

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *GTH Project No. 4 Pty Ltd v Noosa Shire Council & Ors*
[2024] QPEC 26

PARTIES: **GTH PROJECT NO. 4 PTY LTD ACN 607 629 149**
(Appellant)

v

NOOSA SHIRE COUNCIL
(Respondent)

AND

**CHIEF EXECUTIVE, DEPARTMENT OF STATE
DEVELOPMENT, INFRASTRUCTURE, LOCAL
GOVERNMENT AND PLANNING**
(Co-respondent)

AND

COOROY AREA RESIDENTS ASSOCIATION INC
(Co-respondent by Election)

FILE NO/S: 970 of 2021

DIVISION: Planning and Environment

PROCEEDING: Appeal

ORIGINATING
COURT: Planning and Environment Court, Brisbane

DELIVERED ON: 30 May 2024

DELIVERED AT: Brisbane

HEARING DATE: 26 to 28 and 31 July 2023, 1 and 4 August 2023, 31 October
2023, 9 November 2023, 22 December 2023, 20 and 21 and
23 February 2024, and further submissions received 29
February 2024, 14 March 2024, 9 April 2024 and 17 May
2024, and further hearing on 24 May 2024

JUDGE: Kefford DCJ

ORDER: **I order the appeal be dismissed. The development
application seeking a development permit for making a
material change of use and a development permit for
reconfiguration of lots is refused.**

CATCHWORDS: PLANNING AND ENVIRONMENT – APPEAL – appeal
against the Council’s refusal of development application

seeking a development permit for a material change of use for a seniors' living community and golf course clubhouse and reconfiguration of lots – whether the proposed material change of use complies with the assessment benchmarks in Noosa Plan 2006 – whether the admitted non-compliances with the assessment benchmarks in Noosa Plan 2006 are deserving of significant weight – whether the proposed seniors' living community is an appropriate use of land outside the urban growth boundary – whether the proposed seniors' living community involves unacceptable built form and density – whether the proposed seniors' living community will result in unacceptable visual amenity and character impacts – whether the proposed seniors' living community presents an unacceptable risk to the water catchment of Lake Macdonald – whether consideration of Noosa Plan 2020 tells against approval of the proposed development – whether there is a need for the proposed seniors' living community – whether there is a need for the proposed development – whether there are other benefits that support approval – whether the development application for a material change of use should be approved in the exercise of the planning discretion – whether the code assessable proposed reconfiguration of a lot complies with the assessment benchmarks

- LEGISLATION: *Planning Act 2016* (Qld) ss 43, 45, 59, 60, 65, 66
- Planning and Environment Court Act 2016* (Qld), ss 43, 46, 47
- CASES: *AAD Design Pty Ltd v Brisbane City Council* [2012] QCA 44; [2013] 1 Qd R 1, applied
- Abeleda & Anor v Brisbane City Council & Anor* [2020] QCA 257; [2021] QPELR 1003, applied
- Allan & Anor v Noosa Shire Council* [1983] QPLR 227, cited
- Ashanti Logistics Pty Ltd v Sunshine Coast Regional Council* [2022] QPEC 22; [2023] QPELR 965, approved
- Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPEC 16; [2019] QPELR 793, approved
- Austin BMI Pty Ltd v Ipswich City Council & Ors* [2023] QPEC 27, approved
- Brisbane City Council v Klinkert* [2019] QCA 40; (2019) 236 LGERA 88, considered
- Brisbane City Council v YQ Property Pty Ltd* [2020] QCA 253; [2021] QPELR 987, applied
- Clarry & Anor v Brisbane City Council & Anor* [2024] QCA 39, applied

Cooroy Golf Club Inc. & Anor v Noosa Shire Council [2005] QPEC 16; [2005] QPELR 561, approved

Duncombe v Council of the Shire of Caboolture & Anor [1990] QPLR 257, approved

Gaven Developments Pty Ltd v Scenic Rim Regional Council & Ors [2010] QPEC 51; [2010] QPELR 750, approved

Intrafield Pty Ltd v Redland Shire Council [2001] QCA 116; (2001) 116 LGERA 350, applied

Isgro v Gold Coast City Council & Anor [2003] QPEC 2; [2003] QPELR 414, approved

Klinkert v Brisbane City Council [2018] QPEC 30; [2018] QPELR 941, approved

Luke & Ors v Maroochy Shire Council & Anor [2003] QPEC 5; [2003] QPELR 447, approved

McKay v Brisbane City Council & Anor; Panozzo v Brisbane City Council & Anor; Jensen v Brisbane City Council & Anor [2021] QPEC 42; [2022] QPELR 963, approved

Murphy v Moreton Bay Regional Council & Anor; Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor [2019] QPEC 46; [2020] QPELR 328, approved

Project Blue Sky Inc v Australian Broadcasting Authority [1998] HCA 28, (1998) 194 CLR 355, applied

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

SAS Trustee Corporation v Miles [2018] HCA 55; (2018) 265 CLR 137, applied

Smout v Brisbane City Council [2019] QPEC 10; [2019] QPELR 684, approved

SZTAL v Minister for Immigration and Border Protection & Anor [2017] HCA 34; (2017) 262 CLR 362, applied

Trinity Park Investments Pty Ltd v Cairns Regional Council & Ors; Dexus Funds Management Limited v Fabcot Pty Ltd & Ors [2021] QCA 95; [2022] QPELR 309, applied

Walker v Noosa Shire Council [1983] 2 Qd R 86, applied

Wilhelm v Logan City Council & Ors [2020] QCA 273; [2021] QPELR 1321, applied

Yorkeys Knob BP Pty Ltd v Cairns Regional Council [2022] QCA 168, applied

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

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TABLE OF CONTENTS

Introduction	6
What does the progress of the development application reveal?	7
What does the common material for the development application reveal?.....	8
What does the progress of the appeal reveal?	14
What is the nature of the proposed development?	18
What does the proposed reconfiguration of lots entail?	19
What does the proposed seniors' living community use entail?	20
What does the proposed golf course clubhouse use entail?	23
What are the other attributes of the proposed development?	23
What are the issues in dispute?.....	24
What is the applicable framework for the decision?	26
Key issue 1 – Is the proposed seniors' living community appropriately located when assessed against Noosa Plan 2006?	29
What land use outcomes are sought for the subject land in the relevant assessment benchmarks in Noosa Plan 2006?.....	30
Does the proposed development involve uses that are contemplated on the subject land under Noosa Plan 2006?.....	36
Is the proposed seniors' living community appropriately located having regard to its density and its proximity to essential services and facilities?	39
Is the proposed seniors' living community compatible with the surrounding community?.....	42
What is the significance of the non-compliances relating to the proposed location of the seniors' living community use?.....	43
Key issue 2 – Does the proposed seniors' living community involve unacceptable built form and density and result in unacceptable visual amenity and character impacts?	49
What built form, density, visual amenity and character outcomes are sought by the relevant assessment benchmarks in Noosa Plan 2006?.....	50
What is the amenity and character of the locality?.....	55

What are the design features of the proposed seniors' living community?.....	59
Are the buildings appropriately designed and sited to allow for landscaping between buildings?	59
Are the buildings appropriately designed and sited to maintain the visual continuity and pattern of buildings in the street?	60
Is the density of the proposed seniors' living community and its site cover, gross floor area and plot ratio, compatible with surrounding development?	60
Will the proposed seniors' living community present an appearance of bulk to adjacent properties, roads or other areas in the vicinity?.....	61
Are the proposed buildings and other structures designed and sited to encourage the co-location of a range of open space uses?.....	61
Will the proposed seniors' living community have a detrimental impact on the amenity of the locality?	62
Will the proposed seniors' living community have a detrimental impact on the character of the locality?	62
Conclusion regarding whether the proposed seniors' living community involves unacceptable built form and density and results in unacceptable visual amenity and character impacts	64
Key issue 3 – Does the proposed seniors' living community present an unacceptable risk to the water catchment of Lake Macdonald?.....	65
What outcomes are sought for the Lake Macdonald water supply catchment in the relevant assessment benchmarks in Noosa Plan 2006?.....	66
Does the proposed seniors' living community comply with the assessment benchmarks with respect to protection of the Lake Macdonald water catchment?	67
Key issue 4 – Does consideration of Noosa Plan 2020 tell against approval of the proposed material change of use?	77
Does the proposed seniors' living community integrate with the surrounding community?.....	79
Do the facts and circumstances establish that Noosa Plan 2006 is out of step with the contemporary expressions of planning intent in Noosa Plan 2020?	85
Key issue 5 – What are the relevant matters relied on by the parties under s 45(5)(b) of the <i>Planning Act 2016</i> ?	96
Key issue 6 – Is there a need for the proposed use?.....	96
What are the general principles that inform and guide an assessment of need?	99
Do Noosa Plan 2006 and Noosa Plan 2020 recognise the important principles about the need for seniors' accommodation?.....	100
Does the evidence establish a need for the proposed seniors' living community?	101
Is there a need for the upgrade to the golf course clubhouse?	105
Conclusion regarding need.....	106
Key issue 7 – Does the new golf course clubhouse benefit the community?.....	106
Key issue 8 – Is the proposed development consistent with ShapingSEQ?.....	107

Key issue 9 – Is there a community benefit associated with contributions to the upgrade of the intersection of Myall and Elm Streets?	110
Key issue 10 – Is there an absence of unacceptable adverse amenity impacts?.....	110
Key issue 11 – Does the absence of evidence of support from the owner of the Cooroy golf course tell against approval?	111
Key issue 12 – Should the proposed use be approved in the exercise of the planning discretion?	111
Key issue 13 – Should the proposed reconfiguration of lots be approved?	113
Conclusion.....	115

Introduction

- [1] On the outskirts of the rural hinterland township of Cooroy, near the Bruce Highway, there is a 38.1654 hectare parcel of land that comprises four allotments, being Lot 33 on MCH 2281 (“*Lot 33*”) and Lots 1, 2 and 3 on SP 115864 (respectively referred to as “*Lot 1*”, “*Lot 2*” and “*Lot 3*”). They are located at 30, 114, 122 and 144 Myall Street (“*the subject land*”).
- [2] Part of the subject land, being Lot 33 and Lots 1 and 2, is improved by an existing golf course that is operated by Cooroy Golf Club. The golf course contains 18 holes in conventional fairway configurations demarcated by trees and other vegetation. The current clubhouse is at the very northern extent of the golf course, opposite Myall Street’s intersection with Crystal Street. The golf course also appears to occupy Lot 1 on RP 78962 and Lot 1 on RP 86447, but those lots do not form part of the subject land.
- [3] The remainder of the subject land, being Lot 3, has an area of 7.033 hectares. It is at the southern end of the subject land and is currently vacant. It is surrounded by the golf course on three sides. Lot 3 enjoys frontage to Myall Street and its extension into Nandroya Road and is adjacent the roundabout interchange that provides access to the Bruce Highway. It has a history of use for small-scale agricultural activities.
- [4] When the four irregularly shaped, contiguous allotments that comprise the subject land are viewed in plan format and on aerial images, their outline presents a shape reminiscent of a bottle of wine or champagne, where:
- (a) the cork and neck of the bottle points north towards the intersection of Myall and Elm Streets and the Cooroy township centre, which provides a wide array of services and facilities in a vibrant main street configuration;
 - (b) the top of the cork adjoins land to the north that contains a single detached dwelling house;
 - (c) the neck and sides of the bottle are defined by:
 - (i) the North Coast Rail Line, which flanks the eastern boundary of the subject land; and

- (ii) the formed pavement and road reserve for Myall Street and its extension into Nandroya Road, which flanks the western boundary of the subject land;
 - (d) the bottle is positioned such that its label faces Myall Street, which label is represented by the vacant land of Lot 3;
 - (e) the base of the bottle is defined by a golf course fairway, including the linear arrangement of vegetation that demarcates the fairway, which sits between the vacant land of Lot 3 and the disused business enterprise (formerly the Eumundi Smokehouse) on the adjoining land to the south; and
 - (f) a small shard is missing from the centre of the bottle, being that part of the golf course that operates on Lot 1 on RP 78962 and Lot 1 on RP 86447.
- [5] GTH Project No. 4 Pty Ltd wants to make a material change of use of the subject land to develop Lot 3 and a small portion of existing golf course fairways on Lots 1 and 2 for a seniors' living community and a new golf course clubhouse. It also wants to reconfigure the subject land so that:
- (a) the seniors' living community is on proposed lot 4, being an area comprised of all of Lot 3 and part of Lot 1;
 - (b) the golf course is on Lot 33 and proposed lot 5, being an area comprised of all of Lot 2 and part of Lot 1; and
 - (c) there is a proposed access easement over parts of both proposed lot 4 and proposed lot 5 to facilitate a single, internal access road that will provide access from Myall Street to the new golf course clubhouse and the seniors' living community.
- [6] To facilitate its goal, GTH Project No. 4 Pty Ltd made a single development application to Noosa Shire Council ("*the Council*") in which it sought a development permit for the material change of use and a development permit for reconfiguration of lots.
- [7] The Council refused the development application. This is an appeal against the Council's decision.
- [8] Under s 45 of the *Planning and Environment Court Act 2016 (Qld)*, GTH Project No. 4 Pty Ltd bears the onus of establishing that the appeal should be allowed and the Council's decision set aside and replaced with a decision to approve its development application.
- [9] Ultimately, GTH Project No. 4 Pty Ltd says that its development application should be approved because the subject land presents a vast number of opportunities for development of the type proposed and no material constraints. This submission is at the heart of GTH Project No. 4 Pty Ltd's approach to its case.

What does the progress of the development application reveal?

- [10] Before turning to the detail of the issues in dispute in this case, it is helpful to briefly consider the evolving nature of GTH Project No. 4 Pty Ltd's development application. The development application was changed several times during the

development assessment process before the Council. It was also changed several times after the commencement of this appeal.

- [11] Consideration of the issues raised by the Council and others throughout the development application and appeal process, and GTH Project No. 4 Pty Ltd's response to them, provides a better appreciation about the difficulties faced by GTH Project No. 4 Pty Ltd in discharging its onus. It provides relevant context for testing GTH Project No. 4 Pty Ltd's contention that the subject land presents a vast number of opportunities for development of the type proposed and no material constraints.

What does the common material for the development application reveal?

- [12] The evidence before me includes some, but not all, of the material about GTH Project No. 4 Pty Ltd's development application that the Council received before it decided the development application. That material is defined under the *Planning Regulation 2017* (Qld) as "*the common material*". It is information to which regard must be had in an assessment under s 45 of the *Planning Act 2016*.

- [13] The development application forms described the proposed use as "*Seniors Living Community*" with 232 dwelling units and "*Golf Club House*". The forms identified the relevant planning scheme definition as "*Multiple Housing – Type 5 (Relocatable)*" and "*Entertainment and Dining Business – Type 2 (Recreation, Amusement and Fitness)*". The forms also identified that the reconfiguration of lots involved boundary realignment and creation of an easement to give access to a lot from a construction road.

- [14] On 26 September 2019, the Council gave a confirmation notice under the *Planning Act 2016*, in which it confirmed that the development application was properly made on 12 September 2019. The notice states that the development application sought development approval for:

- “• Development Permit for Material Change of Use – **Multiple Housing - Type 5 Relocatable and Entertainment & Dining Type 2 (Recreation amusement fitness)**
- Development Permit for Reconfiguration of a Lot (Boundary realignment and Access Easement).”

(emphasis added)

- [15] At the time that GTH Project No. 4 Pty Ltd's development application was properly made, the Planning Scheme for the Noosa Shire 2006 (Amendment 10, effective 8 June 2018 to 31 July 2020) ("*Noosa Plan 2006*") was in effect.

- [16] The subject land is within the Council's local government area and subject to Noosa Plan 2006. Under Noosa Plan 2006, the subject land is:

- (a) designated on the Planning Scheme Strategy Map as having preferred land use patterns of "*Rural*" and "*Areas of Ecological Significance*";
- (b) within the Cooroy and Lake Macdonald Locality Plan area and mapped as:
 - (i) partly in the Open Space Recreation Zone (Lot 33 and Lot 1);

- (ii) partly in the Rural Zone (Lots 2 and 3); and
 - (iii) entirely outside of the Urban Growth Boundary;
- (c) mapped on the Cooroy & Lake Macdonald Natural Resources Overlay as part of the water supply catchment for Lake Macdonald, which is identified in Noosa Plan 2006 as:
- (i) one of two primary sources of water supply for the Noosa Shire; and
 - (ii) the primary source of water supply for the coastal urban areas of Noosa and the rural towns and villages of Cooroy, Pomona, Cooran and Cooroibah; and
- (d) mapped on the Cooroy & Lake Macdonald Biodiversity Overlay as containing a major waterbody and as requiring an associated riparian buffer area.
- [17] The development application required referral to the Chief Executive, Department of State Development, Infrastructure, Local Government and Planning (*“the Chief Executive”*) as:
- (a) the material change of use is assessable development under a local government’s planning scheme and involves more than 200 dwellings to be used for accommodation for older members of the community, or retired persons, in independent living units or serviced units and an ancillary manager’s residence;
 - (b) the material change of use is assessable development under a local government’s planning scheme and the subject land is within 25 metres of a State transport corridor in that the subject land has frontage to the State-controlled Myall Street and adjoins a State-controlled railway corridor to the east; and
 - (c) the reconfiguration of lots relates to premises that is within 25 metres of a State transport corridor and is to involve a new or changed access between the premises and the State transport corridor.
- [18] By letter dated 1 October 2019, the Department of State Development, Manufacturing, Infrastructure and Planning confirmed that the development application had been properly referred to the Chief Executive. The letter identified the development application to be one seeking development permits for:
- “Material change of use for **multiple housing – Type 5** (seniors living community – 232 independent living units), **entertainment and dining business – Type 2** (Cooroy Golf Club house)
- Reconfiguring a lot for a boundary realignment and access easement.”
- (emphasis added)
- [19] On 18 October 2019, the Council sent GTH Project No. 4 Pty Ltd an information request under the *Planning Act 2016* in which it requested further information to enable it to satisfactorily assess the development application. The information

request identified numerous difficulties with the development application, including with respect to:

- (a) the proposed tenure arrangements for the occupiers of the proposed relocatable dwellings given that, under the *Planning Act 2016*, the definition of reconfiguration of a lot includes:

“dividing land into parts by agreement rendering different parts of a lot immediately available for separate disposition or separate occupation, other than by an agreement that is—

- (i) a lease for a term, including renewal options, not exceeding 10 years; or
- (ii) an agreement for the exclusive use of part of the common property for a community titles scheme under the *Body Corporate and Community Management Act 1997 ...*”

- (b) the absence of detail about how the proposed use would provide for aged care given it was defined by reference to the definition in Noosa Plan 2006 of “*Multiple Housing – Type 5 Relocatable*”, being:

“Premises used for relocatable dwellings (whether they are permanently located or not) that provides long-term residential accommodation. The use does not include a **Type 2 Caravan Park** as separately defined.”

- (c) a lack of clarity about how the proposed dwellings and associated club house are consistent with the prevailing character of Cooroy and reflect the typical Queensland domestic vernacular that is predominant in older parts of Cooroy;
- (d) the inability to impose a condition that requires the provision of 10 years’ membership to the Cooroy Golf Club for residents of the seniors’ living community;
- (e) the absence of detail about how satisfactory walking distances (of about 400 metres) to public transport services for residents of the development will be achieved;
- (f) traffic and car parking arrangements; and
- (g) the paucity of information about:
 - (i) the impact of the proposed development on aspects and vistas around the subject land;
 - (ii) ecological impacts; and
 - (iii) the extent of private open space available to the residents of the individual dwellings for gardening, clothes drying and enjoyment.

[20] By letter dated 6 May 2020, GTH Project No. 4 Pty Ltd responded to the Council’s information request. The response included a change to the development application. GTH Project No. 4 Pty Ltd increased the number of proposed dwelling units from 232 to 246 dwelling units and increased the extent of the subject land proposed to be used for the seniors’ living community from 10.56 hectares to 11.03 hectares.

[21] Otherwise, in the response to the information request, GTH Project No. 4 Pty Ltd indicated, amongst other things, that:

- (a) it maintained that the use for which it sought a development permit was one that accords with the Noosa Plan 2006 defined use of “*Multiple Housing – Type 5 Relocatable*”;
- (b) in its view, no reconfiguration of a lot would result from the occupation of sites within the seniors’ living community because:
 - (i) there are a significant number of retirement communities operating under the *Manufactured Homes (Residential Parks) Act 2003* (Qld) across Queensland, the Sunshine Coast and in the local area and GTH Project No. 4 Pty Ltd is not aware of a single example of one of these communities where approval has been required for the reconfiguration of a lot;
 - (ii) the proposed seniors’ living community will operate under the *Manufactured Homes (Residential Parks) Act 2003* and, under the proposed arrangements:
 - (A) the resident will own the house, which will be capable of being moved or relocated;
 - (B) the site operator will own the land on which the house is located;
 - (C) site rent will be paid to the operator by the homeowner to obtain occupation rights to permit the house to be located on the subject land and to cover the cost of utilities and other outgoings such as rates, water, maintenance of lawns and communal facilities; and
 - (D) the site agreement between the homeowner and the owner and operator of the site is not required to specify a term, with each party retaining the right to terminate the agreement at any time in accordance with the provisions of the *Manufactured Homes (Residential Parks) Act 2003*; and
- (c) it intended to request an amended referral agency response that endorsed the revised plans included with GTH Project No. 4 Pty Ltd’s response to the information request.

[22] A letter dated 28 May 2020 from Queensland Treasury indicates that:

- (a) the Chief Executive, through the State Assessment and Referral Agency, gave a referral agency response on 14 February 2020;
- (b) on 6 May 2020, the State Assessment and Referral Agency received representations from GTH Project No. 4 Pty Ltd requesting a change to the referral agency response; and
- (c) the referral agency response was changed as outlined in the letter of 28 May 2020. It related to those uses referred to in the letter of 1 October 2019, as outlined in paragraph [18] above.

[23] The development application was publicly notified. During the public notification period, the Council received more than 390 properly made submissions about the

development application. One of the submissions was from Cooroy Area Residents Association Inc., who opposed the grant of development permits.

[24] A copy of all the submissions were before me in Exhibit 2.006. My analysis of the submissions reveals that:

- (a) most of the submissions are pro-forma submissions that support approval of the development application for reasons that include, but are not limited to:
 - (i) the benefit to the community associated with increased golf membership to the Cooroy Golf Club by reason of the guaranteed membership proposed for the residents of the seniors' living community;
 - (ii) the benefits associated with the proposed new golf course clubhouse, car park area and golf buggy storage facilities;
 - (iii) the employment that would be generated by the proposed development;
 - (iv) the economic stimulus and increase in business for the local area; and
 - (v) the provision of development that provides needed retirement living;
- (b) most of the submissions that express support for approval of the development application are from residents of the Sunshine Coast area generally who are not residents of the local community;
- (c) several of the letters of support are from golf clubs in the Sunshine Coast area;
- (d) the submissions in support that are from members of the local community generally include additional comments on the pro forma letter, from which I infer that the improvements for Cooroy Golf Club are material to the local residents' support of the development application;
- (e) many of the submissions that oppose approval of the proposed development are from members of the local community; and
- (f) the reasons for opposition cited by the local community include, but are not limited to:
 - (i) the proposed development would have an unacceptable adverse impact on the amenity of the area;
 - (ii) there is no need for the proposed development;
 - (iii) the proposed development would have an unacceptable impact on the major road network;
 - (iv) the density of the proposed development is not compatible with surrounding development;
 - (v) the proposed development does not protect the Lake Macdonald water supply in the manner anticipated by Noosa Plan 2006;
 - (vi) the proposed development has the potential to impact on local fauna, which has not been adequately investigated in the reports provided by GTH Project No. 4 Pty Ltd;

- (vii) the proposed gated, introspective community adds no value to the Cooroy community nor the Noosa Shire;
- (viii) the location of the proposed development at the “*gateway*” into Cooroy would ruin the country town feel; and
- (ix) the intensity of the proposed development jeopardises Cooroy’s charm as a hinterland rural community.

[25] On 31 July 2020, the Council’s most recent planning scheme, Noosa Plan 2020, took effect. It was amended on 25 September 2020.

[26] Under Noosa Plan 2020 (as amended on 25 September 2020) (“*Noosa Plan 2020*”), the subject land is:

- (a) designated on Strategic Framework Map 1 Settlement, Strategic Framework Map 2 Economy & Employment and Strategic Framework Map 3 Infrastructure as being intended to be part of the “*Rural Residential Area*” and “*Major Recreation Area*” and outside the Urban Boundary;
- (b) designated on Strategic Framework Map 4 Biodiversity as having areas of significance as “*Connecting Habitat Area*” and “*Ecological Linkage*”;
- (c) within the Cooroy Local Plan Area and mapped as:
 - (i) partly in the Recreation and Open Space Zone (Lot 33 and Lot 1);
 - (ii) partly in the Rural Residential Zone (Lots 2 and 3); and
 - (iii) entirely outside of the Urban Boundary;
- (d) is mapped on the Regional Infrastructure Overlay as within the water resource catchment and water supply buffer; and
- (e) mapped on the Biodiversity, Waterways and Wetlands Overlay as containing a waterway and areas of biodiversity significance.

[27] Bearing in mind the designation of the subject land outlined above, it is of note that directly across the street from Lots 2 and 3 sits a 6.665-hectare vacant parcel of land, being Lot 4 on SP 248479 (“*Lot 4*”). Under Noosa Plan 2006, Lot 4 was in the Rural Zone and mapped as outside of the urban growth boundary. Under Noosa Plan 2020, Lot 4 is predominantly in the Community Facilities Zone, except for that part of Lot 4 that fronts Myall Street and the roundabout intersection of the Bruce Highway exit and Myall Street, which is in the Environmental Management and Conservation Zone. An annotation on the zoning map indicates that it is intended for use for “*Residential Care Facility*”. Lot 4 is also mapped as within the urban boundary under Noosa Plan 2020.

[28] By email dated 17 November 2020, GTH Project No. 4 Pty Ltd notified the Council of a change to its development application to seek approval for use for a seniors’ living community that accords with the Noosa Plan 2006 defined use of “*Multiple Housing - Type 3 Retirement and Special Needs*” rather than “*Multiple Housing - Type 5 Relocatable*”.

- [29] By decision notice dated 25 March 2021, the Council refused the development application. The decision notice states that the development application the subject of its decision sought development approval for:

“Material Change of Use – Entertainment & Dining Type 2 Recreation amusement fitness (Cooroy golf clubhouse), Multiple Housing - Type 3 Retirement and Special Needs (Seniors Living Community), and Lot Reconfiguration (Boundary Realignment & Access Easement).”

- [30] The reasons for refusal cited by the Council in its decision notice include unacceptable town planning, visual amenity and character, water quality, civil engineering, ecological, environmental, agricultural and reverse amenity, acoustic, and traffic impacts, and the absence of need for the proposed use.
- [31] Those aspects of the common material, Noosa Plan 2006 and Noosa Plan 2020 referred to above indicate that GTH Project No. 4 Pty Ltd’s contention that the subject land presents a vast number of opportunities for development of the type proposed and no material constraints should be approached with a degree of caution (and perhaps even a degree of scepticism). Its contention requires scrutiny in this appeal.

What does the progress of the appeal reveal?

- [32] On 23 April 2021, GTH Project No. 4 Pty Ltd commenced its appeal against the Council’s decision. It seeks an order that the appeal be allowed and its development application approved subject to reasonable and relevant conditions.
- [33] Cooroy Area Residents Association Inc. elected to join the appeal as a Co-respondent by Election.
- [34] The Chief Executive did not elect to join the appeal even though:
- (a) the development application proposes to change the existing access to Myall Street, being a State-controlled road, and proposes upgrades to a State-controlled intersection, being the intersection of Myall and Elm Streets; and
 - (b) unless it does so, the Chief Executive has no entitlement to be heard about:
 - (i) changes to the development application that are made during the appeal process, which may undermine the relevance of the conditions contained in its referral agency response; and
 - (ii) the conditions imposed by the Court if the Court determines that the development application should be approved subject to conditions.
- [35] The Chief Executive’s election not to join the appeal was a potential source of difficulty for GTH Project No. 4 Pty Ltd from the outset. This is because, on its face, the referral agency response relates to a form of the development application that differs from that the subject of the Council’s decision (and the focus of the appeal as instituted). In those circumstances, GTH Project No. 4 Pty Ltd would likely face difficulties persuading the Court to infer from the referral agency response that the proposed development would not have unacceptable traffic impacts on the State-controlled road network. The acceptability of traffic impacts was an issue that was live in the appeal when it was instituted.

- [36] On 5 May 2022, GTH Project No. 4 Pty Ltd obtained an order permitting it to make a minor change to its development application to:
- (a) revise the layout to reduce the number of proposed dwelling units in the seniors' living community from 246 to 214; and
 - (b) amend the design, subdivision and staging.
- [37] On 10 February 2023, GTH Project No. 4 Pty Ltd applied for an order permitting it to make a further change to its development application to:
- (a) relocate the proposed intersection of its internal access road and Myall Street to a position on Myall Street that is further to the north;
 - (b) revise the development footprint to ensure that the built form does not intrude into the identified rehabilitation area;
 - (c) change the extent of earthworks proposed;
 - (d) change the sanitary system; and
 - (e) increase the height of the proposed acoustic barriers.
- [38] At the time that the application was made, the Chief Executive had no entitlement to be heard about the proposed change to the development application as it was not a party to the appeal.
- [39] On 17 March 2023, his Honour Judge Williamson KC ordered that the Chief Executive be joined to the proceeding under r 69(1)(b) of the *Uniform Civil Procedure Rules 1999*, which contemplates joinder of a person whose presence before the Court:
- (a) is necessary to enable the Court to adjudicate effectually and completely on all matters in dispute in the proceeding; or
 - (b) would be desirable, just and convenient to enable the Court to adjudicate effectually and completely on all matters in dispute connected with the proceeding.
- [40] On 14 April 2023, GTH Project No. 4 Pty Ltd obtained an order permitting it to make the further minor change to its development application.
- [41] Following the further minor change, the Council:
- (a) indicated that it would no longer persist with its allegations that refusal was warranted by reason of unacceptable impacts with respect to ecology, civil engineering, agriculture and reverse amenity, traffic, acoustics and air quality or golf course safety netting; but
 - (b) maintained that the development application should be refused because:
 - (i) the proposed development is an inappropriate use of the subject land as it involves urban development outside:
 - (A) the urban growth boundary in Noosa Plan 2006; and
 - (B) the urban boundary in Noosa Plan 2020;

- (ii) the proposed development involves unacceptable built form and density and will result in unacceptable character impacts;
- (iii) the proposed development represents an unacceptable risk to the water catchment for Lake Macdonald; and
- (iv) having regard to the non-compliances with Noosa Plan 2006 and Noosa Plan 2020, and other relevant matters, the exercise of discretion does not favour approval.

