

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *CSR Limited v. Caboolture Shire Council & Ors.* [2001] QPE 013

PARTIES: **CSR LIMITED**
(ACN 000 001 276) Appellant
and
CABOOLTURE SHIRE COUNCIL Respondent
And
SENATOR JOHN WOODLEY
PETER LEONARD and HELEN LEONARD
JUDY MARY THERESE BUTLER
PETER SPINDLER, STEPHEN JOHN BOTT,
ROBERT ALEXANDER KING,
CHRISTOPHER STUART BARBER,
CHRISTOPHER FRANK WALLER,
PETER NEIL FIELDING,
BRIBIE ISLAND ENVIRONEMNT PROTECTION
ASSOCIATION INC, IAN ANDREW HARRISON
Respondents by Election

FILE NO/S: 3724 of 1999

DIVISION: Planning and Environment

PROCEEDING:

ORIGINATING COURT:

DELIVERED ON: 9 March 2001

DELIVERED AT: Brisbane

HEARING DATE: 11,13-15,18-22, 27,28 September & 7 December 2000.

JUDGE: Judge Quirk

ORDER: **The appeal will be allowed but, adjourned to allow formulation of appropriate conditions for approval against the background of the evidence given at the hearing**

CATCHWORDS:

COUNSEL: Mr D Gore QC with Mr. J Houston for the Appellant
Mr S Ure for the Respondent
Mr J Haydon for the Co-Respondent Harrison
Mr C McGrath for the Co-Respondents 3 to 10

SOLICITORS: Connor O'Meara for the Appellant
King & Company for the Respondent
MacGillivrays for the Co-Respondent Harrison

Direct Access for the Co-Respondents 3 to 10

- [1] This appeal is against the respondent's refusal of an application for town planning consent for an extractive industry on land at Donnybrook. The site occupies a total area of 122 hectares and is irregularly shaped. It has frontage to both Donnybrook and Meldale Roads and its northern boundary is close to the environment of Bullock Creek. Elimbah Creek is to the southern side of Meldale Road. Some relatively short distance to the east lies Pumicestone Passage.
- [2] The land was the site of a pine plantation which has now been cleared. Land use in the area is generally rural. Rural residential and closer settlement is encountered as one approaches the townships of Donnybrook and Meldale which are three to four kilometres away.
- [3] The relevant application was lodged on 22 June 1995 and is therefore governed by Chapter 6 of the *Integrated Planning Act*. It is to be decided as if the repealed *Local Government (Planning and Environment) Act* had not been repealed.
- [4] The matter has a relatively long history. The possible presence of a commercially viable sand resource was noted in about 1992 when the pine plantation operation ceased. Geological investigations were undertaken and confirmed that fact. Mr Siemon (a consultant expert in this field) reported that about 10 million tonnes of resource might be available.
- [5] In August of 1994 a request was made for terms of reference for an Environmental Impact Statement. The chronology of events that followed is usefully set out in

Exhibit 4. It is submitted, with some justification, that the proposal was subject to a rigorous and on-going scrutiny which involved the appellant's consultants, relevant government departments and a firm of consulting engineers with wide experience in this area (John Wilson and Partners) who were engaged by the council.

- [6] In February 1998 a very detailed submission was made from the Wetland Association of Concerned Citizens Inc (found at paged 873 – 1162, volume 4, Exhibit 3D). It is noted that, having reviewed relevant material, John Wilson and Partners concluded that the responses of the appellants and their consultants on all relevant issues were satisfactory and that:-

“The documentation supporting the application has been comprehensive and detailed and the issues of concern or requests for clarification which have been raised have been addressed in a responsive manner”.

- [7] The proposal was carefully considered by council's planning officers who concluded that:-

“Based on the information (which has been provided) it is reasonable to approve the application subject to conditions”.

- [8] However, this recommendation was rejected by the council who, instead, instructed its planning staff to prepare “grounds for refusal”. Apparently, with some reluctance (noting that they were “still mainly supportive of the application”) this was done and the application was formally refused on 17 August 1999.

- [9] Notwithstanding this rather unusual situation, this appeal must be decided on the evidence adduced before this court and the onus of showing that the application should be approved rests with the appellant.

