varies the effect of the Planning Scheme would not avoid the need to undertake a further assessment against many of the provisions that have been in issue in this proceeding.

- [419] I am satisfied that the nature and extent of SHC's proposed development was sufficiently identified to enable any concerned person to lodge an informed submission. To the extent that the Appellants maintain this relevant matter, it is not persuasive.

Does the extent of community opposition, and the substance of it, support refusal of the proposed development?

- [420] The Appellants submit that the nature and extent of community opposition to the proposed development is a particularly important consideration given the provisions of the Planning Scheme that seek to preserve the individual identity of local communities.
- [421] The proposed development was publicly notified on two occasions. The first period of public notification commenced on 23 October 2017. The second commenced on 16 November 2017 following an error in the first round of public notification. During the public notification periods, a total of 12 306 submissions were received in respect of the development application. Of those, 11 666 were considered by the Council to be properly made submissions.
- [422] Mr Schomburgk analysed the submissions and provided his analysis at Attachment G of the Joint Experts' Report – Town Planning. His analysis was not challenged. Further, exhibit 39 contains an analysis of the submissions received from the second round of public notification, which the parties agree to be a fair analysis of those submissions. There are some discrepancies in the numbers in that exhibit, which can be attributed to cataloguing and counting the larger volume of submissions received.
- [423] It is clear that there is strong public interest in the development application the subject of the appeal. Both Mr Schomburgk's analysis and the analysis in exhibit 39 demonstrate that public opinion on the proposed development is divided. Each of the parties tendered a selection of the submissions that they regarded as representative of the broader submissions in support of their respective positions in the appeal.
- [424] The majority of the submissions were received from addresses within Queensland, and largely from addresses within the Sunshine Coast local government area. In the second round of public notification, there were 6 704 submissions in opposition to the proposed development and 1 948 submission in support received from addresses on the Sunshine Coast.
- [425] A large percentage of the submissions received were in the form of proforma submissions. There were a number of types of proformas, both in support and in opposition to the proposed development. Out of the total submissions received, 7 934 were in the form of proforma submissions. There were 28 percent of the proforma submissions that were in support of the proposed development and 72 percent in opposition.

- [426] The remainder of the submissions were identified as individual submissions. Of the 3 609 individual submissions received, 3 104 (or 86 per cent) were in opposition to the proposed development and 505 (or 14 per cent) were in support.
- [427] There were a number of common themes of concern that were expressed by the community in the submissions. They related to the proposed development's perceived inappropriateness in terms of its height and density; traffic; creation of a precedent in the area; balance between tourism and residential uses; impact on endangered species, particularly the loggerhead turtle; absence of need for the proposed development; impacts on character and scenic amenity; and conflicts with the Planning Scheme. The lay witness statements tendered by the First Appellant raised similar concerns.
- [428] Although the number of objections to a development application is relevant, of greater significance is the substance of the objections and the basis upon which they are founded.¹¹³
- [429] Here, I am prepared to assume that the submissions, and those lay witnesses, who gave evidence, were genuine in their objection to the proposed development. However, to be deserving of considerable weight the objections must be soundly based.
- [430] A number of the submissions were misguided. Examples include submissions to the effect that the development application "*threatens the integrity of the planning process on the Sunshine Coast*"; the development application would encourage others to apply for development that is "*at odds*" with the Planning Scheme; and an approval would put a developer's profit before the local community. The content of the submissions opposed to the development and the lay witness statements tendered by the Appellants otherwise, in large measure, mirrored the case run by the Appellants.
- [431] I am not persuaded that I should refuse the proposed development by reference to the submissions in opposition to it and the lay witness statements tendered by the Appellants for reasons provided herein with respect to each of the other issues in dispute.

Will the proposed development advance the purpose of the *Planning Act 2016* having regard to the risk to the loggerhead turtle?

- [432] In the document identifying relevant matters in support of refusal, the Appellants allege that, in light of the risk to the loggerhead turtle, the proposed development would not advance the purpose of the *Planning Act 2016* having regard to s 3(1), s 3(2)(a), s 3(3)(a) and s 5(2)(a)(ii).
- [433] The Appellants' written submissions did not address s 3 or s 5 of the *Planning Act 2016*. They also did not address what they say the precautionary principle entails; or the relevant authorities with respect to the precautionary principle; or why they say there is "*obvious scope*" for application of the principle; or why application of the principle militates strongly against approval of the development application.

¹¹³ *Kangaroo Point Residents Association v Brisbane City Council & Anor* [2014] QPEC 64, [2015] QPELR 203, 240 [176]-[177]; *Indooroopilly Golf Club v Brisbane City Council* (1982) QPLR 13, 39.

[434] In their written submissions, the only assistance the Appellants provided was to say:

“Finally, it is submitted that the statutory recognition of the precautionary principle in the [*Planning Act*], and the obvious scope for the application of that principle here, is also an appropriate consideration militating strongly against approval of the Application.”

[435] Further, even though the purpose of the *Planning Act 2016* and the precautionary principle were raised by the Appellants as matters that support refusal, when queried during oral submissions about whether they accept the Council’s analysis of the relevant authorities about the precautionary principle, the Appellants were unable to assist. It was not until the following day that they indicated that they accepted the analysis set out by the Council at pages 97 to 99 of its submissions. It is difficult to appreciate how the Appellants could, in good faith, allege a failure to comply with the precautionary principle when they were unable to articulate the principle, or even recognise the Council’s summary of the relevant case law as a fair and reasonable articulation of the relevant considerations. Nevertheless, the Appellants maintained the allegation about the precautionary principle and the purpose of the *Planning Act 2016* and, as such, I will address it.

What is the precautionary principle?

[436] Section 5(2)(a)(ii) of the *Planning Act 2016* records that advancing the purpose of the Act includes following ethical decision-making processes that apply the precautionary principle. The Act describes the principle in the following terms:

“the lack of full scientific certainty is not a reason for delaying taking a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage.”

[437] That description of the precautionary principle in s 5 of the *Planning Act 2016* is consistent with the precautionary principle considered by this Court and courts of other jurisdictions. The Council’s written submissions provide a useful summary of the relevant case law. For convenience, I adopt the Council’s summary, subject only to the clarifications that I have inserted with underlining below.

“267. The precautionary principle is a principle that has been considered previously by both this Court and courts of other jurisdictions. Nationally, the leading decision remains the decision of the New South Wales Land and Environment Court in *Telstra Corporation Ltd v Hornsby Shire Council* (2006) 67 NSWLR 256. In that case, it was said in respect of the principle that:

(a) the application of the precautionary principle and the concomitant need to take precautionary measures is triggered by the satisfaction of two conditions precedent, namely:

(i) **a threat of serious or irreversible environmental damage;**
and

(ii) **scientific uncertainty as to the environmental damage.**

The preconditions are cumulative. **Once both preconditions are met** a precautionary measure may be taken to avert the anticipated threat of environmental damage but it should be proportionate (at [128]);

(b) in terms of the first limb (threat of serious or irreversible damage) assessing the seriousness or irreversibility of environmental

damage involves consideration of many factors including the spatial scale of the threat, the magnitude of possible impacts, the perceived value of the threatened environment, the temporal scale, complexity, manageability and connectivity of possible impacts, the level of public concern, **the rationality of and scientific or other evidentiary basis for the public concern** and the reversibility of possible impacts (at [131]);