[42] GTH Project No. 4 Pty Ltd sought, and obtained, a listing for hearing, with the appeal scheduled to be heard between 26 July 2023 and 3 August 2023.

[43] Shortly prior to the commencement of the hearing, the Chief Executive applied to be excused from further participation in the appeal. It contended that there were no traffic matters that warranted refusal of the development application, subject to the imposition of the conditions that the Chief Executive considered appropriate. At that time, the Chief Executive did not provide a copy of those conditions. The Chief Executive was of the view that the proposed conditions could be delivered after delivery of judgment in this appeal.

[44] The Chief Executive's position did not appropriately recognise that the ultimate decision to approve subject to conditions rests with the Court, not the Chief Executive. Consequently, the Chief Executive's application to withdraw from participation in the appeal was not successful.

[45] On the first day of the hearing, the parties opened their evidence, and the Chief Executive made another application to be excused from participation in the appeal. The application was premised on the basis that:

- (a) it had provided a set of conditions that differed from its amended referral agency response but which the Chief Executive then contended should be imposed on the development application;
- (b) correspondence between the parties to the appeal indicated that the terms of the conditions were not agreed, particularly insofar as they related to pedestrian connections and the introduction of a concrete path along Myall Street; and, notwithstanding that,
- (c) in the view of the Chief Executive, the existence or absence of a pedestrian path was not a matter that would give rise to a basis for refusal of the development application.

[46] The Chief Executive's position did not appropriately recognise that, in this case, the Chief Executive's conditions have the potential to materially influence an issue in the appeal. The existence or absence of a pedestrian path is relevant to the respective cases of GTH Project No. 4 Pty Ltd and the Council about whether the proposed development is located within reasonable access to a variety of essential services and facilities and whether the proposed seniors' living community is appropriately located.

[47] The Chief Executive's position also ignores that the planning legislation anticipates that the ultimate decision maker will be provided with assistance of referral agencies on issues that relate to matters within the jurisdiction of the referral agency when

determining whether to approve a development application and, if so, the conditions that should be imposed.

- [48] For those reasons, I refused the Chief Executive's application to be excused.
- [49] On the second day of the hearing, the parties arranged a site inspection of the local area. Although my observations on the site inspection do not form part of the evidence, my appreciation of the photographic evidence, and the opinions expressed by the experts, is greatly enhanced with the benefit of that site inspection.
- [50] On the third, fourth and fifth days of the hearing, the parties called experts who gave evidence about need, visual amenity and character issues in the appeal.
- [51] On several occasions during that initial hearing, I expressed concern about the difficulties that I was having with appreciating the evidence of the experts. I explained that my difficulties were informed by a lack of clarity in the evidence about the parameters of the development application that I was to assess.
- [52] On what was to be the final day of evidence, being 2 August 2023, GTH Project No. 4 Pty Ltd applied for an adjournment to permit it time to consider:
- (a) the adequacy of its evidence; and
 - (b) making a further minor change to its development application.
- [53] These matters do not engender confidence in the case advanced by GTH Project No. 4 Pty Ltd.
- [54] GTH Project No. 4 Pty Ltd agreed to pay the Council's costs thrown away by reason of the adjournment. I granted the adjournment on that basis.
- [55] On 10 November 2023, I made an order permitting GTH Project No. 4 Pty Ltd to further progress its appeal based on yet another minor change to its development application. As a result of that order:
- (a) further expert reports (both joint and individual) were prepared; and
 - (b) many of the exhibits tendered during the initial hearing between 26 July 2023 and 3 August 2023 are now of limited relevance as they address a form of development that is no longer pursued.
- [56] The parties identify those many exhibits that they say are now of little relevance in Exhibit 7.030. Unfortunately, the exhibits referenced therein cannot be completely ignored as much of the cross-examination of the experts occurred by reference to them.
- [57] The development application that I am now to assess is the development application refused by the Council on 18 March 2021 as changed by the plans and documents in Exhibit 7.021 ("*the proposed development*"). The development application includes a suite of conditions, set out in Exhibit 8.006, that GTH Project No. 4 Pty Ltd proposes would form part of any approval. I will describe the proposed development in further detail shortly.

- [58] On 20 February 2024, being the first day of the further hearing of the appeal, the Chief Executive tendered Exhibit 12.008, which contains the conditions that it now contends should be imposed. The acceptability of the conditions proposed by the Chief Executive remained a live issue until final submissions, at which stage all parties agreed that any approval should be subject to the proposed conditions in Exhibit 12.008.
- [59] Despite GTH Project No. 4 Pty Ltd's further changes to its development application and agreement about the Chief Executive's conditions, the Council and the Cooroy Residents Association Inc. maintain that GTH Project No. 4 Pty Ltd's development application should be refused. They say that the proposed development is still inappropriate for those reasons advanced at the commencement of the hearing. I have identified them in broad terms in paragraph [41](b) above.
- [60] The matters referred to above demonstrate that the prospect of developing the subject land for intense residential development of the type proposed by GTH Project No. 4 Pty Ltd is fraught with many challenges. Throughout the course of the development application process and the appeal, the Council and others have repeatedly raised many concerns about the suitability of the subject land for the urban development proposed by GTH Project No. 4 Pty Ltd. Time after time, GTH Project No. 4 Pty Ltd's response to those concerns was to change its development application. Those matters do not bespeak of an inherent suitability of the subject land for the form of urban development proposed. Rather, the evolution of the issues and development application indicates that, through changes to its development application, GTH Project No. 4 Pty Ltd has sought to overcome some of the development constraints presented by the subject land. It has overcome some of them. Some persist.
- [61] It is convenient to now turn to consider the details of the iteration of the development application that I am to assess and those issues that remain in the appeal.

What is the nature of the proposed development?

- [62] There are two aspects to the proposed development, namely:
- (a) an application for a development permit for the reconfiguration of lots by way of boundary realignment, amalgamation and creation of an access easement; and
 - (b) an application for a development permit to make a material change of use for:
 - (i) a seniors' living community, which use is defined by reference to the definition of Multiple Housing – Type 3 Retirement and Special Needs in Noosa Plan 2006; and
 - (ii) a golf course club house, which use is defined by reference to the definitions of Entertainment and Dining Business – Type 2 Recreation, amusement & fitness, Entertainment and Dining Business – Type 1 Food & beverages (Restaurant, café and function room), and Entertainment and Dining Business – Type 3 Bar in Noosa Plan 2006.

[63] The relevant definitions in Noosa Plan 2006 are:

Multiple housing means the use of premises for two or more <i>dwelling units</i> or <i>accommodation units</i> as the case may be, occupied by permanent or semi-permanent residents, where the occupants may share common facilities on the site. The term includes the following types:	
Type 3 Retirement and special needs	Means the use of premises for <i>dwelling units</i> or <i>accommodation units</i> that house persons who are aged, being nursed or are convalescing. In each case, communal facilities may be available to residents for social interaction, recreation and emergency medical attention. The use may also include a <i>caretaker's residence</i> and medical centre where they are <i>ancillary</i> to the residential care facility. The use includes a <i>retirement village</i> , <i>residential aged care</i> and a <i>group house</i> , however does not include health uses or community residence as separately defined.
Entertainment and dining business means the conduct of a business activity, where entertainment, amusement, recreation or meals are afforded. The term includes the following types:	
Type 1 Food & beverages	The use of premises involving the sale of food and beverages for consumption on the premises. The use class includes a function room or restaurant or café with dining facilities for 10 or more people.
Type 2 Recreation, amusement & fitness	The use of premises involving recreation or amusement activities, including cinema, health & fitness club, gym, sport activity or brothel.
Type 3 Bar	The use of premises primarily for the serving of liquor for consumption on the premises. The use may include ancillary sale of food for consumption on the premises and may include amplified music, live entertainment and a dance floor. The use includes a hotel, tavern, bar or nightclub but does not include a restaurant.

What does the proposed reconfiguration of lots entail?

[64] As I have mentioned in paragraph [5] above, GTH Project No. 4 Pty Ltd wants to reconfigure the subject land so that:

- (a) the seniors' living community is on proposed lot 4, which comprises all of Lot 3 and part of Lot 1;
- (b) the golf course is on Lot 33 and proposed lot 5, which comprises all of Lot 2 and part of Lot 1; and
- (c) there is a proposed access easement over parts of both proposed lot 4 and proposed lot 5 to facilitate a single, internal access road that will provide access from Myall Street to the new golf course clubhouse and the seniors' living community.

- [65] An emergency access is proposed approximately 130 metres south of the main access point.
- [66] GTH Project No. 4 Pty Ltd does not oppose the imposition of the Chief Executive's proposed conditions 10 and 11, which require:
- (a) the emergency access be for use by emergency vehicles only and must be gated and remain locked at all other times; and
 - (b) all redundant existing vehicular property accesses located between the proposed development and Myall Street are to be permanently closed and removed.

What does the proposed seniors' living community use entail?

- [67] As I have mentioned above, the seniors' living community is to be established on proposed lot 4. It will have a frontage to Myall Street, be proximate to the Bruce Highway, and will interface with the golf course to the north, east and south.
- [68] As is evident from the definition of Multiple Housing – Type 3 Retirement and Special Needs in Noosa Plan 2006 set out in paragraph [63] above, the proposed seniors' living community use is for housing of persons who are aged.
- [69] GTH Project No. 4 Pty Ltd's proposed condition 2 requires the proposed development to be undertaken in accordance with the plans in Exhibit 7.021, including:
- (a) a master plan, which depicts the overall layout of the seniors' living community and shows that it is to contain 214 detached dwelling units, a manager's unit, a community clubhouse and other communal facilities;
 - (b) a staging plan, which shows the golf course clubhouse and the clubhouse for the seniors' living community in stage 1;
 - (c) a site area plan, which designates the dimensions for the 214 dwelling unit sites and shows the site areas range between 273 and 408 square metres;
 - (d) plans that show that the community clubhouse will be located at about a mid-point of an internal road, proximate to the new boundary for the golf course, and will provide extensive facilities, including:
 - (i) on the ground floor, an indoor pool and spa, a tennis court, a bowling alley, a hall, a bar and formal lounge, a meeting or private dining space, an alfresco area overlooking the golf course, a gym, a sauna, medical consultation rooms, a hairdressing salon, and a kitchen area; and
 - (ii) on the first floor, an undercover lawn bowls area, two rooftop terraces, a billiards room, cinema, golf simulator, gaming lounge, bar, wine room, library, multi-purpose room and craft room; and
 - (e) plans that show:
 - (i) a "*summer house*" with an outdoor pool, pickleball court, barbeque area, recreation room and residents' workshop located near the manager's workshop to the south;

- (ii) a bocce court near the mapped waterway in the northern part of proposed lot 4; and
- (iii) a path connecting the proposed new golf course clubhouse to the seniors' living community.

[70] GTH Project No. 4 Pty Ltd's proposed conditions stipulate that:

- (a) prior to the commencement of occupancy of any dwelling unit in any of stages 1 to 5 of the seniors' living community, the golf course clubhouse stage and the internal access road from Myall Street to the new golf course clubhouse must be completed;
- (b) stages 1 to 5 are to occur sequentially as shown on the staging plan;
- (c) stage 1 must include a clubhouse for the seniors' living community;
- (d) the facilities within the seniors' living community are to be available only to residents, employees or bona fide visitors, and visitors are to be accompanied by a resident;
- (e) a bus service is to be provided and maintained for residents from stage 1, with a minimum of weekly services to Cooroy, medical and public transport facilities;
- (f) the number of dwelling units is not to exceed 214 plus the manager's unit;
- (g) no more than two people may occupy each dwelling unit, unless otherwise permitted under a site agreement;
- (h) all building walls and roofs are to be treated with recessive and low-light reflectance colours and finishes;
- (i) each new dwelling unit must:
 - (i) have a different façade and a different roof articulation to the dwelling units that adjoin on each side;
 - (ii) be designed to facilitate wheelchair access with wider doors into the home, master bedroom and bathroom, and space to easily install ramps at entry and exit points externally to the home; and
 - (iii) provide an age-friendly kitchen design, for example by providing easy pull-out drawers and a walk-in pantry;
- (j) all dwelling units must have a minimum separation of:
 - (i) two metres from the front wall to the internal road;
 - (ii) 1.5 metres from the rear wall to the wall of any other dwelling unit; and
 - (iii) 0.9 metres between the wall of the dwelling unit and the walls of the dwelling units that adjoin on each side or zero separation between the wall of the dwelling unit and the wall of any dwelling on one side provided that there is a minimum of 0.9 metres separation to any built form on the other side of the dwelling unit;

- (k) the maximum height of dwelling units, other than the manager's unit, is 5.5 metres above the approved finished ground level;
 - (l) landscaping must be provided in accordance with the Landscape Concept Plan; and
 - (m) landscaping (other than driveways and walkways) must be provided:
 - (i) at the front of each dwelling unit within the two-metre separation between the front dwelling unit wall and the internal road; and
 - (ii) to the sides of each dwelling unit's built form except where zero separation is achieved.
- [71] The layout of the relocatable homes is proposed in a regular pattern with a series of parallel roads on an east-west axis connecting to two roads on a north-south axis. The development application includes plans that depict what are described as "typical" house designs. There are six typical designs for the relocatable homes. They contain either two or three bedrooms. The development application does not specify which design will occur on each dwelling unit site. The selection is to be made later, subject to compliance with the proposed conditions.
- [72] GTH Project No. 4 Pty Ltd's proposed conditions require:
- (a) provision to be made for equitable access for persons with disabilities to and within the site in accordance with the *Anti-Discrimination Act 1991* (Qld), other legislation and nominated standards; and
 - (b) internal paths, ramps and hallways of communal areas to accommodate a mobility scooter with sufficient passing areas where appropriate.
- [73] The site plan depicts the proposed setbacks to the external boundaries of the subject land. Sections depict the intentions for the Myall Street frontage. In the greenspace area to the northwest, development is about 40 to 50 metres from the road frontage. There is a 10 metre setback to the road frontage other than where the boundary skews towards the east and the road verge widens to between 40 and 50 metres width, at which location the setback is more than seven metres from the road frontage. Retaining walls, acoustic barriers and other fencing are proposed on the subject land's side of an extensive landscaped buffer.
- [74] Proposed condition 14 in Exhibit 8.006 purports to require compliance with a contract, which is referred to as the Myall Street Agreement. The Myall Street Agreement is a private contractual arrangement between Cooroy Golf Club Inc., GTH Project No. 4 Pty Ltd, and GTH Resorts No. 9 Pty Ltd dated 27 July 2023. GTH Resorts No. 9 Pty Ltd is an entity that has entered a contract to purchase Lots 2 and 3.
- [75] The Myall Street Agreement contains requirements such as those one might expect to see in a private contract about the development of land. For example, it contains requirements about grants of indemnity, maintenance of insurance and other such matters.
- [76] I have serious reservations about the legality of a condition that requires compliance with a contract of this type given the constraints in ss 65 and 66 of the *Planning Act*

2016. I also have serious reservations about the relevance of the matters referred to therein, given s 45(5)(b) of the *Planning Act 2016* expressly excludes a person's personal circumstances (financial or otherwise) from consideration as a relevant matter.

- [77] In response to my request for assistance about the legality of the condition, Mr Job KC for GTH Project No. 4 Pty Ltd initially indicated that the condition was not abandoned but later submitted "*we don't press the Myall Street agreement in terms of condition 14*". When I consider that submission against the background of my other exchanges with Counsel about condition 14, although Mr Job KC was not explicit in his later submission, I infer that GTH Project No. 4 Pty Ltd abandons its reliance on condition 14 as part of its development application. If I am wrong about that, it does not affect the outcome of this appeal. That is because, regardless of the legality of the condition, GTH Project No. 4 Pty Ltd has the onus in the appeal, and it has not persuaded me to impose the condition. Even if a condition is lawful, its imposition is a matter that is in the Court's discretion: *Ashanti Logistics Pty Ltd v Sunshine Coast Regional Council* [2022] QPEC 22; [2023] QPELR 965, 968-70 [11] to [20] and the cases cited therein.

What does the proposed golf course clubhouse use entail?

- [78] The new golf course clubhouse and car parking is to occur on proposed lot 5. It will include a "*pro shop*", golfing support facilities, dining and café areas, a function room, places to view the golf course, car parking and golf buggy parking. It is proposed that there will be minor reconfiguration to the existing fairways to accommodate the new golf course clubhouse and access.
- [79] GTH Project No. 4 Pty Ltd's proposed conditions stipulate that the golf course clubhouse stage and the internal access road from Myall Street to the golf course clubhouse are to be completed prior to any occupancy of any dwelling unit.

What are the other attributes of the proposed development?

- [80] Parts of the golf course are proposed to be altered to provide a shorter, 18-hole layout that will facilitate use of part of the existing fairways for the new golf course clubhouse and internal access road from Myall Street.
- [81] An overall landscape concept master plan shows an intention to:
- (a) retain existing native vegetation in the road reserve;
 - (b) plant a 10-metre-wide native buffer along the Myall Street frontage;
 - (c) plant a three-metre-wide native buffer along the interface with the golf course to the east; and
 - (d) undertake restoration works in the existing waterway.
- [82] No built form is proposed in the mapped watercourse. That area is to be rehabilitated in accordance with various plans including a concept rehabilitation plan, concept waterway revegetation plan and vegetation restoration plan. The waterway rehabilitation plan identifies that, at present, the existing waterways on the subject land are highly disturbed and have waterway barriers that impact on aquatic ecological function and cause on-site and off-site impacts. The waterway

rehabilitation plan provides for the removal of those barriers, or the addition of appropriate fish-ways, that will significantly benefit the ecology of those waterways and promote a range of other benefits to aquatic ecology, including increased bank stability.

- [83] The tree disturbance plan identifies that 213 trees are to be removed. The proposed ecological restoration works will result in the planting of approximately 7,400 new plants, including approximately 2,265 trees.
- [84] The development is to be carried out generally in accordance with a stormwater quality management plan.
- [85] GTH Project No. 4 Pty Ltd's proposed conditions stipulate that a new 1.5-metre-wide wide footpath is to be constructed along Myall Street. It is to be constructed between a new pedestrian crossing on Myall Street north of the northbound bus stop and the existing footpath on the northern side of the intersection of Myall Street and Ferrells Road. Those works are also to include a two-metre-wide wheelchair or mobility scooter passing bay at two locations.
- [86] Under GTH Project No. 4 Pty Ltd's proposed conditions, the existing footpath between Ferrells Road and Maple Street is also proposed to be widened at up to four locations to allow wheelchairs or mobility scooters to pass. Each of the widened sections are to be two metres in width and traverse three metres.
- [87] The conditions sought by the Chief Executive, which are not opposed, require:
- (a) provision of two bus stops on Myall Street;
 - (b) the construction of a pedestrian crossing on Myall Street and paved pedestrian footpaths to each bus stop; and
 - (c) roadworks comprising a median treatment at the intersection of Myall Street and Elm Street.

What are the issues in dispute?

- [88] In accordance with the usual practice of the Court at the time of the hearing, GTH Project No. 4 Pty Ltd identifies the issues that it says are in dispute in a document titled "*Further Updated Appellant's Issues in Dispute*": Exhibit 7.023. The Council produced its own document, titled "*Respondent's Particularised List of Matters that Support Refusal*": Exhibit 8.003. As is apparent from those documents, over 60 provisions of Noosa Plan 2006 and Noosa Plan 2020 have been put in issue. In addition, each party identifies the relevant matters on which they rely to support their position.
- [89] As I have already mentioned in paragraph [41](b) above, the Council alleges that the development application should be refused because:
- (a) the proposed development is an inappropriate use of the subject land as it involves urban development outside:
 - (i) the urban growth boundary in Noosa Plan 2006; and
 - (ii) the urban boundary in Noosa Plan 2020;

- (b) the proposed development involves unacceptable built form and density and will result in unacceptable character impacts;
 - (c) the proposed development represents an unacceptable risk to the water catchment for Lake Macdonald; and
 - (d) having regard to the non-compliances with Noosa Plan 2006 and Noosa Plan 2020, and other relevant matters, the exercise of discretion does not favour approval.
- [90] Cooroy Area Residents Association Inc. adopts the reasons for refusal advanced by the Council.
- [91] GTH Project No. 4 Pty Ltd accepts that its development does not accord with several assessment benchmarks in Noosa Plan 2006, including those that:
- (a) seek to confine urban development to land within the mapped urban growth boundary; and
 - (b) indicate that the uses that comprise the seniors' living community are identified by Noosa Plan 2006 to be "*strongly inappropriate*" on the subject land.
- [92] GTH Project No. 4 Pty Ltd also accepts that its development does not accord with outcomes sought in Noosa Plan 2020 to a similar effect.
- [93] Nevertheless, GTH Project No. 4 Pty Ltd says that the subject land presents a vast number of opportunities for development of the type proposed and no material constraints. It advances five key reasons that the balancing exercise overwhelmingly favours approval of the development application.
- [94] First, GTH Project No. 4 Pty Ltd says that the materiality of the non-compliances with Noosa Plan 2006 is reduced because of the nature of the use and the attributes of the subject land and Cooroy. It says that the development application performs well in relation to the underlying planning objectives.
- [95] Second, according to GTH Project No. 4 Pty Ltd, Noosa Plan 2020 contemplates development outside the urban boundary where there is a high level of community need. It contends that such need exists for its proposed seniors' living community. In that respect, GTH Project No. 4 Pty Ltd says that Noosa Plan 2020 has significantly underestimated the extent of aging population that must be accommodated.
- [96] Third, GTH Project No. 4 Pty Ltd contends that there is an extremely strong need for the proposed seniors' living community and a need for the upgrade to the golf course clubhouse.
- [97] Fourth, GTH Project No. 4 Pty Ltd says that there is an absence of alternate sites to accommodate the need within the urban boundary under Noosa Plan 2020.
- [98] The fifth reason is an alleged absence of unacceptable, tangible impacts.
- [99] The Council and Cooroy Area Residents Association Inc. join issue with the reasons advanced by GTH Project No. 4 Pty Ltd. They say that the balancing exercise calls for refusal of the development application.

[100] Having regard to the respective issues documents, the provisions of Noosa Plan 2006 and Noosa Plan 2020 referenced therein, and the cases advanced by the respective parties, there are 13 key issues that require determination, namely:

1. Is the proposed seniors' living community appropriately located when assessed against Noosa Plan 2006?
2. Does the proposed seniors' living community involve unacceptable built form and density and result in unacceptable visual amenity and character impacts?
3. Does the proposed seniors' living community present an unacceptable risk to the water catchment of Lake Macdonald?
4. Does consideration of Noosa Plan 2020 tell against approval of the proposed material change of use?
5. What are the relevant matters relied on by the parties under s 45(5)(b) of the *Planning Act 2016*?
6. Is there a need for the proposed use?
7. Does the new golf course clubhouse benefit the community?
8. Is the proposed development consistent with ShapingSEQ?
9. Is there a community benefit associated with contributions to the upgrade of intersections of Myall and Elm Streets?
10. Is there an absence of unacceptable adverse amenity impacts?
11. Does the absence of evidence of support from the owner of the Cooroy golf course tell against its approval?
12. Should the proposed use be approved in the exercise of the planning discretion?
13. Should the proposed reconfiguration of lots be approved?

[101] Each of these questions is to be determined by reference to the applicable statutory assessment and decision-making framework.

What is the applicable framework for the decision?

[102] Under s 43 of the *Planning and Environment Court Act 2016*, the appeal proceeds by way of hearing anew, subject to ss 46(2) and (5). The Court must assess the development application under s 45 of the *Planning Act 2016* as if it were the assessment manager: *Planning and Environment Court Act 2016* s 46(2).

[103] The Court has a broad discretion in determining the appeal. Under, s 47 of the *Planning and Environment Court Act 2016*, the Court has power to confirm the decision appealed against, or 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. The type of decision that may be made is also governed by s 60 of the *Planning Act 2016*.

[104] The Court's broad discretion should be exercised judicially and subject to the limitations in the relevant statutes. The statutory framework in the *Planning and*

Environment Court Act 2016 and the *Planning Act 2016* provides relevant guidance in that respect.

[105] As I have already mentioned, there are two aspects to the development application, namely:

- (a) an application for a development permit for the reconfiguration of lots; and
- (b) an application for a development permit to make a material change of use.

[106] That part of the development application that seeks a development permit for the reconfiguration of lots requires code assessment. Under ss 45(3) and 59 of the *Planning Act 2016*, the exercise of the discretion with respect to that part of the development application must be based on an assessment that must be carried out only:

- (a) against the applicable assessment benchmarks in a categorising instrument; and
- (b) having regard to any matters prescribed by regulation.

[107] Pursuant to s 47 of the *Planning and Environment Court Act 2016* and ss 59(3) and 60(2) of the *Planning Act 2016*, the code assessable aspect of the development application, the Court must approve the application to the extent it complies with all the assessment benchmarks. To the extent that the proposed reconfiguration of lots does not comply with all or some of the assessment benchmarks, the Court may decide to refuse the application for reconfiguration of lots only if compliance cannot be achieved by the imposition of development conditions. Even if the development does not comply with some of the assessment benchmarks, the Court may decide to approve the reconfiguration of lots.

[108] The question of whether departure from an assessment benchmark warrants refusal of a code assessable aspect of a development application is a separate and distinct question. I respectfully agree with the observations of His Honour Judge Williamson QC in *Klinkert v Brisbane City Council* [2018] QPEC 30; [2018] QPELR 941 at 957 [102]. Leave to appeal was granted by the Court of Appeal with respect to this decision but the appeal was dismissed in *Brisbane City Council v Klinkert* [2019] QCA 40; (2019) 236 LGERA 88.

[109] In the case at first instance, His Honour Judge Williamson QC observed that although the discretion is expressed in permissive and broad terms, it is subject to an important constraint, namely the constraint expressed in s 59(3) of the *Planning Act 2016* requiring the decision to be based on the assessment carried out only against the assessment benchmarks and having regard to prescribed matters.

[110] I also adopt His Honour's observations in *Smout v Brisbane City Council* [2019] QPEC 10; [2019] QPELR 684 at 694 [54] that given the size and complexity of modern performance-based planning schemes, not every non-compliance will warrant refusal.

[111] That part of the development application that seeks a development permit for a material change of use requires impact assessment. Pursuant to ss 45 and 59 of the

Planning Act 2016, the exercise of the discretion with respect to that part of the development application must be based on an assessment that:

- (a) must be carried out:
 - (i) against the assessment benchmarks in a categorising instrument, to the extent relevant;
 - (ii) having regard to matters prescribed by regulation; and
 - (b) may be carried out against, or having regard to, any other relevant matter, other than a person's personal circumstances (financial or otherwise).
- [112] For the impact assessable aspect of the development application, s 45(5)(b) of the *Planning Act 2016* gives examples of the term “*relevant matter*”, but the term is not defined. Personal circumstances of a person (including a corporation), financial or otherwise, are not a relevant matter to which regard may be had.
- [113] In this appeal, for both the code and impact assessable components, the parties rely on:
- (a) the South East Queensland Regional Plan 2017, which is titled “*ShapingSEQ*”, and which is prescribed under ss 27(1)(d) and 31(1)(d) of the *Planning Regulation 2017*;
 - (b) any development approval for, and any lawful use of, the premises or adjacent premises, which are matters prescribed under ss 27(1)(f) and 31(1)(f) of the *Planning Regulation 2017*; and
 - (c) parts of the common material in respect of the development application, including those parts to which I refer in paragraphs [12] to [31] above, which are matters prescribed under ss 27(1)(g) and 31(1)(g) of the *Planning Regulation 2017*.
- [114] For both the code and impact assessable components of the development application, pursuant to s 46(2) of the *Planning and Environment Court Act 2016* and s 45(8) of the *Planning Act 2016*:
- (a) to the extent that the assessment is against or having regard to a categorising instrument, the assessment must be against or having regard to the categorising instrument in effect when the development application was properly made; but
 - (b) the Court may give the weight it considers is appropriate, in the circumstances, to amendments or replacements to the categorising instrument and new categorising instruments that commence after the development application is properly made but before the Court makes its decision.
- [115] When GTH Project No. 4 Pty Ltd's development application was properly made on or about 12 September 2019, Noosa Plan 2006 (Amendment 10, effective 8 June 2018 to 31 July 2020) was a categorising instrument in effect. This is the version of Noosa Plan 2006 to which I will refer in these reasons.
- [116] Noosa Plan 2020 took effect on 31 July 2020. At the time of the hearing, Noosa Plan 2020 as amended on 25 September 2020 was in effect. This is the version of Noosa Plan 2020 to which I will refer in these reasons.

[117] The assessment and decision-making process is to be approached consistent with the Court of Appeal decisions of:

- (a) *Brisbane City Council v YQ Property Pty Ltd* [2020] QCA 253; [2021] QPELR 987;
- (b) *Abeleda & Anor v Brisbane City Council & Anor* [2020] QCA 257; [2021] QPELR 1003;
- (c) *Wilhelm v Logan City Council & Ors* [2020] QCA 273; [2021] QPELR 1321; and
- (d) *Trinity Park Investments Pty Ltd v Cairns Regional Council & Ors*; *Dexus Funds Management Limited v Fabcot Pty Ltd & Ors* [2021] QCA 95; [2022] QPELR 309.

[118] Collectively, those cases confirm the approach articulated in *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPEC 16; [2019] QPELR 793 at 803-13 [35]-[86]. That approach is also consistent with that described in *Murphy v Moreton Bay Regional Council & Anor*; *Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor* [2019] QPEC 46; [2020] QPELR 328 at 333-7 [12]-[22].

[119] I now turn to consider each of the disputed issues.

Key issue 1 – Is the proposed seniors’ living community appropriately located when assessed against Noosa Plan 2006?

[120] GTH Project No. 4 Pty Ltd seeks approval to start new uses of the subject land. As I have already mentioned, the proposed uses are:

- (a) a seniors’ living community, which use is defined by reference to the definition of Multiple Housing – Type 3 Retirement and Special Needs in Noosa Plan 2006; and
- (b) a golf course club house, which use is defined by reference to the definitions of Entertainment and Dining Business – Type 2 Recreation, amusement & fitness, Entertainment and Dining Business – Type 1 Food & beverages (Restaurant, café and function room), and Entertainment and Dining Business – Type 3 Bar in Noosa Plan 2006.

[121] The relevant definitions are set out in paragraph [63] above.

[122] The Council contends that the seniors’ living community is not an appropriate use of the subject land. In support of its contention, the Council points to three aspects of Noosa Plan 2006, being assessment benchmarks that are directed at:

- (a) the confinement of urban development to land within the urban growth boundary defined in Noosa Plan 2006;
- (b) establishment of higher density development at locations that are proximate to a variety of essential services and facilities; and
- (c) achieving development of a character that is compatible with the surrounding community.

[123] The Council says that in those respects, the proposed development is inconsistent with the following provisions in Noosa Plan 2006:

- (a) ss 1.7.4, 1.7.6 a) and b), 1.7.11 a) of the Strategic framework;
- (b) the overall outcomes in ss 6.7.2 c), s) ii and iii and rr) ii and specific outcomes O6 a) and (c), O80 c) and m) and O86 d) and n) of the Cooroy & Lake Macdonald Locality Code; and
- (c) specific outcome O17 and probable solution S17.3 of the Residential Uses Code.