- [10] The proposal involves the extraction of the sand resource by a process of dredging. The lifetime of the project is expected to be in the order of 30 years. Two lakes will eventually be formed between which a floodway will be constructed to permit the free-flow of flood waters at times of excessive rain.
- [11] The lakes are to be appropriately bunded. A substantial set-back (in the order of 200 metres) is to be provided from the Bullock Creek environs. The details of the proposal are found in the evidence of the appellant's representatives, Messrs Giobbi and Bashford, and in the Environmental Management Plan (Exhibit 8 particularly in section 2).

Issues

- [12] The issues in the appeal fell under three broad headings, namely:-
1. Possible threat to the environment in nearby waterways.
 2. Possible threat to local fauna.
 3. Town planning issues including the issue of "need".

Threat to areas waterways.

- [13] The importance of protecting water quality in Pummicestone Passage and adjoining waterways was not an issue in the case. Various treaties, Commonwealth and State legislation and references in the respondent's relevant planning documents confirm

this importance. These measures are not however support for any unjustified embargo on development of privately owned land which otherwise conforms with relevant planning provisions. However it was accepted at the outset that the appellant carried an onus of showing, on the balance of probabilities, that the proposal would not result in any unreasonable impact on the water quality in question.

[14] Essentially the thrust of the respondent's case was not that the proposal would necessarily have such an impact but that it had not been adequately demonstrated on the evidence given that it would not do so.

[15] An appropriately qualified expert, Dr Thorogood, made a detailed assessment of the relevant characteristics of the adjacent waterways on the appellant's behalf. He concluded that the proposed development was unlikely to result in any change to the flora and fauna of the adjacent inter-tidal lands of Bullock Creek and the Pummicestone Passage, or to effect the livestock of the Donnybrook Prawn Farm (which is a relatively short distance to the north across Bullock Creek) in any way.

[16] He also concluded that the endangered species such as dugong and green turtle and critical RAMSAR habitat would not be threatened by the proposed development and recreational commercial fisheries would not be affected. It has to be said that Dr Thorogood assumed that (in areas relevant to his considerations) the proposal could be controlled in the manner detailed by experts in other fields. The results of his work are found in Exhibit 19 and he pointed out that we are dealing her with an estuarine system with a saline environment. For reasons which he explained, these

systems have a level of resilience greater than fresh water systems and this provides an added safeguard

[17] An important feature of this case is that the proposal will not itself introduce contaminants onto the site. The matters of concern to which the respondents' experts drew attention relate to the potential for the release of acidic runoff (as a result of exposure of acid sulphate soils) and metallic ions. These are presently there in an insoluble form that has the potential to convert to solutes which would be capable of movement from the site via surface or ground water runoff.

[18] The importance of the containment of these materials was recognised by all and was the subject of extensive evidence in the appeal. Dr Pillsworth (a consultant to the council) did not really make a direct attack on the views expressed by Dr Thorogood. His concerns appeared to follow a lack of confidence in the views expressed by other experts called by the appellant.

[19] An important element of the proposal is that soluble potential contaminants will be contained in the ponds that will be the working areas for the extractive process and will remain on completion of the operation. It was therefore important in the case to explore ways in which these contaminants, in solution, might possibly escape the confines of the ponds and their bunding.

Flooding

[20] The possible consequences of flooding in the area was, at the time of the preparation of the EIS and relevant responses, examined by the consultants Kinhill.

- [21] For the purposes of the hearing of the appeal a more detailed assessment was undertaken on the appellant's behalf by Dr Connor and the results of his work are set out in Exhibit 10. Adopting a range of Average Recurrence Intervals, flood depths and water velocities across the site were modelled. The results indicated that it would be possible to provide effective flood immunity for the plant area and dredge ponds by appropriate bunding without causing any substantial affect on flooding or local hydrology.
- [22] Dr Connor's investigations indicate that the proposal would not cause, at times of local flooding, any added problems for the road network or residences in the area. His evidence on these matters was not contradicted in any serious way.
- [23] Mr Heyden, who was called by the council, raised concerns about the possible risk of bund-wall collapse. Dr Connor responded that for a ARI of 100 years a freeboard of about 0.8 metres would be provided and the relevant low velocities would make it unlikely that properly constructed bunding would be breached. He added that even if any breaching occurred mixing of flood and lake waters would be limited and whatever water might escape as floods receded would be subject to very substantial dilution by the relatively large volume of flood waters outside the pond areas.
- [24] Mr Heyden asserted that there was an absence of any contingency plan to account for bund-wall collapse but overlooked specific references to that matter in the Acid Sulphate Soil Management Plan (Exhibit 9 at page 75). An effort was made to raise difficulties in providing an appropriate vegetative cover for the floodway but these matters were satisfactorily addressed in the evidence of the botanist Dr Olsen. I

accept the evidence called by the appellant in relation to potential flooding problems.