- (c) the threat of environmental damage must be adequately sustained by scientific evidence. Not every claim or scientifically unfounded presumption of potential risk can justify the adoption of protective measures (at [134]);
- (d) if there is not a threat of serious or irreversible environmental damage, there is no basis upon which the precautionary principle can operate (at [138]);
- (e) the precautionary principle does not apply and precautionary measure cannot be taken to regulate a threat of negligible environmental damage (at [138]). See also *Alumino (Aust) Pty Ltd v Minister Administering the Environmental Planning and Assessment Act 1979* [1996] NSWLEC 102 at 15-16 and *Hutchinson Telecommunications (Australia) Pty Ltd v Baulkham Hills Shire Council* [2004] NSWLEC 104 at [27];
- (f) the second condition precedent required to trigger the principle is that there is a lack of full scientific certainty. The uncertainty is as to the nature and scope of the threat of environmental damage (at [140]). Full scientific certainty as to the threat of environmental damage is an unattainable goal: *Nicholls v Director General of National Parks and Wildlife* (1994) 84 LGERA 397 at 419;
- (g) it cannot be said that that a particular phenomenon will never cause adverse effects. This is because a null hypothesis can never be proven through the process of inductive logic (at [144]);
- (h) if there is no, or not considerable, scientific uncertainty (i.e. where the second condition precedent is not satisfied), but there is a threat of serious or irreversible environmental damage (i.e. the first condition precedent is satisfied), the precautionary principle will not apply. In that case, the threat of serious irreversible environmental damage can be classified as relatively certain because it should be possible to establish a causal link between an action or event and environmental damage to calculate the probability of their occurrence and to insure against them. Although the precautionary principle does not apply in that scenario, measures will still need to be taken to address the damage. They will be preventative measures to control or regulate the relatively certain threat of serious or irreversible environmental damage, rather than precautionary measures that are appropriate in relation to uncertain threats (at [149]);

There is nothing in the formulation of the precautionary principle which requires decision-makers to give the assumed factor (i.e. the serious or irreversible environmental damage) overriding weight compared to the other factors required to be considered, such as social and economic factors, when deciding how to proceed (at [154]);

- (i) the precautionary principle and any preventative measure cannot be based on a purely hypothetical approach to the risk, founded on mere conjecture which has not been scientifically verified (at [159]);
- (j) a preventative measure may only be taken if the risk, although the reality and extent of risk have not been fully demonstrated by conclusive scientific evidence, appears nevertheless to be adequately backed up by the scientific data available at the time when the measure was taken (at [159]);
- (k) the type and level of precautionary measures that will be appropriate will depend on the combined effect of the degree of seriousness and irreversibility of the threat and the degree of uncertainty. This involves assessment of risk in its usual formation, namely the probability of the event occurring and the seriousness of the consequences should it occur. The more significant and the more uncertain the threat, the greater the degree of precaution required (at [161]);

prudence suggests some margin for error should be retained until all consequences of the decision to proceed are known. One means of retaining a margin for error is to implement an adaptive management approach, which might involve a monitoring regime that would detect adverse impacts and enable the regulatory authority to require them to be addressed if and when they emerge (at [162]-[165]);

- (l) the precautionary principle embraces the concept of proportionality. The concept of proportionality is that measures should not go beyond what is appropriate and necessary in order to achieve the objectives in question. Where there is a choice between several appropriate measures, recourse should be had to the least onerous measure and the disadvantages caused should not be disproportionate to the aims pursued (at [166]);
- (m) considerations of practicality need to be taken into account (at [169]); and
- (n) the precautionary principle, where triggered, does not necessarily prohibit the carrying out of a development plan until full scientific certainty is attained. If the precautionary principle were to be interpreted in this way, it would result in a paralysing bias in favour of the status quo and against taking precautions against risk. The solution is to assess the risk weighted consequences of various options and select the option that affords the appropriate degree of precaution for the set of risks associated with the option (at [179]-[181]).

268. An earlier case that is relevant is the decision of Quirk DCJ in *GFW Gelatine International Limited v Beaudesert Shire Council & Ors* (1993) QPLR 342. In that case, the Judgment of the Court provides generally as follows (at 342 352-3):

- (a) the Court must be careful to resist the attractions of avoiding responsibility for allowing a proposal which has been demonstrated to have its risks if not handled carefully and which has been the subject of considerable public attention and feeling. Justice must be done for all interested parties and this calls for a fair minded assessment of the proposal on the evidence given free from any

emotive influences which matters of this kind are prone to attract: citing *Lane v Gatton Shire Council* (1988) QPLR 49; *Reifek v McElroy* (1965) 112 CLR 517; *Davjan v Noosa Shire Council* (1981) QPLR 69 and *Esteedog Pty Ltd v Maroochy Shire Council* (1991) QPLR 7;

- (b) the onus of showing that the application for town planning consent should be approved rests with the applicant but that is not to say that in a proposal yet untried, the complete absence of any likely future difficulty must be demonstrated. It is essential that it be shown that the relevant procedures and their likely impact on the environment are properly understood and that there is a capacity to deal with any difficulty that might arise in a way which will preclude unacceptable results; and
- (c) while there should be no uncertainty at all about the standards that are called for, there is more room for flexibility regarding the way in which those results are attained. Lessons will be learned in practice and there will be advances in technology.”

(emphasis in original, strike through and underlined portions added by me)

Does the precautionary principle warrant refusal?

- [438] As I have already mentioned, when the Appellants eventually addressed the precautionary principle, they accepted that the Council’s summary (set out above) correctly identifies the relevant considerations.
- [439] During oral submissions on the final day, having seemingly turned their mind overnight to the Council’s written submissions, the Appellants submitted that both preconditions for operation of the precautionary principle are met in this case. They say there is a threat of serious or irreversible environmental damage, namely the threat the proposed development poses to the nesting of loggerhead turtles and dispersal of hatchlings proximate the subject land. They say the threat is introduced by the increased height and density and the associated increase in light impact and the introduction of population that might traverse the beach. They also say the prospect of any loss has the potential to be irreversible because the loggerhead turtle is an endangered species. In relation to the second precondition, the Appellants submit there is scientific uncertainty about the light impact that will be occasioned by the proposed development and whether it will have an adverse impact on the nesting of loggerhead turtles proximate the subject land or the dispersal of turtle hatchlings.
- [440] I am satisfied that the first pre-condition is not met. There is no threat of serious or irreversible environmental damage adequately sustained by scientific evidence. The damage referred to by the Appellants is the risk to the loggerhead turtle population. I accept the evidence of Dr Thorogood that the decline in the population is largely linked to factors related to the failure of juvenile loggerhead turtles to return from South America – a problem unrelated to the proposed development. I am also satisfied that there is no adequately sustained scientific evidence that increased development on the beaches of the Sunshine Coast is posing a threat of serious or irreversible damage by reason of reducing the establishment of nests on the beaches of the Sunshine Coast. Dr Hamann’s concern about disturbance by increased population is a scientifically unfounded presumption. The same can be said for his concern that even a negligible increase to sky glow will impact the dispersal of

hatchlings. Stringent lighting conditions are accepted by SHC. For the reasons detailed above, taking account of the proposed conditions and the contents of the Master Sea Turtle Management Plan and the Master Sea Turtle Lighting Plan, I am satisfied that the proposed development does not raise a threat of serious or irreversible environmental damage. As such, there is no basis upon which the precautionary principle can operate, and it is unnecessary to consider whether the second precondition is met. I accept the Council's submission that effectively the Appellants are urging the Court to adopt a "zero risk precautionary standard" based on a purely hypothetical approach to risk founded on conjecture. Such an approach is not only wrong, it is unwarranted in this case.

- [441] The purpose of the *Planning Act 2016* and the risk to the loggerhead turtle is not a matter that warrants refusal of the proposed development.

Is the proposed development supported by an economic, planning or community need?

- [442] SHC and the Council submit there is a clear economic, planning and community need for each of the components of the proposed development (i.e. hotel, residential and retail), and also because of the economic benefits it will provide to the locality and the Sunshine Coast region.

