Submission

The Argument

Development Assessment

The Subject Development

Conditions Commentary

The Argument

Subdivision of land

The lawful subdivision of land in Australia commenced in 1792 when Governor Arthur Phillip awarded land grants, in the new colony to emancipists, free settlers, and non-commissioned Marine Officers.[1]

This land was granted under English law which can be traced back to first recorded practice of formally subdividing land in England in 604 A.D[2].

However, under common law in 1792, the transfer of ownership of land was required to be recorded with the civil authority, equivalent of our current titles office. Outside of that there were no restrictions or requirements to first seek someone else's approval.

The first Australian legislation requiring **approval to transfer** land was in Western Australia's Transfer of Land Act of 1893[3]

It wasn't until 1919 that the first Australian legislation *Local Government Act 1919* in New South Wales dictated the **size of land** that could be separated from an existing titled parcel[4]. Management of this legislation was placed exclusively within the preserve of local governments.

That system was adopted also by Queensland

The Queensland Subdivision of land Process 2025

Overview

In Queensland, the *Land Title Act 1994* (LTA94) requires that a person wishing to subdivide their freehold land, must lodge with the Registrar of the Land Title Office [Now Queensland Titles - since 2021] a *plan of subdivision* in order to have an independent title issued for each subdivide of the parcel of land[5].

In order to complete the registration, process, the *plan of subdivision* when lodged, must comply with a number of criteria[6]

[1] Museums of History NSW [Ref]
[2] English land law [Ref]
[3] Austlii.edu.au [Ref]
[4] State Library NSW [Ref]
[5] LTA94- Section 52
[6] LTA94- Section 50

The relevant requirement for this matter is, that a *plan of subdivision* must be approved by the *relevant planning body*,[7] and in this case that is the local government[8] for the area in which the land is located.

In order to obtain that approval, the applicant seeking lodgement for registration of a *plan of subdivision,* with Queensland Titles, is required under 'the *Planning Act 2016* (PA16) to first lodge with the local government, as *assessment manager*, an application to subdivide their land[9](DA).

This is classified as a '*development'* under PA16, for the purposes of *reconfiguring a lot*[10]**(**RAL)

Local governments, under their *local categorising instrument* (planning schemes), provided for by PA16[11], are required to follow an *assessment* process, of the DA, in accordance with the provision of PA16 - Chapter 3.

When a local government is *satisfied* this process is complete, it will assign their approval to the *plan of subdivision*.[12]

Satisfied entails:

- Compliance with the provisions of PA16.
- Payment of money to the local governments, determined to be relevant in gaining approval.

However, it would be rare that, as a consequence of achieving compliance for a RAL, there were no other requirements, set by *assessment benchmarks* under PA16, to undertake work that is the subject of other *development approvals.*

For example:

- *Operational Works* -required civil construction;
- *Plumbing and Drainage* works- water and sewerage; and in some cases
- *Building Works* – buildings and structures

The historic practice was (now supported by Schedule 18 of Planning Regulations 2017) [PR17] that a local authority will reframe from endorsing the *plan of subdivision* until **all other** associated development approvals and local requirements are also complied with.

Prior to the introduction of the *Integrated Planning Act* in 1997 with its IDAS system, it was not possible to have an all-encompassing *development application,* to cover more than one approval process and each development type required its own application, assessment and permitting process.

[7] LTA94- Section 50(h)
[8] LTA94- Section 50(6)
[9] PA16- Section 50
[10] PA16- Schedule 2
[11] PA16- Section 43(3)
[12] PR17- Schedule 18

Since 1997 however, applicants have had the **option** of:

- applying for approval of a single development, one at a time, if desired; or
- amalgamate all required developments into the one single DA.[13]

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Development Assessment

Overview

The overarching legislation for development assessment in Queensland is PA16.

Section 3(1) of PA16 announces the purpose of the Act is to establish, amongst other things, an efficient, effective, transparent, integrated, coordinated, and accountable system of *development assessment* to facilitates the achievement of *ecological sustainability.*

Ecological sustainability is defined in Section 3(2) of PA16 as a balancing act and detailed in Section 3(3) a list all the forces that comprise the components in the balance, including Climate Change.

