

# Focus on conditions appeals

## An interesting Planning and Environment Court decision

The recent *Parklands Blue Metal v Sunshine Coast Regional Council and Ors* [2017] QPEC 35 judgment highlights some interesting aspects of the Court's powers and discretion to impose conditions on a development approval. The background to the appeal was that the developer of a proposed hard rock quarry had successfully won approval in a major merits appeal against its refusal by the Council. The Court was then asked to consider a dispute as to the condition of approval to be imposed some years after that hearing. That conditions determination was itself a substantial hearing lasting six days.

Conditions can be critical to the viability of a project. A conditions hearing can be where a general commitment given by a developer at a merits hearing is translated into a specific obligation where the extent and cost of gaining an approval is made clear.

The *Parklands* judgment is an interesting judgment which explores both the limits of the power to impose conditions and provides an example of the exercise of the Court's discretion. It is particularly notable for determining in the circumstances of that case:

1. that extensive road upgrade works were required *before* the use commenced to accommodate construction traffic to be provided entirely at the developer's cost; and
2. that even after acceptance of the road upgrade works on maintenance by the Council, the developer was responsible for significant ongoing maintenance of the road for the life of the project.

In the course of making its findings, the Court appeared to be influenced by the way in which the case was conducted for the merits hearing, at which the developer did not make sufficiently clear that it proposed to generate substantial heavy vehicle movements in the construction phase of the project without first having completed the road upgrades. In the circumstances where there was, the Court found, an impact on traffic safety and amenity likely to arise, the Court did not allow the developer to go behind its position at the merits hearing.

An understanding of the decision may be helpful for anyone involved in formulating or negotiating conditions of approval/changes to approvals.



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