What land use outcomes are sought for the subject land in the relevant assessment benchmarks in Noosa Plan 2006?

[124] The Strategic framework in Noosa Plan 2006 expresses the community vision for Noosa Shire in 2021. This community vision is reflected in the desired environmental outcomes and the strategy adopted by Noosa Plan 2006 to achieve the desired environmental outcomes.

[125] Section 1.7.4 of the Strategic framework identifies that:

“The Noosa Shire community respects and appreciates its environment and has goals of environmental excellence, quality lifestyle and economic well-being. As a consequence the Noosa community seeks—

- a) built environments which fit into and do not dominate the natural environment; and
- b) confidence that population growth and associated change does not adversely impact upon the character, lifestyle and environment enjoyed by its residents.”

[126] Having set out that overarching vision, the Strategic framework records the strategy in relation to specific uses. In relation to residential development, the Strategic framework states:

“1.7.6 Residential Development

- a) **The planning scheme consolidates urban residential development to the existing *urban settlements* of Boreen Point, Castaways Beach, Cooran, Cooroibah, **Cooroy**, Kin Kin, Marcus Beach, Noosa Heads, Noosaville, Peregian Beach, Pomona, Sunrise Beach, Sunshine Beach, Teewah and Tewantin.**
- b) **The physical boundaries of *urban settlement* are defined by the Urban Growth Boundary and the planning scheme allows for no expansion beyond these. Growth will be through urban infill and where appropriate, redevelopment.**
- c) Additional *rural settlement* is provided for in areas close to towns and villages where the land is physically suitable for rural settlement, where it does not pose a threat to water quality,

agricultural sustainability or biodiversity, and where it is not at risk to natural hazards.

- d) A variety of housing types is allowed for with higher densities being encouraged in proximity to business centres, neighbourhood centres or the village centres.
- e) Residential development is encouraged to be more sustainable and flexible relying less on non-renewable energy for heating, cooling, lighting, or hot water heating. The planning scheme seeks to achieve housing that is physically more accessible, providing for the ageing population of Noosa Shire and disabled persons.
- f) Residential development does not occur in locations where it would inhibit or prevent the lawful conduct of existing land uses including agricultural, industrial and extractive uses or associated haulage operations.”

(emphasis reflects assessment benchmarks put in issue by the Council)

[127] Section 2.1.1 of Noosa Plan 2006 explains that the dictionary in s 2.11 defines particular words used throughout Noosa Plan, with:

- (a) defined uses and use classes identified by bold; and
- (b) administrative terms identified by italics.

[128] The administrative terms defined in Noosa Plan, relevantly, include:

“***rural settlement*** means *residential development* on a *lot* greater than 2,000m², regardless of whether the land is also used for hobby farming”.

towns means *urban settlements* with **business uses** serving more than local needs. These include Cooroy, Noosa Heads, Noosaville, Peregian Beach, Pomona, Sunshine Beach and Tewantin.

urban growth boundary means the extent of land suitable for urban development including residential, industrial, retail, commercial and community activities. It includes established towns and villages and any land suitable for urban growth.

urban settlement means *towns* or *villages* supporting *residential development* on *lots* that are predominantly of an urban scale.”

[129] Section 1.7.11 records the strategy for rural uses. It, relevantly, states in s 1.7.11 a):

“The scheme seeks to protect the traditional rural base of Noosa Shire by protecting good quality agricultural land through the Agricultural Land Conservation Area designation and excluding development that would preclude or conflict with agriculture. **Urban uses, more appropriately located within the *urban growth boundary* do not occur in the Rural Zone.**”

(emphasis reflects assessment benchmarks put in issue by the Council)

[130] Noosa Plan 2006 divides the local government area into several localities. The above-mentioned strategies are reflected in greater detail in the codes for the various localities. In this case, the Cooroy & Lake Macdonald Locality Code is relevant. It comprises:

- (a) a section about compliance with the Cooroy & Lake Macdonald Locality Code;
- (b) overall outcomes for the Cooroy & Lake Macdonald Locality including for each zone in the locality in Division 15;
- (c) specific outcomes and probable solutions for the Cooroy & Lake Macdonald Locality in Division 16; and
- (d) specific outcomes and probable solutions for each zone in the Cooroy & Lake Macdonald Locality in Divisions 17 to 26.

[131] Section 6.6 of the Cooroy & Lake Macdonald Locality Code explains that development complies with the code if it:

- (a) fulfils the specific outcomes for the locality in Division 16; and
- (b) is a consistent use and fulfils the specific outcomes for the relevant zones.

[132] The overall outcomes sought for the Cooroy & Lake Macdonald Locality are set out in s 6.7.2 of the Cooroy & Lake Macdonald Locality Code. Relevantly, they include:

- “c) **Urban development is limited to land within the Urban Growth Boundary as shown on Map ZM3;**
- s) Outside the town of Cooroy, development is characterised by—
 - i conservation of good quality agricultural land for agricultural purposes;
 - ii **conservation of open space for biodiversity and water quality purposes;** and
 - iii **rural settlement at varying densities consistent with the available levels of convenience and accessibility,** environmental constraints and proximity to the Lake Macdonald water supply catchment;
- rr) For the Rural Zone—rural land is protected and appropriately managed such that:-
 - i Agriculture and habitat protection are the dominant land uses;
 - ii **the scenic and environmental values, the distinct rural amenity and agricultural productivity of the locality are preserved and are not adversely impacted as a consequence of development on or adjacent to that land;** and
 - iii locally appropriate enterprises such as bed and breakfast accommodation, farmstays, cabins, camping grounds,

roadside stalls and home based businesses enhance the economic sustainability of the hinterland ...”

(emphasis reflects assessment benchmarks put in issue by the Council)

[133] The specific outcomes sought for the Cooroy & Lake Macdonald Locality include:

(a) with respect to built form and density in the Cooroy & Lake Macdonald Locality generally:

“**O6 The density of development within the *site* area—**

- a) **is compatible with surrounding *development***; and
- b) does not exceed—
 - i. For the Semi-Attached Housing Zone—1 *dwelling unit* per 400m² of site area with a maximum *population density* of 100 persons per hectare;
 - ii. For the Attached Housing Zone—maximum *population density* of 100 persons per hectare; and
 - iii. For the Business Centre Zone—maximum *population density* of 100 persons per hectare
 - iv. For the Community Services Zone maximum *population density* of 320 persons per hectare exclusively for the purposes of *Residential Aged Care* and 160 persons per hectare for any other form of Retirement & Special needs housing; and
- c) **has a low *site* impact to enhance the opportunity to maintain natural *site* characteristics such as native vegetation and natural landforms.**”

(emphasis reflects assessment benchmarks put in issue by the Council)

(b) with respect to land in the Rural Zone:

“**O80** The following defined uses and use classes are inconsistent uses and are not located in the Rural Zone—

- a) **Commercial business Type 1** if not located on Lot 1444 on CG3956 and associated with **Forestry uses**;
- b) **Commercial business Type 2**;
- c) **Entertainment and dining business**;
- d) **Industrial business Type 1**;
- e) **Industrial business Type 2** if not located on Lot 1444 on CG3956 and associated with **Forestry uses**;
- f) **Retail business Type 1** if not a *roadside stall*;
- g) **Retail business Types 2, 4, 5, 6 or 7**

- h) **Education;**
 - i) **Emergency service Type 1;**
 - j) **Open space Type 1;**
 - k) **Wellbeing;**
 - l) **All Infrastructure Uses;**
 - m) **Multiple housing;**
 - n) **Visitor Accommodation Types 2 or 3** where located within the water catchment area as depicted on the Overlay Map OM 3.5; and
 - o) **Visitor accommodation Type 4.”**
- (c) with respect to land in the Open Space Recreation Zone:
- “**O86** The following defined uses and use classes are inconsistent uses and are not located in the Open Space Recreation Zone—
- a) **All Agricultural Uses;**
 - b) **Commercial business;**
 - c) **Entertainment and dining** if not **Type 1** in conjunction with an Open Space Use;
 - d) **Entertainment and dining Type 3;**
 - e) **Home-based business;**
 - f) **Industrial business;**
 - g) **Retail business;**
 - h) **Education;**
 - i) **Emergency service Type 1;**
 - j) **Wellbeing Types 1, 3 or 4;**
 - k) **All Infrastructure Uses;**
 - l) **Detached house;**
 - m) **Community residence;**
 - n) **Multiple housing;** and
 - o) **Visitor accommodation Types 1, 3 or 4.”**

[134] Relevant to these specific outcomes, the dictionary of administrative terms in Noosa Plan 2006 contains the following definitions:

“*inconsistent use* means the use is strongly inappropriate in the relevant zones because it is incompatible with other uses generally expected in that zone.

site means any land on which development is carried out or is proposed to be carried out (including the whole or part of one lot or more than one lot where each of those lots is contiguous with the other or another).

use in relation to a *use class*, means a use for a purpose that is within that *use class*. The use may include multiple uses.

use class means a group of *uses* having different purposes but broad characteristics in common.”

- [135] Finally, in terms of the inappropriateness of the proposed land use, the Council alleges non-compliance with specific outcome O17 and probable solution S17.3 of the Residential Uses Code. They relate to residential uses that are defined as Multiple housing Type 3 – Retirement & special needs and state:

Specific Outcomes	Probable Solutions
<p><i>Access to Commercial and Community Services</i></p> <p>O17 Development is located within reasonable access to a variety of essential services and facilities, including retail and medical facilities and public transport services.</p>	<p>S17.1 The use is located within 300m (measured along a sealed footpath with grade of no more than 1 in 20 (5%)) of a public transport stop or where no public transport is available, an alternative means of transport, such as a minibus, is made available to the residents;</p> <p>AND</p> <p>S17.2 Where a Commercial Business Type 2 medical is not located within 400m, medical or therapy services may form part of the use and be provided on site providing the total proportion of gross floor area used for Commercial Businesses does not exceed 10%;</p> <p>AND</p> <p>S17.3 Where the use is not <i>residential aged care</i> it is located within 400m (measured along a sealed footpath with grade of no more than 1 in 20 (5%)) of a retail use providing convenience goods and groceries.</p>

(emphasis reflects assessment benchmarks put in issue by the Council)

- [136] The dictionary of administrative terms in Noosa Plan 2006 defines “*residential aged care*” as:

“premises housing elderly persons under the supervision of nursing care. Residents are accommodated in bedrooms or bed-sit units but not dwelling units.”

[137] Section 2.8.1 of Noosa Plan 2006 explains that:

- (a) a probable solution for a specific outcome provides a guide for achieving that outcome in whole or in part, and does not limit the assessment manager's discretion to impose conditions on a development approval; and
- (b) probable solutions identified in Noosa Plan 2006 are not exhaustive and alternative solutions that achieve the outcomes and purpose of the applicable codes may be proposed by applicants.

[138] The assessment benchmarks that the Council has put in issue about the appropriateness of the proposed land use on the subject land raise the following three key factual questions for determination:

1. Does the proposed development involve uses that are contemplated on the subject land under Noosa Plan 2006?
2. Is the proposed seniors' living community appropriately located having regard to its density and its proximity to essential services and facilities?
3. Is the proposed seniors' living community compatible with the surrounding community?

[139] I will now consider each of those questions.

Does the proposed development involve uses that are contemplated on the subject land under Noosa Plan 2006?

[140] GTH Project No. 4 Pty Ltd accepts that its proposed development is not within the urban growth boundary and is regarded an inconsistent use in the Rural Zone and the Open Space Recreation Zone. It concedes non-compliance with ss 1.7.6 a) and b) of the Strategic framework and the overall outcome in s 6.7.2 c) and the specific outcomes in O80 and O86 of the Cooroy & Lake Macdonald Locality Code.

[141] These concessions are unsurprising given:

- (a) the subject land is entirely outside the mapped urban growth boundary;
- (b) the seniors' living community:
 - (i) involves the use defined in Noosa Plan 2006 as Multiple Housing – Type 3 Retirement and Special Needs, which is a use that is part of the Multiple housing use class;
 - (ii) is proposed on part of the subject land that is predominantly in the Rural Zone and partly in the Open Space Recreation Zone;
 - (iii) is a use in the Multiple housing use class and specific outcomes O80 and O86 of the Cooroy & Lake Macdonald Locality Code stipulate that uses in the Multiple housing use class are inconsistent uses and are not to be located in the Rural Zone and the Open Space Recreation Zone;
- (c) the proposed golf course clubhouse:
 - (i) involves the uses defined in Noosa Plan 2006 as Entertainment and Dining Business – Type 2 Recreation, amusement & fitness, Entertainment and Dining Business – Type 1 Food & beverages

(Restaurant, café and function room), and Entertainment and Dining Business – Type 3 Bar, which are uses that are part of the Entertainment and dining businesses use class;

- (ii) is proposed on part of the subject land that is predominantly in the Rural Zone and partly in the Open Space Recreation Zone;
- (iii) is a use in the Entertainment and dining businesses use class and specific outcome O80 of the Cooroy & Lake Macdonald Locality Code stipulates that uses in the Entertainment and dining businesses use class are inconsistent uses and are not to be located in the Rural Zone; and
- (iv) include an Entertainment and dining Type 3 use and specific outcome O86 of the Cooroy & Lake Macdonald Locality Code stipulates that the Entertainment and dining Type 3 use is an inconsistent use and is not to locate in the Open Space Recreation Zone.

[142] Despite these non-compliances, GTH Project No. 4 Pty Ltd contends that approval of the proposed use is not discordant with the strategies in s 1.7.4 b) and 1.7.11 of the Strategic framework.

[143] With respect to s 1.7.4 b) of the Strategic framework, GTH Project No. 4 Pty Ltd relies on the fact that the Strategic framework expresses the community vision, which summarises the strategy adopted by Noosa Plan 2006 to achieve the desired environmental outcomes. There are eight identified aspects of the vision. With that in mind, GTH Project No. 4 Pty Ltd develops its argument of compliance by reference to part of one of the aspects, being that associated with community well-being. In that respect, GTH Project No. 4 Pty Ltd observes that the social sector vision is that by 2021, Noosa Shire is renowned for its focus on people, the environment and tourism. As is noted by GTH Project No. 4 Pty Ltd, ss 1.4.5 d) and e) identify that the vision contemplates that the people of Noosa Shire will enjoy a healthy lifestyle and convenient access to services and resources. With its focus on those aspects of the vision, GTH Project No. 4 Pty Ltd develops its submission that residential development of the type proposed is contemplated outside the urban growth boundary.

[144] I do not accept GTH Project No. 4 Pty Ltd's submissions on this issue. It invites an approach to construction that is contrary to orthodox principles of statutory construction. GTH Project No. 4 Pty Ltd encourages the Court to read select portions of Noosa Plan 2006 in isolation and without any regard to other provisions that provide relevant context and the complete picture.

[145] GTH Project No. 4 Pty Ltd's submissions do not grapple with the many provisions that reveal a rigid policy position with respect to urban development outside the urban growth boundary, nor those provisions that identify the basis for the rigid policy. It is sufficient to refer to two provisions to demonstrate that the urban growth boundary is not a line without substance as suggested by GTH Project No. 4 Pty Ltd. First, s 1.4.5 a) of the Strategic framework states that the people of Noosa Shire "*belong to a community which values, maintains and nurtures its small communities*" (my emphasis). Second, s 1.7.6 b) states that "*Growth will be through urban infill and where appropriate, redevelopment.*"

- [146] Noosa Plan 2006 is to be read as a whole and in a way that is practical and intended to achieve a balance between the individual outcomes: *AAD Design Pty Ltd v Brisbane City Council* [2012] QCA 44; [2013] 1 Qd R 1 and *Zappala Family Co Pty Ltd v Brisbane City Council*; *Brisbane City Council v Zappala Family Co Pty Ltd* [2014] QCA 147; [2014] QPELR 686, 698-700 [52]-[58]. See also *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28, (1998) 194 CLR 355, 381-2 [69]-[71]; *SZTAL v Minister for Immigration and Border Protection & Anor* [2017] HCA 34; (2017) 262 CLR 362, 368 [14]; *SAS Trustee Corporation v Miles* [2018] HCA 55; (2018) 265 CLR 137, 149 [20].
- [147] Having regard to an orthodox approach to the construction of Noosa Plan 2006, GTH Project No. 4 Pty Ltd has not persuaded me that a seniors' living community and a bar as part of the golf course clubhouse are uses that are contemplated on the subject land under Noosa Plan 2006. GTH Project No. 4 Pty Ltd has also failed to persuade me that its proposed use accords with s 1.7.4 b) of the Strategic framework.
- [148] I am satisfied on the balance of probabilities that a decision to approve the proposed development on the subject land is discordant with the outcome sought to be achieved in s 1.7.4 b) of the Strategic framework. It would undermine the Noosa community's confidence that population growth and associated change will not adversely impact upon the character, lifestyle and environment enjoyed by its residents. My finding in that regard is informed by:
- (a) the location of the subject land outside the mapped urban growth boundary;
 - (b) the assessment benchmarks with which GTH Project No. 4 Pty Ltd concedes there is non-compliance;
 - (c) the properly made submissions from the Noosa community; and
 - (d) the unchallenged factual evidence given by residents of the area.
- [149] Turning then to s 1.7.11 of the Strategic framework. It forms part of the strategy for rural uses. The proposed development does not involve a rural use, nor does it conflict with existing agricultural uses in the area. Notwithstanding this, if the development application were approved and the proposed development were to proceed, at face value it would preclude use of that part of the subject land that is in the Rural Zone for agricultural purposes. However, that is not an issue in this appeal, and it is not a matter to which I attribute any weight.
- [150] In this case, the focus of the dispute about s 1.7.11 of the Strategic framework relates to the proper construction of the final sentence, which states:
- “Urban uses, more appropriately located within the *urban growth boundary* do not occur in the Rural zone.”
- [151] There is no suggestion that the proposed development is not an urban use, nor that it is an urban use that is proposed to occur in the Rural Zone. GTH Project No. 4 Pty Ltd concedes that a seniors' living community would be appropriately located within the urban growth boundary. It contends that the proposed development involves an urban use for which a need exists and that the need is unable to be met within the urban growth boundary. GTH Project No. 4 Pty Ltd submits that the facts here are such that the proposed development is a use that cannot be “*more appropriately located within the urban growth boundary*”. I deal further with this contention later. For present purposes,

I note that GTH Project No. 4 Pty Ltd's case is premised on an alleged absence of appropriate vacant land within the urban growth boundary. Its case ignores that s 1.7.6 b) indicates that necessary growth is not only to be achieved through infill development, but also through redevelopment of land within the urban growth boundary.

[152] The Council submits that, properly construed, s 1.7.11 of the Strategic framework does not admit of urban uses being located outside the urban growth boundary.

[153] When the final sentence in s 1.7.11 of the Strategic framework is read in isolation, it lacks clarity due to difficulties with its grammatical construct. When read in the context provided by the balance of s 1.7.11 a) of the Strategic framework and Noosa Plan 2006 generally, it seems to me that the articulated strategy is that:

- (a) urban uses do not occur in the Rural Zone; and
- (b) urban uses are to be located within the urban growth boundary because that is where they are more appropriately located.

[154] So construed, the proposed development does not comply with s 1.7.11 of the Strategic framework. That said, if I am wrong about that construction, it is not material to the outcome of this case. That is so for two reasons.

[155] First, the proposed development does not comply with the strategy to preclude urban development of this type outside the urban growth boundary as expressed in other assessment benchmarks. A finding that the proposed development does not comply with s 1.7.11 of the Strategic framework does not enhance the significance of the non-compliance with the overall strategy.

[156] Second, GTH Project No. 4 Pty Ltd's position is premised on its contention that the proposed development involves an urban use for which a need exists that is unable to be met within the urban growth boundary. It bears the onus of demonstrating this contention. For reasons explained later, it has not discharged that onus.

[157] For the reasons provided above:

- (a) the non-compliance with s 1.7.11 of the Strategic framework adds nothing of substance to the case against approval; and
- (b) the non-compliances with ss 1.7.4 b) and 1.7.6 a) and b) of the Strategic framework and the overall outcome in s 6.7.2 c) and the specific outcomes in O80 and O86 of the Cooroy & Lake Macdonald Locality Code tell against approval of the proposed development.

Is the proposed seniors' living community appropriately located having regard to its density and its proximity to essential services and facilities?

[158] The overall outcome in s 6.7.2 s) iii of the Cooroy & Lake Macdonald Locality Code and specific outcome O17 of the Residential Uses Code call for consideration of whether the proposed use is suitably located having regard to the density of the use and the nature of access between the subject land and essential services and facilities.

[159] GTH Project No. 4 Pty Ltd contends that the proposed development complies with these assessment benchmarks.

[160] To assist me to determine this issue, I have the benefit of evidence that includes:

- (a) evidence given by Mr Gavin Duane and Mr Marcus Brown, the economics experts retained by GTH Project No. 4 Pty Ltd and the Council respectively;
- (b) evidence given by Ms Catherine Wells, a retirement need expert retained by GTH Project No. 4 Pty Ltd;
- (c) evidence given by Mr Chris Buckley and Ms Jennifer Morrissy, the town planners retained by GTH Project No. 4 Pty Ltd and the Council respectively;
- (d) Exhibit 7.008, which is an aerial photograph marked up by Mr Duane to show the location of existing essential services and facilities, including retail and medical facilities and public transport services;
- (e) Exhibit 7.025, which is an aerial photograph marked up to demonstrate the distance by road between the centre of Cooroy (treated as the roundabout intersection of Maple, Myall and Garnet Streets) and each of the proposed development and the retirement facility on the northern side of the town known as Palm Lakes Cooroy-Noosa;
- (f) Exhibit 7.026, which is an aerial photograph marked up to demonstrate the walking distance between the centre of Cooroy and each of the proposed development and the Palm Lakes Cooroy-Noosa; and
- (g) Exhibit 8.004, which is a copy of a plan of the proposed development marked up by Ms Morrissy to demonstrate the distances between:
 - (i) the security gate and the furthest proposed house site in the seniors' living community; and
 - (ii) the security gate and the Myall Street access to the proposed development.

[161] Relevantly, the distance between the proposed development and the nearest retail uses providing convenience goods and groceries far exceed the 400-metre distance contemplated in probable solution S17.3 of the Residential Use Code.

[162] The evidence further demonstrates that the security gate access to the seniors' living community is about:

- (a) 1.6 to 1.9 kilometres from retail, commercial and medical uses in Cooroy town;
- (b) 1.7 kilometres from Eden Private Hospital and a QML pathology;
- (c) 2 kilometres from the closest public park, being Apex Park;
- (d) 1.8 kilometres from the pedestrian entrance to the Cooroy train station;
- (e) 700 metres from the nearest existing bus stop, in circumstances where there is presently no safe pedestrian crossing across Myall Street that provides access to the bus stop; and
- (f) 1.9 kilometres from the Cooroy library.

- [163] Some improvements to accessibility would be achieved under the conditions proposed by the Chief Executive. Those conditions require the provision of:
- (a) a pair of bus stops on Myall Street, proximate to the access to the proposed development; and
 - (b) pedestrian crossing works across Myall Street and paved pedestrian footpaths between the seniors' living community and each bus stop.
- [164] Mr Duane, Ms Wells and Mr Buckley opine that the subject land is well located and provides a suitable level of access to lifestyle, health and essential services. Their opinions in that regard are informed by:
- (a) their perception that residents of the seniors' living community are able to easily access essential services by car;
 - (b) the comparability between the distance between the subject land and Lot 4, part of which is designated as an aged care site in Noosa Plan 2020; and
 - (c) the fact that the distance between the subject land and the centre of Cooroy is comparable to the distance between the Palm Lakes Cooroy-Noosa retirement facility and the centre of Cooroy.
- [165] Mr Brown acknowledges that the subject land is co-located with the golf course, but says that, given its location at the edge of the Cooroy township, the proposed seniors' living community is not well located to access retail and commercial facilities within the context of Cooroy.
- [166] Ms Morrissy opines that the location of the subject land does not facilitate easy and direct access to services and facilities in Cooroy in a way that caters for users of varying ages and abilities and provides an optimum degree of independence.
- [167] I prefer the evidence of Mr Brown and Ms Morrissy to that of Mr Duane, Ms Wells and Mr Buckley on this issue. The evidence of Mr Brown and Ms Morrissy aligns with views I have formed based on other evidence that I accept, such as aerial photographs and plans. I am not persuaded to accept the opinions of Mr Duane, Ms Wells and Mr Buckley for three reasons.
- [168] First, their evidence does not appropriately recognise or address:
- (a) the context of the location, including the fact that the seniors' living community is proposed at the edge of the Cooroy township;
 - (b) the potential difficulties associated with access by car having regard to the extent of parking available in the town centre of Cooroy. This is a matter that is referenced in the properly made submissions and supported by the unchallenged factual evidence given by residents of the local government area who frequent the town centre, including Ms Jennifer Sadler, Mr Rod Ritchie and Mr Garry Webster; and
 - (c) the grade of the footpath between the subject land and the centre of Cooroy;
- [169] I am cognisant that the properly made submissions are not sworn testimony, and I do not regard them as such. Nevertheless, they identify potential issues that may need to be considered by experts when making assumptions that inform their opinions. The

potential difficulties associated with the extent of parking available in the town centre of Cooroy is an example of such an issue. As I have just mentioned, this is a potential issue that is substantiated by the unchallenged evidence of residents of the local government area who frequent the town centre.

- [170] Second, I accept that the location of the Palm Lakes Cooroy-Noosa retirement facility is more removed from the centre of Cooroy than the subject land. I also accept that it is a development that was approved by the Council. However, I am not prepared to infer from the combination of those matters that the proposed development is located with reasonable access to a variety of essential services and facilities. There is no evidence about the provisions against which that development was required to be assessed, nor about the basis on which it was approved.
- [171] Third, the Council's decision to designate part of Lot 4 as an aged care site in Noosa Plan 2020 does not persuade me that the proposed development is appropriately located. There are the following relevant differences between the proposed development as compared to Lot 4.
- [172] That part of the subject land proposed to be developed for seniors' living community is physically and visually disconnected from the centre of Cooroy and surrounding urban development. It has no contiguous urban zoned land under Noosa Plan 2006 or Noosa Plan 2020, not even in terms of its interface with Lot 4. That part of Lot 4 that is directly opposite the subject land is outside the urban boundary and in the Environmental Management and Conservation Zone under Noosa Plan 2020.
- [173] Moreover, Lot 4 does not suffer from the same physical and visual disconnection as the subject land. That part of Lot 4 that is within the urban boundary and in the Community Facilities Zone under Noosa Plan 2020 has a frontage to Ferrells Road and an interface with existing residential development.
- [174] For those reasons, GTH Project No. 4 Pty Ltd has not satisfied me that the proposed development complies with the overall outcome in s 6.7.2 s) iii of the Cooroy & Lake Macdonald Locality Code and specific outcome O17 of the Residential Uses Code.
- [175] Having regard to the evidence, I am satisfied that the proposed development does not achieve the planning goals sought by those assessment benchmarks. The non-compliances are matters that tell against approval of the proposed development.

Is the proposed seniors' living community compatible with the surrounding community?

- [176] The relevant outcomes regarding the compatibility of the proposed seniors' living community with the surrounding community are those sought in s 1.7.4 a) of the Strategic framework and the overall outcome s 6.7.2 rr) ii and specific outcome O6 of the Cooroy & Lake Macdonald Locality Code. These outcomes call for consideration of the density of the proposed seniors' living community and its impact on visual amenity and character. I consider those issues as part of key issue 2 below.

What is the significance of the non-compliances relating to the proposed location of the seniors' living community use?

- [177] As I have identified above, the non-compliances with ss 1.7.4 b) and 1.7.6 a) and b) of the Strategic framework, and the overall outcomes in ss 6.7.2 c) and s) iii, and the specific outcomes in O80 and O86 of the Cooroy & Lake Macdonald Locality Code, and specific outcome O17 of the Residential Uses Code tell against approval of the proposed development.
- [178] GTH Project No. 4 Pty Ltd says that those non-compliances are without substance.
- [179] The real dispute relates to the weight that should be attributed to the discord between the proposed development and the assessment benchmarks in Noosa Plan 2006 in the balancing exercise. To answer the question about weight, it is necessary to consider the nature and extent of the conflict. Two broad considerations are relevant in that respect. The first is the verbiage of Noosa Plan 2006, which must be considered to appreciate the degree of importance that the Planning Scheme attaches to the relevant outcomes. The second is the facts and circumstances of the case.
- [180] GTH Project No. 4 Pty Ltd submits that when the assessment benchmarks are considered in the context of the verbiage of Noosa Plan 2006, the materiality of the non-compliances is reduced. I have considered each of the matters to which it refers in this respect: see paragraphs 157 to 168 of Exhibit 7.028. I do not consider GTH Project No. 4 Pty Ltd's submissions to be persuasive. That is so for three reasons.
- [181] First, GTH Project No. 4 Pty Ltd refers to selective parts of Noosa Plan 2006, which are taken out of context and provide an artificially constrained reading of Noosa Plan 2006.
- [182] Second, GTH Project No. 4 Pty Ltd's submissions fail to recognise the constraints on rural settlement reflected in the combined effect of:
- (a) the application of the tables of assessment;
 - (b) the requirements that apply to accepted development; and
 - (c) the constraints faced by code assessable development. That form of development is to only be assessed against the assessment benchmarks in applicable codes, rather than the entire planning scheme. In a code assessment process, there is also limits to the ability to consider other relevant matters, which limits the prospect of an approval in the event of non-compliance with the codes.
- [183] Third, in many respects the submissions are not confined to a consideration of the verbiage of Noosa Plan 2006. Rather, they invite consideration of the facts and circumstances pertaining to the proposed development on the subject land. In that respect, they assume that GTH Project No. 4 Pty Ltd will succeed in establishing those facts and circumstances that it asserts: see, for example, paragraphs 160 (particularly the final sentence) and 162(b) of Exhibit 7.028.
- [184] For present purposes, a useful approach to determine the weight to be given to a statement of policy or a forward planning strategy in a planning scheme is to examine the evil that it seeks to avoid.

[185] In light of this, when the assessment benchmarks in question are considered in combination and in the broader context of the verbiage of Noosa Plan 2006, they reveal that:

- (a) there is a deliberate and rigidly expressed strategy to restrict urban residential development to area within the urban growth boundary, which strategy is informed by policies and strategies that seek to, amongst other things:
 - (i) protect and preserve the character of the towns and villages in the local government area;
 - (ii) protect the lifestyle enjoyed by the residents, including by reference to their ability to reside at locations that provide convenient access to services and facilities;
 - (iii) protect water quality and the water supply catchment of Lake Macdonald;
 - (iv) protect and enhance the natural environment; and
 - (v) support the economy of Noosa Shire, including by supporting Cooroy as a major hinterland service centre;
- (b) while residential development of a scale consistent with rural settlement is anticipated in areas outside the urban growth boundary, the degree of flexibility afforded to such development is limited where it is proposed on land that is subject to constraints associated with:
 - (i) maintenance of water quality;
 - (ii) maintenance of agricultural sustainability;
 - (iii) preservation of biodiversity; and
 - (iv) preservation of scenic values, rural amenity and character; and
- (c) these policies and strategies are important because, amongst other things, they are directed at providing confidence to the Noosa Shire community that population growth and associated change does not adversely impact upon the character, lifestyle and environment enjoyed by its residents.