Section 4 of PA16 details the SYSTEM to achieve *ecological sustainability*

Subsection 4(f) provides that, the development assessment system, [including that provided by the State Assessment and Referral Agency (SARA) and defined in Chapter 3 of PA16], is to be used to make and decide development applications, to establishing rights and responsibilities in relation to development approvals and to promote cost effective provisioning of infrastructure, to ensure developments via the hierarchy of *planning instruments*[14], achieve the overarching requirements of **ecological sustainability.**

Section 5 of PA16 deals with *advancing the purposes of the Act.* Subsection 5(1) makes it mandatory on entities (including *assessment managers*) in 'performing a function under the Act' to perform that function in way that advances *Ecological Sustainability.* Keep this in mind, this is important.

Development Assessment System.

Chapter 3 of PA16 (Sections 43 to 109) details the *Development Assessment System.*

Section 43 of Chapter 3 introduces *categorising instrument* and defines their scope of authority and application to: —

(i) categorising **development**; and then

(ii) categorising **types of assessment** for particular development; and then

[13] Link to Form 1

[14] PA16- Section 8

(iii) prescribing the **processes** for assessment (making, receiving, assessing and deciding) for development applications; PLUS

(iv) establishing

- rights and
- responsibilities

in relation to development approvals.

Section 45 of PA16 provides, amongst other things, that for developments, which are *assessable* under PA16, there are two types (categories) of assessment processes, relevant to assessing a DA. - **CODE** or IMPACT

These two different types of assessment have their own individual scope for the assessment process.[15]

While **IMPACT** assessment of a DA is carried out against

1. the relevant *assessment benchmarks* that are assigned to a particular type of development, under particular circumstances, by a *categorising instrument* (Regulation and or Planning Schemes) PLUS
2. having regard to any matters prescribed by regulation for the DA **AND**
3. may be carried out against, or having regard to **any other** '⁎**relevant matter'** - other than a person's personal circumstances.[16]

⁎A relevant matter has a very wide scope.

CODE assessment however, on the other hand, is a much more constrained process and must be carried out, **ONLY**

1. against an *assessment benchmark;* and

2. having regard for a matter prescribed by regulation, relevant to CODE assessment.[17]

And most poignantly, provides that when carrying out CODE assessment, the *assessment manager* is **not** to apply the **purpose** of PA16, called up by 'subsection 5(1) of the Act'[18]. (See above)

Examples of *assessment benchmarks* for CODE assessable DA's are—

- a **code**; or
- a **standard**; or
- an **expression of the intent** for
    - a zone or

[15] PA16- Section 45
[16] PA16- Section 45(5)
[17] PA16- Section 45(3)
[18] PA16- Section 45(4)

- precinct
- overlay

within a *local categorising instrument*

Assessment Benchmarks

Assessment benchmarks form the backbone of the assessment process. They provide published performance content, against which the DA is be assessed, to determine achievement, required in order to obtain an approval of a development application.

Inherent in the term "benchmark" is the idea of measurement, which is central to ***performance-based development assessment****. A benchmark is a "ruler", or "gauge" against which proposed development is measured to test its "performance" or compliance.*[19]

Section 43(2) of PA16 provides that an *assessment benchmark* **does not** include

- a person's opinion; or
- a person's circumstances; or

for **CODE** assessment— an *assessment benchmark* is **not** to include:

- a strategic outcome (defined by PA16(1)(a);[20]) or
- a matter prescribed by regulation.

Assessing Development Applications

An *assessment manager* for a DA is selected by PR17.[21] If PR17 does not identify an *assessment manager* for a particular DA then the Minister may[22]

An *assessment manager* for both CODE and IMPACT assessments is to assess the development application against or having regard to the **relevant**

- statutory instruments; or
- other document within or applied by, a statutory instrument.

at the date the development application was *properly made***.**

But the assessment manager can, before it is decided the DA, also take into consideration, the appropriateness and relevant, in the circumstances, of the latest version of the statutory instrument or document, or a new statutory instrument, if it has come into effect, before the DA is decided[23].