Geotechnical considerations

- [25] On behalf of the appellant these matters were considered by Dr Shaw, an expert appropriately qualified in this field. Having examined the proposal, he made various recommendations in relation to the configuration and construction of the ponds and their bunding. He also considered the slopes to be achieved during excavation. There was little controversy about these matters.
- [26] The main contest in this area emerged somewhat late in the appeal after the appellant's case had concluded and Dr Shaw had given his evidence. The matter was raised in the evidence of Mr Amaral (called by the respondent by election, Mr Harrison) who questioned the appellant's ability to construct a stable floodway in the manner described in the relevant material. This floodway is intended to be in place before the commencement of Stage 3.
- [27] It is true that, in certain reports, he had referred to difficulties that might be encountered in capping slimes (which are the residue of the extractive process which, because of a relatively high moisture content, are of loose consistency).
- [28] It was not, until called to give evidence when he provided his final report, that Mr Amaral made it clear that he believed slimes would form a disproportionate component of material available for the construction of the floodway and that, apart

from difficulties in its construction, it would necessarily lack the stability required of it.

[29] Mr Amaral reached this conclusion by examining a “earthworks balance” carried out by Mr Bashford. This material indicated to him that something in the order of 50% of the backfill used to form the floodway consists of slimes. It was not disputed that, if this was so, difficulties would be encountered in constructing a stable floodway.

[30] However, when he fully appreciated the point being made by Mr Amaral, Mr Shaw re-examined the investigations that had been made and demonstrated that sufficient clay material would be available to provide a stable floodway. The reasons for his views are set out concisely in a short supplementary response (Exhibit 13A) wherein he concluded that the construction of a backfilled floodway of adequate stability could be achieved using predominantly stiff to very stiff clay backfill. I accept his evidence on the point.

Acid Sulphate Soils

[31] This matter is one which received close attention during the time in which the proposal was assembled. Concerns were expressed by the Departments of Natural Resources and Environment about this issue, and it was agreed between representatives of these departments and Kinhill that further and more detailed studies would be carried out at the site. Evidence of the extensive testing that followed was placed before the court.

[32] A detailed advice on “acid sulphate and water quality issues” was provided to the court (Exhibit 14) by Mr Shooter, principal environmental scientist with Brown and Root Services (the name under which Kinhill now practices) who states that his findings included the following:-

- There is no evidence of significant acid sulphate soil potential in the overburden material
- The only materials with significant acid generating potential are located in isolated areas below the prevailing groundwater level and below the intended pond water level.
- The bulk of the sand resource has no significant acid generating potential.

[33] Nevertheless a detailed and extensive acid sulphate soil management plan has been prepared and was placed before the court (Exhibit 9). This is a refinement of earlier drafts about which the relevant departments expressed satisfaction. John Wilson and Partners, in their advices to council, also found the intended measures to deal with acid sulphate soils acceptable. Mr Heyden had earlier expressed reservations concerning this aspect of the proposal, but it appeared that, at the time, he was not aware of the 1998 draft of the Management Plan or the approval expressed by the relevant departments and John Wilson and Partners. In the end result he appeared to resile from his earlier expressed concerns.

Surface Water Quality

- [34] The quality of surface water on site has been monitored over a long period and found to be poor. Nevertheless measures will be adopted in the proposal to avoid any contamination of existing surface water in the area.
- [35] The high level of flood immunity of the ponds has already been referred to as has the careful attempts to avoid any problems from acid sulphate soils. Any surface runoff from plant and stockpile areas and dredge returns will be contained and returned to the bunded ponds.
- [36] Mr Shooter, in his evidence, explained measures intended to maintain pond water at acceptable pH. levels during the operations. He predicted that, after closure of the operation, water quality in the ponds would remain satisfactory. There was no persuasive challenge to his evidence. I am satisfied that possible threat to surface water quality in the area does not provide any justification for refusing the application.