[186] The proposed seniors' living community does not accord with these important strategies and policies. It is residential development of an urban scale that is proposed on land that:

- (a) is outside the urban growth boundary;
- (b) is physically and visually removed from the town centre of Cooroy and other urban development;
- (c) contributes to the rural amenity and character of the locality; and
- (d) is subject to water quality and biodiversity constraints.

[187] As such, consideration of the verbiage of Noosa Plan 2006 indicates that significant weight should be afforded to the non-compliances in the balancing exercise.

- [188] GTH Project No. 4 Pty Ltd submits that general town planning consideration of the opportunities and constraints that are peculiar to the subject land provides important context when considering the extent to which the development respects the planning policy or purpose of the provisions in issue associated with the land use. I agree. This involves consideration of the facts and circumstances of the case, which I have already identified is the second of two broad considerations when determining the weight that should be attributed to the discord between the proposed development and the assessment benchmarks in Noosa Plan 2006 in the balancing exercise.
- [189] GTH Project No. 4 Pty Ltd identifies ten factors that it says are relevant in this regard, each of which it says were accepted by Ms Morrissy during cross-examination.
- [190] First, proposed lot 4 is a large and vacant site that offers the opportunity to meaningfully cater for what GTH Project No. 4 Pty Ltd says is an identified need and to facilitate ageing in place and quality of life.
- [191] Second, there is an absence of environmental constraints on proposed lot 4. The part of the land that has ecological constraints will be avoided and the proposed development on the unconstrained parts provides the opportunity to rehabilitate and enhance the ecological values that exist.
- [192] Third, there is an absence of other constraints on proposed lot 4, such as constraints associated with bushfire, slope stability, and the presence of good quality agricultural land.
- [193] Fourth, proposed lot 4 is not affected by natural hazards.
- [194] Fifth, proposed lot 4 is close to and has good access to the full range of services in the largest hinterland business centre in the local government area. During cross-examination, Ms Morrissy accepted that the subject land's proximity to services and facilities can be described as convenient, but not walkable. The facilities on offer in Cooroy are well suited for development of this type. They include a hospital, a range of medical facilities, and a wide range of community facilities.
- [195] Sixth, the co-location of the proposed seniors' living community with the golf course provides:
- (a) a desirable amenity and recreational opportunity for residents of the seniors' living community; and
 - (b) an opportunity for significant investment in, and improvement of, the golf course, its facilities and carparking;
- [196] Seventh, other than sewerage, urban infrastructure is available to proposed lot 4. Further, the size of the whole of the subject land is such that a suitable on-site treatment arrangement can be provided to avoid any water quality or amenity impacts.
- [197] Eighth, there is only one adjoining neighbour, which is to the south of the subject land. There is an absence of any constraint in terms of off-site or reverse amenity impacts. Although acoustic barriers are proposed to protect on-site amenity, the scale of proposed lot 4 enables them to be installed such that they will not be visible and will have no impact.

- [198] Ninth, there is the ability to screen development on proposed lot 4 through a landscaped buffer in a location where extensive roadside vegetation already exists.
- [199] Tenth, suitable access is available.
- [200] GTH Project No. 4 Pty Ltd says that there are no material planning constraints associated with proposed lot 4 that countervail these opportunities. It says that Ms Morrissy struggled to identify constraints on the suitability of proposed lot 4 on a “*first principles*” basis. It says that the only constraints identified by Ms Morrissy were lack of walkability, character alteration and the impact on the values of the community in terms of the carrying capacity of the land. GTH Project No. 4 Pty Ltd submits that these constraints are far from compelling.
- [201] Further, with respect to the delineation of the urban growth boundary, GTH Project No. 4 Pty Ltd submits that the delineation lacks apparent purpose given:
- (a) the town planners agree that the subject land is located at the southern extent of Cooroy and that it has a direct locational connection to the first roundabout east of the Bruce Highway that announces Cooroy to those approaching from the south;
 - (b) Ms Morrissy describes the subject land as being located at the southern edge and entrance to a rural town; and
 - (c) Mr Buckley’s observations that:
 - (i) Noosa Plan 2006 does not identify the golf course as a marker of the town’s edge, even though the golf course is a dominant feature;
 - (ii) the proposed development will have no material impact on water quality or biodiversity and is not part of a working rural area;
 - (iii) the proposed seniors’ living community will be essentially out of sight from public vantage points and would not erode the characteristics of the edge of town or the values that constitute its public appreciation; and
 - (iv) Noosa Plan 2020 encourages housing on proposed lot 4.
- [202] GTH Project No. 4 Pty Ltd submits that the weighing up of those opportunities and constraints, and the matters it identifies about the delineation of the urban growth boundary, are relevant in two respects. First, they demonstrate the logic, or planning sense, in locating the proposed seniors’ living community on proposed lot 4. Second, they provide relevant context when considering whether approval of the development would offend the identifiable policy or planning purpose behind the provisions about the urban growth boundary.
- [203] The tenor of GTH Project No. 4 Pty Ltd’s submissions is to invite the Court to set aside the Council’s planning strategy with respect to the urban growth boundary insofar as it relates to the subject land on the basis that it is not soundly based. For reasons identified below with respect to character impacts and water catchment planning, I am not persuaded that the urban growth boundary strategy is unsoundly based.

[204] Having regard to the evidence, I am satisfied that:

- (a) the proposed development will not adversely impact on the ecological constraints on the subject land. Rather, it will rehabilitate and enhance the ecological values that exist;
- (b) the subject land is not subject to constraints associated with bushfire hazard, slope stability or good quality agricultural land;
- (c) proposed lot 4 is not affected by natural hazards;
- (d) the facilities on offer in Cooroy include a hospital, a range of medical facilities, and a wide range of community facilities that are beneficial for residents of a seniors' living community;
- (e) the co-location of the proposed seniors' living community with the golf course provides a desirable amenity and recreational opportunity for residents of the seniors' living community;
- (f) urban infrastructure, other than that for sewerage, is available to proposed lot 4;
- (g) the adjoining land uses do not present a constraint in terms of:
 - (i) amenity impacts from off-site uses; or
 - (ii) reverse amenity impacts;
- (h) in the long-term, the acoustic barriers are not likely to be visible as they will be screened by the proposed vegetative buffer; and
- (i) suitable vehicular access is available to the proposed development.

[205] Individually, each of these matters moderate, to a degree, the weight that should be attributed to the non-compliances in the balancing exercise.

[206] However, GTH Project No. 4 Pty Ltd has not persuaded me that:

- (a) there is a strong need for the proposed seniors' living community on the subject land;
- (b) proposed lot 4 being a large, vacant site and offering an opportunity to provide the extensive range of facilities that assist ageing in place and quality of life is a matter that materially mitigates the significance of the non-compliances with the assessment benchmarks in Noosa Plan 2006 or otherwise represents a planning opportunity based on general town planning theory or principles;
- (c) the fact that proposed lot 4 is a large, vacant site demonstrates that such land offers an appropriate opportunity to provide the extensive range of facilities that assists ageing in place and quality of life;
- (d) there is an absence of environmental constraints on proposed lot 4. This submission is an exaggeration and is not supported by reference to any evidence. The evidence demonstrates that proposed lot 4 is mapped on the Cooroy & Lake Macdonald Biodiversity Overlay as containing a major waterbody. The mapping is not demonstrated to be wrong. To the contrary, as I have mentioned in my overview of the development application and appeal process, the environmental constraints on the subject land were the focus of

consideration early in the process and informed changes to the development application;

- (e) the existence of facilities in Cooroy that are beneficial for residents of a seniors' living community demonstrates that it is appropriate to locate a seniors' living community that caters to residents aged 50 and above at a location on the edge of Cooroy where the residents will be more than one kilometre from the facilities;
- (f) assuming the evidence establishes the matters referred to in paragraph [195] above, and that the matter referred to in paragraph [195](b) above is a relevant matter (and not simply the personal circumstances of Cooroy Golf Club Inc.), that such matters materially mitigate the significance of the non-compliances with the assessment benchmarks in Noosa Plan 2006 or otherwise represent a planning opportunity based on general town planning theory or principles;
- (g) the availability of urban infrastructure, other than that for sewerage, to proposed lot 4 materially mitigates the significance of the non-compliances with the assessment benchmarks in Noosa Plan 2006;
- (h) the location of proposed stormwater quality treatment measures associated with the seniors' living community use on privately owned land that is not part of proposed lot 4 is appropriate;
- (i) suitable on-site stormwater treatment arrangements can be provided to avoid any inappropriate water quality impacts;
- (j) the proposed landscape buffer that will screen development on proposed lot 4 mitigates the significance of the non-compliances with the assessment benchmarks in Noosa Plan 2006. To the contrary, for reasons explained below, it will result in an unacceptable character impact. As such, it supports a finding that the proposed development's location outside the urban growth boundary is inappropriate;
- (k) there are no material planning constraints associated with proposed lot 4 that countervail the opportunities that it presents;
- (l) taking account of the matters referred to in paragraph [163] above, the distances between the seniors' living community and the facilities identified in paragraph [162] above and the grade of the footpath, are not compelling considerations that tell against the suitability of the subject land for the proposed seniors' living community;
- (m) the impact on character occasioned by the proposed development is not a compelling consideration that tells against the suitability of the subject land for the proposed seniors' living community; and
- (n) the delineation of the urban growth boundary lacks apparent purpose. To the contrary:
 - (i) the evidence of the town planners reinforces the significance of the subject land to character considerations, which I address further below. The relevant evidence to this end indicates that the subject land is located at the southern edge and entrance to the rural town of Cooroy, has a direct

locational connection to the first roundabout east of the Bruce Highway, and announces Cooroy to those approaching from the south;

- (ii) I do not accept Mr Buckley's observations that:
 - (A) Noosa Plan 2006 does not identify the golf course as a marker of the town's edge, even though the golf course is a dominant feature. Section 3.1.3 g) i e. of Noosa Plan 2006 identifies that networks of open space are to be protected as they are material in defining the boundaries of the distinct urban localities of Noosa Shire;
 - (B) the proposed development will have no material impact on water quality as he is not appropriately qualified to express such opinions and the evidence does not otherwise persuade me that there is no material impact for reasons which I address further below; and
 - (C) the screening that causes the proposed seniors' living community to be essentially out of sight from public vantage points would not erode the characteristics of the edge of town or the values that constitute its public appreciation for reasons which I address further below; and
- (iii) although Noosa Plan 2020 encourages housing on proposed lot 4, it is subject to material constraints that limit the nature and extent of such housing. Consideration of the verbiage of Noosa Plan 2020 overall supports a finding that the urban growth boundary reflects sound town planning and has not been overtaken by events.

[207] On balance, having regard to all those matters referred to above, and all my findings in these reasons about the matters that mitigate the significance of non-compliance, I am not persuaded that the non-compliances do not stand in the way of approval of the proposed development. To the contrary, they remain significant considerations that tell against a decision to approve the proposed seniors' living community.

Key issue 2 – Does the proposed seniors' living community involve unacceptable built form and density and result in unacceptable visual amenity and character impacts?

[208] The Council contends that the proposed development would have an unacceptable impact on the character of the locality. Its allegation in that regard focuses on that aspect of the proposed development that involves the seniors' living community. The Council says that the proposed seniors' living community is inconsistent with the following provisions in Noosa Plan 2006:

- (a) ss 1.7.4 a) and 1.7.12 a) of the Strategic framework;
- (b) the desired environmental outcomes in ss 3.1.3 g) i b. and xvii and j) iii and ix;
- (c) the overall outcomes in ss 6.7.2 c), f), r), s) iii, cc), and rr) ii and specific outcomes O6 a) and c), O7 d), O8 c) and d) and O9 a), b), c) and d) and O88 a) of the Cooroy & Lake Macdonald Locality Code; and
- (d) ss 14.44.2 b) and j) of the Residential Uses Code.

What built form, density, visual amenity and character outcomes are sought by the relevant assessment benchmarks in Noosa Plan 2006?

[209] Although I have set out s 1.7.4 a) of the Strategic framework in paragraph [125] above, it bears repeating here. It states:

“The Noosa Shire community respects and appreciates its environment and has goals of environmental excellence, quality lifestyle and economic well-being. As a consequence **the Noosa community seeks—**

- a) **built environments which fit into and do not dominate the natural environment;** and
- b) confidence that population growth and associated change does not adversely impact upon the character, lifestyle and environment enjoyed by its residents.”

(emphasis reflects assessment benchmarks put in issue by the Council)

[210] Section 1.7.12 of the Strategic framework sets out part of the Strategy for Environmental and Heritage Protection and Management in relation to natural environment protection. It, relevantly, states:

“a) **Through the use of zones** and overlays **the scheme** identifies and seeks to protect areas of remnant *vegetation* and encourages the rehabilitation of riparian corridors and wildlife corridors. **It also seeks to protect land of** ecological, biophysical, **scenic** or cultural **value**, including the mountains that dominate the landform and landscape.”

(emphasis reflects assessment benchmarks put in issue by the Council)

[211] Section 3.1.1 of Noosa Plan 2006 explains that the desired environmental outcomes are the basis for the measures of Noosa Plan 2006.

[212] The desired environmental outcomes in ss 3.1.3 g) i b. and xvii and j) iii and ix state:

“g) OPEN SPACE, ENVIRONMENT & CONSERVATION FUNCTIONS

Networks of open space and natural habitat, vegetated lands, wetlands, watercourses and riparian zones are sensitivity managed and protected and avoid as far as practicable or, where avoidance is not practicable, minimise adverse impacts resulting from development by -

- i **protecting and managing the natural environment in a way that—**
 - a. supports the economy through the tourism industry and contributes to the region’s competitive advantage and lifestyle;
 - b. **maintains and improves landscape character and visual amenity;**

- c. builds ecological resilience and capacity to adapt to a changing climate;
 - d. provides passive, nature-based recreation and educational opportunities including appropriate eco-tourism facilities;
 - e. defines the boundaries to or of each of the distinct urban localities of Noosa Shire; and
 - f. provides linkages beyond Noosa Shire's boundaries;
- xvii **development not impacting on views and vistas that characterise particular localities in Noosa Shire** including views to or from watercourses, beaches or riparian corridors avoiding visual scarring of the hill slopes.
- j) **RESIDENTIAL USES**
- Urban and rural settlement for residential use is contained within the defined urban growth boundaries shown on zoning maps ZM1- ZM9 by -**
- iii **development being consistent with the character and amenity of the particular locality;**
 - ix **considering the impact new development has on resident perceptions of Noosa Shire's natural resources, open space, clean environment, integration of the landform and landscape, character, natural environment and resident lifestyle;**
 - xiv responding to the changing housing needs of the community, including changing demographics, changing composition of households, ageing and in-migration, whilst not impacting on the amenity of residential neighbourhoods or environmental values"

(emphasis reflects assessment benchmarks put in issue by the Council)

[213] The overall outcomes in s 6.7.2 of the Cooroy & Lake Macdonald Locality Code include:

- "c) **Urban development is limited to land within the Urban Growth Boundary as shown on Map ZM3;**
- f) **The physical setting of the town of Cooroy, characterised by undulating land to the southwest of Lake Macdonald, ranges to the north, east, and south, and flatter land immediately to the north-west and west is maintained and accommodates rural settlements and forestry;**
- q) The urban community is predominantly accommodated in detached housing, although areas close to Cooroy centre support

- semi-attached and attached residential development and other properties in Cooroy township contain aged-care housing;
- r) **The traditional built form of Cooroy is retained and new development complements traditional streetscape and building forms;**
 - s) Outside the town of Cooroy, development is characterised by—
 - i conservation of good quality agricultural land for agricultural purposes;
 - ii conservation of open space for biodiversity and water quality purposes; and
 - iii **rural settlement at varying densities consistent with the available levels of convenience and accessibility,** environmental constraints and proximity to the Lake Macdonald water supply catchment;
 - cc) **The vistas offered from the major road corridors are protected and add to the attraction of the locality for visitors and residents;**
 - rr) For the Rural Zone—rural land is protected and appropriately managed such that:-
 - i Agriculture and habitat protection are the dominant land uses;
 - ii **the scenic and environmental values, the distinct rural amenity and agricultural productivity of the locality are preserved and are not adversely impacted as a consequence of development on or adjacent to that land;** and
 - iii locally appropriate enterprises such as bed and breakfast accommodation, farmstays, cabins, camping grounds, roadside stalls and home based businesses enhance the economic sustainability of the hinterland ...”

(emphasis reflects assessment benchmarks put in issue by the Council)

[214] The specific outcomes sought in the Cooroy & Lake Macdonald Locality Code with respect to the locality generally include:

Density

O6 The density of development within the *site area*—

- a) **is compatible with surrounding *development*; and**
- b) does not exceed—
 - i. For the Semi-Attached Housing Zone—1 *dwelling unit* per 400m² of site area with a maximum *population density* of 100 persons per hectare;

- ii. For the Attached Housing Zone—maximum *population density* of 100 persons per hectare; and
 - iii. For the Business Centre Zone—maximum *population density* of 100 persons per hectare
 - iv. For the Community Services Zone maximum *population density* of 320 persons per hectare exclusively for the purposes of *Residential Aged Care* and 160 persons per hectare for any other form of Retirement & Special needs housing; and
- c) **has a low *site* impact to enhance the opportunity to maintain natural *site* characteristics such as native vegetation and natural landforms.**

Height

O7 Buildings and other structures—

- a) are low rise and present a building height consistent with structures on adjoining and surrounding premises;
- b) have a maximum building height of 2 storeys;
- c) do not visually dominate the street, surrounding spaces or the existing skyline;
- d) **preserve the amenity of surrounding land uses;**
- e) respect the scale of existing vegetation; and
- f) respond to the topography of the site by avoiding extensive excavation and filling.

Setbacks

O8 Buildings and other structures are appropriately designed and sited to—

- a) provide amenity for users of the premises as well as preserve the visual and acoustic privacy of adjoining and nearby properties;
- b) preserve any existing vegetation that will buffer the proposed building from adjoining uses;
- c) **allow for landscaping to be provided between buildings; and**
- d) **maintain the visual continuity and pattern of buildings and landscape elements within the street.**

Site cover, gross floor area and plot ratio

O9 The site cover, gross floor area and plot ratio of buildings and other roofed structures—

- a) **results in a building scale that is compatible with surrounding development;**

- b) **does not present an appearance of bulk to adjacent properties, roads or other areas in the vicinity of the site;**
- c) **maximises the retention of existing vegetation and allows for soft landscaping between buildings;**
- d) allows for adequate area at ground level for outdoor recreation, entertainment, clothes drying and other site facilities; and
- e) facilitates onsite stormwater management and vehicular access.”

(emphasis reflects assessment benchmarks put in issue by the Council)

[215] In addition, with respect to built form in the Rural Zone, specific outcome O88 of the Cooroy & Lake Macdonald Locality Code states:

“O88 Buildings and other structures are designed and sited to—

- a) **encourage the co-locating of a range of Open space uses;**
- b) be attractive, comfortable and accessible to the public;
- c) provide suitable landscape treatments seating, lighting and other amenities conducive to community interaction and convenience and public safety; and
- d) protect any environmental values on the site.”

(emphasis reflects assessment benchmarks put in issue by the Council)

[216] The overall outcomes in the Residential Uses Code are the purpose of the code. The overall outcomes in ss 14.44.2 of the Residential Uses Code include:

“14.44.2 The overall outcomes sought for the Residential Uses Code are to ensure that *residential development*—

- b) **is attractive and consistent with the developed character of its particular neighbourhood;**
- g) creates comfortable and accessible homes for people with different needs through all stages of life;
- i) provides residents with a choice in housing types to meet their varying needs;
- j) **does not adversely impact on the natural character and environmental values of Noosa.”**

(emphasis reflects assessment benchmarks put in issue by the Council)

[217] The assessment benchmarks that the Council has put in issue about built form, density, and visual amenity and character impacts raise the following nine factual questions for determination:

1. What is the amenity and character of the locality?
2. What are the design features of the proposed seniors’ living community?

3. Are the buildings appropriately designed and sited to allow for landscaping between buildings?
4. Are the buildings appropriately designed and sited to maintain the visual continuity and pattern of buildings in the street?
5. Is the density of the proposed seniors' living community and its site cover, gross floor area and plot ratio, compatible with surrounding development?
6. Will the proposed seniors' living community present an appearance of bulk to adjacent properties, roads or other areas in the vicinity?
7. Are the proposed buildings and other structures designed and sited to encourage the co-location of a range of open space uses?
8. Will the proposed seniors' living community have a detrimental impact on the amenity of the locality?
9. Will the proposed seniors' living community have a detrimental impact on the character of the locality?

[218] To assist me in that regard, I have the benefit of evidence that includes, but is not limited to:

- (a) plans, sections and elevations depicting the proposed development;
- (b) many photographs of the area;
- (c) unchallenged expert evidence in the form of photomontages given by Mr Mark Elliott, who was retained by GTH Project No. 4 Pty Ltd to produce photomontages;
- (d) expert evidence with respect to character and visual amenity issues given by Mr Nathan Powell and Mr Leslie Curtis, the visual amenity experts retained by GTH Project No. 4 Pty Ltd and the Council respectively; and
- (e) expert evidence with respect to town planning given by Mr Buckley and Ms Morrissy.

[219] The parties arranged a site inspection of the local area. Although my observations on the site inspection do not form part of the evidence, my appreciation of the photographic evidence, and the opinions expressed by the experts, was greatly enhanced by that site inspection.

[220] My findings below are not attributable to a single statement by an expert. They reflect the aggregate impression that I have formed having regard to the collective effect of the evidence, including the photographic evidence.

What is the amenity and character of the locality?

[221] The character of a locality is the aggregate impression formed having regard to the individual features and traits of the existing development, landscaping and natural environment in the street or locality: *McKay v Brisbane City Council & Anor*; *Panozzo v Brisbane City Council & Anor*; *Jensen v Brisbane City Council & Anor* [2021] QPEC 42; [2022] QPELR 963, 990 [72]; *Purcell Family v Gold Coast City Council* [2004] QPELR 521, 524 [20]. It is also informed by the perceptions or

expectations that people hold about a place, which may be influenced by the existing attributes of the area and the planning intentions for the area.

- [222] In describing the existing and planned contribution that the subject land makes to the character of the locality, the subject land can be separated into two parts, namely:
- (a) the existing 18-hole Cooroy golf course and the associated clubhouse that is located opposite the intersection of Myall Street and Crystal Street. This is predominantly in the Open Space Recreation Zone but is also partly in the Rural Zone under Noosa Plan 2006; and
 - (b) the southern part of the subject land, being Lot 3, which:
 - (i) comprises an area of approximately 7 hectares;
 - (ii) is surrounded by the golf course on three sides;
 - (iii) has a frontage to both Myall Street and the start of Nandroya Road; and
 - (iv) is in the Rural Zone under Noosa Plan 2006.
- [223] The subject land is mostly cleared but contains groupings and linear arrangements of mature trees and regrowth that is typical of golf courses. It also contains a dense pocket of vegetation that is associated with a watercourse, which is located on the subject land near the proposed access to Myall Street.
- [224] That part of the subject land that is proposed to include the seniors' living community use, being proposed lot 4, slopes down from a high point of approximately RL 21 metres AHD in the southern third of the proposed lot. It connects to the Myall Street frontage as a shallow spur running south-west. The subject land otherwise gradually slopes away from the high point, with slopes ranging between 3 and 10 per cent, towards a low point of RL 105 metres in the north-west, a low point of RL 111 metres in the north, a low point of RL 118 metres in the east and a low point of RL 110 metres in the south. Within the road reserve, to the west of the spur, proposed lot 4 slopes down more steeply towards the Myall Street pavement.
- [225] To the north, the subject land is adjoined by a lot containing a single detached dwelling house. Further to the north lies the Cooroy township centre, which provides a wide array of services and facilities in a vibrant main street configuration.
- [226] To the east, the subject land is flanked by the North Coast Rail Line and the nearby train station, which provide commuter services to stations in the Sunshine Coast, Moreton Bay and Brisbane.
- [227] To the south, the southern part of the subject land that contains the existing golf course interfaces with a disused business enterprise (formerly the Eumundi Smokehouse). The adjoining land to the south has an area of parking at the front and a manoeuvring area to the rear.
- [228] To the west, the subject land has a contiguous frontage to Myall Street that extends north and south of the roundabout intersection of Myall Street, Nandroya Road and the access and egress road that connects to the Bruce Highway.

- [229] On the opposite side of Myall Street is Lot 4. As I have already mentioned, it is in the Rural Zone under Noosa Plan 2006. Under Noosa Plan 2020, the part of Lot 4 that has an interface with the subject land is in the Environmental Management and Conservation Zone and is outside the urban boundary. The balance of Lot 4 interfaces with existing urban development. It is in the Community Facilities Zone with an intended use of Residential Care Facility under Noosa Plan 2020.
- [230] Proximate the subject land, on the opposite side of Myall Street and north of Lot 4, housing and the Noosa District State High School campus extend west to the Bruce Highway and north to the township centre.
- [231] The subject land and the surrounding parcels sit at the southern edge of Cooroy, which is the largest of Noosa's hinterland towns. Most of the Cooroy township community is east of the Bruce Highway. The town centres around the junction of major roads that connect to Tewantin and Noosa Heads to the east, Pomona and Kin Kin to the north, and Eumundi to the south.
- [232] In broad terms, the residential character of Cooroy is informed by:
- (a) housing within Cooroy that is predominantly dwelling houses on individual lots;
 - (b) existing aged care and retirement facilities, including:
 - (i) a modern seniors' living community known as Palm Lake Resort Cooroy-Noosa, which is situated on Trading Post Road off Elm Street on Cooroy's northern edge; and
 - (ii) the Cooroy Village Retirement Community, which is situated on the corner of Myall Street and Ferrells Road.
- [233] With those features of Cooroy in mind, it is convenient to focus on the immediate visual context within which the subject land sits and the visual presentation and character of that area.
- [234] As I have already mentioned, the subject land sits at the southern edge of Cooroy. It forms part of the landscape that is the gateway to the township of Cooroy. Myall Street is the major road corridor that, via a roundabout, connects the Bruce Highway to the town centre of Cooroy. As soon as one approaches the roundabout entrance to Myall Street, one is immediately confronted by views of the subject land. The town planners gave evidence to this effect, with which I agree. For that reason, the subject land plays an important role in informing the character of the locality.
- [235] I accept the evidence of Mr Curtis that the present experience that characterises this entrance to the township of Cooroy is one of open space. One's perception in that regard is informed by the combination of:
- (a) an impression of expansive, open, undulating pasture, which visual impression is provided by Lot 3 and, as was acknowledged by Mr Powell during cross-examination, invokes a rural feel;
 - (b) grassed road reserves containing sporadic clumps of vegetation;
 - (c) visual cues of the golf club use that wraps around Lot 3, including the linear arrangements of mature trees that line the fairways; and

- (d) the perception of openness that is conveyed by one's ability to gain views of treed ridgelines and glimpses of Mount Cooroy in the distance.
- [236] Given its gateway location and its visual characteristics, the subject land materially contributes to the visual cue that the township of Cooroy sits in a broader rural context. This context is characterised by areas of undulating land and flatter landscapes over which one obtains views to distinctive landforms of the Sunshine Coast region, such as Mount Cooroy.
- [237] Ferrells Road marks a delineation in the visual character in the locality surrounding the subject land. As is explained by Mr Curtis, the existing residential development on the western side of Myall Street that is to the north of Ferrells Road creates an abrupt visual contrast to the open space character experienced at the entrance to Cooroy. It provides a legible point of differentiation between the urban form of the Cooroy township to the north and the surrounding rural area to the south. It marks where urban uses and the urban footpath network commence on this southern part of Myall Street.
- [238] In this respect, the existing situation reflects the desired environmental outcome in s3.1.3 g) i e. of Noosa Plan 2006, which indicates that the network of open space is an important part of the natural environment that defines the boundaries to the urban localities of Noosa Shire.
- [239] Having regard to the unchallenged factual observations made by witnesses including Ms Julia Walkden, Mr Rod Ritchie, and Mr Patrick Allen, I am satisfied that the above-mentioned visual attributes of the locality, and the character they convey, is consistent with perceptions of Cooroy enjoyed by its residents.
- [240] The perceptions of the existing character of the locality are not displaced by the planning intentions evident in Noosa Plan 2006. Rather, consideration of the attributes of the subject land together with Noosa Plan 2006 supports an impression that the subject land's contribution to the existing character of the locality is not intended to materially change in the life of Noosa Plan 2006. This is particularly evident when one considers:
- (a) the mapping of the subject land, to which I have referred in paragraphs [16] and [16](c) above;
 - (b) those provisions of Noosa Plan 2006 that indicate the land use outcomes sought for the subject land to which I have referred in paragraphs [124] to [137] above;
 - (c) the provisions of Noosa Plan 2006 that apply to any proposed use of the subject land that is impact assessable, including those referred to in paragraphs [209] to [217] above; and
 - (d) the constraints imposed on development on the subject land because of the subject land's location in the water supply catchment of Lake Macdonald, including those constraints associated with the application of the Natural Resources Overlays Code;
 - (e) the limited types of uses that are accepted development and the provisions that such development must comply with to be accepted development; and

- (f) the limited types of uses that are code assessable development and:
- (i) the provisions of the codes that such development must comply with to comply with Noosa Plan 2006; and
 - (ii) the limitations on assessment of code assessable development in ss 45, 59 and 60 of the *Planning Act 2016*.

[241] Similarly, consideration of Noosa Plan 2020 supports an impression that the subject land's contribution to the existing character of the locality is not intended to materially change in the life of Noosa Plan 2020. The content of Noosa Plan 2020, insofar as it relates to the subject land, is consistent with Noosa Plan 2006.

[242] Both Noosa Plan 2006 and Noosa Plan 2020 indicate that the subject land is not intended to be used for urban development and its use is otherwise subject to a careful examination of environmental and amenity impacts.

What are the design features of the proposed seniors' living community?

[243] I have already set out several of the key parameters of the proposed seniors' living community in paragraphs [68] to [73] above.

[244] In addition, GTH Project No. 4 Pty Ltd intends to undertake earthworks to level out that part of the subject land intended to be used for the seniors' living community. The earthworks are intended to result in a high point in the southern half of proposed lot 4 at or about RL 120 metres AHD at the Myall Street boundary. The balance of proposed lot 4 will slope gradually away from this high point to the east, north and south-east.