[19] Explanatory Notes-Planning Bill 2015 (P5)
[20] PA16 (1)(a)
[21] PA16 Section 48(1)
[22] PA16 Section 48(6)
[23] PA16 Section 45(6)

Referral agency's assessment

A referral agency is selected by regulation or under certain circumstances, the Minister[24]

If a referral agency is selected by the Minister, certain conditions may apply, otherwise, a referral agency must assess a DA as required by the regulation.

The regulation may prescribe the matters for assessment, the selected referral agency:

1. may,
2. must, or
3. must **only**

assess a development application

a. against and
b. have **regard** to[25]**.**

The referral agency **must** assess the development application 'against or having regard to' the prescribed matters, as in effect when the development application was properly made, unless, before the agency delivers its advice, a change in or a new relevant statutory instrument come into effect, then the referral agency may, in the agency's advice, if appropriate in the circumstances, give weight to this new information.[26]

Deciding development applications

For a properly made application the *assessment manager* for a DA that requires **CODE** assessment, (after- if relevant, receiving advice from a referral agency), carry's out the assessment and

(1) Must, if the development complies with all of the assessment benchmarks, -approve the application; or
(2) May, if the development does not comply with some of the assessment benchmarks, - still approve the application despite the lacking full compliance; or
(3) May, refuse the application, **but only** if compliance cannot be achieved by imposing *development conditions.*

All *development conditions* however must meet the test set by Section 65 of PA16.

[24] PA16 Section 54(2)
[25] PA16 Section 55(2)
[26] PA16 Section 55(5)

However, by comparison, for a DA that requires **IMPACT** assessment, the assessment manager has much more flexibility and wider scope and may decide to—

1. approve the application; with or without conditions;
2. approve part of the application; with or without conditions or
3. refuse the application.
4. give a preliminary approval for all or part of the development application and refuse the part without preliminary approval

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The Subject Development

Development application RAL 21 – 0138 (DA21) is for a development for ***Reconfiguring a Lot*** for the freehold parcel of land described as Lot 51 MCH 567. (Subject Site)

The development, *reconfiguring a lot* (RAL), means, amongst other things, creating new lots by subdividing an existing title for a lot. A process involving a term "*plan of subdivision*" under the *Land Act 1994* and *Land Title Act 1994*;

For DA21, under PR17:

Schedule 8 Table 2:

- 'The local government' is ***assessment manager***; and for

Schedule 10 Part 14:

- Section 21 – is ***assessable*** *development*; and
- Table1- is **Code** *assessable*

The *Subject Site* is partly affected by:

1. An *erosion prone area* located within the *coastal management district* of the *coastal zone* declared under the *Coastal Protection and Management Act 1995*; and
    (a) PR17 Schedule 10 Part 17 Table 5 identified SARA as a ***referral agency*** for DA21; and
        (i) The *assessment benchmark* as - ***State code 8****: Coastal development and tidal works*- and
2. A, *Great Barrier Reef wetland protection area* (wetland protection area – **triggers)** declared under the *Environmental Protection Regulation 2019;* and
    (a) PR17 Schedule 10 Part 20 identified SARA as a **referral agency** for DA21; and
        (i) The *assessment benchmark* as - ***State code 9****: Great Barrier Reef wetland protection areas* -

PR17 **does not** assign any other *assessment benchmarks* for DA21.

Under the Fraser Coast Regional Council's (FCRC) *local categorising instrument,* (Planning Scheme) DA21 is also:

- **assessable** development; and
- **Code** assessable.

Part 5 of the planning scheme determines for DA21 four (**4**) *assessment benchmarks*

1. Applicable local plan code
2. The zone code = **Low Density Residential**
3. The **Reconfiguring** a lot code
4. The **Transport** and **parking** code

There is **no Local Plan** for the Subject Site. - so that code is not in play. and

Provides the following *overlays* are relevant to DA21.

1 OM-001 Acid Sulfate Soils
At or below 5 metres
2 OM-002 Agriculture Land
Class B - Limited crop
3 OM-004 (W) Biodiversity Areas
Local wetland buffer
4 OM-005 Bushfire Hazard
Bushfire hazard potential impact buffer
Bushfire prone area
Medium bushfire hazard area
5 OM-006 Coastal Protection
Coastal management district
Erosion prone area
Medium hazard storm tide

Referral

DA21 is subject to referral.