- [443] The Appellants accept that there is a demand for five-star accommodation on the Sunshine Coast but says the evidence does not demonstrate either the extent of that demand or that the subject land, or 220 rooms in a seven-storey building, is required to meet the demand. The Appellants also say there is no planning need for the additional 537 units and 71 other dwellings in the residential component of the proposed development. They accept that if the resort complex and residential development proceeded, there would be a need for a retail component once the other development was completed but says no more than 1 800 square metres of retail development is warranted.

- [444] The general principles that inform and guide an assessment of need are well settled. They are conveniently summarised by His Honour Judge Wilson SC (as he then was) in *Isgro v Gold Coast City Council*.¹¹⁴ As His Honour stated:¹¹⁵

“Need, in planning terms, is widely interpreted as indicating a facility which will improve the ease, comfort, convenience and efficient lifestyle of the community... Of course, a need cannot be a contrived one. It has been said that the basic assumption is that there is a latent unsatisfied demand which is either not being met at all or not being adequately met.”

- [445] Other relevant principles referred to in the analysis of the authorities in *Isgro v Gold Coast City Council*¹¹⁶ include:

- (a) need in the town planning sense does not mean a pressing need or a critical need or even a widespread desire, but relates to the well-being of the community;

¹¹⁴ [2003] QPEC 2; [2003] QPELR 414, 417-20 [20]-[30].

¹¹⁵ [2003] QPEC 2; [2003] QPELR 414, 418 [21].

¹¹⁶ [2003] QPEC 2; [2003] QPELR 414, 417-20 [20]-[30].

- (b) a thing is needed if its provision, taking all things into account, improves the services and facilities available in a locality such that it will improve the ease, comfort, convenience and efficient lifestyle of the community;
- (c) the question whether need is shown to exist is to be decided from the perspective of a community and not that of the applicant, a commercial competitor, or even particular objectors;
- (d) providing competition and choice can be a matter which also provides for a need, in the relevant sense, but of itself the addition of choice to the marketplace does not necessitate a finding of need;¹¹⁷
- (e) 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;
- (f) need is but one of a large number of issues that is required to be considered in an application of this kind and is not, on any view, paramount; and
- (g) in some instances, public or community need for a service or facility may not be great, and other considerations may be of greater moment.

[446] On the issue of need, I had the benefit of expert evidence from Mr Duane, Mr Ganly and Mr Brown.

Is there a need for the hotel component of the proposed development?

[447] The Appellants say that the controversy that arises with respect to need for the hotel is whether the evidence presented by SHC warrants the conclusion that Yaroomba should be the location of that accommodation in a seven-storey, 220-room hotel in circumstances where they say there are so many indications in the Planning Scheme to the contrary.

[448] The evidence of the economist retained by the Appellants does not support their submission with respect to the Planning Scheme. Mr Brown acknowledged that having regard to the Planning Scheme, he would expect both an integrated tourist facility and residential development in the Yaroomba tourism focus area. In any event, I do not accept that the Planning Scheme indicates that the subject land is not appropriate for tourist development for reasons already explained in paragraphs [45] to [137] above.

[449] As for the need for the proposed hotel, I have already addressed a number of the key aspects of the economic evidence in paragraphs [69] to [75], [81], [94] and [96] above when assessing whether the proposed development satisfactorily addressed the Planning Scheme's intention with respect to tourism development. Nevertheless, it is convenient to revisit some of the evidence here.

[450] All of the economists agree that tourism is an important element of the economic framework of the Sunshine Coast. It is, and will continue to be, a major contributor to the Sunshine Coast regional economy and the Coolum local economy. Although there is disagreement about the extent to which the expansion of the Sunshine Coast airport might influence demand, the economists agree that there will be ongoing

¹¹⁷ *Intrafield Pty Ltd v Redland City Council* [2001] QCA 116; (2001) 116 LGERA 350, 354 [19]-[21].

demand for tourist accommodation driven by increasing demand in the domestic overnight visitor market and the natural attributes of the area. They also agree that there is a growing demand for five-star accommodation on the Sunshine Coast, and that there is a gap in the market for a five-star resort facility within Coolum and the surrounding area. Based on these agreed matters, each of the economists opine that there is a need for the hotel component of the proposed development.

- [451] In the Second Economic Need Joint Report, Mr Brown relied on these agreed matters to inform his opinion that there is a moderate level of economic need for the hotel component of the proposed development. However, he says there is likely to be no planning need for the hotel component because of the designated resort at Palmer Coolum Resort and because he considers the Sunshine Coast Planning Scheme intent is to focus tourism activities more towards Maroochydore.
- [452] During his cross-examination, it became apparent that Mr Brown's opinion that there is "*likely to be no planning need*" is premised on three things. First, he accepts that there is a need for at least one five-star resort. Second, he is uncertain whether there is a need for more than one five-star resort because he has not undertaken a quantitative analysis to ascertain the extent to which the economy might support a second five-star resort. Third, he considers that the Planning Scheme provides for the need to be met by the Palmer Coolum resort and he is concerned that approval of the proposed development would hinder the "*real prospect*" that the Palmer Coolum resort would be refurbished and meet that need as anticipated by the Planning Scheme. In effect, the position advanced by Mr Brown during his oral testimony was that the proposed development should not be approved because Mr Duane and Mr Ganly have not provided a quantitative analysis that demonstrates that the market could support both the proposed development and a refurbished Palmer Coolum Resort. This is the position advanced by the Appellants also.
- [453] I do not accept Mr Brown's opinion about planning need for the reasons already provided in paragraphs [74] and [75] above. Further, I do not accept Mr Brown's assertions that planning need cannot be established in the absence of a quantitative analysis. The authorities do not mandate a quantitative analysis. Whether there is a need for a proposed development is a question of fact to be determined having regard to the available evidence. Given Mr Brown considers that a quantitative analysis was necessary, it is difficult to understand why he did not refrain from expressing an opinion on that issue; or otherwise undertake such an analysis himself before expressing the opinion that it was *likely* that there was no planning need. During his oral testimony, Mr Brown confirmed that he was qualified to undertake such an analysis but had not done so because he had told Mr Duane and Mr Ganly that they should. Mr Brown's insistence that a quantitative analysis is necessary, coupled with his failure to undertake one, left me with a poor impression about the reliability of his evidence regarding the likelihood of a planning need.¹¹⁸

¹¹⁸ Pursuant to r 426 of the *Uniform Civil Procedure Rules 1999* (Qld), an expert has a duty to assist the court. Having regard to r 428(3) of the *Uniform Civil Procedure Rules 1999* (Qld), it is reasonable to expect that an expert will have made all enquiries that they consider appropriate or will otherwise indicate how the absence of particular information affects the reliability of the opinions they express. The tenor of Mr Brown's evidence was that the absence of a qualitative analysis infected the opinions expressed by Mr Duane and Mr Ganly about the planning need for the proposed development, but somehow not his own.

- [454] I prefer the evidence of Mr Duane and Mr Ganly to that of Mr Brown on this issue. Mr Duane and Mr Ganly review the Yaroomba study area to identify any opportunities for a major, five-star resort development. They say there are limited opportunities and no indication that any of the existing or proposed facilities intend to pursue a five-star resort so as to address the identified gap in the market for a five-star resort facility within Coolum and the surrounding area. Their analysis was unchallenged. The only prospect identified by Mr Brown to address the identified gap was the reopening of the Palmer resort. I do not accept that to be a real prospect. Further, the recent approval of other developments identified by Mr Brown do not assist, as they do not address the gap identified by him, being a gap within Coolum and the surrounding area. I am satisfied that the analysis undertaken by Mr Duane and Mr Ganly about other opportunities demonstrates there is a latent unsatisfied demand that is not presently being met.
- [455] I also accept the evidence of Mr Ganly that the Sunshine Coast market associated with the business traveller market (including travellers for meeting, incentives, conferences, and exhibition events) is poorly served. Although Twin Waters offers conference facilities, it has a lower standard of accommodation. The only five-star option for the premium international and conference-based market is at Noosa Heads, about 35 kilometres north of the Sunshine Coast Airport.
- [456] Having regard to the matters referred to in paragraphs [45] to [137] above (particularly the evidence referred to in paragraphs [49], [69] to [75], [81], [94] and [96] above), and those referred to in paragraphs [448] and [450] to [455] above, I am satisfied that there is a need for the hotel component of the proposed development. I am also satisfied that it is appropriate that such need is met by provision of the proposed development on the subject land given the land is identified as a tourism focus area where integrated tourist and residential development is expressly intended.