[245] Retaining walls of up to 2.5 metres in height associated with the earthworks are proposed to be located behind a buffer. At most locations along the Myall Street frontage to the seniors' living community, the buffer is proposed to have a width of 10 metres, but that reduces to approximately 4.5-metres-wide near house site 39 and 3.5 metres at house site 38. At those locations, the road verge widens to between 40 and 50 metres.

[246] Acoustic fencing with a maximum height of 2.4 metres is also proposed to be constructed behind the buffer.

Are the buildings appropriately designed and sited to allow for landscaping between buildings?

[247] In the Revised Visual Amenity Joint Expert Report, Mr Powell opines that there appears to be sufficient allowance in the rear of lots to provide for primary amenity and screen planting between rear courtyards and primary private open spaces. He also opines that there appears to be sufficient room between the front of buildings for shrub planting within the private verge. In Mr Powell's view, alfresco roof overhangs will not create any material impediment to the ability to plant appropriately scaled shrubs and groundcovers in ground to the sides and rear of buildings. Mr Powell explains his opinions by reference to various plans.

[248] The Council's submissions invite me to rely on an opinion expressed by Mr Curtis during examination in chief to the contrary. Its submissions fail to identify that

Mr Curtis initially expressed an opinion contrary to that of Mr Powell, but he agreed with Mr Powell's opinion when his attention was directed to the proposed conditions and detailed plans during cross-examination.

- [249] I accept the evidence of Mr Powell on this issue. It accords with views that I have formed having regard to the plans and the proposed conditions.
- [250] In addition to allowance for soft landscaping between buildings, the proposed development involves the retention of a significant area of vegetation proximate the waterway on the subject land.
- [251] For the reasons provided above, I am satisfied that the proposed development complies with specific outcomes O6 c), O8 c) and O9 c) of the Cooroy & Lake Macdonald Locality Code. Assessment of the proposed development against these assessment benchmarks does not tell against its approval.

Are the buildings appropriately designed and sited to maintain the visual continuity and pattern of buildings in the street?

- [252] In the Revised Visual Amenity Joint Expert Report, Mr Powell opines that, apart from the prevailing landscaped edge along the eastern side of Myall Street, there is presently no clear visual continuity and pattern of buildings and landscape elements within Myall Street. He also opines that, apart from possibly the northernmost three buildings on the western side of Myall Street, there does not appear to be any sense of a traditional streetscape in Myall Street.
- [253] Mr Powell explains the basis of this opinion by reference to the existing pattern of built form and landscaping at the street edge along each of the eastern and western sides of the 1.5-kilometre length of Myall Street. He illustrates his descriptions by reference to many photographs of the built form and landscaping along the street. Mr Curtis agrees with the description provided by Mr Powell.
- [254] The Council's submissions do not identify evidence that supports a contrary finding.
- [255] I accept Mr Powell's evidence about the absence of visual continuity and pattern of buildings in Myall Street. It is supported by other evidence that I accept such as the photographic evidence.
- [256] In those circumstances, assessment of the proposed seniors' living community against the overall outcome in s 6.7.2 r) and specific outcome O8 d) of the Cooroy & Lake Macdonald Locality Code are not matters that tell against approval of the proposed development.

Is the density of the proposed seniors' living community and its site cover, gross floor area and plot ratio, compatible with surrounding development?

- [257] Specific outcome O6 a) of the Cooroy & Lake Macdonald Locality Code requires the density of development on the subject land to be compatible with surrounding development. In a similar vein, specific outcome O9 a) of the Cooroy & Lake Macdonald Locality Code requires the site cover, gross floor area and plot ratio of buildings and other roofed structures on the subject land to result in a building scale that is compatible with surrounding development.

- [258] What is the surrounding development is a question of fact to be determined having regard to all the relevant circumstances.
- [259] GTH Project No. 4 Pty Ltd contends that it complies with each of these requirements. It submits that the starting point is that the density and scale of the buildings will not be perceived, as the proposed vegetative buffer, once established, will screen the proposed seniors' living community from view. GTH Project No. 4 Pty Ltd also says that the surrounding development includes the nearby Cooroy Village development.
- [260] These submissions are not persuasive. The assessment benchmarks in question do not call for a comparison of visible built form. The visual impact of new development is the focus of other assessment benchmarks. I am also not persuaded that the surrounding development includes the nearby Cooroy Village development.
- [261] The part of the subject land that is to be developed for the seniors' living community is physically and visually disconnected from any urban development in its vicinity. The development that surrounds the proposed seniors' living community is a golf course and a disused business enterprise (formerly the Eumundi Smokehouse) on the adjoining land to the south. The density of the proposed development and its site cover, gross floor area and plot ratio, are not compatible with that surrounding development.
- [262] I am satisfied that the proposed seniors' living community does not comply with specific outcomes O6 a) and O9 a) of the Cooroy & Lake Macdonald Locality Code. That said, I accept that the fact that the proposed vegetative buffer will, in due course, screen the buildings from view is a matter that mitigates the weight to be attributed to these non-compliances.

Will the proposed seniors' living community present an appearance of bulk to adjacent properties, roads or other areas in the vicinity?

- [263] As I have already mentioned, the proposed development includes a dense vegetative buffer that is to be planted between Myall Street and the proposed seniors' living community. Once established, this vegetative buffer will present to Myall Street as a dense wall of vegetation. It will screen the proposed seniors' living community from views along Myall Street.
- [264] In those circumstances, I am satisfied that the proposed seniors' living community complies with specific outcome O9 b) of the Cooroy & Lake Macdonald Locality Code. Assessment of the proposed development against that assessment benchmark is not a matter that tells against approval of the proposed development.

Are the proposed buildings and other structures designed and sited to encourage the co-location of a range of open space uses?

- [265] Specific outcome O88 of the Cooroy & Lake Macdonald Locality Code requires buildings and other structures in the Rural Zone to be designed and sited to encourage the co-locating of a range of open space uses.
- [266] In final oral submissions, GTH Project No. 4 Pty Ltd conceded non-compliance with this provision. This is matter that is of no material significance to the outcome in this case. It neither supports approval nor tells strongly against it.

Will the proposed seniors' living community have a detrimental impact on the amenity of the locality?

- [267] The Council alleges non-compliance with several assessment benchmarks that focus on visual impact. They are:
- (a) s 1.7.4 a) of the Strategic framework;
 - (b) the desired environmental outcomes in ss 3.1.3 g) i b. and j) iii and ix, insofar as they refer to amenity and perceptions of the integration of the landform and landscape;
 - (c) specific outcome O7 d) of the Cooroy & Lake Macdonald Locality Code; and
 - (d) s 14.44.2 b) of the Residential Uses Code.
- [268] Although the proposed development does not comply with specific outcomes O6 a), O9 a) and O88 of the Cooroy & Lake Macdonald Locality Code, I am satisfied that it complies with the above assessment benchmarks that directly call for consideration of the potential visual amenity impact of development. The introduction of a dense vegetative buffer between the proposed seniors' living community and Myall Street will screen what would otherwise be an unacceptable visual amenity impact occasioned by the proposed seniors' living community. As was accepted by Mr Buckley during his oral evidence, the main purpose of the proposed vegetation buffer is to obliterate the proposed development from view. In those circumstances, the assessment of the proposed development against these assessment benchmarks adds no meaningful weight to the Council's case for refusal.
- [269] The real issue is whether the introduction of a dense vegetative buffer between the proposed seniors' living community and Myall Street will have an unacceptable detrimental impact on the character of the locality.

Will the proposed seniors' living community have a detrimental impact on the character of the locality?

- [270] The balance of the assessment benchmarks put in issue by the Council raise issues about whether the proposed development will have a detrimental impact on the character of the locality.
- [271] GTH Project No. 4 Pty Ltd says that the immediate locality is one where there is a prominence of dense linear landscaping along the road frontage. It submits that the effect of the proposed development will be to extend that vegetated roadside character in the locality. On that basis, it submits that the proposed seniors' living community will not have a detrimental impact on the character of the locality. GTH Project No. 4 Pty Ltd urges me to rely on the evidence of Mr Powell in that regard, which it says is supported by the photomontages and images in the Revised Visual Amenity Joint Experts' Report.
- [272] Mr Powell opines that the eastern side of the 1.5-kilometre length of Myall Street is an area where a visually prominent landscaped edge prevails. He says it comprises large native trees. He describes the landscapes as primarily associated with community and golf course uses and the vacant land of Lot 3. He says that, at present,

Lot 3 has a frontage with a mix of dense vegetation and informal linear groupings of vegetation.

- [273] According to Mr Powell, the rural amenity of the locality includes views of vegetated road edges. He says that the dense vegetation on either side of Myall Street provides positive visual value. Mr Powell opines that this value can be reinforced by the proposed development forming a logical extension to the dense riparian vegetation in the north-western sector of the subject land and a connection to the informal linear groupings of boundary vegetation that commence near the roundabout.
- [274] In Mr Powell's opinion, the appearance of vegetated edges, including densely vegetated edges, would be maintained and enhanced by the proposed development. He says that semi-open glimpses will be replaced with trees, which provide an attractive edge to the road. He says that this does not detract from what occurs further along Myall Street, proximate the waterway, where the vegetation hugs the road and creates a proper gateway into the rest of Cooroy.
- [275] Mr Powell opines that the subject land does not provide any important scenic vista. He says that as one travels south along Myall Street there is a fleeting glimpse from a localised section of the outbound part of Myall Street, which glimpse is obtained at an angle almost perpendicular to the direction of travel. He says that it is not a particularly significant view, nor one that is particularly sustainable given that it could be completely obscured by modest shrubs or a boundary fence, or simply by allowing wattle seedlings along the boundary to reshoot. According to Mr Powell, there is no important scenic vista, or even a glimpse, of Mount Cooroy when entering Cooroy.
- [276] Mr Powell says that the proposed seniors' living community is compatible with the preferred rural residential character sought under Noosa Plan 2020 as rural residential development would be expected to have some degree of built form, including residential dwellings and outbuildings.
- [277] I do not find this evidence from Mr Powell to be compelling. His opinions focus on small elements that inform the character of the area. He ascribes to them a character value that I do not accept. This can be demonstrated by reference to one of the matters that provides a critical foundation for Mr Powell's opinions, namely that along Myall Street there is a visually prominent landscaped edge comprising large native trees that prevails. I disagree with this characterisation. Although the road frontage contains trees and other vegetation, they provide filtered views to the built form and, on that part of Myall Street adjacent and near to the subject land, views of open space beyond.
- [278] Mr Powell's opinions do not accord with other evidence that I accept, such as the photographic evidence and the photomontages, and the views that I have formed about the character of the locality based on that evidence. My findings about the character of the locality are set out in paragraphs [221] to [242] above.
- [279] Insofar as Mr Powell relies on the inclusion of Lot 3 in the Rural Residential Zone under Noosa Plan 2020, that fact does not support a finding that the proposed development is of a character consistent with that which is intended. It ignores that reading the whole of Noosa Plan 2020 reveals an intention that the subject land will not be used for urban development and that the limited nature of uses that are contemplated will be subject to a careful examination of environmental and amenity impacts.

- [280] Mr Curtis acknowledges that the proposed development will be substantially screened by vegetation. He opines that this screening will diminish the scenic value of the existing vista by limiting its overall depth and expanse and by reducing the variety of elements that provide visual interest. Mr Curtis says that the primary function of the proposed vegetative buffer is to screen the proposed development, not to enhance or preserve the scenic quality of the vista.
- [281] Mr Curtis opines that although the proposed landscape screen is preferable to a view of the acoustic barrier and the aggregation of building bulk behind, it is not consistent with maintaining the scenic character of the rural land and the contribution it makes to the entrance to the Cooroy township.
- [282] Ms Morrissy expressed a similar view to that of Mr Curtis. She opines that by removing views of a scenic rural landscape at the southern entrance of Cooroy and replacing those views with one of a dense landscape buffer, the proposed development will incrementally erode the association that Cooroy town has with its rural history and identity. This is matter that she says Noosa Plan 2006, Noosa Plan 2020 and ShapingSEQ identify as important.
- [283] I accept the evidence of Mr Curtis and Ms Morrissy. Their opinions accord with other evidence that I accept, such as the photographic evidence and the photomontages, and the views that I have formed about the character of the locality based on that evidence. My findings about the character of the locality are set out in paragraphs [202] to [222] above.
- [284] For the reasons provided above, the proposed seniors' living community is discordant with the planning outcomes identified in:
- (a) s 1.7.12 a) of the Strategic framework;
 - (b) the desired environmental outcomes in ss 3.1.3 g) i b. and xvii and j) iii and ix to the extent that they refer to character;
 - (c) the overall outcomes in ss 6.7.2 c), f), s) iii, cc), and rr) ii; and
 - (d) s 14.44.2 j) of the Residential Uses Code.
- [285] Some of these planning goals are expressed in broad terms. This is reflective of their application to an area that is much greater than the subject land. That said, the character impacts are a matter of importance. That is evident from reading Noosa Plan 2006 in its entirety, including by reference to those provisions that relate to land outside the urban growth boundary and inconsistent uses in the Rural Zone and the Open Space Recreation Zone.

Conclusion regarding whether the proposed seniors' living community involves unacceptable built form and density and results in unacceptable visual amenity and character impacts

- [286] The proposed seniors' living community involves a built form and density that is not anticipated on the subject land. It is discordant with planning outcomes sought in that respect. That said, it is not a matter that tells in any meaningful way in the exercise of the planning discretion. This is because the visual impact of those non-

compliances is mitigated by the proposal to plant a dense vegetative buffer between the proposed seniors' living community and Myall Street.

[287] However, because of that proposed vegetative buffer, the proposed seniors' living community will have an unacceptable, detrimental impact on the character of the locality. This is a matter that tells against approval of the proposed development.

Key issue 3 – Does the proposed seniors' living community present an unacceptable risk to the water catchment of Lake Macdonald?

[288] In the Respondent's Particularised List of Matters that Support Refusal dated 1 August 2023, the Council identifies the issue with respect to the water catchment of Lake Macdonald in the following terms:

“5. It has not been demonstrated that impacts on the water quality of Lake Macdonald will be acceptable:

- (a) the proposed development involves a higher density residential use for some 214 dwelling units within the Water Supply Catchment which may result in adverse effects on the quality of water entering Lake Macdonald;

In these respects, the proposed development is inconsistent with the following provisions of Noosa Plan 2006:

- (i) Strategic Framework - 1.7.12(b) limited to potential impact on water quality, 1.7.16(c);
- (ii) Cooroy & Lake Macdonald Locality Plan – 6.7.2(s)(ii) limited to potential impact on water quality, 6.7.2(y), 6.7.2(gg) limited to the issue of protection of water quality;”

15. The proposed development may have an unacceptable impact on the water quality of Lake Macdonald, as:

- (a) The Respondent repeats and relies upon its particulars at paragraph 5 above.

In this respect, the proposed development is inconsistent with the following provisions of Noosa Plan 2020:

- (i) Cooroy Local Plan Code – 7.2.2.2(2)(d), PO22.”

[289] In correspondence dated 19 February 2024, the Council sought to clarify its position in these terms:

“Upon review of the Respondent's Particularised List of Matters that Support Refusal dated 1 August 2023 (with a view to limiting the issues) we note that the way the water quality issue was couched in paragraph 5 (with respect to the 2006 Scheme) and paragraph 15 (with respect to Noosa Plan 2020) does not sufficiently reflect Council's position made clear in, for example, the reports of Dr Trevor Johnson.

To remove any doubt about Council's position, the approval of an urban development such as that proposed within the catchment area,

represents poor water catchment management and town planning and therefore non-compliance with the nominated provisions in Issues 5 and 15, as is made clear in the Revised JER on Water Quality and Civil Engineering dated 12 December 2023.

It is not Council's case that the additional concentration of pollutants and runoff from this development will, of itself, cause an unacceptable impact on the water quality in Lake Macdonald, rather that the introduction of any urban development within the catchment inevitably increases the pollutant load and is contrary to good catchment planning and therefore good town planning."

- [290] The clarification sought to be provided by this correspondence was unnecessary. When one reads the issue raised by the Council in conjunction with the assessment benchmarks that it identified, it is apparent that the Council's allegation encompasses that matter referenced in the correspondence.

What outcomes are sought for the Lake Macdonald water supply catchment in the relevant assessment benchmarks in Noosa Plan 2006?

- [291] Section 1.7.12 of the Strategic framework sets out part of the strategy for environmental and heritage protection and management in relation to natural environment protection. It, relevantly, states:

"b) **Activities that have potential to impact on water quality, bank or slope stability, fauna habitats and linkages, or significant scenic vistas are inconsistent within the scheme.**"

(emphasis reflects assessment benchmarks put in issue by the Council)

- [292] Section 1.7.16 of the Strategic framework sets out part of the strategy for water and sewerage infrastructure. It, relevantly, states:

"c) **Lake Macdonald water catchment and Mary River drinking water catchment is protected from further development that could have an impact on water quality.**"

(emphasis reflects assessment benchmarks put in issue by the Council)

- [293] The overall outcomes in s 6.7.2 of the Cooroy & Lake Macdonald Locality Code with respect to water quality include:

"s) Outside the town of Cooroy, development is characterised by—

- i conservation of good quality agricultural land for agricultural purposes;
- ii **conservation of open space for biodiversity and water quality purposes;** and
- iii rural settlement at varying densities consistent with the available levels of convenience and accessibility, environmental constraints and proximity to the Lake Macdonald water supply catchment;

- y) **New areas of urban and rural settlement development are precluded from the part of the locality within the catchment area of Lake Macdonald where the dominant goal is the protection of water quality within the primary water supply source;**
- ee) The water quality of Lake Macdonald is protected as the primary source of water supply for the coastal urban areas of Noosa and the rural towns and villages of Cooroy, Pomona, Cooran and Cooroibah;
- gg) **Development within the catchment is restricted to protect water quality and its associated environmental values. Subdivision and development within the water catchment is limited and much of the land will remain as open space ...”**

(emphasis reflects assessment benchmarks put in issue by the Council)

[294] When these assessment benchmarks are read together, and in the broader context of Noosa Plan 2006, they reveal a strategy to preclude new areas of urban and rural settlement from areas identified as land that is in the water supply catchment for Lake Macdonald. The purpose of the strategy is to protect the water quality of Lake Macdonald as a primary source of water supply for the Noosa Shire local government area.

Does the proposed seniors’ living community comply with the assessment benchmarks with respect to protection of the Lake Macdonald water catchment?

[295] To assist me with my assessment of the proposed development against the assessment benchmarks identified by the Council, I have the benefit of evidence that includes:

- (a) plans that show that the subject land in its entirety is within the water supply catchment for Lake Macdonald;
- (b) plans that provide details of the proposed water quality measures to be implemented, including those at pages 45 to 61 of Exhibit 7.021;
- (c) a report titled Gemlife Cooroy Proposed Relocatable Home Park – Site Based Stormwater Quality Management Plan dated September 2022, which describes the proposed stormwater quality management measures; and
- (d) evidence given by Mr Neil Collins and Dr Trevor Johnson, the water quality experts retained by GTH Project No. 4 Pty Ltd and the Council respectively.

[296] The real issue with respect to the potential impact of the proposed development relates to the use of proposed lot 4 for a seniors’ living community. Most of the subject land that is proposed to be put to that use, being Lot 3, has a history of use for small-scale agricultural activities, although those uses appear to have been abandoned and the land lies vacant.

[297] As I have already mentioned, all the subject land is in the water supply catchment for Lake Macdonald. So too are Lot 1 on RP 78962 and Lot 1 on RP 86447. Although there was no evidence about the ownership of Lot 1 on RP 78962 and Lot 1 on

RP 86447, as I mentioned in paragraph [2], it appears from the photographs that those lots are used as part of the golf course.

[298] The protection of good quality drinking water for the Noosa Shire is a matter of paramount importance. As was identified by His Honour Judge Brabazon QC in *Cooroy Golf Club Inc. & Anor v Noosa Shire Council* [2005] QPEC 16; [2005] QPELR 561 at 577:

“^[108] It must be accepted that good quality drinking water is essential for all communities which rely on a reticulated water supply. There was no dispute about the fundamental principle:

“The greatest risks to consumer’s drinking water are pathogenic microorganisms. Protection of water sources and treatment are of paramount importance and must never be compromised. Water borne pathogens can cause outbreaks of illness affecting a high proportion of the community and in extreme cases causing death. How much treatment is needed will depend on the level of protection of water supplies ... Disinfection is the single process that has had the greatest impact on drinking water safety. There is clear evidence that the common adoption of chlorination on drinking water supplies in the 20th century was responsible for a substantial decrease in infectious diseases. Disinfection will kill all bacterial pathogens and greatly reduce numbers of viral and most protozoan pathogens. Combined with protection of water sources from human and livestock waste, disinfection can ensure safe drinking water. In the absence of complete protection of source water, filtration could be required to improve the removal of viruses and protozoa.” (Australian Drinking Water Guidelines, June 2002.)”

[299] It is uncontroversial that the proposed seniors’ living community involves inherent risk to water quality. However, that is not the end of the matter. Relevant considerations for a case such as this were identified by His Honour Judge Quirk in *GFW Gelatine International Ltd v Beaudesert Shire Council* [1993] QPLR 342 at 352-3, where His Honour said:

“In this case, **the Court is once more faced with a proposal which, if not properly considered, planned and executed has a potential to pose a serious threat to the environment and in particular to water quality** in the Logan River. The way in which the Court should approach a case of this kind is well established by decisions of this and other Courts in comparable situations (*Rejfe v McElroy* (1965) 112 CLR 517; *Davjan v Noosa Shire Council* (1981) QPLR 69; *Esteedog Pty Ltd v Maroochy Shire Council* (1991) QPLR 7), **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** (*Lane v Gatton Shire Council* (1988) QPLR 49). **Justice must be done for all interested**

parties and this calls for a fairminded assessment of the proposal on the evidence given free from any emotive influences which matters of this kind are prone to attract.

The onus of showing that the application for town planning consent should be approved of course rests with the Applicant, but this 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 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 will preclude unacceptable results.**

The results that are achieved are all important and the means whereby these results are achieved are less so. 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 these results are attained. Lessons will be learned in practice and there will, no doubt, be advances in technology...”

(emphasis added)

[300] Further, as was explained by His Honour Judge Williamson KC in *Austin BMI Pty Ltd v Ipswich City Council & Ors* [2023] QPEC 27 at [536]:

“... First, the mere presence of risk does not, in and of itself, call for a nervous approach or intolerance. Second, an assessment of risk, and its acceptability, requires an examination of: (1) the nature and the extent of the risk; and (2) the means by which it is to be addressed.”

[301] As I have already identified, the nature of the risk is that which is posed to the primary source of water supply for the coastal urban areas of Noosa and the rural towns and villages of Cooroy, Pomona, Cooran and Cooroibah by the introduction of urban development to that part of the subject land comprising proposed lot 4.

[302] The problems associated with introduction of new development in an area that forms part of the water supply catchment for Lake Macdonald are recognised by GTH Project No. 4 Pty Ltd and its consultants. In his individual statement of evidence, Mr Collins reviewed multiple reports that were commissioned by the Council and Seqwater to investigate water quality issues for Lake Macdonald between 1996 and January 2020. Those reports highlight the nature of the risk.

[303] GTH Project No. 4 Pty Ltd, through its consultant engineers, proposes a carefully designed sewerage solution for the seniors’ living community and measures to control the quality of stormwater runoff to address the risk.

[304] The proposed sewerage solution, provided by Westera Partner, Engineers, uses a gravity sewer to service the proposed low pressure sewer house sites within the seniors’ living community. There is to be a separate gravity sewer from this area to the private pump station for the development. The plans from Westera Partners that now form part of the development application depict the details of the proposed solution: pages 45 to 61 of Exhibit 7.021. They show that the solution includes a site

private sanitary pump station and site private rising main. The site private rising main that is to provide the sewerage solution for the seniors' living community runs along the side of the proposed access easement over proposed lot 5 and then across Lot 1 on RP 78962 and Lot 1 on RP 86447. As such, the achievement of this solution in due course will require the consent of the owner of Lot 1 on RP 78962 and Lot 1 on RP 86447 and the construction of the necessary private sewer main across that land. As indicated on the plans, this will also require a separate plumbing approval from the Council.

- [305] The measures to control the quality of stormwater runoff associated with the seniors' living community use include:
- (a) measures to be implemented during construction and establishment of the seniors' living community, such as measures to control sediment associated with the extensive bulk earthworks that are to be undertaken on proposed lot 4: Exhibit 7.021 p 51; and
 - (b) the construction of five bioretention basins.
- [306] Proposed basin 1 is the largest. It is to be located straddling proposed lot 5, Lot 33 and Lot 1 on RP 78962. The other four bioretention basins are to be located on proposed lot 5.
- [307] The Site Based Stormwater Quality Management Plan identifies that the MUSIC software was used to assess the generation, transportation, management and treatment of flows and pollutant loads from the seniors' living community site. Mr Collins and Dr Johnson agree that the model results demonstrate compliance with contamination removal standards for water quality management identified by the Council and Seqwater.
- [308] Mr Collins opines that this compliance achieves a satisfactory water quality outcome even though the use is not one that is anticipated in the water supply catchment for Lake Macdonald. He contends that provided other developments adopt similar water quality controls as those proposed by GTH Project No. 4 Pty Ltd, there will be no adverse impact on water quality. In his view, there are no water quality matters that warrant refusal.
- [309] Dr Johnson disagrees. He says that the cumulative impact of similar developments to that which is currently proposed by GTH Project No. 4 Pty Ltd would have a deleterious effect on water quality in Lake Macdonald. Dr Johnson explains that compliance with relevant water quality control standards does not equate to an absence of adverse water quality impacts. The water quality standard applied to urban development is, in effect, a deemed-to-comply standard. Achievement of the standard does not achieve no-worsening. This is evident from the modelling results, which show that the predicted contaminant removal efficiencies achieved by the proposed stormwater quality control measures are less than 100 per cent.
- [310] According to Dr Johnson, any introduction of urban development within the Lake Macdonald water supply catchment will result in increased contaminant flows to Lake Macdonald and are attendant with the potential for adverse water quality impacts. He says that even under the most stringent of guidelines, there is potential for stormwater

runoff from the proposed seniors' living community to adversely impact on water quality in an incremental manner.

- [311] Dr Johnson says that the information about water quality in Lake Macdonald in the reports that were commissioned by the Council and Seqwater indicate that existing land use practices in the catchment have the potential to cause adverse water quality impacts in Lake Macdonald. To date, those impacts are not sufficient to threaten the continuing use of lake water as a potable water supply for Noosa Shire. In Dr Johnson's opinion, the fact that the current state of the water supply catchment for Lake Macdonald is not pristine reinforces the need to protect that water supply source going forward. He says that the existing water quality could be further adversely affected by an increased flow of nutrients and pathogens to Lake Macdonald.
- [312] In Dr Johnson's opinion, it is orthodox, sensible and prudent water catchment planning to avoid the creation of increased contaminant loading where possible. He says that such a policy should apply regardless of the existing water quality conditions in the catchment and in Lake Macdonald.
- [313] I accept that Mr Collins and Dr Johnson are both very experienced experts. Their evidence was given professionally. I accept that it appears to them that the stormwater quality control measures are feasible and that the modelled results demonstrate compliance with the relevant prescribed standards. Nevertheless, GTH Project No. 4 Pty Ltd has not persuaded me that the stormwater quality control measures proposed achieve compliance with the assessment benchmarks relied on by the Council, nor that water quality issues present no impediment to a development approval. That is so for the following five reasons.
- [314] First, GTH Project No. 4 Pty Ltd's case is entirely reliant on an assumption that the outcomes achieved in practice will mirror those that are modelled. That is unrealistic. Modelling can provide a reasonable prediction of results that may be achieved. However, it is important to recognise that models are the product of assumptions that are adjusted to reflect, as closely as possible, that situation that will arise.
- [315] That is not to say that one can never rely on modelling or that a complete absence of any likely future difficulty must be demonstrated. But it is critical that the limitations of the models are recognised and that there is evidence that demonstrates that there is a capacity to deal with any difficulty that might arise in a way that will preclude unacceptable results. GTH Project No. 4 Pty Ltd has not persuaded me that such capacity exists here. To the contrary, GTH Project No. 4 Pty Ltd's Site Based Stormwater Quality Management Plan states:

“No water quality monitoring is recommended for stormwater discharges from the site.

Although stormwater from the development will discharge to Six Mile Creek, no uncertain or untested stormwater quality best management practices are proposed, and stormwater quality monitoring is not considered to be required. The measures proposed for stormwater quality treatment are well understood and demonstrated and therefore do not require monitoring by the developer.

Additionally, the level of treatment proposed is considered to be best practice and **little improvement in the treatment train proposed would be possible should monitoring prove the treatment train was not operating as modelled.**"

(emphasis added)

- [316] This evidence alone leaves me with considerable doubt about the adequacy of the proposed stormwater quality measures.
- [317] Second, the Site Based Stormwater Quality Management Plan identifies that ongoing maintenance of the five bioretention basins is required to ensure that there is no unacceptable water quality impact occasioned by the seniors' living community use. In that respect, the Site Based Stormwater Quality Management Plan identifies that:
- (a) the bioretention basins should not be treated like other vegetated assets in the golf course; and
 - (b) to achieve appropriate maintenance, there may be a need to investigate problems and the steps required to rectify them. It seems reasonable to infer that this would likely require the assistance of an expert.
- [318] GTH Project No. 4 Pty Ltd has not identified the means for ensuring this occurs. Ordinarily, such issues are not of significance. That is because it is common for stormwater treatment measures to be proposed on the land that is the subject of the development that gives rise to the requirement for them. That is not the case here. Here, GTH Project No. 4 Pty Ltd proposes to locate the bioretention basins on land that forms part of the golf course, which is intended to be on a separate title to the proposed use for which the maintenance of bioretention basins is reasonably required.
- [319] In response to my queries about the appropriateness of this situation, GTH Project No. 4 Pty Ltd invites me to infer that a satisfactory arrangement would likely be achieved in the future. It invites me to draw that inference from the terms of the Myall Street Agreement, which it submits provides evidence of a willingness on the part of the owner of the golf course to permit its land to be used for stormwater treatment measures such as that which are proposed. GTH Project No. 4 Pty Ltd also submits that it is not necessary, at this stage, for it to demonstrate that the approval of the owner of the other land will be forthcoming. It only needs to demonstrate that the approval is not a clear futility. Alternatively, GTH Project No. 4 Pty Ltd submits that the issue could be satisfactorily addressed by way of condition.
- [320] It is common that the successful implementation of a development approval for a material change of use is dependent upon obtaining other approvals and conditions precedent. If those approvals are not obtained and the conditions precedent are not met, the approved material change of use will not proceed. The requirement of future approvals is not a matter that warrants refusal of a development application unless the approval is a clear futility or is tainted with illegality: *Walker v Noosa Shire Council* [1983] 2 Qd R 86, 88-9.
- [321] It is also well recognised by this Court that full detailed design is often left for later, once the Court has decided that a proposed development should proceed. However, in some instances, the details are critical. The degree of detail and certainty required will depend upon the type of approval sought and the matters of relevance that the

decision maker is called upon to assess in granting or withholding approval in the particular case: *Gaven Developments Pty Ltd v Scenic Rim Regional Council & Ors* [2010] QPEC 51; [2010] QPELR 750, 775; *Murphy v Moreton Bay Regional Council & Anor*; *Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor* [2019] QPEC 46; [2020] QPELR 328, 371.