Ground Water

- [37] The proposal's impact on the existing ground water regime was the subject of extensive examination in the appeal. Ground water quality had been monitored at this location over a lengthy period (since 1995) notwithstanding attempts by some of the respondents' witnesses as to suggest otherwise, the results of these studies

indicate conclusively that ground water quality in the area is poor. Moderate to high salinity is indicated as are elevated levels of iron, calcium and magnesium ions. It is reasonable to conclude that the ground water present on site is generally unsuitable for domestic, pastoral or agricultural use.

[38] Nevertheless it was accepted that pond water, where higher levels of potential contaminants (to the local marine environment) might concentrate, should, as far as reasonably possible, be isolated. The fundamental approach to this difficulty was explained in the 1995 Douglas Partners Report by Mr Briese who concluded:-

“The pond will generally act as a sink with evaporation and the volume of sand extraction exceeding input from rainfall. Groundwater will therefore flow into the pond rather than out, except for about 4 months of the year when the pond level will rise as a result of rainfall. Outflow from the pond during these months under average conditions is expected to be minimal, given the flat gradient and lower permeability of the formation to the north of the site. It is also assessed that the large amount of clay inter-bedded with the sand will have a sealing effect on the pond floor and walls, reducing or prohibiting outflow. Any ground water discharged from the pond will be heavily diluted from surface runoff resulting from the rainfall events which raised the pond levels”.

[39] Mr Briese (who is now principal hydrologist with Australasian Groundwater & Environmental Consultants Pty Ltd) in a report furnished in April 1998 confirmed his opinion in that respect when it was questioned in certain material put forward by WACC, namely as assessment of Dr Malcolm Cox (June 1997 Exhibit 3 page 900) and a study of “The Hydrology of Meldale” by John Bean (Exhibit 3 page 937).

[40] In September 1998 the Department of the Environment indicated that it no longer saw groundwater concerns as an obstacle to approval and, in its 1999 report to the council, John Wilson and Partners, having reviewed relevant material concluded

“There is sufficient information available to assess the impact of the and extraction operation on the groundwater regime and further groundwater studies are not required”.

[41] For the purposes of the appeal, the appellant engaged Mr Hair, a specialist hydrologist with extensive practical experience, to give a “peer review assessment” of the work that had been earlier done. The results of his work are found in his report (Exhibit 11) and the additional evidence he provided to the court as the debate on the matter developed.

[42] I was impressed by the evidence of Mr Hair and found him very thorough and even-handed in his approach. His assessment was carefully prepared and clearly expressed but he was always ready to review earlier given opinions when additional material was drawn to his attention. In contrast, the evidence presented by the respondents was less impressive and the attack on the appellant’s case appeared to change direction in a number of respects as the debate developed.

[43] Neither Professor Volker (called by the council) nor Mr Harbison (by the respondents by election) made a definite assertion that the contention that the pond would act as a groundwater sink was invalid. Their approach was rather to raise possibilities that might cast some doubt on the appellant’s belief that the pond would act in that way.

[44] With due respect to his views, Mr Harbison appeared confused in his approach to the matter. It was not at all clear that he appreciated what was being said by the appellant’s experts about the pond’s capacity to act as a sink and he conceded in cross-examination that he was still not aware whether or not this proposition was

correct. It appeared that he had not available to him a good deal of important and relevant material (e.g., the 1995 Douglas Partners report particularly where it dealt with water table levels, groundwater movement and water balance). His discussions of groundwater quality on site was confusing.

[45] At one point, in the presentation of the case for the respondents by election, it seemed to be suggested that contaminants would travel in a direction opposite to that of groundwater flow. Reliance was placed on the concepts of “diffusion, advection and dispersion” as they are discussed in an accepted authority on these topics by Fetter (see Exhibit 39).

[46] The appellant’s representatives pointed out that the process of “retardation”, also discussed in Fetter, was conveniently overlooked and it is one which is relevant to the “mass transportation of solutes” about which much was sought to be made and works against the proposition that was sought to be advanced.