Is there a need for the residential component of the proposed development?

- [457] The economists agree that, from an economic point of view, the subject land is appropriate for residential development. They disagree about whether there is a need for the quantum and scale of residential activity proposed.
- [458] The preliminary approval for Stages 2 to 5 would facilitate development of the subject land for approximately 608 multiple dwellings comprising 71 townhouse-style multiple dwellings with three or more bedrooms in two and three storey buildings; and 537 apartment-style multiple dwellings in two and three storey buildings, with one to three bedrooms.
- [459] The Planning Scheme encourages use of the subject land for an integrated tourist and residential development. It does not prescribe numerical limits on the quantum or scale of residential development. Rather, the quantum and scale of retail development is governed by provisions that I have already addressed above.¹¹⁹ As the proposed development complies with those requirements, were there an absence of need for the residential component, I would not consider that to be of great moment in this case. Nevertheless, as SHC and the Council advance need for the residential component as a relevant matter that provides further support to approval, it is appropriate that I consider it.

¹¹⁹ See paragraphs [45] to [137] and [179] to [331] above.

- [460] In August 2017, the Department of Infrastructure, Local Government and Planning published *Shaping SEQ: South East Queensland Regional Plan 2017*. It was prepared in collaboration with the region's 12 local governments. It guides the future of the South East Queensland region. It indicates that, for the period 2016 to 2041, the Sunshine Coast population (excluding Noosa) is expected to grow from approximately 303 400 people in 2016 to approximately 495 000 people in 2041 – an increase of 191 600 persons. A demand for 87 000 new dwellings is projected for the area over that same period.
- [461] For that same period, the Office of Economic and Statistical Research forecasts that the Sunshine Coast population (again excluding Noosa) will grow from 303 389 persons in 2016, to between 462 160 (low scenario) and 578 762 (high scenario) persons by 2041. The medium scenario projects population of 518 004. This equates to an average demand for 3 400 dwellings per year on the Sunshine Coast.
- [462] The economists agree that the projected population growth in the area surrounding Yaroomba is best understood by considering the population growth with statistical area 2 comprising Coolum Beach, Marcoola-Mudjimba and Peregian Springs. They agree that the population of that area is predicted to grow from 34 071 persons in 2016 to 43 195 persons by 2041, representing growth of approximately 9 124 persons at a rate of almost 370 persons per year under the medium series projection (which the economists were content to adopt).
- [463] The economists adopted different approaches for identifying the available land supply for their analysis of the need for the residential component of the proposed development.
- [464] Mr Duane and Mr Ganly based their supply analysis upon the medium density zoned land that remains capable of development for multiple dwellings within each of the planning areas comprising the Yaroomba Study Area. Their analysis indicates that in the Peregian South area, the remaining land will yield approximately 111 dwellings. In the Maroochy North Shore area, the remaining land will yield approximately 214 dwellings, in addition to the 197 multiple unit dwellings that are proposed as part of the Twin Waters West development. In the Coolum local area, the remaining land yields a possible 66 dwellings. Based on that analysis, Mr Duane and Mr Ganly opine that the subject land represents one of the few remaining parcels within the defined study area that is capable of providing medium density dwellings at a reasonable scale.
- [465] Mr Brown estimated a supply based on vacant land within the Low density residential zone; and vacant land and sites that he regarded as underutilised within the Medium density residential zone, High density residential zone, and Emerging community zone. Based on his analysis, Mr Brown estimates the total potential supply is 2 886 possible dwellings. As such, Mr Brown says there is sufficient remaining supply within the Planning Scheme and this suggests there is limited need for the residential component of the proposed development.
- [466] I do not consider Mr Brown's supply analysis to be helpful. By including land located in the Low density residential zone and the High density residential zone, Mr Brown includes land that is intended to supply a different form of residential development than that which is proposed.

- [467] Mr Brown's supply analysis also presents an unduly inflated picture of available supply as it includes many lots that are approximately 600 square metres in area and are improved by single houses. Mr Brown did not have regard to the quality of the built form on those lots to assess the objective likelihood that the landowners would be willing to subdivide their lots. He simply assumes they would be so willing. The likelihood of this is purely speculative. Mr Brown made no allowance for the possibility that a portion of the landowners may wish to retain their current, larger lots.
- [468] Further, Mr Brown's analysis ignores the direction for sustainability and high-quality living set by the South East Queensland Regional Plan. The South East Queensland Regional Plan identifies a long-term sustainable pattern of development. It outlines the need to focus more growth in existing urban areas and to support better and more diverse housing. It places emphasis on promoting "*missing middle*" forms of housing, being housing offering greater density and diversity compatible with surrounding lower density residential environments. Examples of the "*missing middle*" forms of housing include duplexes, triplexes, row or terrace housing and medium rise apartments. The South East Queensland Regional Plan identifies that the current capacity for new dwellings in the Sunshine Coast local government area is 81 600, which is below the benchmark of 87 000 new dwellings that are required over the period 2016 to 2041. In areas earmarked for consolidation, the capacity of planning dwelling supply is about 34 900 dwellings, which is about 14 000 less than the benchmark of 53 700 dwellings that are to be provided in those areas by 2041. This highlights the importance of delivering the "*missing middle*" form of residential development on land that is capable of supporting it without conflicting with the planning intent in the Planning Scheme, as is the case with the proposed development. The need to ensure the efficient utilisation of the subject land is heightened because land in the Tourist accommodation zone, such as at Marcoola Shores, is being developed for lower density residential development. Mr Brown's supply analysis takes no account of the need to focus on delivering the "*missing middle*".
- [469] I also do not accept Mr Brown's opinion about the limited need as it is a purely quantitative analysis and ignores legitimate qualitative considerations. For example, it does not take into account the niche, higher end nature of the proposed integrated tourist and residential development on the subject land. It also ignores the lack of comparability between supply of residential development proximate the beach such as that proposed and supply at non-beachside development sites and locations such as Peregrin Springs to the west of the Sunshine Coast motorway. The two are markedly different development opportunities that would attract a very different market. They satisfy a different town planning need for a different segment of the community. Mr Brown's analysis also does not take account of the historical uptake of large chunks of residential land for retirement village development. As Mr Ganly observed, significant portions of medium density zoned land can readily be consumed by retirement village developments. Recent examples include the Aveo Retirement Village on Yarran Road and the 96-unit retirement village underway at 40 Menzies Drive.
- [470] Mr Duane's and Mr Ganly's land supply analysis does not suffer from these same inadequacies. I prefer their analysis.