- [322] Here, I accept that the approval sought by GTH Project No. 4 Pty Ltd is not a clear futility. There is the prospect that it will obtain the necessary consent from the owners of the golf course to construct the bioretention basins on that land. It may even persuade the current owner of the golf course to assume the burden of maintenance. However, GTH Project No. 4 Pty Ltd has not persuaded me that such private contractual arrangements are sufficient to demonstrate that water quality is sufficiently protected into the future. It is not difficult to foresee potential difficulties arising for the Council if it were required to enforce maintenance of the bioretention basins. This is in circumstances where the contributor of the water to the basins is under the control of one property owner, but the basins are in the control of another. The community has no recourse if private contractual arrangements are breached.
- [323] In addition, GTH Project No. 4 Pty Ltd has not persuaded me that this issue can be satisfactorily addressed by the imposition of a condition. That begs the questions:
- (a) How is it lawful under s 65 of the *Planning Act 2006* to impose a condition on the ongoing use of the golf course land that requires maintenance of bioretention basins that are reasonably required in relation to the use of proposed lot 4 because of the seniors' living community development?
 - (b) How does such a condition not offend the prohibition against development conditions that require a person other than the applicant to carry out works of the development in s 66 of the *Planning Act 2016*?
- [324] GTH Project No. 4 Pty Ltd has not answered those questions. It has not identified the terms of a condition that could be lawfully imposed. GTH Project No. 4 Pty Ltd has not provided any detail that demonstrates that ongoing maintenance is realistic and can lawfully be ensured. The uncertainty about the mechanism to ensure the construction of the bioretention basin and its ongoing maintenance detracts from the persuasiveness of Mr Collins' evidence that water quality will be appropriately addressed. As such, GTH Project No. 4 Pty Ltd has failed to persuade me that the water quality issue will be satisfactorily addressed.
- [325] Third, leaving aside my concerns about the long-term effectiveness of the measures proposed, even if Mr Collins' opinion was to be accepted, it is not sufficient to overcome the non-compliance with the assessment benchmarks. This is because Noosa Plan 2006 calls for an exclusion of urban development from the subject land, as does Noosa Plan 2020.
- [326] I do not accept GTH Project No. 4 Pty Ltd's submission that to construe Noosa Plan 2006 as seeking to exclude urban development from the subject land results in a perverse outcome. The strategic importance of precluding future development in the Lake Macdonald water catchment has long been recognised by Noosa Shire.
- [327] In *Allan & Anor v Noosa Shire Council* [1983] QPLR 227, His Honour Judge Byth considered a proposal to develop a holiday centre at Cooroy within the catchment of

Lake Macdonald. At that time, the Council had a proposed town planning scheme for the Shire that was to include a Water Supply Protection Zone.

- [328] In considering the significance of the proposed planning scheme to the development in question, His Honour Judge Byth noted that the water-supply catchment of Lake Macdonald was not a sterile one. This was because of existing uses and activities in the water catchment for Lake Macdonald that included some rural and agricultural uses. Despite that, His Honour found that the Council’s stance to resist further development in the water catchment for Lake Macdonald was a responsible attitude. His Honour found that the Council was not acting unreasonably to prevent further intensive residential uses and intensive human activity in the catchment.
- [329] The importance of the strategy was also identified by His Honour Judge Brabazon QC in *Cooroy Golf Club Inc. & Anor v Noosa Shire Council* [2005] QPEC 16; [2005] QPELR 561. His Honour was considering a proposal to use vacant land adjoining the Cooroy golf course to build a motel and create 75 residential allotments. In that matter, His Honour considered the 1988 Strategic Plan, the 1990 Town planning Scheme, the Cooroy Development Control Plan 1992, the 1997 Strategic Plan and the draft of Noosa Plan 2006 that related to the Cooroy locality and the Lake Macdonald water supply catchment. His Honour observed at 577:
- “[109] As the above extracts from the planning document show, the emphasis on water quality in Lake MacDonald has led to a cautious and restricted approach to potential development on this land. It is easy to see why a development application, without a rezoning, is not likely to succeed.”
- [330] The Council’s reticence to permit new urban development on land in the water catchment of Lake Macdonald persists. So does the Council’s strategic planning to protect the source of drinking water for its local government area by excluding almost all forms of development from the subject land. This is reflected in Noosa Plan 2006 and Noosa Plan 2020. It is expressly recognised in those provisions with respect to water quality put in issue by the Council and the other provisions referred to in paragraph [293] above. The strategy is also reflected in other aspects of Noosa Plan 2006, such as the mapping of the urban growth boundary and the provisions that seek to preclude urban development on land outside the urban growth boundary.
- [331] Fourth, I do not accept GTH Project No. 4 Pty Ltd’s submission that acceptability of the proposed development is supported by the provisions of the Natural Resources Overlay Code in Noosa Plan 2006.
- [332] That approach to construction of the assessment benchmarks in issue is not appropriate. It ignores that the nature of planning instruments remains relevant to the task of construction: *Clarry & Anor v Brisbane City Council & Anor* [2024] QCA 39, [38].
- [333] Like many planning schemes that apply throughout Queensland, Noosa Plan 2006 is a voluminous document. It comprises numerous components, including a strategic framework; localities and zones (with associated 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.

- [334] The combination of assessment benchmarks that regulate development of a parcel of land can vary significantly. This is so even where the development applications are in the same locality or where they are for the same type of development but in different localities. Under Noosa Plan 2006, the integers that inform the combination of assessment benchmarks against which a development application must be assessed are:
- (a) the type of development sought, i.e., whether the application is for carrying out building work, carrying out operational work, reconfiguring a lot or making a material change of use of premises;
 - (b) the category of development, i.e., whether the application is for accepted development or assessable development;
 - (c) the category of assessment, i.e., whether the application is code assessable or impact assessable;
 - (d) the locality and zone in which the land is located;
 - (e) whether the land is affected by one or more overlays, such as a flooding or natural resources overlay.
- [335] In some instances, the resultant outcome is so complex that not all provisions applicable to assessment of a particular development on a particular site will give effect to harmonious goals. This prospect is recognised in the express terms of the Noosa Plan 2006, which contemplates that there may be inconsistencies in the application of its provisions and stipulates how such inconsistencies should be addressed: see s 2.5.2 of Noosa Plan 2006.
- [336] I am cognisant of the overall outcome in s 13.42.2 c) and the specific outcomes in O11 and O12 of the Natural Resources Overlay Code in Noosa Plan 2006. They require that:
- (a) development not have an adverse effect on the quality or quantity of water entering Lake MacDonald or its tributaries; and
 - (b) development in water supply buffer areas be undertaken in a manner that contributes to maintaining and improving water quality in those catchments.
- [337] Provisions to a similar effect appear in the Regional Infrastructure Overlay Code in Noosa Plan 2020.
- [338] Those provisions do not detract from the primary strategic planning position that new urban development should be excluded from land in the water catchment of Lake Macdonald that is identified as outside the urban growth boundary (or the urban boundary under Noosa Plan 2020). Rather, a careful reading of Noosa Plan 2006 in its entirety reveals that the inclusion of these provisions is consistent with prudent water catchment planning.
- [339] Where the type of development involves impact assessment, the Natural Resources Overlay Code will apply, but so will the higher order provisions put in issue by the Council. As such, for an impact assessable development application, the higher order provisions provide a clear direction that urban development, such as the seniors' living community that is proposed in this case, is not appropriate on the subject land.

[340] Where the proposed material change of use, or other form of development, is one that only requires code assessment, the higher order provisions will not apply. At first blush, this supports the submission made by GTH Project No. 4 Pty Ltd. However, one needs to carefully analyse the nature and extent of development that falls into that category of development that is code assessable. That exercise reveals that the type of uses that only require code assessment under Noosa Plan 2006, rather than impact assessment, are extremely limited in range and intensity. They include, for example, residential uses that comprise:

- (a) a single detached house if it is not located above 98.5 metres AHD level;
- (b) a community residence, being a dwelling used for accommodation of a maximum of six persons who require assistance or support with daily living needs, share communal spaces and who may be unrelated, if the community residence is not located above 98.5 metres AHD level; and
- (c) the use described as Visitor accommodation – Type 1 Home hosted, if the home hosted accommodation is 50 metres or more from agricultural uses on adjoining premises. The Visitor accommodation – Type 1 Home hosted use is defined as the use of premises for short term accommodation hosted by the resident family within a detached houses where there are no more than six guests accommodated in no more than three rooms and with at least one bedroom from which guests are excluded.

[341] These code assessable residential uses are vastly different to the intensity of the proposed seniors' living community.

[342] Under Noosa Plan 2020, even though Lots 2 and 3 are in the Rural Residential Zone, the code assessable uses contemplated on the subject land are extremely limited in range and intensity. The limited range of uses that are contemplated as code assessable are subject to the requirements of the Regional Infrastructure Overlay Code, unless the material change of use:

- (a) is in an existing building and does not involve a dwelling house on an existing lot; or
- (b) is for a community residence, which is defined as the use of premises for residential accommodation for:
 - (i) no more than:
 - (A) six children, if the accommodation is provided as part of a program or service under the *Youth Justice Act 1992*; or
 - (B) six persons who require assistance or support with daily living needs; and
 - (ii) no more than one support worker.

[343] Fifth, I do not accept GTH Project No. 4 Pty Ltd's submission that a finding that there is an absence of unacceptable impacts on the water quality of Lake Macdonald is supported by the opinions of Mr Collins that:

- (a) for urban development, the run-off values for various water quality metrics are significantly lower than rural residential development; and

(b) when compared to rural development, urban development produces lower impacts on water quality.

[344] Mr Collins' opinions in that respect are premised on modelling that adopts generalised assumptions about rural and rural residential development. As was revealed during cross-examination, the modelling assumptions do not reflect the stringent limits on such uses contained in Noosa Plan 2006 or Noosa Plan 2020.

[345] Considered individually, each of the first three reasons demonstrate to me that GTH Project No. 4 Pty Ltd has not discharged its onus with respect to the water quality issue. This is compounded by a consideration of each of the five reasons in combination. GTH Project No. 4 Pty Ltd has not demonstrated compliance with the assessment benchmarks of Noosa Plan 2006 put in issue by the Council.

[346] I am satisfied that Noosa Plan 2006 calls for an exclusion of urban development from the subject land. The proposed seniors' living community offends that strategy.

[347] As has been said repeatedly, this Court is not the planning authority for this area. That is the role of the Council. The formally expressed planning strategy of the planning authority is a matter that is deserving of respect and, ordinarily, it is entitled to be given its full force and effect: *Duncombe v Council of the Shire of Caboolture & Anor* [1990] QPLR 257, 259; *Cooroy Golf Club Inc. & Anor v Noosa Shire Council* [2005] QPEC 16; [2005] QPELR 561, 563 [12].

[348] In this case, there is no credible suggestion that the Council's strategy is unsoundly based or overtaken by events. A decision to approve a material change of use for the seniors' living community would conflict with the formally expressed planning strategy to preclude urban development on the subject land. This issue is determinative in this case. It alone warrants refusal of the proposed development. It is a compelling and weighty consideration in the balancing exercise. In my view, it is not overcome even if I were to assume that GTH Project No. 4 Pty Ltd was able to establish a strong need and each of the other grounds in support of approval addressed in key issues 5 to 12 below.

Key issue 4 – Does consideration of Noosa Plan 2020 tell against approval of the proposed material change of use?

[349] As I have mentioned in paragraph [115] and [116] above:

(a) when GTH Project No. 4 Pty Ltd's development application was properly made on or about 12 September 2019, Noosa Plan 2006 was a categorising instrument in effect; and

(b) Noosa Plan 2020 took effect on 31 July 2020.

[350] GTH Project No. 4 Pty Ltd and the Council both submit that the Court should give considerable weight to Noosa Plan 2020 in the exercise of the planning discretion. They submit that this is appropriate as Noosa Plan 2006 is now 18 years old and Noosa Plan 2020 has been in force for over three years.

[351] The Council contends that the proposed development is inconsistent with the following provisions (or parts thereof) in Noosa Plan 2020:

- (a) ss 3.3.1(b), (f), (g), (h) and (o), 3.3.3(a) and (c), and 3.3.4(k) of the Strategic Framework;
- (b) ss 6.6.1.2(1) and (2)(a) of the Recreation and Open Space Zone Code;
- (c) ss 6.8.4.2(1) and (2)(b), (h) and (i), and performance outcomes PO1 (and associated AO1.1), PO5(b) and (c) (and associated AO5.3), PO6(a) and (c) and PO10 of the Rural Residential Zone Code;
- (d) ss 7.2.2.2(2)(b), (c)(ii), (d), (j) and (k), and performance outcomes PO2, PO3, PO4 (and the associated acceptable outcome AO4), PO6, PO7 and PO22 of the Cooroy Local Plan Code; and
- (e) ss 9.3.4.2(1)(a) and (2)(c) and (d) and performance outcomes PO1 (and associated acceptable outcome AO1.1 and AO1.2), PO6, PO7, PO9(a) to (d) and PO18(b) of the Special Residential Code.

[352] GTH Project No. 4 Pty Ltd concedes non-compliance with ss 3.3.1(b) and (f) of the Strategic Framework, s 7.2.2.2(2)(b) of the Cooroy Local Plan Code and s 9.3.4.2(2)(c) of the Special Residential Code, each of which seeks to limit urban development to urban areas within the mapped urban boundary. The concessions are hardly surprising given the subject land is entirely outside the mapped urban boundary.

[353] GTH Project No. 4 Pty Ltd and the Council both acknowledge that:

- (a) most of the provisions raised by the Council require outcomes that reflect those sought in the assessment benchmarks in Noosa Plan 2006 that the Council put in issue;
- (b) the evidence relied on by the parties to demonstrate their respective allegations of compliance and non-compliance is the same as the evidence relied on for the assessment against the assessment benchmarks in Noosa Plan 2006; and, as such
- (c) it is unnecessary for me to undertake a detailed assessment of the allegations of non-compliance.

[354] I have undertaken an assessment against Noosa Plan 2020 to the extent required by the issues in dispute, considering the submissions by GTH Project No. 4 Pty Ltd and the Council. However, in light of the position adopted by the parties, it is unnecessary to set out the detail of each of the provisions and my findings about the evidence with respect to those provisions. It is sufficient to observe that I am satisfied that, except for those issues to which I will turn shortly:

- (a) the provisions of Noosa Plan 2020 put in issue by the Council reflect the same planning goals that are advanced in the assessment benchmarks in Noosa Plan 2006 that the Council put in issue, which I have already addressed above;
- (b) whether the proposed development complies with those provisions of Noosa Plan 2020 put in issue is informed by the same evidence to which I have referred above; and

- (c) the nature and extent of the non-compliances are like those identified with respect to Noosa Plan 2006, in that:
- (i) the proposed development complies with those provisions that seek:
 - (A) buildings of a height and scale that do not detrimentally impact on adjacent properties, roads or other areas in the vicinity of the site;
 - (B) buildings that have a low site impact;
 - (C) buildings to be designed and sited to provide a high level of amenity and allow for space and landscaping between buildings;
 - (D) development that protects the traditional built form of Cooroy; and
 - (E) development that protects the productivity of surrounding rural land; and
 - (ii) the proposed development does not comply with those provisions that require:
 - (A) urban development to be consolidated and confined to urban areas within urban boundaries;
 - (B) development to have reasonable access to essential services and facilities;
 - (C) the maintenance of the scenic amenity, character and identity of Cooroy; and
 - (D) the protection of water quality within Lake Macdonald; and, consequently
- (d) an assessment of the proposed material change of use against those provisions of Noosa Plan 2020 put in issue by the Council, of itself, does not advance the determination of the appeal in either direction.

[355] The real issues that require determination by reference to Noosa Plan 2020 can be addressed by answering two factual questions, namely:

1. Does the proposed seniors' living community integrate with the surrounding community?
2. Do the facts and circumstances establish that Noosa Plan 2006 is out of step with the contemporary expressions of planning intent in Noosa Plan 2020?

Does the proposed seniors' living community integrate with the surrounding community?

[356] Unlike Noosa Plan 2006, Noosa Plan 2020 contains a development code that is expressly directed at the regulation of relocatable home parks and retirement facilities within the Noosa Shire, namely the Special Residential Code.

[357] The Special Residential Code includes outcomes like those contained in the assessment benchmarks of Noosa Plan 2006. In addition, it contains provisions directed at the integration of relocatable home parks and retirement facilities with the surrounding community.

[358] GTH Project No. 4 Pty Ltd contends that it complies with those additional requirements. The Council disagrees.

[359] In s 9.3.4.2 of Noosa Plan 2020, the Special Residential Code sets out the purpose and overall outcomes thereof. It relevantly states:

“(1) **The purpose of the Special Residential code is to ensure relocatable home parks, residential care facilities, retirement facilities and rooming accommodation:**

- (a) **are appropriately located and integrated with the surrounding community;**
- (b) are designed in a manner which meets the needs of and provides a comfortable, adaptable and safe environment for residents; and
- (c) protect the amenity of surrounding premises.

(2) **The overall outcomes sought for relocatable home parks, residential care facilities, retirement facilities and rooming accommodation are as follows:**

- (a) Development for alternative housing types provide housing diversity and enables people to find suitable accommodation throughout their life cycle.
- (b) The residential use provides a home-like environment that promotes individuality, sense of belonging and independence.
- (c) **The residential use is located within the urban boundaries.**
- (d) **The residential use is designed to be integrated with the surrounding community and provides the opportunity for residents to participate in the wider community.**
- (e) The residential use is sited such that there is ease of movement, safety and legibility for residents and visitors.
- (f) The residential use provides for residents to have easy and direct access to public transport and community services and facilities. ...”

(emphasis reflects the provision put in issue by the Council)

[360] The Special Residential Code also contains performance outcomes and acceptable outcomes. They relevantly state:

Performance outcomes	Acceptable Outcomes
<i>All Relocatable home parks, Residential care facilities, Retirement facilities and Rooming accommodation</i>	
<i>Location</i>	
<p>PO1</p> <p>Development has reasonable access to a variety of essential services and facilities, including retail, commercial, social and medical facilities and public transport services.</p>	<p>AO1.1</p> <p>Development is located within the urban boundary.</p> <p>AO1.2</p> <p>Development is located in one of the following:</p> <p>(a) Community facilities zone;</p> <p>(b) Medium density residential zone; or</p> <p>(c) High density residential zone.</p> <p>AO1.3</p> <p>For Relocatable home parks, retirement facilities and rooming accommodation:</p> <p>(a) the use is located within 400 metres (measured along a sealed footpath with grade of no more than 5%) of a public transport stop; or</p> <p>(b) where no public transport is available, an alternative means of transport, such as a minibus, is made available to the residents.</p> <p>AO1.4</p> <p>Where a health care service is not located within 400 metres, medical or therapy services for residents may form part of the use</p>

	and may be provided on site providing the total proportion of gross floor area used for health care services does not exceed 10%.
<i>Effects of Use</i>	
PO6 Development 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.	No acceptable outcome provided.
PO7 The residential use integrates with the broader neighbourhood and allows residents to interact with the wider community in the vicinity.	No acceptable outcome provided.

(emphasis reflects the provision put in issue by the Council)

[361] In the Special Residential Code, above the table of performance outcomes and acceptable outcomes, Noosa Plan 2020 states:

“FOR ASSESSABLE DEVELOPMENT

Acceptable outcomes are provided for some, but not all, performance outcomes and identify ways in which performance outcomes can be met. Compliance with the performance outcomes should be demonstrated and the acceptable outcomes are considered as one way to satisfy the corresponding performance outcome.

[362] This statement is consistent with the guidance provided in s 5.3.3 of Noosa Plan 2020, which, relevantly, states:

“5.3.3 Determining the requirements for accepted development and assessment benchmarks and other matters for assessable development

(3) The following rules apply in determining assessment benchmarks for each category of development and assessment:

(4) **Code assessable development:**

(a) is to be assessed against all the assessment benchmarks identified in the assessment benchmarks column;

(b) that occurs as a result of development becoming code assessable pursuant to subsection 5.3.3(2), must:

(i) be assessed against the assessment benchmarks for the development application, limited to the subject matter of the required acceptable outcomes that

were not complied with or were not capable of being complied with under subsection 5.3.3(2)

- (ii) comply with all required acceptable outcomes identified in subsection 5.3.3(1), other than those mentioned in subsection 5.3.3(2);
 - (c) **that complies with the performance or acceptable outcomes complies with the purpose and overall outcomes of the code;**
 - (d) is to be assessed against any assessment benchmarks for the development identified in section 26 of the Regulation.
- (5) **Impact assessable development:**
- (a) **is to be assessed against the identified assessment benchmarks in the assessment benchmarks column (where relevant)**
 - (b) **is to be assessed having regard to the whole of the planning scheme, to the extent relevant**
 - (c) is to be assessed against any assessment benchmarks for the development identified in section 30 of the Regulation.”

(my emphasis added; editor’s notes omitted)

[363] Contrary to the submission by GTH Project No. 4 Pty Ltd, Noosa Plan 2020 does not indicate that compliance with the code can be demonstrated by achieving compliance with the purpose and overall outcomes alone. That said, in this case the question of compliance with the Special Residential Code does not turn on that issue.

[364] The question of compliance with the integration outcome sought in the Special Residential Code is one that calls for consideration of the facts and circumstances that pertain in the case. It is a matter about which reasonable minds might differ.

[365] To assist me to determine whether the proposed seniors’ living community achieves the outcome sought with respect to integration with the surrounding community, I have the benefit of evidence that includes, but is not limited to:

- (a) plans, sections and elevations depicting the proposed development;
- (b) many photographs of the area, including aerial photographs and aerial photographs marked up by the experts;
- (c) unchallenged expert evidence in the form of photomontages given by Mr Elliott; and
- (d) expert evidence given by Ms Wells, Mr Buckley, Mr Brown and Ms Morrissy.

[366] Ms Wells gave evidence that she regards integration with the community to require an ability to access the services in the community in an efficient way. For example, she says that when it comes to health care services, the health care community could

be in Cooroy, or in Noosa, or on-site, or at the local hospital, or at Nambour. She says integration requires that the residents be able to access the health care services in an efficient way so that they can use them. She also considers that the proposed seniors' living community integrates with the community as its residents will be able to go to the golf club where then can engage in civic participation with the rest of the community.

[367] Insofar as the proposed seniors' living community is designed as a gated community, Ms Wells considers that design is adopted to provide security to people in their older years and to provide them with peace of mind. She says that it does not stop:

- (a) residents of the proposed seniors' living community from having visitors into the community; or
- (b) people from community groups coming into the community centre that forms part of the seniors' living community to interact with residents; or
- (c) the residents of the proposed seniors' living community from going into Cooroy.

[368] Ms Wells opines that although many of the residents of the proposed seniors' living community would likely choose to use the internal facilities, it does not preclude them from using similar facilities in the broader community. She considers it likely that the residents of the proposed seniors' living community would make friends within Cooroy and would avail themselves of those social connections. In her opinion, the golf club enables a lot of civic participation and interaction with the local community.

[369] Mr Buckley opines that the proposed seniors' living community will integrate functionally and physically with the township. He says that the scale of Cooroy is such that residents of the proposed seniors' living community would not be isolated. He says Cooroy is a sub-regional service centre with a wide catchment and that, considered in the context of the town's functional extent, the subject land is conveniently located. He notes that the golf course is already a centre of community connection and adjoins the proposed seniors' living community.

[370] Mr Buckley explains that, in his view, integration conveys the concept of exchange, where community members make economic and social exchanges at a community level. Economic exchange involves the use of services. Socially, connections in the community are more widespread and cover the range of activities that people undertake. They involve meeting in the public domain, but also privately in houses and businesses. Mr Buckley says that such exchanges will occur within the proposed development.

[371] Mr Buckley considers it significant that the golf course clubhouse will be relocated towards the proposed seniors' living community. In his view, there will be a strong connection between the community and the use of the clubhouse. He says the connection will be for more than just for golfing. It will likely extend to social events.

[372] Mr Brown holds a different view to Ms Wells and Mr Buckley. He opines that the design of the proposed development, with its extensive provision of facilities, is such as to discourage engagement with the broader community.

- [373] Ms Morrissy opines that the proposed development is not integrated by reason of its isolation from the community.
- [374] I prefer the evidence of Mr Brown and Ms Morrissy to that of Ms Wells and Mr Buckley as it more closely aligns with the views that I have formed having regard to other evidence that I accept, such as the plans, photographs and photomontages.
- [375] In my view, the proposed seniors' living community is not designed to be integrated with the surrounding community and to provide an appropriate opportunity for residents to participate in, and interact with, the wider community. This is because of the combined effect of:
- (a) its design as a gated community;
 - (b) its physical isolation from nearby urban development by reason of the distance from the front gate of the proposed seniors' living community to Myall Street and the even greater distance to urban development beyond;
 - (c) its visual isolation from nearby urban development due to its location and the proposed acoustic fences and dense vegetated buffer;
 - (d) the extent of community facilities proposed as part of the seniors' living community, which seriously detract from the likelihood that the residents will meaningfully participate in, and interact with, the wider community; and
 - (e) the proposed conditions, which indicate that the community facilities that are proposed as part of the seniors' living community are not open for use by the public. Rather, they are only for the use of residents and their invitees.
- [376] For those reasons, I am not satisfied that the proposed development accords with the overall outcome sought in s 9.3.4.2(2)(d) and performance outcome PO7 of the Special Residential Code.

Do the facts and circumstances establish that Noosa Plan 2006 is out of step with the contemporary expressions of planning intent in Noosa Plan 2020?

- [377] GTH Project No. 4 Pty Ltd contends that there is a shift in planning approach in Noosa Plan 2020 and, as such, the contemporary planning framework in Noosa Plan 2020 should be given determinative weight. In effect, it asserts that Noosa Plan 2006 is out of step with the contemporary expressions of planning intent in Noosa Plan 2020. GTH Project No. 4 Pty Ltd points to two matters that it says evidence the alleged shift in planning approach from that in Noosa Plan 2006.
- [378] First, GTH Project No. 4 Pty Ltd says that there has been a shift in the planning outcomes for the land. It says this is evident from Lots 2 and 3 no longer being zoned as Rural. Rather, they are in the Rural Residential Zone under Noosa Plan 2020.
- [379] Second, GTH Project No. 4 Pty Ltd places emphasis on the fact that Noosa Plan 2020 does not designate any uses to be inconsistent uses. Although "*inconsistent use*" is a defined term, GTH Project No. 4 Pty Ltd says that it is not a concept included in any applicable provision that would form an assessment benchmark were the development application remade now. The term "*inconsistent use*" only appears as a heading as part of the tables of assessment for the Rural Residential Zone: see pages 147 and 152 of the Exhibit 6.02. According to GTH Project No. 4 Pty Ltd, that

involves a material shift in planning approach and demonstrates why the Court should not be persuaded to refuse the proposed development by reason of its status as an inconsistent use under Noosa Plan 2006.

[380] I do not find GTH Project No. 4 Pty Ltd’s submissions persuasive. They seek to attribute a significance to these two differences absent other relevant context that informs the extent to which Noosa Plan 2020 encourages or permits urban development on the subject land. Like its approach to Noosa Plan 2006, GTH Project No. 4 Pty Ltd’s submissions fail to recognise that Noosa Plan 2020 is to be construed as a whole and having regard to its nature as a voluminous planning instrument. Importantly, Noosa Plan 2020 does not express its planning policies solely through zoning maps and statements about inconsistent uses.

[381] Although GTH Project No. 4 Pty Ltd refers to some of the provisions of Noosa Plan 2020 that it says provide relevant context, its references are selective. In addition, when one focuses on those parts emphasised by GTH Project No. 4 Pty Ltd, which are indicated in the quotes in its submissions by underlining and bold, it is readily apparent that GTH Project No. 4 Pty Ltd deliberately ignores those parts of the context that do not favour its argument, but which are material. This is demonstrated by my reproduction below of the quotes that appear in GTH Project No. 4 Pty Ltd’s submissions, retaining the emphasis applied by it and by the addition of my emphasis of other relevant aspects in bold and italics. The provisions of Noosa Plan 2020 to which GTH Project No. 4 Pty Ltd refers are:

(a) s 3.2.2, which describes the strategic intent in respect of a well managed and sustainable Noosa Shire and states:

“Noosa’s values, principles and long term approach to planning

...

... **Most** of the remaining planned capacity is to be located within defined ‘Urban Boundaries’. There is also limited remaining rural residential zoned land still to be developed. ***The established Urban Boundaries define the extent of land for urban development in Noosa Shire and hence land for new greenfield development on undeveloped land remains limited.*** Consequently, **most** development and redevelopment will occur within existing urban areas. This will **encourage under utilised land to be used more efficiently.** It will lead to more efficient use of existing infrastructure and a more compact urban form to help reduce car usage. Environmental impacts will also be minimised.

This planning scheme seeks to maintain Council’s long standing commitment to a sustainable population and well managed growth through firm Urban Boundaries, development densities and building heights. Unrestrained and unplanned development is resisted in Noosa Shire. Any unanticipated development requires demonstration of a high level of community need.

...

Key challenges

The planning scheme will focus on a number of key challenges including:

...

- **an aging population and meeting the housing, health, social and transport needs of an increasing proportion of elderly people**

...

Demographic change

Noosa's population is expected to continue to age and will require specific responses to meet the housing, transport, health and wellbeing needs of elderly residents. By 2041, the proportion of residents aged 65 years and over is predicted to rise to around 30 per cent. Hence there is a need for all forms of housing suitable for retirees and elderly people including residential care, retirement communities and small dwellings. ...

(emphasis in underlining and bold reflects that added by GTH Project No. 4 Pty Ltd, my additional emphasis is in bold and italics)

- (b) s 3.2.3, which describes the strategic intent in respect of a connected, safe and happy community and states:

“The Noosa community has a strong identity and sense of place. The community respects and appreciates its environment and has a strong commitment to the pursuit of environmental excellence, quality lifestyle and economic wellbeing. ...

The focus is on creating communities that are:

- cohesive and resilient
- active and healthy
- accessible, diverse and affordable
- creative and informed.

Cohesive and resilient communities

...

An intergenerational approach is required to maintain an engaged community who participate in sporting, recreational, cultural, artistic, creative and educational pursuits. It is important for all sectors of the community, including older people, to stay connected and continue to have the opportunity to participate in a range of activities. Land within and around urban centres is allocated for community purposes and open space, and is managed and developed to be safe and accessible

and to provide for the needs of individual communities and their various age groups.