[47] Professor Volker, when he was called to give evidence, raised some important matters to which he claimed insufficient attention had been given. These matters, he said, could have the result of an outflow from the pond into the groundwater system greater than that which would be able to return causing contaminants to escape into the surrounding area. These matters included:-

- Times at which rainfall would be disproportionate to loss by evaporation and the effect that this would have upon the direction of groundwater flow.

- The position of the proposed ponds in relation to the existing groundwater divide.
- The relative cross-section or areas of outflow and return flow.
- The contribution, by re-charge, to the groundwater system external to the pond.
- The ability to maintain a satisfactory relationship between the water level of the pond and that of Bullock Creek.

[48] Unfortunately (but perhaps understandably due to the complexity of these matters) Mr Hair was not really given an adequate opportunity to comment on these matters when he earlier gave his evidence. However, he was able to consider and deal with these matters in his evidence in rebuttal. In response to Professor Volker's suggestions he made the following points:-

- Proper regard must be made to the comparative periods during which rainfall and evaporation would control the direction of groundwater flow. In this context volume of flow must be considered as well as rate of flow. He pointed out that authorised rainfall records from Meldale for a 10 year period of 1999 showed that the number of days of rainfall events of 100mm or more was only 0.5% of the total number of days. Days with a rainfall event of 50mm or more represented only 1.5% of the total number of days. Against this background it was fair to say that while, for a relatively short period, the rate of flow out of the pond might be higher, flow back into the pond will occur over a much greater period of time.

- He accepted the proposition that cross-sectional areas of outflow might exceed those of return flow but the differences would be relatively small and the matter of the disproportionate period of return flow as discussed in the previous point is also relevant.
- In regard to the proximity of the ponds to the existing groundwater divide, he pointed out that the extraction process will alter any existing regime with the result that the “groundwater sink” situation will quickly develop.
- Groundwater re-charge outside the pond is not affected by the operation and, due to storative properties of the clayey soils, less rainfall will be required to elevate the level of the divide than would be to elevate the pond level. Consequently a groundwater divide between the pond and Bullock Creek will be maintained at a higher level than those at each of those locations. In his view it was highly improbable that a linear or near linear gradient from the pond to Bullock Creek would develop.

[49] In the course of the evidence some confusion arose about different sets of data in respect of rainfall but this confusion appeared to be resolved when given further attention by Mr Hair.

[50] This highly technical area of the case was explored to an extremely detailed extent in the evidence. In the end result I accept that Mr Hair’s work on the matter was thorough and careful. I accept his opinion which verified earlier expressed views that the proposed operation can be conducted in a way which effectively isolates

any dissolved contaminants in the ponds from surrounding areas which are environmentally sensitive.

The Precautionary Principle

[51] Much was sought to be made of the “Precautionary Principal” which is specifically mentioned in the *Integrated Planning Act*. In section 6.1.2.3(2) it is described in this way:-

“The principal that, if there are threats of serious or irreversible environmental damage, careful evaluation must be made to avoid wherever practicable, serious or irreversible environmental damage including, if appropriate, assessing risk weighted consequences of various options”.

[52] This statement of principal does not, as I read it, depart in any important way from the approach which this court has taken conventionally with such matters prior to the statement’s becoming part of the legislation. It has generally been held that the appellant faces a burden of establishing, on the balance of probabilities, that when a particular activity might pose a risk of environmental harm, those risks have been evaluated and measures intended to provide protection from environmental harm are feasible and likely to be put in place (*Refjek v. McElroy* 1965 112 CLR 517; *Davjan v. Noosa Shire Council* 1981 QPLR 69; *Esteedog Pty Ltd v. Maroochy Shire Council* 1991 QPLR 7; *GFW Gellatin International Limited v. Beaudesert Shire Council*).

[53] In the lastmentioned case it was put in this way:-

“It is essential that it be shown that relevant procedures and their likely impact on the environment are properly understood by the appellant and its expert consultants and that there is a capacity to

deal with any difficulty that might arise in a way which might precluded unacceptable results.”