- [471] In terms of the number of dwellings that will be required to satisfy the recognised population growth, the difference between the experts in the joint report was limited to differing opinions on the average household size that ought to be applied to calculate the requisite number.
- [472] A further area of disagreement arose during the hearing: after Mr Duane had given evidence and during the second day of Mr Ganly's cross-examination, Mr Brown recalculated the anticipated demand based on his interpolation of population growth figures. His calculation was presented as Exhibit 50. The Council submits that Exhibit 50 should be given limited weight because it represents a departure from Mr Brown's agreed position in the Second Economic Need Joint Report and, as such, he denied the other economists the opportunity to properly consider and analyse it in the context of the joint report process. It was also not put to Mr Duane and, though it was put to Mr Ganly, Mr Ganly expressed clear reservations with the data interpretation. Further, the conclusion represented by Exhibit 50 is inconsistent with other evidence of housing demand. The agreed dwelling demand analysis in Exhibit 6 (demonstrating demand within a range of 3 300 to 3 650 dwellings for the period 2016 to 2041) is consistent with the dwelling demand calculated for the Sunshine Coast (excluding Noosa) in each of the South East Queensland Regional Plan and the Office of Economic and Statistical Research. Having heard Mr Brown explain Exhibit 50, and the reservations expressed by Mr Ganly about it, I am not persuaded that it is reliable.
- [473] Returning to the analysis in the Second Economic Need Joint Report, Mr Duane and Mr Ganly calculated the anticipated demand adopting an average household size of 2.5 persons. They say there is a demand for approximately 145 new dwellings each year. This is 3 198 dwellings over the period 2016 to 2031 and 3 560 dwellings over the period 2016 to 2041. Mr Brown adopted a higher average household size of 2.75 persons and, as such, calculates demand for approximately 133 new dwellings each year. This is 2 907 dwellings over the period 2016 to 2031 and 3 318 dwellings over the period 2016 to 2041.
- [474] The average household size used by Mr Duane and Mr Ganly corresponds with the ABS's Census approach and the industry standard for reporting average household sizes. Mr Brown has adjusted the Census figure to exclude visitor only properties. This is inconsistent with the industry approach. I also do not consider it appropriate because the area is likely to include a number of properties owned as holiday houses. To exclude those houses from the analysis risks misrepresenting the locality to which the analysis applies. Further, as was explained in the evidence of Mr Duane, if the phenomenon of "*holiday houses*" is removed from the demand scenario, account also needs to be made for it in the anticipated supply. That is, more houses will need to be supplied to accommodate future growth as some dwellings built will be "*holiday houses*" only and, as such, will not be available to accommodate permanent residents. For those reasons, I prefer the approach of Mr Duane and Mr Ganly in this regard.
- [475] In any event, as Mr Duane observed, and Mr Ganly agreed, Mr Brown's estimated supply of a possible 2 886 dwellings represents a shortfall in the indicated demand for dwellings to both periods to 2031 and to 2041. As such, even based upon Mr Brown's preferred average household size and his more conservative land supply analysis (neither of which are accepted by me), Mr Duane calculates that

housing demand will exceed supply by 2032. On Mr Duane's and Mr Ganly's analysis, which I prefer over Mr Brown's, the shortfall will arise even sooner.

[476] Having regard to the matters referred to above, I am satisfied that the subject land is appropriate to satisfy the identified demand for the dwellings for four reasons.

[477] First, as demonstrated by Mr Duane and Mr Ganly's supply analysis, the Yaroomba study area has a limited supply of land that is capable of providing medium density dwellings at a reasonable scale. The proposed development represents an opportunity to achieve a coordinated and considered approach towards accommodating large-scale infill development. This outcome accords with the requirements of the South East Queensland Regional Plan to accommodate significant population growth in the urban area, and to provide housing diversity, choice and affordability in terms of a mix of dwelling types and sizes including a range of "*missing middle*" housing forms.

[478] Second, there is an even more limited opportunity to deliver infill residential development in a beachfront location such as the subject land. The land represents an opportunity to provide housing choice and diversity for retirees looking to downsize, and families looking for a different lifestyle, within walking distance to the beach and other facilities (including employment opportunities) provided by the integrated tourist resort and in close proximity to the Coolum Town Centre and the nearby Airport.

[479] Third, the subject land is already approved for medium density development (up to four storeys) pursuant to the Hyatt preliminary approval. Although the proposed development will provide a greater residential density than the Hyatt preliminary approval, this design option chosen more than a decade ago for that proposal does not operate as a limit on the density of proposed development.

[480] Fourth, the proposed development will make efficient use of infrastructure and contribute to a more compact urban form. This is an outcome desired by the Planning Scheme¹²⁰ and the South East Queensland Regional Plan. It does so without comprising the planning outcomes sought by the Planning Scheme, including in terms of character, visual impact and ecological impact.

[481] The demonstrated need for the residential component of the proposed development is a relevant matter that supports approval of the proposed development.

Is there a need for the retail component of the proposed development?

[482] The proposed development provides for a maximum of 2 770 square metres of retail and commercial space with tenancies limited to a maximum size of 300 square metres. The retail facilities are to be provided as part of Stage 1, prior to the majority of the residential development.

[483] The ultimate tenancy mix will be subject to final design and leasing arrangements. Nevertheless, as I have noted in paragraph [150] above, the economists all agree the likely tenants for the retail and commercial area. They would be a convenience or food store; a range of food catering outlets including breakfast or lunch café, some night time restaurants together with juice or ice-cream gelato store; potential

¹²⁰ See, for example s 3.3.1(f) of the Planning Scheme.

pharmacy; liquor store; giftware or souvenir or resort shop containing a range of products such as beachwear; and hair and beauty and spa treatment tenants. This likely mix of retail and commercial development is supported by performance outcome PO16(f) of the Coolum local plan code.

- [484] The economists agree that it is appropriate for the proposed development to provide retail facilities of the nature proposed. They also agree that the majority of spending within the retail facilities will be by on-site tourists. They all opine that, based on the likely tenancy mix and scale, the proposed retail centre will not undermine the viability of other centres in the hierarchy.
- [485] The only disagreement between the economists relates to the timing of the retail component and the size of the retail component.
- [486] Although Mr Brown accepts the use is appropriate, he does not support the timing of the retail development or the size of the retail component. Mr Brown says there is a need for only 1 800 square metres of retail floor space, and only once all other aspects of the development are delivered. He says the retail floor space required for Stage 1 is significantly less than 1 800 square metres. Despite Mr Brown's position that there is an overprovision of retail floor space and his view that it is provided prematurely, Mr Brown does not anticipate that the retail and commercial component of the proposed development will have trading impacts sufficient to undermine the viability of other centres. Rather, he says that the overprovision will sound in on-site underperformance of the retail and commercial component of the proposed development.
- [487] Mr Duane and Mr Ganly opine that there is need for the proposed 2 700 square metres of retail and commercial space. They accept that the retail and commercial component of the proposed development is likely to trade at lower levels in the first instance given the absence of the residential population but opine that it will be sustainable and will not affect the viability of other retail facilities in the surrounding area. They say it may take some time to lease some of the stores but consider that a private economic issue for the developers of the subject land.
- [488] I am satisfied that there is a need for the retail and commercial component of the proposed development for three reasons.
- [489] First, I accept that it is appropriate for a modern, five-star resort to incorporate a range of facilities to meet the reasonable needs of the resort guests immediately upon opening. I accept the evidence of Mr Duane and Mr Ganly that this may mean that the developer will achieve lower trading levels initially. This is a matter of private economics and is not a matter of concern to me. It is significant that the proposed development will deliver a range of retail and commercial facilities that will be of a small scale, primarily consisting of local services to support the resort complex and local convenience needs. With the tenancy limit of 300 square metres, it will not compete with other centres, nor impact upon other centres in the hierarchy. As is acknowledged by Mr Brown, there is no prospect that the proposed tenancy mix will morph into a local centre, nor any prospect that the proposal will position itself as a convenience centre, including because the recent refurbishment of the Mount Coolum Local Centre militates against that possibility.
- [490] Second, although the retail component of the development will predominantly serve tourists staying at the resort complex, and tourists and visitors from within the wider

area, it will also provide a benefit to residents of the trade area in the locality. They will benefit from the availability of convenience goods, particularly when they visit the beach or the resort complex or hotel. In addition, the experts all agreed that the food catering premises (i.e. the restaurants and cafes) would be the key attractor of trade area residents. As such, the retail component of the proposed development will provide additional choice and convenience for both local residents and tourists at the proposed development, as well as those in the broader region, through its provision of food catering and other facilities in a modern integrated tourist facility.