Active and healthy communities

Community service facilities and sports facilities need to be maintained and improved to continue to meet the current and future needs of the Noosa Shire community. ...

Accessible, diverse and affordable communities

...

The concept of 'ageing in place' is supported through the planning scheme by providing additional housing choice such as encouraging small dwellings and secondary dwellings, promoting adaptable housing standards, identifying land for retirement and aged care accommodation, and protecting existing aged care sites. The importance of remaining in or near one's community is acknowledged so aged care and independent retirement living opportunities are encouraged in hinterland towns as well as in the coastal urban areas of the Shire. *Improving the accessibility and usability of housing through universal or adaptable housing principles will allow people to stay in their own home longer or find new housing suitable to their physical needs.*

Historically, the majority of dwellings are three or more bedrooms and the predominant household size is only one or two persons. Consequently, priority is given to increasing opportunities for smaller housing to better meet the needs of small households. As there is a correlation between the size of housing and the cost of housing this should improve affordability. *New attached housing in or close to centres will generally be limited to small dwellings. Within established urban residential neighbourhoods, a small dwelling can be established within the existing built form of a house or adjacent to it on the same property. Protecting existing communities of relocatable homes and allowing for additional communities is also important as are other models of housing, such as rooming accommodation.*

The well serviced hinterland towns such as Cooroy and Pomona have ongoing scope for growth. Increasing housing in rural or remote parts of the Shire is not a sustainable solution to meet housing needs as it increases the number of people living away from employment, services and facilities and puts increased pressure on rural areas through conflicts with rural production, pressure on rural roads and cumulative environmental impacts.”

(emphasis in underlining and bold reflects that added by GTH Project No. 4 Pty Ltd, my additional emphasis is in bold and italics)

- (c) s 3.2.4, which describes the strategic intent in respect of housing to meet diverse needs of the community and states:

“The residents of Noosa Shire are part of an inclusive community where diversity is valued. Different housing types and styles are needed to provide choices, ensuring people’s housing needs are catered for, regardless of age and mobility, household size and budget. *By providing housing choice in each local area, a greater mix of people and ages are accommodated* and this can provide a more diverse community.

The quality lifestyle sought by residents of the Shire demands high standards of residential amenity. Factors such as design, density, accessibility, security, landscaped open space, proximity and availability of services and transport are important considerations.

While low density, predominantly detached housing, prevails in Noosa Shire, as the population ages, there is likely to be increased demand for a range of housing that suits single and couple households in locations with good public transport and access to services and facilities. Historically, around 80 per cent of housing in the Shire is separate houses comprising three or more bedrooms. Residential units and communal living such as retirement and aged care make up the remainder. *To best meet future housing needs, it is projected that by 2041 some 30 per cent of the total housing stock should be multi unit housing styles, particularly small one and two bedroom dwellings to cater for smaller households.*

By 2041, development needs to cater for around 6,400 more dwellings than existed at the 2016 census. Future housing demand, particularly for smaller dwellings, is likely to be best met through ‘infill’ development within existing residential areas, on well-located underutilised land, and within town centres in a mixed-use format. Residential growth in and around existing centres with ready access to goods and services, attractive public spaces and community activities is encouraged. High standards of residential amenity and building design is expected. However, style and size may vary to accommodate a range of household types and income levels. Incentives are offered to exemplary and innovative residential developments that advance sustainable housing choice including affordable options for aging in place and housing key workers.

The cost of housing can be high, so special effort is needed to allow for an element of affordability within the diversity of new housing provided. A range of measures are provided to encourage housing affordability including requirements for small dwelling units close to centres and facilitating an additional small dwelling on traditional house sites. Providing housing choice for key workers to support key industry sectors is a particular focus. Established retirement communities, aged

care facilities and transportable home parks are also protected. ***Land set aside for retirement and aged care facilities at Tewantin, Cooroy, Noosa Heads, Noosaville and Sunrise Beach will help cater for demand.*** The initiatives of Federal and State Government and community based not-for-profit entities in delivering more affordable housing for residents in need are likely to be an important component of new housing.”

(emphasis in underlining and bold reflects that added by GTH Project No. 4 Pty Ltd, my additional emphasis is in bold and italics)

- (d) the strategic outcome with respect to settlement in s 3.3.1(k), which states:

“Attractive and diverse living opportunities are available including for key workers, low income earners and the elderly. A significant proportion of new developments comprise smaller dwellings located close to activity centres, with ease of access to public and active transport networks.”

(emphasis reflects that added by GTH Project No. 4 Pty Ltd)

- (e) strategic outcome with respect to housing choice in s 3.3.3(e), which states:

“A wide range of housing is spread throughout the existing urban areas of Noosa Shire and responds to housing needs associated with factors such as changing demographics, changing composition of households, and lifestyle choices.”

- (f) the strategic outcome with respect to economy and employment in s 3.3.5(s)(ii), which identifies that Cooroy has the role and function of a district centre and states:

“(A) District centres provide a mix of activities and services that cater for the weekly and fortnightly needs of surrounding communities. Generally, they do not attract people from beyond the district. They contain a diversity of commercial, community and entertainment related uses, with supermarket based retailing. They may also include medium density housing above or behind businesses. Any new development should not be of a type, scale or form that would detract or reduce the viability of either of the two major centres in the Shire.

(F) Cooroy District Centre serves as the main activity centre for the communities of Cooroy and other outlying hinterland villages. Cooroy has a strong historic country town identity with a number of local and state listed heritage buildings. The centre provides services to rural enterprises in the surrounding hinterland area. Shop top housing in the centre of town and townhouse residential development on the edge of the centre are provided for.”

(g) the overall outcomes in ss 7.2.2.2(2) of the Cooroy Local Plan Code, which state:

“(e) Cooroy town centre functions as a district centre providing a wide range of commercial, retail and community activities to serve the needs of the Cooroy community and Noosa hinterland residents and visitors to the area.

(s) A diverse range of community services including the Lower Mill Place Precinct, library, playgrounds, community hall, schools, medical facilities, sporting and recreational facilities service local residents, the hinterland and beyond.”

(h) performance outcome PO1 of the Cooroy Local Plan Code, which requires that:

“Development enhances the role of Cooroy as the largest centre in the Noosa Hinterland ...”

[382] Other provisions in Noosa Plan 2020 that provide important relevant context also appear to be deliberately overlooked by GTH Project No. 4 Pty Ltd’s submissions. They include:

(a) s 3.1(1) of Noosa Plan 2020, which states that the strategic framework sets the policy direction for Noosa Plan 2020 and forms the basis for ensuring appropriate development occurs in the planning scheme area for the life of Noosa Plan 2020;

(b) s 3.1(3), which explains that the strategic framework comprises:

(i) the strategic intent, which is expressed by reference to various themes;

(ii) the strategic outcomes for development under identified key matters, including with respect to settlement, housing choice and biodiversity and environment; and

(iii) the strategic framework maps;

(c) s 3.1(4), which states that the strategic framework in its entirety represents the policy intent for Noosa Plan 2020;

(d) the strategic outcomes for settlement in s 3.3.1, which relevantly include:

“(b) **Urban development is consolidated and confined to urban areas within Urban Boundaries. These boundaries are defined to maintain the distinct character of individual communities; avoid biophysical constraints and natural hazards; protect environmental values and landscape features; protect natural resources and quality farming land; and plan for the effective and efficient delivery of infrastructure and services. The boundaries also reflect the outcomes of detailed local investigations.**

- (c) **Noosa Shire continues to be characterised by a series of compact, low-rise towns and villages.**
- (f) **The defined boundaries of urban and rural residential areas are maintained and adhered to, as are the limited subdivision yields outside of urban areas.**
- (g) **There is sufficient land to cater for urban development within already committed areas.”**

(emphasis added)

- (e) the strategic outcomes for settlement in s 3.3.3, which relevantly include:

“(a) **Residential development occurs on land that is suited and designated for the intended form of housing and avoids any unnecessary removal of significant vegetation.”**

(emphasis added)

- (f) the overlay mapping, which shows that the subject land is mapped on the Regional Infrastructure Overlay as within the water resource catchment and water supply buffer areas;
- (g) the tables of assessment for the Regional Infrastructure Overlay, which reveal that almost all new development is subject to assessment against the Regional Infrastructure Overlay Code. I have given examples of the extremely limited range of development that do not require assessment against the Regional Infrastructure Overlay Code in paragraph [342] above;
- (h) s 8.2.9.1(2) of the Regional Infrastructure Overlay Code, which stipulates that all provisions the Regional Infrastructure Overlay Code are assessment benchmarks for applicable assessable development;
- (i) the overall outcomes of the Regional Infrastructure Overlay Code, which relevantly include:
 - “(i) **Development is located, designed and managed to maintain or improve water quality, flow regimes, environmental values and natural systems in a water supply catchment;**
 - (ii) **Development ensures there is no cumulative impact on water quality;”**

(emphasis added)

- (j) the overall outcomes that apply to the Cooroy local plan area (in which the subject land is located), which are set out at s 7.2.2.2(2) of the Cooroy Local Plan Code and relevantly include:

“(b) **Development is limited to land within the urban boundary and maintains a defined edge to the town to protect and reinforce the character and identity of Cooroy, provide efficient provision of infrastructure and**

services, **avoid constrained land and protect the landscape character** and productivity of surrounding rural and rural residential land.

- (d) **The protection of water quality within Lake Macdonald and waterways that drain to it is a paramount factor in consideration of development within the water supply catchment.”**

(emphasis added)

- (k) the Special Residential Code, which is a use code with a purpose of, amongst other things, ensuring that relocatable home parks, residential care facilities, retirement facilities and rooming accommodation are appropriately located and integrated with the surrounding community and, to that end:

- (i) the overall outcome in s 9.3.4.2(2)(c) of the Special Residential Code, which requires that such residential uses be located within the urban boundaries; and
- (ii) performance outcome PO6, which requires:

Development 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.”

(emphasis added)

- (l) the Reconfiguring a Lot Code, which is an “*other development*” code in which all provisions are assessment benchmarks for applicable assessable development;

- (m) the overall outcomes in s 9.5.1.2(2) of the Reconfiguring a Lot Code, which relevantly include:

- “(a) Development provides for lots that are of a size and have dimensions that are appropriate for their intended use and are consistent with the sizes of surrounding lots.
- (b) Development provides for lots which are responsive to local character and site constraints such that the natural landform is not modified.
- (c) Development avoids significant adverse effects on the natural environment and landscape including waterways, drainage lines, wetlands and other ecologically important areas.”

- (n) the performance outcomes in the Reconfiguring a Lot Code, which relevantly include:

- (i) performance outcome PO1, which requires, amongst other things, that urban residential development is confined to land within the urban boundary; and
- (ii) performance outcome PO5, which requires, amongst other things, that new lots have areas and dimensions that comply with the minimum lot

size specified in Table 9.5.1.4 Minimum Lot Size and Dimensions, unless otherwise specified in a local area code;

- (o) Table 9.5.1.4 Minimum Lot Size and Dimensions, which indicates that the subject land is not intended to be further subdivided because it is within the Lake Macdonald water resource catchment; and
 - (p) s 1.5 of Noosa Plan 2020, which stipulates that, where there is an inconsistency between provisions in Noosa Plan 2020:
 - (i) the strategic framework prevails over all other components to the extent of inconsistency for impact assessment;
 - (ii) overlays prevail over all other components, except for the strategic framework, to the extent of the inconsistency;
 - (iii) local plan codes prevail over zone codes, use codes and other development codes to the extent of the inconsistency; and
 - (iv) zone codes prevail over use codes and other development codes to the extent of the inconsistency.
- [383] I have considered the differences identified by GTH Project No. 4 Pty Ltd in combination with:
- (a) the provisions of Noosa Plan 2020 relied on by GTH Project No. 4 Pty Ltd, which I have identified in paragraph [381] above;
 - (b) the broader context provided by those aspects of Noosa Plan 2020 referred to in paragraph [382] above; and
 - (c) the balance of Noosa Plan 2020.
- [384] On my analysis of Noosa Plan 2020, it does not represent a material shift in planning approach in a way that favours approval of the proposed development. If anything, Noosa Plan 2020 adopts a more rigid approach to its urban boundary and its limits on development on land in the Lake Macdonald water supply catchment than Noosa Plan 2006.
- [385] Although GTH Project No. 4 Pty Ltd concedes that the proposed seniors' living community does not accord with several provisions of Noosa Plan 2020, it contends that those non-compliances would not stand in the way of approval. GTH Project No. 4 Pty Ltd describes the provisions with which it admits non-compliances to be:
- (a) lacking in identification of the underlying investigations that found them and their soundness;
 - (b) bare provisions that are devoid of a stated purpose or policy;
 - (c) without consequence;
 - (d) equivocal;
 - (e) of reduced materiality by reason of the need for the proposed development and an absence of tangible impact associated with the proposed development; and
 - (f) absent adverse impact or consequence.

[386] I do not accept these submissions. They are not supported by the evidence of Mr Buckley. During cross-examination, Mr Buckley accepted that the provisions in Noosa Plan 2006 and Noosa Plan 2020 that guide the appropriate development for the subject land include provisions that reflect legitimate planning policy decisions directed at:

- (a) preventing urban sprawl and supporting compact urban form;
- (b) making efficient use of existing infrastructure;
- (c) reducing car usage and supporting active travel;
- (d) consolidating the intactness of hinterland villages within a broader rural locality;
- (e) preserving the distinct rural amenity and landscape character of localities;
- (f) ensuring development is consistent with the character, identity and amenity of a particular locality;
- (g) protecting views and vistas from the major road network; and
- (h) preserving the water quality in Lake Macdonald.

[387] I accept Mr Buckley's evidence in this respect. It is supported by a fair and balanced reading of Noosa Plan 2020 (and Noosa Plan 2006).

[388] In addition, careful consideration of the differences between Noosa Plan 2006 and Noosa Plan 2020 makes good the statements in ss 3.3.1(b) and (g) of Noosa Plan 2020 that:

- (a) the urban boundaries reflect the outcomes of detailed local investigations; and
- (b) there is sufficient land to cater for urban development within already committed areas under Noosa Plan 2020.

[389] This can be sufficiently demonstrated by reference to just one example, being the change in mapping with respect to Lot 4. As I have already mentioned, under Noosa Plan 2006, Lot 4 was mapped in the Rural Zone and outside the urban growth boundary. Under Noosa Plan 2020, that part of Lot 4 that has an interface with the subject land is in the Environmental Management and Conservation Zone and is outside the urban boundary. The balance of Lot 4 interfaces with existing urban development. It is in the Community Facilities Zone with an intended use of Residential Care Facility under Noosa Plan 2020.

[390] In light of the above, the facts and circumstances do not establish that Noosa Plan 2006 is out of step with the contemporary expressions of planning intent in Noosa Plan 2020. Moreover, Noosa Plan 2020 maintains, and possibly even strengthens, the strategic policy position reflected in Noosa Plan 2006 that urban development should not occur on land outside the mapped urban boundary.

[391] For those reasons, a decision to give weight to Noosa Plan 2020, properly construed, is not one that lends support to approval of the proposed seniors' living community.

Key issue 5 – What are the relevant matters relied on by the parties under s 45(5)(b) of the *Planning Act 2016*?

[392] GTH Project No. 4 Pty Ltd contends that there are several relevant matters that support approval of the proposed material change of use. They are identified in Exhibit 7.023. The Council identifies relevant matters that it says support refusal of the proposed material change of use. They are identified in Exhibit 8.003. Cooroy Area Residents Association Inc. supports the Council's position. The Chief Executive does not raise any relevant matters under s 45(5)(b) of the *Planning Act 2016*.

[393] I am satisfied that each of the matters raised by the parties is a relevant matter under s 45(5)(b) of the *Planning Act 2016*. The real issue is whether they are each established on the evidence and what weight should be attributed to each of them.

[394] I have already addressed the substance of many of the relevant matters in my reasons above. Those relevant matters that are raised by the parties and which are not otherwise addressed by my findings above can be adequately addressed by answering the following six questions:

1. Is there a need for the proposed use?
2. Does the new golf course clubhouse benefit the community?
3. Is the proposed development consistent with ShapingSEQ?
4. Is there a community benefit associated with contributions to the upgrade of the intersection of Myall and Elm Streets?
5. Is there an absence of unacceptable adverse amenity impacts?
6. Does the absence of evidence of support from the owner of the Cooroy golf course tell against approval?

[395] I now turn to answer those questions.

Key issue 6 – Is there a need for the proposed use?

[396] GTH Project No. 4 Pty Ltd has acknowledged some aspects of non-compliance with the planning instruments. It accepts that, in those circumstances, an absence of need would pose difficulties for it in this appeal but says that is not an impediment to approval in this case. It says that there is a need for the proposed seniors' living community, and that it is very strong indeed.

[397] As I have already mentioned in paragraph [348] above, even if GTH Project No. 4 Pty Ltd were able to establish strong need, this is insufficient to overcome the serious issues identified above. That said, I have serious reservations about this aspect of GTH Project No. 4 Pty Ltd's case for the reasons that follow.

[398] GTH Project No. 4 Pty Ltd's case that there is a strong need for the seniors' living community is founded on six propositions.

- [399] First, GTH Project No. 4 Pty Ltd says there are well-established principles associated with considerations of need, particularly for seniors' accommodation. It says those principles demonstrate that:
- (a) such facilities are critical to the wellbeing of an important group of the community;
 - (b) it is important to be "*ahead of the game*"; and
 - (c) it is in the public interest to provide such facilities to enhance the quality of life of the elderly, and that is a compelling consideration that supports approval.
- [400] Second, it says that Noosa Plan 2006 and Noosa Plan 2020 recognise those important principles.
- [401] Third, GTH Project No. 4 Pty Ltd contends that Noosa Plan 2020 has very substantially underestimated the size of the population that requires facilities of the type proposed.
- [402] Fourth, it says that all existing similar facilities in the catchment area are full, and there are no other developments of the type proposed in the catchment or elsewhere in the Noosa local government area.
- [403] Fifth, it asserts that there is an absence of suitable alternate sites.
- [404] Sixth, GTH Project No. 4 Pty Ltd says that there is an array of strong qualitative indicators of need.
- [405] GTH Project No. 4 Pty Ltd also says that there is a need for the upgrade to the golf course, including the new clubhouse. It says that this is recognised by the objectives for community wellbeing in Noosa Plan 2006 and Noosa Plan 2020.
- [406] The Council accepts that there is a need to deal with an ageing population and there is no doubt that need will continue. However, it disputes that the need warrants approval of the proposed development. The Council's case about need is premised on three matters.
- [407] First, the Council accepts that there is a need to provide for accommodation for seniors in the community, just as there is a need to provide for accommodation for all other cohorts in the community. This is reflected in Noosa Plan 2006 and Noosa Plan 2020. However, it says that the existence of that need (be it for accommodation for seniors or other cohorts) does not remove the role of the town planning scheme to seek to distribute the location of such competing needs within its planning area.
- [408] Second, the Council says that it is the community's interest as embodied in the planning documents that determines whether development of facilities such as that proposed should be permitted in a community's planning area. It says that this is to be determined by reference to adopted provisions that guide the location, design and integration of such facilities within the existing communities, and by the extent to which a proposal embraces those planning scheme requirements. In this case, the Council says that there is no credible suggestion that, should the proposed development not proceed, any need will not, or cannot, be satisfied by the acquisition

of control over a site or sites which embrace the requirements of the planning documents.

- [409] Third, the proposed seniors' living community does not cater for residents of the local area only. It seeks to draw residents from a catchment area well beyond Cooroy. The Council says that it would not be unreasonable to expect residents of that broader catchment area to travel similar distances outside of Cooroy, such as to a destination closer to the coast, to enjoy downsizing or moving into seniors' accommodation. This would still be within a reasonable distance to ensure some measure of "*aging in place*". The Council says that the fact that people will travel considerable distance to reside in a seniors' living community also demonstrates that the precise location enjoys flexibility.
- [410] In those circumstances, the Council contends that there is insufficient need to warrant setting aside the important planning strategies in Noosa Plan 2006.
- [411] The respective allegations give rise to three key factual issues for determination, namely:
1. Do Noosa Plan 2006 and Noosa Plan 2020 recognise the important principles about the need for seniors' accommodation?
 2. Does the evidence establish a need for the proposed seniors' living community?
 3. Is there a need for the upgrade to the golf course clubhouse?
- [412] To assist me with determining those issues, I have the benefit of evidence that includes, but is not limited to:
- (a) expert evidence from Mr Duane, Mr Brown and Ms Wells;
 - (b) evidence from Mr Adrian Puljich, a director and chief executive officer of GTH Project No. 4 Pty Ltd, who provides details about GemLife communities which is the type of seniors' living community proposed on the subject land;
 - (c) documents providing details about potential alternative sites: Exhibits 7.016, 7.017, 7.018 and 7.019; and
 - (d) Exhibit 7.021, which provides details about the proposed seniors' living community, including with respect to the facilities that it will provide to residents.
- [413] My findings below are not attributable to a single statement by an expert. They reflect the aggregate impression that I have formed having regard to the collective effect of the all the available evidence to the extent that it is accepted by me. That said, at the outset I note that, in terms of the expert evidence, I generally prefer the evidence of Mr Brown to that of Mr Duane and Ms Wells. Mr Brown's opinions are supported by cogent explanations. The opinions of Mr Duane and Ms Wells are founded, in part, on propositions that I do not accept.
- [414] Before turning to the evidence, and my findings about the key questions, it is useful to record some general principles that inform and guide an assessment of need.

What are the general principles that inform and guide an assessment of need?

[415] The existence of a need for the proposed development is relevant under s 45(5)(b) of the *Planning Act 2016*.

[416] The general principles that inform and guide an assessment of need are well-settled. Many of them are conveniently summarised in *Isgro v Gold Coast City Council & Anor* [2003] QPEC 2; [2003] QPELR 414 at 417-20 [20]-[30]. In that case, His Honour Judge Wilson SC (as His Honour then was) stated at 418 [21]:

“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.”

[417] 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: *Isgro v Gold Coast City Council & Anor* [2003] QPEC 2; [2003] QPELR 414, 417-8 [20].

[418] Planning need is also not limited to the need for the proposed development on the particular site in question and no other site. The existence of other sites for which the proposed development is permitted under the applicable code may be a relevant matter, depending on all the circumstances of the case. That said, the weight to be given to the planning need may be greater if the evidence shows that the need would be satisfied only by the proposed development on the particular site: *Abeleda & Anor v Brisbane City Council & Anor* [2022] QCA 168; [2021] QPELR 1003, 1018 [51].

[419] It must be remembered that these are general statements of principle that inform and guide an assessment of need. They are not a checklist that must be established in every case. Rather, the assessment of need in this context is a flexible process. This has long been recognised. It was again confirmed by the Court of Appeal recently in *Yorkeys Knob BP Pty Ltd v Cairns Regional Council* [2022] QCA 168 at [30].

[420] Need is a relative concept to be given a greater or lesser weight depending on all the circumstances that the decision maker is to consider: *Intrafield Pty Ltd v Redland Shire Council* [2001] QCA 116; (2001) 116 LGERA 350, 354 [20].

[421] The nature of the proposed use is relevant to a consideration of need: See, for example, *Isgro v Gold Coast City Council & Anor* [2003] QPEC 2; [2003] QPELR 414, 419 [27]. In *Luke & Ors v Maroochy Shire Council & Anor* [2003] QPEC 5; [2003] QPELR 447, His Honour Judge Wilson SC (as his Honour then was) held at 455 [35]:

“The question whether need exists is to be decided from the perspective of a community and not that of the applicant for development, its competitors, or objectors. Otherwise, the weight to be afforded to it is not fixed and where, as here, the apparent public or community need for the proposed facility is strong and relates to a

basic requirement of the resident population it is, plainly, a matter to which considerable weight must be given.”

(endnotes omitted)

- [422] This Court has recognised that the provision of adequate facilities to support ageing in place is a matter of significance to the local community. It is critical to the wellbeing of an important group therein: *JRD No 2 Pty Ltd v Brisbane City Council & Ors* [2020] QPEC 4; [2020] QPELR 1023, 1075 [224].
- [423] Finally, at the end of the day, whether there is a need for a proposed development is a question of fact: *Clarry & Anor v Brisbane City Council & Anor* [2024] QCA 39, [53].
- [424] With those general principles in mind, I turn to consider the key factual issues about need in this case.

Do Noosa Plan 2006 and Noosa Plan 2020 recognise the important principles about the need for seniors’ accommodation?

- [425] Need can be demonstrated through the words of planning documents: *Barro Group Pty Ltd v Sunshine Coast Regional Council* [2021] QPEC 18; [2022] QPELR 235, 272 [185]; *Murphy v Moreton Bay Regional Council & Anor*; *Australian National Homes Pty Ltd v Moreton Bay Regional Council & Anor* [2019] QPEC 46; [2020] QPELR 328, 413 [469] and 419 [508]; *North Harbour Holdings Pty Ltd v Moreton Bay Regional Council & Anor* [2024] QPEC 21, [393].
- [426] There is no dispute between the parties that in the Noosa Shire Council local government area, the importance of accommodation for the ageing population is reflected in Noosa Plan 2006 and Noosa Plan 2020. It is reflected in, amongst other provisions:
- (a) ss 1.7.6 e), 3.1.3 j) xiv, and 14.44.2 g) and i) of Noosa Plan 2006, which I have extracted at paragraphs [126], [212] and [216] above; and
 - (b) ss 3.2.2, 3.2.3, 3.2.4, 3.3.1(k), and 3.3.3(e) of Noosa Plan 2020, which I have extracted at paragraph [381] above.
- [427] Importantly, both Noosa Plan 2006 and Noosa Plan 2020 stipulate that the growth required to meet the need for additional housing, including for the elderly, is planned to be provided by way of urban infill and redevelopment, not by establishing new development on vacant land outside of the urban growth boundary and urban boundary: s 1.7.6 b) of Noosa Plan 2006 and ss 3.2.2, 3.2.3 and 3.2.4 of Noosa Plan 2020.
- [428] To that end, Noosa Plan 2020 has identified land that is to be set aside for retirement and aged care facilities at Tewantin, Cooroy, Noosa Heads, Noosaville and Sunrise Beach: see s 3.2.4 of Noosa Plan 2020 and mapping with respect to Lot 4.
- [429] In addition, both Noosa Plan 2006 and Noosa Plan 2020 identify multiple ways the need for appropriately designed housing for the ageing population is to be addressed: see, for example, s 1.7.6 b) of Noosa Plan 2006 and ss 3.2.2, 3.2.3 and 3.2.4 of Noosa Plan 2020.

[430] The planning solution to this key challenge is not limited to the provision of retirement facilities, relocatable home parks and aged care facilities. The need is also to be addressed by:

- (a) ensuring all housing is more physically accessible;
- (b) encouraging small dwellings and secondary dwellings through internal reconfiguration of existing houses or existing house sites; and
- (c) providing multi-unit housing styles.

[431] There is no suggestion that these policies are unsoundly based. To the contrary, they reflect goals expressed in ShapingSEQ. The goals also appear to be practically achievable. I infer as much from the information provided by Mr Puljich, which identifies that home care assistance is provided by entities such as Feros Care and that funding packages may be available in that regard: Exhibit 5.022 pp 32, 34, 35.

[432] Noosa Plan 2020 identifies that confinement of urban development to land within the urban boundary reflects the Council's long-standing commitment to a sustainable population and well managed growth. For that reason, Noosa Plan 2020 indicates that any unanticipated development requires demonstration of a high level of community need: s 3.2.2 of Noosa Plan 2020.

Does the evidence establish a need for the proposed seniors' living community?

[433] Mr Duane opines that there is a need for the proposed seniors' living community.

[434] Mr Duane explains that there is predicted to be a rapid growth in population over the next 20 years, particularly for the number of residents aged over 65 years in both the Noosa local government area and the defined catchment area. The defined catchment area extends between 10 and 15 kilometres from the subject land and encapsulates the towns of Cooroy, Eumundi, North Arm, Cooran, and Pomona. The predicted growth is greater than that estimated in Noosa Plan 2020.

[435] Based on the predicted growth, and taking account of existing supply, Mr Duane predicts that there will be a shortfall in seniors' living places, inclusive of relocatable home parks, in the defined catchment over the period to 2041. He says that, based on the average size of retirement villages of 100 units per village, the shortfall is equivalent to around three to four villages. Mr Duane's prediction also assumes a 10.8 per cent target penetration rate, which reflects the south-east Queensland benchmark.

[436] According to Mr Duane, seniors' living of the nature proposed enables older persons to access an affordable lifestyle and living environment that is particularly tailored to their needs and expectations. This is through inclusion of on-site communal and recreational facilities, on-site services, and access to important social inclusion, wellbeing, and lifestyle programs. He also opines that the proposed seniors' living community is conveniently located in that it is close to a range of facilities including retail, entertainment and health facilities.

[437] Another factor that Mr Duane says demonstrates a need for the proposed development is the fact that the two existing facilities in the defined catchment area are full. He says that this is very strong evidence of market demand for this type of facility.

- [438] In Mr Duane's opinion, there are limited high density, medium density and mixed use sites available for development in the defined catchment area and in the Noosa local government area more broadly. He says that, given the increasing demand for retirement village facilities, even with the benefit of the proposed seniors' living community, there will be a further need for the development of additional sites in the defined catchment area.
- [439] Mr Duane is of the view that the proposed seniors' living community represents an opportunity, of which there are a limited number. This opportunity is to consolidate a seniors' living facility development in a location that provides a high degree of residential amenity for seniors' living and which is served by significant levels of private and public infrastructure that support residential uses.
- [440] In Mr Duane's opinion, the proposed development will:
- (a) provide a high quality, modern facility, which will allow local ageing in place;
 - (b) add to the current limited supply of seniors' living facilities (inclusive of relocatable home parks), thereby creating greater choice for the elderly within the defined catchment and the Noosa local government area;
 - (c) meet the increasing expectations around the standard of living for older people. This includes by the provision of support services and amenities, which promote social inclusion and wellbeing for older persons and reduce the impacts of isolation and loneliness; and
 - (d) provide additional seniors' living units in a location that is sought after by retirees and older persons.
- [441] Ms Wells also gave evidence supporting the approval of the proposed seniors' living community. She says that a decision to refuse the proposed development will:
- (a) limit access to quality and desirable ageing in place options for all persons aged 50 years and above, including those seeking alternative financial models to the retirement village model;
 - (b) significantly restrict options for persons under 75 years of age seeking modern retirement communities. Ms Wells says a refusal will limit the options to only one modern retirement community in the Noosa area, being Palm Lakes Cooroy-Noosa, which caters to a broader range of ages; and
 - (c) result in persons needing to leave the area and their networks to access retirement communities, which is detrimental to their wellbeing.
- [442] Ms Wells also expresses opinions about the benefits of the proposed seniors' living community. She says that it would improve access to retirement housing, improve diversity of housing, and increase choice in retirement housing in the Noosa hinterland and the wider Noosa Shire.
- [443] Ms Wells identifies that there are six retirement communities in the Noosa Shire. Two are land lease villages dedicated to people aged over 55 years, namely Cooroy Village and Palm Lakes Cooroy-Noosa. They are both located in the Cooroy area. Cooroy Village offers 68 homes. It is an older village and Ms Wells says that it is not designed to contemporary standards. Palm Lakes Resort has 220 homes and is a

contemporary offer with modern homes. It also proposes to develop a residential aged care onsite.