- [54] A similar approach has been taken in other, but comparable jurisdictions. In *Leatch v. National Parks and Wildlife Service and Shoalhaven City Council* 1993 81 LGERA 270, Stein J. said:-

“In my opinion the precautionary principal is a statement of common sense and has already been applied by decision-makers in appropriate circumstances prior to the principal being set out. It is directed towards the prevention of serious or irreversible harm to the environment in situations of scientific uncertainty. Its premise is that where uncertainty or ignorance exists concerning the nature or scope of environmental harm (whether this follows from policies, decisions or activities) decision-makers should be cautious.”

- [55] It is noted that His Honour was there dealing with a somewhat different provision, the wording of which is reflected in what he wrote. Section 6.1 of the *Protection of the Environment Administration Act* 1991 (N.S.W.) required the EPA to have regard to the need to maintain Environmentally Sustainable Development. Section 6(2) states that ESD can be achieved through the implementation of the following principals and programs:-

“(a) the precautionary principal – namely that if there are threats of a serious or irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation”.

- [56] The end result of all of this is that, while the precautionary principal imposes a responsibility on planning authorities (and the court) to consider very closely any prospect of environmental harm, those bodies are not relieved of the responsibility of doing justice to the interests of all parties including, of course, those of the proponent.

[57] For the reasons which I have already stated, I am satisfied that the appellant, in its evidence has shown that the procedures relevant to this proposal and their likely impact upon the environment, have been properly investigated and understood by its consultants and, that taking appropriate advice, it has the capacity to deal with any difficulties for the environment that might otherwise arise.

Threat to Local Fauna

[58] As early as 1996 the presence of fauna, whose status is somewhat sensitive, was recognised. The false water rat was known to inhabit the fringes of the inter-tidal zone and the wallum froglet was also known to be present.

[59] Amendments to Environmental Management Plans were made to acknowledge these species. The major measure involved the introduction of a 200 metre wide buffer between the proposed areas of activity and those which were particularly environmentally sensitive. Dr Ingram, an expert whose eminence in these fields is acknowledged, was asked to make an assessment of the proposal and, subject to certain relatively minor modifications which he suggested and which are set out in his report (Exhibit 16), he was prepared to endorse the Environmental Management Plans. While it was acknowledged that his views were premised on the success of measures adopted to preserve the quality of surface and ground water, his opinion was that any impact upon the prospects of survival of these creatures will be negligible.

Town Planning Issues

[60] The subject land is included in the rural zone. In that zone extractive industry is a permissible use. This suggests that such an industry is not inherently incompatible with other uses intended for such areas and the application is entitled to be considered on its merits.

[61] The area of dispute in the town planning context focused upon the Strategic Land Use Plan. In that plan the land is in an area designated as having a Preferred Dominant Land Use of “rural areas”. In dealing with the rural area designation implementation (d) of objective 1 provides:-

“(d) the use of rural areas for extractive industries is considered to be appropriate and such applications will be treated on their merits.”

[62] However, the plan, in its graphic form, also indicates at certain locations symbols (superimposed on other designations) which indicates the presence of “Extractive Resources”. No such symbol is shown at this location.

[63] The purpose of these planning measures is explained in the Strategic Land Use Plan at page 47 where “Extractive Resources” are dealt with. The introductory paragraph states:-

“The significant extractive and mineral resources located within the Shire have been designated by a purple symbol on the Strategic Land Use Plan Map. These areas are not the only resources in the Shire, and are only indicative of the actual resource location. The types of material extracted includes sand, gravel, clay and hard rock and in some cases the processing of such substances occurs on the site”.

[64] It is very important to note the essential objective of this part of the Strategic Land Use Plan which is stated in this way:-

“To protect valuable extractive and mineral resources from encroachment of residential and rural residential development in order to enable such resources to be utilised as required”.

[65] The implementation provisions follow and among these are:-

- “(a) the Strategic Land Use Plan map identifies extractive and mineral resource locations which should be protected to enable utilisation as required.

- (b) residential and rural residential development will not be supported in locations which would preclude the utilisation of valuable extractive and mineral resources where extractive and mineral resources are located within residential or rural residential areas on the Strategic Land Use Plan map, utilisation of the extractive and mineral resources will only be supported by the council where adequate separation and buffering is provided within the extractive and mineral industry site from existing or future residential or rural residential areas”.