[491] Third, the retail and commercial facilities will provide a further community benefit in terms of the additional opportunities for employment within the proposed development.

[492] For the reasons provided above, I am satisfied that there is an economic need for the retail component of the proposed development.

Conclusion regarding need

[493] For the reasons provided above, I am satisfied that there is a need for the proposed development. It will improve the well-being of the community by meeting the latent unsatisfied demand for a five-star resort in the locality. The residential component will also provide an important choice to the community, by making provision for “*the missing middle*” form of accommodation proximate the beach. The retail and commercial component will improve the facilities and services available in the locality. The proposed development can meet these needs absent unacceptable impacts and in a manner that is consistent with the intended outcomes under the Planning Scheme. Further, the proposed development will improve the well-being of the community through the benefits it will provide to the Coolum locality and the Sunshine Coast region more generally by generating economic and community benefits, particularly in terms of employment.

Will the proposed development provide economic benefits to the locality, region and State that support its approval?

[494] The Council submits that the proposed development will improve the well-being of the community through the benefits it will provide to the Coolum locality and the Sunshine Coast region and State more generally by generating economic and community benefits, particularly in terms of employment. I accept the Council’s submission for the reasons that follow.

[495] I accept the evidence of Mr Duane and Mr Ganly that the proposed development will provide employment in the tourist sector (on a permanent basis) and in the construction sector (for some 10 years). It is evident from the data presented by the economists that these are important employment sectors for the Sunshine Coast.

[496] Mr Ganly’s opines that, generally, a five-star hotel has a workforce of approximately 20 jobs per ten rooms, which he says equates to between 400 and 500 jobs associated with the operation of the proposed hotel. He says this will be significantly more than other three-star and four-star hotels in the locality. Mr Ganly says that the workforce for a five-star hotel is significantly greater than the workforce required for a four-star hotel, which generally supports 12 jobs per ten rooms, and well beyond that required for a three-star hotel, which generally

supports eight jobs per ten rooms. His evidence was unchallenged in this respect and I accept it. It was consistent with the evidence of Mr Hunt.

- [497] Mr Hunt is an Area Vice President (Australia, New Zealand and Pacific) for Marriott International Inc. He has a lifetime of experience in the hospitality industry, including managing a five-star resort hotel on the Sunshine Coast (the then Sheraton Noosa Resort), which gives him the knowledge and experience to provide evidence of likely local employment, including with respect to career opportunities that this proposal will likely provide to the community. Mr Hunt estimates that a five-star Westin hotel on the subject land would employ between 400 and 500 staff, sourced locally. Moreover, in terms of public and community benefits, Mr Hunt said that a hotel such as the Westin would provide training for staff. He is a living example of those benefits provided by five-star resorts. He commenced employment with the Sheraton Hotel chain as an apprentice chef and advanced through his career to the Starwood chain as a vice president. He also says that employment would be offered in a number of hotel divisions or cells including management, front office, house-keeping, food and beverage, grounds staff, engineering and maintenance and allied services including airport transport, concierge and tours.
- [498] Mr Hunt's evidence persuades me that the five-star hotel component of the proposed development will provide the local community with both employment and opportunities for advancement in the hospitality industry.
- [499] Significant new employment will also be created during the construction phase of the development. Given the multiple stages of the proposed development, employment for construction purposes is likely to continue for a number of years. The sunset date for completion of the development will be ten years from the date that any approval takes effect.
- [500] Having regard to the evidence referred to in paragraphs [495] to [499] above, I am satisfied that the provision of jobs for the local community will be a key benefit provided by the proposed development.
- [501] In terms of the local economy generally, an approval of the proposed development will attract a significant number of new visitors to the local area. This is evident from Mr Brown's admission that the Yaroomba area does not currently attract the visitor segment that would be attracted by the proposed development. The evidence of Mr Hunt supports it. He anticipates that a five-star Westin hotel would have 100 per cent weekend occupancy rates, year round and that the meetings, incentives, conference and events offer would make a substantial contribution to maintaining high occupancy rates even during the week, which is otherwise a quieter time on the Sunshine Coast (other than during the holiday periods). Mr Hunt's evidence about the contribution made by the meetings, incentives, conference and events offer is consistent with the evidence of the economists (particularly Mr Duane and Mr Ganly).
- [502] Mr Perkins opines that the additional visitors to the Yaroomba area may benefit local businesses within the area through increased spending by the tourists and visitors. His opinion was unchallenged, and I accept it.
- [503] Members of the local community also stand to benefit from the range of infrastructure secured by the infrastructure agreement entered into between SHC

and the Council. It requires a number of improved public and community access outcomes, including a coastal discovery trail; a three-metre wide pedestrian and cycle access way; a three-metre wide coastal pathway; a motor vehicle, pedestrian and cycle access road; and two refurbished beach access ways. It also requires the provision of community-based infrastructure. That infrastructure includes a “Coastal Discovery Centre” (being a centre for the holding of educational material, art and displays); a 7 000 square metre civic park; a 4 600 square metre beach side park; public amenities (including toilets, end of trip facilities and beach showers); a surf life saving tower and amenities; a minimum 4 500 square metre “*green link*” (involving vegetation retention and management); a new public car parking facility providing for a minimum of 80 car parking spaces; a financial contribution of \$1.2 million towards road improvements in the locality; a financial contribution of at least \$500 000 (or works in kind) to fund an upgrade of the car park and toilets at Mt Coolum, or other recreational facilities in the Coolum and Yaroomba areas; and a financial contribution of \$500 000 for the funding of a local indigenous arts program. The provision of these items means that a significant area of the subject land, totalling approximately 3.22 hectares, will be dedicated to the Council for the community benefit. Mr Perkins notes that these community benefits will be available beyond the residents and users of the proposed development.

- [504] The Appellants seek to diminish the economic and community benefits because, on their case, such benefits would also be provided through the continuation of the Coolum Residences on the subject land and through (to at least some extent) the development of the subject land consistent with the Planning Scheme and under the Hyatt approval. I do not accept their position. There is no evidence as to how the same, or even similar, economic benefits would follow from a continuation of the Coolum Residences (or for that matter the speculative refurbishment of the Palmer Coolum Resort). There is no evidence to demonstrate that the delivery of the extensive list of parks, pedestrian pathways, publicly available facilities, public parking, and so forth (listed above), would be reasonably required by a development consistent with the Planning Scheme and under the Hyatt preliminary approval.
- [505] An approval of the proposed development would allow SHC to deliver the economic and community benefits to which it has committed. This relevant matter supports approval of the proposed development.

Will the proposed development increase tourism and economic activity in the locality and the region that supports the investment in the Sunshine Coast Airport?

- [506] The Council submits that an approval of the proposed development, particularly the resort complex, will both support and be supported by the significant investment in the expansion of the Airport.
- [507] The importance in town planning and economic terms of the recent investment in the expansion of the Airport is reflected in the Planning Scheme. It identifies the Airport expansion as a “*game changer*” project, with the Airport a specialist activity centre that provides a range of opportunities that promote the region and support tourism on the Sunshine Coast. The Regional Economic Development Strategy 2013 – 2033 also recognises the Airport expansion as a “*game changer*” project and states that it will, amongst other such projects, have a transformational effect on

business, employment and investment growth – and on the Sunshine Coast economy overall.