- [444] In addition, there are four retirement villages operated under the *Retirement Villages Act 1999*. They are all in the coastal area of the Noosa Shire. Those four villages offer a more traditional form of retirement village. They were constructed between the late 1980's and the 2000's and have had various additions over time, including recently. According to Ms Wells, these villages offer a wide range of accommodation. She considers that they are likely to appeal to people who are over 75 years old.
- [445] Ms Wells identifies that there are new developments proposed at Tewantin and Sunrise Beach. They are to be developed as retirement villages in the coastal area of the Noosa Shire. Ms Wells considers that they are likely to appeal to people who are over 75 years old.
- [446] According to Ms Wells, the proposed seniors' living community will deliver a contemporary choice that is aligned to the changing expectations of older Australians. She says it is also aligned with the changing ageing policy, which seeks to increase care in the home and community so that the demand on residential aged care is reduced.
- [447] Ms Wells says that the proposed seniors' living community will offer an innovative housing choice that provides access to modern accommodation and structured support. She says that this enables persons to age well and in place. Her opinion is premised on her view that the proposed seniors' living community:
- (a) is conveniently located close to a range of facilities, including retail, entertainment and health facilities, that allow people to age well in the neighbourhood;
 - (b) provides people with the choice to reside in individual accommodation designed for persons to age well, rather than in their existing house that may not be suitable for ageing;
 - (c) provides large scale communal and wellbeing spaces that enable an extensive range of desired health and wellbeing activities and socialisation;
 - (d) provides access to technology and structured support programs to enable seniors to maintain independence, and access support, care and restorative and maintenance services. She says that the proposed seniors' living community offers the potential for this to be the last move for most of the residents because it provides access to appropriately designed housing and services to enable ageing in place; and
 - (e) promotes interaction with the wider community and an active lifestyle through onsite facilities and collocation with a modern golf course and clubhouse.
- [448] Ms Wells acknowledges that the proposed seniors' living community has similar attributes to other recently developed land lease villages, including Palm Lakes

Cooroy-Noosa. Nevertheless, she says that the proposed seniors' living community has attributes that are innovative, namely:

- (a) its colocation with the Cooroy Golf Course and a new clubhouse, which facilitates an active lifestyle and social interaction with the wider Cooroy and Noosa community;
- (b) the design aspects of the proposed seniors' living community and the proposed care partnership, which Ms Wells says will enable persons to age in their homes in a cost-effective manner and avoid more expensive or undesirable forms of care such as residential aged care;
- (c) the GemLife sustainability strategy, which involves energy efficient homes and novel power solutions, and innovations that assist resident lifestyle, such as the opportunity to use a motorhome; and
- (d) a scale of communal facilities that is far more comprehensive and wide ranging for social, health and wellbeing opportunities than any retirement village in the Noosa Shire.

[449] Mr Brown acknowledges that the population that is aged 65 years and older in the defined catchment area and the Noosa local government area is increasing as the population ages. However, in his opinion, any need for additional independent seniors' living accommodation is for retirement villages as opposed to manufactured home parks aimed at seniors. In this respect, Mr Brown explains that 9.3 per cent of the population aged 65 years and over in the defined catchment area are accommodated in manufactured homes. This is high relative to the proportion of the population aged 65 years and over that are accommodated in manufactured homes in each of the Noosa local government area (3.3 per cent), south-east Queensland (5.1 per cent) and Queensland (4.3 per cent). Mr Brown also observes that manufactured home parks aimed at seniors are the only independent seniors' living typology that is available within the defined catchment area. There are no retirement villages. As such, in his view, the proposed development does not increase the diversity of seniors' living typologies for independent seniors within the defined catchment area.

[450] Given those circumstances, Mr Brown does not accept that there is an economic and community need for the 214 units in the manufactured home park that is the proposed seniors' living community. In his view, any need that might exist for accommodation for seniors in the study area is a need for independent living units in a retirement village rather than a need for further manufactured homes.

[451] I accept many aspects of Mr Duane's evidence, but I have reservations about several matters that inform his overall opinion about need.

[452] It seems to me that Mr Duane's quantitative analysis does not pay sufficient regard to the differences between manufactured home parks that are aimed at seniors and retirement villages.

[453] In addition, I do not accept that the proposed development will create greater choice for the elderly within the defined catchment. I am not prepared to infer a need from the fact that the two existing facilities in the defined catchment area are full. That circumstance may also be explained by the absence of an opportunity to reside in a

retirement village in the defined catchment area. As was observed by Ms Wells, the Cooroy area already has two facilities of the type proposed that are dedicated to people aged over 55 years. As such, the proposed development simply offers more of the same type of seniors' living opportunity.

[454] For reasons already explained, I disagree with Mr Duane's view that that the proposed seniors' living community is conveniently located to a range of facilities including retail, entertainment and health facilities.

[455] I also have reservations about Mr Duane's reliance on what he says is limited availability of high density, medium density and mixed use sites in the defined catchment area and in the Noosa local government area more broadly. Mr Duane's opinion in that regard assumes that the available options are limited to presently vacant sites of a size that could accommodate a facility of the size proposed here. I do not consider that assumption to be appropriate. Noosa Plan 2006 and Noosa Plan 2020 both indicate that redevelopment may be required to ensure that growth can be accommodated in a manner that is sustainable. In addition, the number of dwelling units proposed here far exceeds that typically provided in this type of facility.

[456] As for the evidence of Ms Wells, I accept many aspects of that evidence, but there are some aspects that cause me concern.

[457] I do not accept Ms Wells' evidence about the effect of a decision to refuse the proposed development. That aspect of Ms Wells' opinion assumes that there is no prospect of further development of seniors' living accommodation in the future. I reject such an assumption. It has no credible foundation in the evidence.

[458] I also do not accept that the proposed development will improve the diversity of housing. It provides a further manufactured home park. There are already two of those in Cooroy.

[459] I accept the evidence of Mr Brown. It is supported by cogent analysis and explanation in the Economic Need Joint Expert Report and his individual statement of evidence.

[460] For the reasons provided above, GTH Project No. 4 Pty Ltd has not persuaded me, to the requisite standard, that there is a need for the proposed seniors' living community, let alone a strong need.

Is there a need for the upgrade to the golf course clubhouse?

[461] GTH Project No. 4 Pty Ltd contends that there is a need for the golf course component of the proposed development. GTH Project No. 4 Pty Ltd refers to two matters to support its contention.

[462] First, GTH Project No. 4 Pty Ltd says that it is relevant to recall that Noosa Plan 2006 and Noosa Plan 2020 both contain objectives associated with community wellbeing, including in relation to sport and recreation and the benefits brought about by such facilities. It says that this demonstrates that such facilities are needed, and valued, by the community.

[463] Second, GTH Project No. 4 Pty Ltd says that the need for the golf course improvements to be facilitated by this development is evidenced by various lay

witness statements. These include those of the manager of Cooroy Golf Club, Mr Wayne Patston, the Cooroy Golf Club's former President, Mr Gregory Michael and Ms Teresa Cairns.

[464] Mr Patston gave evidence about the deficiencies associated with the existing clubhouse, and the consequential problems that those deficiencies create for Cooroy Golf Club. He explains that membership fees are the Cooroy Golf Club's main source of revenue and are used to pay salaries and outgoings. Cooroy Golf Club does not have surplus funds, and very little money has been spent on the existing clubhouse in the 18 years that Mr Patston has been at Cooroy. Mr Patston says that the other golf courses on the Sunshine Coast have better facilities. He says that the state of the existing clubhouse facilities do not provide adequate services to the club's members. According to Mr Patston, the kitchen is not up to standard, with the consequence that the Cooroy Golf Club has limited food offerings. This makes it difficult to entertain members for any extended period as the existing clubhouse is not an appealing place where people can come to have a drink or meal together. Mr Patston is of the view that the condition of the existing clubhouse is the main barrier to increasing and retaining membership. Mr Patston explains the flow on benefits that would accrue from improving the existing clubhouse facilities, including those associated with car parking.

[465] Mr Patston's observations were echoed by Mr Michael and Ms Cairns.

[466] The benefits that would be delivered to the golf course and the community were also referred to in many of the submissions lodged in support of the development application.

[467] In addition, the traffic engineers agree that relocating the clubhouse would be a significant improvement over the current arrangement.

[468] I accept that these matters demonstrate that the proposed improvements to the golf course and its facilities are ones that are needed and amount to a material benefit to the community.

Conclusion regarding need

[469] Notwithstanding my findings about the need for the upgrade to the golf course and its clubhouse, for the reasons provided above, GTH Project No. 4 Pty Ltd has not persuaded me, to the requisite standard, that there is a need for the whole of the proposed development.

Key issue 7 – Does the new golf course clubhouse benefit the community?

[470] GTH Project No. 4 Pty Ltd contends that the proposed use will protect and enhance access to the golf course and make a valuable contribution to recreational facilities that are accessible to the community. It says that approval of the proposed development would result in the extensive improvements to the golf course. It says these are matters that benefit the community at large.

[471] I accept that this benefit is established on the evidence.

- [472] The unchallenged evidence of Mr Anthony Durkin, Mr Patston, Mr Michael, Ms Cairns, and Mr Peter O'Brien attest to how the proposed golf course improvements, particularly to the clubhouse, will enhance the economic, community and social functions of the golf course. This also will benefit the community.
- [473] Additionally, as already mentioned above, the traffic engineers agree that relocating the clubhouse would be a significant improvement over the current arrangements.
- [474] This community benefit is a matter that lends support to approval of the proposed seniors' living community and new golf course clubhouse.
- [475] The weight to be attributed to this issue is moderated to a degree by the evidence of Mr Blunden, an expert in golf course sustainability. Mr Blunden's evidence demonstrates that the Cooroy Golf Club is an attractive recreation option. It has a consistent rate of membership of around 400 people. In that respect, it draws a higher percentage of its members from the Cooroy locality than is the local government area average. Mr Blunden also confirmed that Cooroy Golf Club has increased the number of rounds of golf played each year, including visitor rounds.
- [476] Although Mr Blunden's evidence moderates the weight to be attributed to this public benefit, I still consider that the community benefit associated with improvements to the golf course, including by provision of a new golf course clubhouse, is a matter that lends weight to the case for approval.

Key issue 8 – Is the proposed development consistent with ShapingSEQ?

- [477] ShapingSEQ is a planning instrument that, like a planning scheme, reflects the public interest. At the time that the development application was properly made, ShapingSEQ was in effect. Shaping SEQ post-dates Noosa Plan 2006 and, as such, is not reflected in Noosa Plan 2006. ShapingSEQ is a matter that the Court must have regard to, to the extent that it is relevant to the proposed development.
- [478] GTH Project No. 4 Pty Ltd advances two reasons that consideration of ShapingSEQ supports approval.
- [479] First, GTH Project No. 4 Pty Ltd invites the Court to rely on Principle 6 for the Urban Footprint in ShapingSEQ. Principle 6 indicates that land may be considered for inclusion in the Urban Footprint where:
- (a) the land is physically suitable;
 - (b) its inclusion is either a logical explanation of an urban area or the land is of sufficient size to provide social and economic infrastructure efficiently;
 - (c) the land has ready access to services and employment;
 - (d) its inclusion will maximise the use of infrastructure;
 - (e) the land is separated appropriately from incompatible land uses;
 - (f) its inclusion will maintain the integrity of inter-urban breaks;
 - (g) the land does not include areas that have an unacceptable risk from natural hazards;

- (h) the land does not contain matters of national or state environmental significance or a regional biodiversity network, including koala habitat;
- (i) its inclusion will achieve an appropriate balance of urban development in the southeast Queensland region and sub-regions;
- (j) its inclusion will maintain a well-planned region of urban areas, towns and villages;
- (k) its inclusion will minimise impacts on natural resources;
- (l) its inclusion will avoid irrevocable impacts to important, sensitive natural environments in and outside the area; and
- (m) its inclusion will provide physical and social infrastructure efficiently.

[480] GTH Project No. 4 Pty Ltd submits that the subject land has all those attributes. It says that this is a matter of public interest that supports approval.

[481] I am not persuaded that inclusion of the subject land in the Urban Footprint minimises impacts on natural resources, particularly the water supply catchment for Lake Macdonald.

[482] In any event, even if GTH Project No. 4 Pty Ltd had established that the subject land has all those attributes that are considered appropriate for its inclusion in the Urban Footprint, this is not a compelling reason to approve development that does not accord with Noosa Plan 2006. Such a submission has not found favour in this Court in the past: *Stockland Development Pty Ltd v Sunshine Coast Regional Council & Ors* [2013] QPEC 79; [2014] QPELR 52, 61-2 [49]-[52]; *Silk Properties Australia Pty Ltd v Sunshine Coast Regional Council & Anor* [2020] QPEC 38; [2021] QPELR 493, 507 [41]. That is so for good reason. ShapingSEQ makes it clear that designation of land as part of the Urban Footprint does not necessarily indicate that it is appropriate for urban development. Land in the Urban Footprint may be unsuitable for urban purposes because of constraints such as flooding or scenic amenity: Exhibit 10.001 p 101.

[483] His Honour Judge Cash QC's observations in *Silk Properties Australia Pty Ltd v Sunshine Coast Regional Council & Anor* [2020] QPEC 38; [2021] QPELR 493 are apposite in this regard. In considering the relevance of the South East Queensland Regional Plan, His Honour observed at 507-8:

“[42] **That a proposed development finds support in the text of SEQRP may be considered a matter in favour of approval, but it does not override, or require to be ignored, the controls of a local planning scheme. It cannot be the case, and the appellant does not suggest that it is, that the location of land with the Urban Footprint is itself sufficient to permit urban development. Issues relating to infrastructure, character, amenity and other common planning issues will be relevant when deciding whether or not to approve a particular development proposal. These sorts of planning controls are usually, if not always, to be found in local planning schemes. The extent to which any proposed development complies with, or departs from, the Regional**

Plan or other relevant assessment benchmarks is to be weighed in the usual way, along with other relevant considerations, in order to decide if the development should be approved.”

(emphasis added, footnotes omitted)

- [484] The second reason GTH Project No. 4 Pty Ltd says that consideration of ShapingSEQ supports approval is on the basis that ShapingSEQ encourages proper utilisation of land in the Urban Footprint. GTH Project No. 4 Pty Ltd says that use of the subject land for rural, or even rural residential, purposes would be an underutilisation of it. In that respect, GTH Project No. 4 Pty Ltd relies on the subject land’s proximity to the major town in the Shire with services and facilities that are intended to service the town and hinterland community, its ability to efficiently accommodate urban growth needs, and its lack of suitability for rural uses.
- [485] Consideration of ShapingSEQ reveals that it emphasises the need to ensure the efficient use of urban land and the importance of accommodating the needs of the growing population of South-East Queensland. I accept the worthiness of such goals. That said, these are not the only statements in ShapingSEQ of relevance.
- [486] ShapingSEQ records that the Urban Footprint includes some areas that are designated or already developed for rural and rural residential purposes that are located near urban services and facilities. It explains that local governments must investigate these areas for urban redevelopment opportunities as part of their planning scheme reviews. Moreover, ShapingSEQ relies on local government planning schemes to determine the most suitable zone for each land parcel within the Urban Footprint. It anticipates that the development assessment process determines the extent and suitability of development on each site: Exhibit 10.001 p 101.
- [487] ShapingSEQ outlines goals, elements and strategies, which are central to achieving the regional policy outlined therein. These elements and strategies are to be implemented through local government planning schemes: Exhibit 10.001 p 36.
- [488] Goal 1 is that South East Queensland has a consolidated urban structure of well-planned and more complete communities, and housing choice and sufficient land to accommodate the projected population and employment growth in an affordable and sustainable way to meet the community’s changing lifestyle needs. With respect to that goal, element 5 indicates that rural towns and villages are to provide for sustainable growth in a way that reinforces local identity. ShapingSEQ provides a guide for minimum densities in and around centres but makes it clear that it is for local governments’ to determine the best outcomes for the locality. No minimum density is stipulated in ShapingSEQ for land around major rural activity centres. ShapingSEQ indicates that such areas are not intended to accommodate significant growth: Exhibit 10.001 p 44.
- [489] As I have mentioned, Noosa Plan 2006 preceded, and so did not appropriately reflect, ShapingSEQ. However, Noosa Plan 2020 records that the Minister for Planning has identified that Noosa Plan 2020 appropriately integrates all aspects of ShapingSEQ, including those goals, elements and strategies about sustainable growth in rural towns: Exhibit 6.002 p 11.

[490] As I have already identified in addressing key issue 4 above, Noosa Plan 2020 does not designate the subject land for development for urban purposes. To the contrary, it seeks to preclude the development of the subject land for urban purposes, placing it outside that scheme's defined urban boundary and in the Rural Residential and the Recreation and Open Space Zones. This has been endorsed by the Minister for Planning as consistent with ShapingSEQ.

[491] As such, although ShapingSEQ is relevant, it does not advance GTH Project No. 4 Pty Ltd's case any further than consideration of Noosa Plan 2020.

[492] For the reasons provided above, GTH Project No. 4 Pty Ltd has not persuaded me that consideration of ShapingSEQ lends material support to approval of the proposed development. That said, it also does not lend material support to the case against it. It does not advance the case either way.

Key issue 9 – Is there a community benefit associated with contributions to the upgrade of the intersection of Myall and Elm Streets?

[493] GTH Project No. 4 Pty Ltd submits that there is a clear community benefit associated with the contribution to the upgrade of the intersection of Myall and Elm Streets that is required by the Chief Executive's proposed conditions if the proposed development proceeds.

[494] I accept that this benefit is established on the evidence. The joint expert report of the civil engineers indicates that the "*wide median treatment*" upgrade to the intersection will cost more than \$700,000. The engineers agreed that the upgrade would "*more than ameliorate traffic impacts of the proposed development at the intersection*", which the Department of Transport and Main Road has otherwise been investigating for potential upgrades.

[495] This community benefit is a matter that lends support to approval of the proposed seniors' living community and new golf course clubhouse.

Key issue 10 – Is there an absence of unacceptable adverse amenity impacts?

[496] GTH Project No. 4 Pty Ltd contends that the fact that a demonstrated need would be met in the absence of any adverse amenity impacts, reverse or otherwise, is a matter that favours the exercise of discretion to approve the application.

[497] In an appropriate case, the absence of a negative impact or detrimental effect may be taken into account as a relevant matter: *Abeleda & Anor v Brisbane City Council & Anor* [2020] QCA 257; [2021] QPELR 1003, 1021 [61].

[498] As I have already found, there is an absence of adverse amenity impacts occasioned by the built form and density of the proposed seniors' living community. This is a matter that lends support to approval of the proposed seniors' living community and new golf course clubhouse. However, that must be balanced against the fact that such a result is achieved at the expense of the character of the locality.

Key issue 11 – Does the absence of evidence of support from the owner of the Cooroy golf course tell against approval?

- [499] The Council contends that GTH Project No. 4 Pty Ltd has failed to demonstrate that the owner of the Cooroy Golf Course will permit the proposed development to proceed. It says this is a relevant matter that tells against approval.
- [500] GTH Project No. 4 Pty Ltd disagrees. It says that the evidence of Mr Booth demonstrates that Cooroy Golf Club Inc. will permit the proposed development to proceed. In that respect, GTH Project No. 4 Pty Ltd observes that Mr Booth provides minutes from a recent meeting of the Cooroy Golf Club Inc. at which a resolution was passed indicating support for the proposed development. In addition, since that meeting, the Myall Street Agreement has been signed.
- [501] Having regard to that evidence, and the matters to which I have already referred in paragraph [320] above, I am satisfied that this is not a matter that tells against approval of the proposed seniors' living community and new golf course clubhouse.

Key issue 12 – Should the proposed use be approved in the exercise of the planning discretion?

- [502] The appropriate approach to the exercise of the planning discretion is identified in the cases referred to in paragraphs [117] and [118] above. Consideration of those cases reveals that it is well established that whether a development application is to be approved or refused is not necessarily determined by a finding of non-compliance with an assessment benchmark. The starting point generally remains that the planning scheme is taken to be an embodiment of the public interest. In most instances, where a planning scheme is not affected by changed circumstances, the decision-maker would give significant weight to it. Nevertheless, the *Planning Act 2016* affords flexibility for an assessment manager, or the Court on appeal, in deciding an impact assessable development application. The flexibility promulgated by the *Planning Act 2016* permits approval of a development application in the face of non-compliance with a planning scheme. This is because the decision can be informed by other relevant matters. Inherent in the decision-making process is a balancing exercise that is invariably complicated and multi-faceted. Although the exercise is to be based on the assessment carried out under s 45 of the *Planning Act 2016*, the way the balance is struck will turn on the facts and circumstances of each case. As aforementioned, this is informed by consideration of the verbiage of the planning scheme to appreciate the degree of importance that the planning scheme attaches to a particular requirement or planning policy.
- [503] GTH Project No. 4 Pty Ltd's case in support of approval is founded on three propositions. Each is fundamental to GTH Project No. 4 Pty Ltd's case for approval.
- [504] The first relates to the assessment of the proposed material change of use against Noosa Plan 2006. GTH Project No. 4 Pty Ltd's case is that:
- (a) the non-compliances are limited to those aspects of Noosa Plan 2006 that indicate that urban development is not to occur outside the urban growth boundary;
 - (b) the proposed use is compliant with those assessment benchmarks that relate to character impacts and water quality impacts; and

(c) to the extent that there are any non-compliances, they are without consequence.

[505] The second relates to Noosa Plan 2020. GTH Project No. 4 Pty Ltd says that it is the most contemporary planning instrument and is deserving of weight. It says that consideration of Noosa Plan 2020 lends support to approval.

[506] The third fundamental proposition on which GTH Project No. 4 Pty Ltd's case is founded is that there is an extremely strong need for the proposed seniors' living community.

[507] In addition to those three fundamental propositions, GTH Project No. 4 Pty Ltd advances a handful of other relevant matters that it says lend support to an approval of the development application for a material change of use.

[508] For the reasons already provided, I am satisfied that:

- (a) assessment of the proposed seniors' living community against the assessment benchmarks in Noosa Plan 2006 about general amenity impacts, building design and siting as they relate to the provision of landscaping, streetscape impacts and the appearance of bulk are not matters that tell against approval;
- (b) non-compliances with assessment benchmarks in Noosa Plan 2006 about density, site cover, gross floor area and plot ratio do not lend meaningful weight to the case against approval;
- (c) consideration of similar provisions in Noosa Plan 2020 to those referenced in paragraph [508](a) and [508](b) do not lend meaningful weight to the case against approval;
- (d) there is a need for further accommodation to support the ageing population of the locality. However, GTH Project No. 4 Pty Ltd has not satisfied me to the requisite standard that there is a need for such accommodation in the form of the proposed seniors' living community, let alone a strong need;
- (e) the benefit to the community provided by the proposed new golf course clubhouse lends weight to the case for approval;
- (f) consideration of ShapingSEQ does not lend material support to approval of the proposed development, nor does it lend material support to the case against it;
- (g) there is a community benefit associated with contributions to the upgrade of the intersection of Myall and Elm Streets, which is a matter that lends support to approval;
- (h) there is an absence of adverse amenity impacts occasioned by the built form and density of the proposed seniors' living community, which is a matter that lends support to approval; and
- (i) the alleged failure to demonstrate that the owner of the Cooroy Golf Course will permit the proposed development to proceed is not a matter that tells against approval.

[509] Despite that, GTH Project No. 4 Pty Ltd has not satisfied me, to the requisite standard, of any of its three fundamental propositions.

- [510] Having regard to my findings above, I am not persuaded that a combination of partial compliance with Noosa Plan 2006 and Noosa Plan 2020 alongside the matters supportive of approval provide a sound town planning basis to approve the proposed seniors' living community and new golf course clubhouse.
- [511] Considering all those issues raised for consideration in the appeal, I am of the view that it would be inappropriate for the Court to exercise the planning discretion to approve the proposed use. A decision to approve a material change of use for the seniors' living community would conflict with the formally expressed planning strategy to preclude urban development on the subject land. GTH Project No. 4 Pty Ltd has not demonstrated the policy to be unsoundly based or overtaken by events. The strategy is deserving of respect, and, in this case, it is entitled to be given its full force and effect.

Key issue 13 – Should the proposed reconfiguration of lots be approved?

- [512] As I identified in paragraph [62] above, there are two aspects to the proposed development. I have already dealt with the aspect of the development application that seeks a development permit for a material change of use. I now turn to assess that aspect that involves the application for a development permit for the reconfiguration of lots by way of boundary realignment, amalgamation and creation of an access easement.
- [513] This aspect of the proposed development requires code assessment. As such, it must be assessed in the manner identified in paragraphs [106] to [110] and [113] to [116] above. As I have identified in those paragraphs:
- (a) I must approve the proposed reconfiguration to the extent it complies with all the assessment benchmarks; and
 - (b) to the extent that the proposed reconfiguration of lots does not comply with all or some of the assessment benchmarks, I may decide to refuse the application for the reconfiguration of lots only if compliance cannot be achieved by the imposition of development conditions.
- [514] Despite these statutory limitations on me, in oral submissions Mr Job KC said:
- “Can I indicate just in terms of the reconfiguration component - - -
- that that’s very much tied to the MCU. So, accordingly, we can indicate to your Honour that should your Honour determine to refuse the MCU components, GTH won’t press the reconfig.”
- [515] When I expressed concern about how that position accords with the statutory limitations and fits within the legal framework, Mr Job KC continued to urge me to refuse that aspect of the development application that requires code assessment.
- [516] I gave GTH Project No. 4 Pty Ltd an opportunity to provide further written submissions on this issue. Those written submissions did not address my abovementioned concern.
- [517] Assistance on that issue was only provided by GTH Project No. 4 Pty Ltd, through its counsel Mr Batty, later when I again called the parties back. With the benefit of the assistance provided by Mr Batty and Counsel for the Council, I accept that it is

necessary for me to undertake an assessment of the reconfiguration of a lot component even though I have determined that the part of the application that sought a development permit for a material change of use should be refused. That said, given the lack of interest in this aspect of the development application expressed by GTH Project No. 4 Pty Ltd through its Counsel Mr Job KC, this matter can be disposed of in short measure.

- [518] I describe the details of the proposed reconfiguration of lots in paragraphs [64] to [66] above. This reconfiguration is to be assessed against the applicable assessment benchmarks in the Cooroy & Lake Macdonald Locality Code and the Reconfiguration of a Lot Code in Noosa Plan 2006.
- [519] It is readily apparent from the details of the proposed reconfiguration of lots that the reconfiguration is sought to facilitate the end use of proposed lot 4 for the proposed seniors' living community. This was confirmed by Mr Job KC for GTH Project No. 4 Pty Ltd in final submissions. As would be apparent from my reasons above, I have found that the proposed seniors' living community is an inappropriate use of the subject land and should be refused. These are relevant considerations when assessing this aspect of the development application as the overall outcome in s 14.181.2 a) of the Reconfiguring a Lot Code requires that any reconfiguring of lots results in lot sizes and dimensions that are appropriate for their intended use.
- [520] In those circumstances, it seems to me that the best outcome that GTH Project No. 4 Pty Ltd could achieve with respect to its proposed reconfiguration of lots is a preliminary approval, rather than a development permit: see s 60(5) of the *Planning Act 2016*. Any such preliminary approval would also appropriately be subject to a condition that the reconfiguration of lots is not to proceed until the proposed material change of use is authorised by a development permit or otherwise becomes lawful. It would also be appropriate that any such preliminary approval be subject to the conditions that are now proposed by the Chief Executive and that the matter be remitted to the Council with directions that it is to give a decision notice to that effect, coupled with any additional lawful conditions that it considered appropriate: see s 47(1)(c)(ii) of the *Planning and Environment Court Act 2016*.
- [521] That said, GTH Project No. 4 Pty Ltd has not persuaded me that even a limited approval in those terms is appropriate. It has not discharged its onus with respect to the issues in dispute that relate to this aspect of its development application.
- [522] Relevantly, in that respect, the Council contends that in Noosa Plan 2006, the proposed reconfiguration does not comply with:
- (a) the overall outcomes in ss 6.7.2 c), f), r), s) ii and iii, y), cc), gg), rr) ii, and specific outcomes O6, O7, O8, O9, O80, O86, and O88 of the Cooroy & Lake Macdonald Locality Code; and
 - (b) the overall outcomes in ss 14.181.2 g) and l) and specific outcome O23 in Table 14-66 of the Reconfiguring a Lot Code.
- [523] I have already set out the assessment benchmarks from the Cooroy & Lake Macdonald Locality Code above: see paragraphs [132], [133], [213], [214] and [293] above.

[524] The overall outcomes in ss 14.181.2 g) and l) of the Reconfiguring a Lot Code state:

“14.181.2 The overall outcomes sought by the Reconfiguring a Lot Code are to ensure that any reconfiguring of lots results in—

- g) lots that avoid significant adverse effects on the natural environment and landscape and minimise the risk of hazards for people and property;
- l) residential development which is consistent with the developed character of its particular neighbourhood.”

[525] Specific outcome O23 in Table 14-66 of the Reconfiguring a Lot Code states:

“**O23** Buildings and other structures do not have a significant adverse impact upon the visual amenity of surrounding areas.”

[526] It is unnecessary to deal with each of these assessment benchmarks to dispose of this part of the development application. It is sufficient to observe that GTH Project No. 4 Pty Ltd has not persuaded me, to the requisite standard, that the proposed reconfiguration of a lot complies with the overall outcome in ss 14.181.2 g) of the Reconfiguring a Lot Code. That is so for two reasons.

[527] First, it seems to me, on the balance of probabilities, that if the proposed reconfiguration of lots was to proceed, it would necessitate earthworks on the subject land to alter the golf course. This would be necessary to ensure that the golf course did not protrude into proposed lot 4. Given such earthworks would be on land in the catchment of Lake Macdonald, and having regard to the earthworks plans in Exhibit 7.021 and the water quality evidence referred to above, I am not satisfied that the proposed reconfiguring of lots would result in lots that avoid significant adverse effects on the natural environment and landscape.

[528] Second, the proposed reconfiguration of lots would result in the bioretention basins that are necessary to treat water quality associated with the proposed seniors’ living community being located on a separate title. I have explained my concerns in this regard already.

[529] Having regard to each of those reasons, considered individually, GTH Project No. 4 Pty Ltd has not persuaded me that the proposed reconfiguration will result in lots that avoid significant adverse effects on the natural environment and landscape, nor that compliance could be achieved by way of conditions. This issue alone warrants refusal of the proposed reconfiguration.

Conclusion

[530] I order that the appeal be dismissed. The development application for a development permit for making a material change of use and reconfiguration of lots is refused.