[66] Other measures (including (f) which stresses the need to protect the environmental and conservation values of Pummicestone Passage) follow but these matters do not, on the evidence given, appear to stand in the way of approval in this case. These provisions of the Strategic Land Use Plan do not appear to support the argument advanced by the respondents that it follows from the absence of the relevant symbol that the Strategic Land Use Plan is against extractive industry development of this particular resource at this location.

[67] There is no suggestion in the provisions that extractive industries will be approved only at locations designated by the symbol. As can be seen from the introductory words it is accepted by the Plan that these are not the only resources in the Shire. To read this distribution of the symbols as an exhaustive identification of sites

suitable for extractive industry development is, in my view, to go too far and involves a misunderstanding of the provisions.

[68] The main thrust of these provisions is to protect known deposits from encroachment by incompatible forms of land use. The most that could be said is that locations designated by the symbol might enjoy a higher level of protection in that respect than might be gained by areas not so designated. A very similar situation arose before this court in *Agtec Holdings Pty Ltd v. Kilcoy Shire Council* 1999 QPELR 208.

[69] Although, in view of what I have said, it probably does not require discussion, the absence of a symbol at this location is explicable having regard to the evidence given. At the time of the gazettal of the Strategic Land Use Plan reliance had been placed on the work of a Mr O'Flynn.

[70] In his report of 1986 he noted a "lack of drilling information" in respect of this particular area. Mr O'Flynn was called to give evidence and acknowledged that, in the light of what is now known of the area (following extensive testing by Siemon and others) the site contains a "regionally significant resource". Accordingly, for what it is worth, the probabilities appear to be that had the draftsman of the Strategic Land Use Plan been furnished with the data that is now available, this location would have gained the appropriate symbol. This however, is in no way determinative of the case.

[71] It is generally accepted, in a planning sense, that the community's interests are advanced by the exploitation of valuable mineral resources prior to the advent of

other potentially incompatible forms of land use. In these circumstances I am satisfied that the proposal is not in conflict with the Strategic Land Use Plan. Had there been any substance in the arguments advanced by the respondents, I would have been satisfied on the evidence that there was more than sufficient planning justification for overlooking such conflict.

Need

[72] The matter of need attracted a considerable amount of attention in the appeal and this was surprising in that the proposal was one which would not have required a rezoning under the appeal legislation. As a consequence s.4.4(3)(b) (which makes need a relevant consideration in the determination of a rezoning application) would not apply to the matter.

[73] In the course of the evidence there was extensive discussion about available sand resources and the relevant merits of the types of sand that can be won at those locations (in terms of particle size, texture and utility in concrete manufacture and building procedures). I do not believe it necessary to go into any detail about these matters and findings in respect of areas of conflict in these discussions are not required.

[74] The need arguments seem to arise in connection with the issue of the “Extractive Resources” symbol in its absence at this location. The point appeared to be that if,

as was contended, this absence weighed against the proposal it was not a matter that was overcome by any consideration of public need.

[75] It is true, as has been indicated in other cases (eg *Theodorou v Redlands Shire Council* 1987 QPLR 11), that when it is unnecessary to establish need (in a planning sense) to discharge the relevant onus, a demonstration of advantage to the community can, in appropriate circumstances, work to overcome otherwise negative impacts of a particular proposal. In this appeal no such suggestion was made as part of the appellant's case.

[76] As has been said, there is abundant authority for the proposition that the public interest is advanced by the location and winning of valuable mineral resources prior to the advent of other potentially incompatible land uses. The evidence that this is a regionally significant resource is all one way and also establishes that it is conveniently accessible to the market place. At present the form of land use in the area is not such as to give rise to any important amenity conflicts.

[77] The south-eastern part of the State is a growing area and continued growth is certainly hoped for. I am satisfied that the availability to the market of this resource would benefit the general community even if it might not be welcomed by commercial competitors. In my view the evidence there is nothing in the "need" point that would call for the proposal's rejection.

[78] The matter was difficult and complex in a technical sense. However the appellant's case was thoroughly prepared and carefully presented. On the whole of the evidence I am satisfied that the onus of showing that the application was one that

should be approved has been discharged. The appeal will be allowed but, at this point, adjourned to allow formulation of appropriate conditions for approval against the background of the evidence given at the hearing.