- [508] The expansion of the Airport is underway, with completion due in the next two years. The expansion includes:
- (a) a new 2 450 metre long and 45 metre wide runway;
 - (b) an expanded aircraft parking apron;
 - (c) runway and taxi loops;
 - (d) a new air traffic control tower and associated infrastructure;
 - (e) passenger terminal upgrades; and
 - (f) new access roads and utilities.
- [509] The expansion is intended to cater for larger, more fuel-efficient aircraft that can fly longer distances and open the Sunshine Coast up to direct access from destinations across Australia, Asia and the Western Pacific.
- [510] The Council relied on passenger projections in the Sunshine Coast Airport 2040 Masterplan to support its submission. Mr Brown suggests that there is a high risk of optimism bias in those Airport passenger forecasts but recognises that passenger projections are typically a trend projection. Since 2015, passenger numbers have been increasing steadily each year.
- [511] The Council submits that the Airport expansion is both relevant and important because of the relationship between the Airport and tourism and the subject land's proximity to the Airport. If approved, the proposed development would be the closest five-star resort complex to the Airport. It would be located just eight kilometres north and a ten-minute drive from the Airport, which is considerably closer than the 35 kilometres distance to the only relevant competitor, the Sofitel at Noosa. Mr Adamson accepted that the Airport expansion is a relevant consideration.
- [512] I accept that the proposed development will be ideally located to cater for both business and leisure travellers arriving at the Airport. Mr Brown opines that business travellers would be drawn towards the Principal Centre of Maroochydore, or one of the Sunshine Coast's other Major Centres (which he does not identify). Those destinations will have attraction to business travellers, but that does not detract from the obvious attraction that will be provided by a new, luxury and quality conference facility located ten minutes from the Airport nor from the clear convenience of such facilities for business travellers.
- [513] The proposed development is well placed to provide tourist and business traveller accommodation facilities that will support, and be supported by, the expansion to the Airport. This relevant matter lends some (limited) support to approval of the proposed development.

Can the proposed development be provided without any unacceptable impacts?

- [514] A relevant matter identified by the Council is that the proposed development, through the imposition of reasonable and relevant conditions, and its many associated benefits (particularly in achieving the planning intentions for the subject land and providing economic benefits to the community) can be provided with no unacceptable amenity impacts and no unacceptable environmental or other impacts.
- [515] For the reasons already provided, I am satisfied that the proposed development, as conditioned by the Council (subject to recommended amendments referred to herein), can be provided without any unacceptable impacts in terms of traffic, visual amenity and character, and turtles.
- [516] The absence of unacceptable impacts is a relevant factor that, where coupled with an economic, community and planning need for the proposed development, lends support to approval of the proposed development.

Does the Hyatt preliminary approval support an approval of the proposed development?

- [517] As I have noted in paragraph [3] above, the subject land has the benefit of a current development approval, being the Hyatt preliminary approval. It anticipates development of the subject land for a mix of dwelling types, including multiple dwellings, detached houses and duplexes, as well as retail and commercial uses up to a maximum of 500 square metres. As such, the exercise of the planning discretion must be based on an assessment that is carried out having regard to the Hyatt preliminary approval.¹²¹
- [518] The Hyatt preliminary approval includes development across a number of precincts, relevantly including Precincts 1C, 3C, 3D, part of 3E, 3F and part of 3H (buffer precinct). These are the precincts that most closely align with the subject land. The uses provided for within these precincts include:
- (a) non-residential uses, including restaurant, shop and outdoor recreation up to a maximum of 500 square metres; and
 - (b) residential uses comprising a mix of dwelling types, including multiple dwellings, detached houses and duplexes.
- [519] The form of development that could occur on the subject land is usefully depicted in Figure 1 of Exhibit 21. It is also graphically depicted on the last page of Exhibit 82, which graphically depicts the likely extent of built form when viewed from the type of aerial oblique view one would get from Mt Coolum. The extent of development facilitated by the Hyatt approval is significant.
- [520] The subject land is located within part of the “*Beachside*” precinct (Precinct 3) in the Hyatt preliminary approval. That precinct also included land to the south of the subject land. In that precinct, the preliminary approval allowed a maximum density of 450 dwellings across the precinct. The southern portion of the precinct, to the south of the subject land, has been developed predominately for detached houses of two storeys in height. That development is known as “*Coolum Beachside*” and

¹²¹ See s 45(5)(a)(ii) of the *Planning Act 2016* and s 31(1)(f) of the *Planning Regulation 2017*.

“*Belle Mare*”. It provides approximately 110 dwellings. The Hyatt preliminary approval also authorised units within sub-precinct 3F, which is located within the subject land. In that sub-precinct, the approval authorised 140 dwelling units and buildings up to 16 metres and four storeys in height.

- [521] All of the sub-precincts within Precinct 3, except for 3F, allowed for 20 per cent of dwellings to be multiple dwellings (units) of up to three storeys, and allowed for a further 20 per cent of dwellings to be dual occupancy, leaving the remainder of the sub-precincts (60 per cent) to be comprised of detached houses.
- [522] The development of Coolum Beachside with a predominance of detached houses of two storeys in height informs expectations about the likely development of the remainder of Precinct 3 under the Hyatt preliminary approval, given the approval contemplated up to 40 per cent of the development being other than detached houses.
- [523] Having regard to the Hyatt preliminary approval, the community could reasonably expect that development of the subject land would include residential and non-residential uses. The community could also reasonably expect that the residential development would include accommodation other than detached dwellings, being dual occupancies and multiple dwellings, and that some of the residential development might be above 8.5 metres in height (despite the mapping on the Height of Buildings and Structures Overlay Map).
- [524] The Appellants submit that the proposed development is a much greater scale than that contemplated in the Hyatt preliminary approval. I agree. However, it is not reasonable for the community to expect that the extent of development of the subject land will be limited to that approved in the Hyatt preliminary approval. The preliminary approval was granted about 12 years ago and the planning needs of a community are not static and immutable. It is reasonable for the community to expect that the subject land might be developed for a more intensive form of development where it complies with the assessment benchmarks that apply at the time the development application is made and meets an identified need, as the proposed development does.

Do the locational attributes of the subject land and the design response to it support approval?

- [525] SHC and the Council raise the strategic beachfront location of the subject land and the design responsiveness of the proposed development to the locational and shape constraints of the subject land as relevant matters that they say support approval of the proposed development.
- [526] The large size and beachside location of the subject land represents an uncommon and distinct opportunity to provide a large five-star luxury resort facility on the Sunshine Coast. As observed by Mr Schomburgk, large parcels of beachfront land are rare and even more so when that parcel is identified as being within a tourism focus area.
- [527] Mr Thompson gave evidence about the merit of the design of the proposed development. He was the only architect called. His evidence persuades me that a rigorous site analysis was undertaken prior to developing the design of the proposed development to inform a design that respects the natural ecology, environment,

vegetation and other qualities of the subject land, including views to and views from the subject land from a range of vantage points. In paragraph [203] above, I record Mr Thompson's evidence about the key principles that informed the design outcome, which evidence I accept.

[528] Mr Thompson opines that the architectural design of the proposed development is exemplary, particularly having regard to his view that:

- (a) the scale of the buildings (in particular the way in which they are broken down into smaller elements with variation in height) is positively responsive and deferential to the scale of the immediate and wider landscape of the natural environment, both in built form and architectural detail;
- (b) the proportions of the architectural composition are elegant and well considered;
- (c) the colours and materials are derived from, and will be harmonious with, the natural environment and landscape; and
- (d) the tectonic detail of sun shading, screening, balustrading, recesses and steps, and other smaller elements of the façade provides a more intimate scale in a visually stimulating manner, which he says also serves to give the external form a seemingly non-repetitious and syncopated irregular pattern similar to that found in the natural landscape.

[529] Mr Thompson opines that the dominant character and experience of the proposed development will be of the natural environment, both internally to the site and from external perceptions. He says this is achieved through the master planning concepts and design features that he addressed in his oral evidence.

[530] As I have already indicated elsewhere in these reasons,¹²² I accept the evidence of Mr Thompson.

[531] Having regard to the built form design and the locational attributes of the subject land (including the significant size and beachfront location), Mr Perkins opines that the subject land presents an opportunity to develop an intensive tourism focus development without unacceptable, adverse impacts upon the surrounding community. I accept his evidence.