Development details	
Description:	Development Permit Reconfiguring a Lot – 1 Lot into 5 Lots
SARA role:	Referral Agency
SARA trigger:	Schedule 10, Part 17, Division 3, Table 5, Item 1 (Planning Regulation 2017)- Reconfiguring a lot in a coastal management district - (A) Schedule 10, Part 29, Division 4, Table 2, Item 1 (Planning Regulation 2017) -Reconfiguring a lot in a wetland protection area - (B)
SARA reference:	2112-26497 SRA

Assessment benchmarks:	A. State Code 8: Coastal development and tidal works B. State Code 9: Great Barrier Reef wetland protection areas

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Conditions Commentary

Preamble

For a development application that requires **code** assessment, the assessment manager and *Referral Agencies* must assess the development against **only** the relevant *assessment benchmarks* or part thereof, for that developmental circumstance[27] and must approve the development, even if it does not comply with some or even all of the requirements of an assessment benchmark, if **compliance** with the assessment benchmark can be achieved by imposing a development condition[28], unless refusal is a condition of a referral (concurrence) agency's advice[29]

The sole purpose of a development conditions for code assessment development is to meet compliance with an assessment benchmark for that development.

There is no facility available under PA16 for an assessment manager or a referral agency when assessing **Code** assessable development to require a condition on a development approval that is not exclusively for the purpose of achieving compliance with an assigned *assessment benchmark.*

Development conditions are legal documents and should be crafted with all the skill and care of legally binding contracts, while at the same time, avoid extraneous material such as, replicating existing lawful obligations and free of the need for explanatory notes, in order to assist interpretation of the requirement of particular circumstances.

Advice can always be incorporated into a **special section**, appropriately label to that effect, within the decision notice that clearly indicates they **are not** development conditions **or** preferably as a separate document attached to the decision notice.

Background

6 December 2021 - The Assessment Manager (FCRC) received development application DA21 which included in its 'common material' a planning report (PR21) from the Appellant's consultant planner. SARA as referral (concurrence) agency was provided with a copy of DA21

13 December 2021 - FCRC issued their *Confirmation Notice.*

[27] PA16-S45(3)
[28] PA16-S60(2)
[29] PA16 -S56(1)

14 December 2021 - FCRC and the Appellant agreed to extend the period of time for FCRC to make an information request to 14 January 2022.

20 December 2021 - SARA issued their *Confirmation Notice*

7 January 2022 - SARA issued an *Information Request.* (SIR)

13 January 2022 - FCRC issued an *Information Request.* (CIR)

20 June 2024 - The Appellant's consultant planner, responded to the SIR and CIR by providing material to FCRC - with a copy to SARA. [IR24]

The material provided, included:

- A report from *Stormwater Consulting*, specialist in stormwater engineering, including hydrology and hydraulic. (SCR24)
- Advice from *International Coastal Management*, specialists in coastal engineering (ICM24)
- Supporting Planning Report from consultant planner Urban Planet (PR24A)

9 July 2024 SARA raised an issue, in an *Advice Notice,* regarding *Operational Works,* identified in SCR24, related to a stormwater drainage design, located within the forestry reserve.

3 September 2024 - Appellant **submits** changes to DA21 (DA24)

The material provided, included:

- A report from the Appellant's consultant planner Urban Planet (PR24B) demonstrating the matter relevant to the *Advice Notice,* was now redundant.
- Amended layout plan reducing the lot yield from 18 down to 5. (APD24)

