IN THE SUPREME COURT OF QUEENSLAND Appeal No. 67 of 1985

FULL COURT

BEFORE:

Mr Justice Kelly S.P.J.

Mr Justice Derrington

Mr Justice Ryan

BRISBANE, 4 OCTOBER 1985

BETWEEN:

NEVILLE WOOTTON (Appellant) Respondent

- and -

COUNCIL OF THE SHIRE OF WOONGARRA (Respondent) Appellant

JUDGMENT

MR JUSTICE KELLY: In my opinion the appeal should be allowed, the judgment of the Local Government Court should be set aside, and the matter should be referred back to that Court for determination in the light of the judgment of this Court. I agree with the reasons which have been prepared by my brother Ryan.

MR JUSTICE DERRINGTON: I agree.

MR JUSTICE RYAN: In my opinion the appeal should be allowed and the matter should be referred back to the Local

Government Court to decide whether the conditions sought to be imposed by the Council are reasonably required by the user of the land. I publish my reasons.

MR JUSTICE KELLY: The order of the Court will be that the appeal is allowed with costs, the judgment of the Local Government Court is set aside, and the matter if referred back to the Local Government Court to decide whether in the light of the judgment of this Court the conditions sought to be imposed by the appellant council are reasonably required by the user of the land.

This is not a case for the issue of a certificate under the Appeal Costs Fund Act, and the certificate is refused.

IN THE SUPREME COURT OF QUEENSLAND Appeal No. 67 of 1985

FULL COURT

NEVILLE WOOTTON (Appellant) Respondent

V.

COUNCIL OF THE SHIRE OF WOONGARRA (Respondent) Appellant

KELLY S.P.J.

DERRINGTON J.

RYAN J.

Reasons for judgment delivered by Ryan J. on 4th October, 1985. Kelly S.P.J. and Derrington J. concurring with those reasons.

"Appeal allowed with costs, the judgment of the Local Government Court be set aside, and the matter be referred back to the Local Government Court, to decide whether in the light of the judgment of this Court the conditions sought to be imposed by the appellant council are reasonably required by the user of the land. Order that a certificate under the Appeal Costs Fund Act be refused."

IN THE SUPREME COURT OF QUEENSLAND Appeal No. 67 of 1985

FULL COURT

NEVILLE WOOTON (Appellant) Respondent

v.

COUNCIL OF THE SHIRE OF WOONGARRA (Respondent) Appellant

JUDGMENT - RYAN J.

Delivered the fourth day of October, 1985.

This is an appeal against a judgment of a Judge of District Courts sitting as a Local Government Court given on 4th April, 1985 by which it was decided that the appellant Council had no power to impose certain conditions for consent to use land for the purpose of a caravan park and outdoor entertainment centre.

The respondent had appealed on 23rd December, 1983 to the Local Government Court against a decision of the appellant Council by which it had refused to consent to the use of land situated in Bargara as a caravan park and outdoor entertainment area. On 3rd September, 1984 His Honour delivered a judgment in which he concluded that consent should have been given to the application and indicated that the appeal would be allowed but he adjourned the matter to allow the parties to attempt to agree on the

terms of the conditions of consent. On 25th March, 1985 His Honour was informed that agreement had been reached on all conditions except two which the Council sought to impose and which the respondent who was the appellant in the Local Government Court) contested. They are:

19. A cash contribution of $65,528.00 for sewerage head-work shall be paid to the Council before the approval of the building application? and

20. A cash contribution of $17,375.00 for water supply head-work shall be paid to the Council before the approval of the building application.

His Honour had in his judgment delivered on 3rd September, 1984 found that the existing water supply and sewerage systems in the vicinity of the land were adequate to cope with the proposed development. On the resumed hearing it was not contended by the Council that any augmentation of them would be called for within the foreseeable future. Accordingly, he said that: "there is no identifiable sum which might be claimed by the Council to be a reasonable contribution from the appellant towards any present or future outlay on water or sewerage works made necessary by this development. Instead, the Council by proposed conditions 19 and 20 seeks to have the appellant pay a reasonable sum towards the existing water and sewerage systems." His Honour referred to s. 33(16C)A of the Local Government Act 1936-1983 by which it is unlawful for a local authority in the case of an application for consent to use land for any purpose to subject the approval of that application to a condition that is not prescribed by the scheme or by By-law or reasonably required by the use, and observed that the issue in this case was whether the contributions of money sought by the Council were reasonably required by the use of the land as a caravan park and outdoor entertainment area. He quoted a passage from the judgment of Gibbs C.J. in Cardwell Shire Council v. King Ranch Australia Pty. Ltd. (1984) 58 A.L.J.R. 386 at p. 388 and observed: "My reading of that passage suggests

to me that before something can be said to be reasonably required by a development there must be something about the development which will bring about a change in an existing state of affairs which will have to be met or catered for."

The critical question in this case is whether the learned Judge was right in his conclusion that a condition was not reasonably required by the use of the land to which an application related because the existing water supply and sewerage systems in the vicinity of the subject land were adequate to cope with the proposed development and no change in the existing state of affairs would have to be met by the development.

In Cardwell Shire Council v. King Ranch Australia Pty. Ltd. (1984) 58 A.L.J.R. 386 the question for decision was whether a condition was reasonably required by a proposed subdivision of land within s. 33(16C) of the Local Government Act. The passage quoted by His Honour is as follows:

> 'The statutory test that has to be applied by a local authority in deciding whether to attach conditions to its approval in a case such as the present is whether the conditions are reasonably required by the subdivision. This means that the local authority in deciding whether a condition is reasonably required by the subdivision is entitled to take into account the fact of the subdivision and the changes that the subdivision is likely to produce - for example, in a case such as the present the increased use of the road and of the bridge - and to impose such conditions as appear to be reasonably required in those circumstances.'

Those remarks were made in a case where the question at issue was whether conditions could be imposed only if they were necessary to provide access or drainage to the land or if they provided a benefit to the land which would be enjoyed exclusively by persons connected with the land. The High Court held that this was too stringent a test. I do not consider that its observations are properly understood as meaning that a condition is not required by

the use of the land if existing facilities are adequate to cope with that use. The question must be whether there is a relevant nexus between the use of the land and the conditions sought to be imposed, that nexus being that the proposed use creates such a change in existing affairs that the condition is a reasonable response to it.

The learned Judge has found that the existing water supply and sewerage systems provided by the appellant Council have sufficient present capacity for this development. However, in my judgment this does not have the consequence that there can be no relevant nexus between the use of the land as a caravan park and outdoor entertainment area and the making of contributions for the water supply head-works and the sewerage head-works which are required to bring water supply to the land and to take sewerage from the land. The contributions are to buy into an existing adequate system or infra-structure. Nevertheless, there seems to me to be a clear relationship between a use of land which would involve increased use of an existing system causing a corresponding reduction in the reserve capacity and a condition requiring a user to make a contribution to the cost of that system.

It follows, in my opinion, that it would not be unlawful for the Council to subject the approval of the application to the conditions set out earlier in this judgment. If the Council gives its consent subject to conditions, these must be reasonable and relevant. See By-law 3(1)(C) of Part 2 of Chapter XXXII of the By-laws of the Council of the Shire of Woongarra. The power to impose conditions upon an application for consent is accorded by this By-law and not by s. 33(16C) of the Local Government Act. The question for determination by the Local Government Court must therefore be whether the conditions sought to be imposed by the Council are reasonably required by the use of the land to which the application relates.

In my opinion the appeal should be allowed and the matter should be referred back to the Local Government

Court to decide whether the conditions sought to be imposed by the Council are reasonably required by the user of the land.