[532] These relevant matters support approval of the proposed development, particularly as they can be achieved without compromising the planning outcomes sought in the assessment benchmarks.

Is the proposed development consistent with objectives and planned outcomes in the South East Queensland Regional Plan 2017, the *Regional Economic Development Strategy 2013-2033* and the *Tourism, Sport and Leisure Industry and Investment Plan 2014-2018*?

[533] The Council submits that the proposed development is consistent with and supports the achievement of objectives and planned outcomes of the South East Queensland Regional Plan; the *Regional Economic Development Strategy 2013-2033*; and the *Tourism, Sport and Leisure Industry and Investment Action Plan 2014-2018*. The

¹²² See, for example, paragraph [227] above.

Appellants did not address this ground, other than to assert (without elaboration) that the relevant matters raised in support of the proposed development do not provide justification for approval of the proposed development.

- [534] I have already addressed the objectives and planned outcomes of South East Queensland Regional Plan in respect of dwelling supply and “*missing middle*” housing in paragraphs [468] to [481] above. The South East Queensland Regional Plan also identifies a goal of becoming a globally competitive region with close to a million jobs by 2041 by building on, amongst other things, South-East Queensland’s economic advantages in key export-oriented industries including tourism. I am satisfied that an approval of the proposed development is consistent with the South East Queensland Regional Plan’s objectives in respect of both tourism and residential growth.
- [535] *Sunshine Coast – The Natural Advantage: Regional Economic Development Strategy 2013-2033* was developed by leading business and industry groups and key stakeholders, including the Queensland Government, Sunshine Coast Regional Council, the Sunshine Coast Economic Development Advisory Board, the Sunshine Coast Business Council. It provides a 20-year vision and blueprint for sustainable economic growth to seek to ensure that the Sunshine Coast region realises its full potential. It identifies five “*pathways*” for growth, and recognises that the construction, retail and tourism industries are, and will remain, significant elements of the Sunshine Coast’s economy. The tourism, sport and leisure industry is identified as a “*high value*” industry for which the region will “*vigorously seek new investment opportunities*”, because it has the potential to generate higher-paying enduring employment opportunities on the back of the region’s “*game changer*” projects. It identifies the expansion of the Airport as one of the “*game changer*” projects.
- [536] Mr Gschwind gave unchallenged evidence on behalf of the Queensland Tourism Industry Council. He identifies the importance of tourism to the Queensland economy, observing that tourism is a \$27.3 billion industry for Queensland that sustains 237 000 Queensland jobs across 55 000 businesses. He also says that tourism is a major contributor to the Queensland economy.
- [537] By providing five-star luxury accommodation and conference facilities at the proposed development, in close proximity to the “*game changer*” expanded Airport, an approval of the proposed development would be consistent with, and support the achievement of, the planned outcomes of the *Regional Economic Development Strategy 2013-2033*.
- [538] The *Tourism, Sport and Leisure Industry and Investment Action Plan 2014-2018* was developed by local industry stakeholders and is intended to be a guide to progressing and increasing the economic value of the tourism sector to the region. It corresponds with the five-year implementation plan in the *Regional Economic Development Strategy 2013-2033*. It recognises the expansion of the Airport, with international capability, as a priority development offering a suite of opportunities for tapping directly into a global tourist market including numerous international events.

[539] In recognising the need to attract investment in new tourism experiences, the *Tourism, Sport and Leisure Industry and Investment Action Plan 2014-2018* states that:

“... the visitor economy currently injects almost \$2.81 billion dollars of direct expenditure into the destination. This in turn generates an estimated an overall expenditure impact of \$4.6 billion dollars (direct and indirect expenditure) across sectors including transport, accommodation and food services, and retail trade which, in turn, supports an overall 42,251 jobs (direct and indirect).”

[540] A key target area for growth of the Sunshine Coast visitor economy is mid-week event tourism, including business, leisure and sporting events as well as interstate fly/drive. For reasons already provided, I am satisfied that the proposed development will provide convenient facilities for the business and leisure markets and for interstate flyers.

[541] For the reasons provided above, I am satisfied that a decision to approve the proposed development is consistent with, and supports the achievement of, the planned outcomes of the *Tourism, Sport and Leisure Industry and Investment Action Plan 2014-2018*.

[542] These matters lend support to approval of the proposed development.

Is it within the public interest for the proposed development to be approved?

[543] The Appellants allege that it is not in the public interest for the proposed development to be approved. The Appellants’ submissions did addressing their allegation. Their allegation appears to be founded on the case otherwise advanced by the Appellants.

[544] Whether an approval is, or is not, in the public interest is a question of fact to be determined in the exercise of the planning discretion. The discretion is to be exercised based on the assessment carried out under s 45 of the *Planning Act 2016*. Its exercise is not a matter of mere caprice. The decision must withstand scrutiny against the background of the applicable planning scheme and proper planning practice. It should recognise that the provisions of a planning scheme are seen to embody the public interest and, as such, there is a public interest in compliance with them. However, not every non-compliance is contrary to public interest or will warrant refusal. The extent to which a flexible approach will prevail in the face of any given non-compliance with a planning scheme (or other assessment benchmark) will turn on the facts and circumstances of each case, which includes a consideration of the “*relevant matters*”.

[545] The Council submits that matters of public interest overwhelmingly support an approval of the proposed development. By way of summary, it provides six key reasons it says approval of the proposed development is in the public interest.

[546] First, the three key components of the proposed development, being tourist and residential development with supporting retail and commercial development, are clearly supported by the Planning Scheme, which itself reflects the public interest.

[547] Second, the extent of development does not involve “*over development*” and is compliant with the relevant provisions of the Planning Scheme.

- [548] Third, although the proposed development is inconsistent with the maximum height shown on the Height of Buildings and Structures Overlay Map, the built form of the proposed development is otherwise compliant with the relevant provisions of the Planning Scheme. The exceedance of the standard shown on the Height of Buildings and Structures Overlay Map does not result in an unacceptable departure from the Planning Scheme as there is an absence of visual amenity (and any other) impacts arising from the height. It also facilitates the satisfaction of the economic and planning need for a five-star resort hotel with conference facilities, while satisfying the relevant planning provisions regarding landscaping and open space.
- [549] Fourth, an approval of the proposed development will result in a significant increase in publicly accessible areas of open space, particularly because the subject land is privately owned and the proposed development will deliver considerably more open space than that which would be available under the Hyatt preliminary approval. It also makes excellent provision for public access to Yaroomba Beach through the proposed car parking, access ways and new surf lifesaving facilities.
- [550] Fifth, an approval would satisfy the economic, planning and community need for the proposed development. It says it is not in the public interest to refuse the proposed development on the basis that the Palmer Coolum Resort may re-open: because that resort is closed, there is a failure to achieve the planning intent for the Yaroomba tourism focus area and a failure to provide the associated public benefits to the Sunshine Coast economy.
- [551] Sixth, the proposed development will provide economic benefits to the Coolum locality and wider Sunshine Coast area, including employment and career opportunities that will be made available to members of the local community.
- [552] I accept the Council's submissions. They reflect a fair summary of my findings set out in the reasons above.
- [553] In all of the circumstances of this case, an approval of the proposed development is in the public interest. Accordingly, the application should be approved, subject to conditions.

Conclusion

- [554] For the reasons provided above, I am satisfied that, in the exercise of the planning discretion, SHC's application should be approved subject to the conditions in the Council's decision notice but with the amendments recommended by the turtle experts. SHC has discharged the onus and the appeal will be dismissed in due course.
- [555] I will give the parties an opportunity to prepare a judgment document that attaches the conditions of approval. The orders of the Court will be:
- (a) By 4 pm on 8 June 2020, the Respondent is to deliver a draft Judgment attaching the conditions of approval to the other parties.
 - (b) The appeal is to be listed for review at 9 am on 15 June 2020 for the purpose of making final orders in the appeal.