9 September 2024 - FCRC submits DA24 to SARA.

17 September 2024- Project Manager contact SARA-Re delays.

24 September 2024 – SARA responds - Request more storm water information.

24 September 2024 – Project Manager responds - Providing information.

29 September 2024 - Project Manager contact SARA-Re Response to information.

1 October 2024 - Project Manager contact SARA-Re change of officers.

3 October 2024 – SARA Responds-Seeking response to *Advice Notice* (SAN24).

4 October 2024 - Project Manager responds -Re confusion.

8 October 2024 – SARA Responds to consultant planner - Re *High Impact Earthworks.*

10 October 2024 - Project Manager responds- SARA Refuses to negotiate with Project Manager.

17 October 2024 -SARA issues *Referral Agency Response* to *assessment manager* (RAR1).

23 October 2024 -Appellant makes 1st representation to SARA.

30 October 2024 -SARA responds. -Seeking further information.

31 October 2024 --Appellant makes 2nd representation to SARA.

14 November 2024 -SARA responds with *Draft* - deleting conditions 2, 7 and 9.

15 November 2024 -Appellant makes 3rd representation to SARA

18 November 2024 -SARA responds. – retaining deleting conditions 2, 7, reinstating condition 9.

21 November 2024 -SARA issues amended *Referral Agency Response* to assessment manager. (RAR2)

2 December 2024 -. Project Manager seeks advice - Re issue of *Decision Notice*-FCRC responds advising it is due on 6 December 2025.

6 January 2025 - Project Manager seeks advice - Re issue of *Decision Notice* extended to the 13 December 2025 - FCRC responds - Decision notice to be issued that week.

10 January 2025- FCRC sent draft of *Recommended Condition* to Appellant.

13 January 2025 - Project Manager responds -Raising issues.

15 January 2025 - Project Manager submits 'Submission' - Request advice.

28 January 2025 - Project Manager seeks update - FCRC responds – will chase up!

29 January 2025 - Project Manager provides draft of acceptable conditions.

3 February 2025 - Project Manager seek update on *Decision Notice.*

5 February 2025 - Project Manager seek update- FCRC responds Decision Notice to be issued 13 February 2025

12 February 2025 - Project Manager seek meeting - Meeting arranged for 18 February 2025.

17 February 2025 - Project Manager submits material relevant to meeting discussions - FCRC Responds - Executive Manager advising that there is no area for negotiation on the issues raised- Proposes cancelling meeting - Project Manager accepts that suggestion but advises that this will result in the matter ending up in court.

21 February 2025 – FCRC issued *Decision Notice* (DN25) and *Infrastructure Charges Notice* number 5138178 (ICN25)

The Process

The appeal centres on 3 aspects of conditions set out in the decision notice.

1. The **correct determination** of relevant *assessment benchmark*; and
2. The **correct application** of condition; and
3. The **relevancy** of conditions.

Assessment Benchmark

The position of the Appellant is that the correct *assessment benchmark* is one that is identified by a *categorising instrument* (regulation or planning scheme) for the development that is the subject of the application.

The correct application of that *assessment benchmark* is that it sets the **only standard** against which the development, that is **Code** assessable, is to be assessed.

An *Assessment benchmarks* can cite in their *Acceptable Outcomes* provisions extraneous material that can be used to assist in the **interpretation** of a provision within an *assessment benchmark* but this extraneous material does not of itself form part of the *assessment benchmark*.[30]

When relying on extraneous material to assist in determine compliance with a requirement in an *assessment benchmark*, it is critical that the process of determination is not as a consequence of a **personal opinion.**

Correct Application of Condition

The position of the Appellant is that the correct interpretation of:

1. **Section 60** of PA16, is that an *assessment manager* may **only** attach a condition to a development approval in order to achieve **compliance** with the requirement of a designated *assessment benchmarks;* and
2. **Section 45** of PA16 provides exactly how, for **Code** assessable DAs, those *assessment benchmarks* are chosen; and
3. **Section 43** of PA16 provides the constraints, to which, in the *assessment process*, an *assessment benchmark* can be stretched or embellished.

Conditions that offend these 3 premises cannot be lawfully applied because they are either:

- not *reasonably required;* or
- demonstrably unreasonable.

The issue with the **37** conditions cited in the Notice of Appeal can best be categorised as follows

[30] Exp Notes – Act-(P51)

There are:

1. **26** lack support from documentation in an *assessment benchmark,* called up for *Reconfiguration of a Lot* - The subject of DA24.

   As such, these 26 merely comprise either:

   - **advice** about matters, not the subject of a relevant *assessment benchmark*; and or
   - **replicate** existing lawful requirements, under relevant pieces of legislation, for which the development is, or will, in its performance, already be required to comply.

2. Of the **remaining 11 -**
   - **2** seek to place condition denying existing lawful rights
   - **2** seem to lack any lawful bases at all; and
   - **7** are lawful condition which the Appellant seek to challenge their appropriateness

The conditions which the Appellant:

A. claims are **not relevant** and therefore not reasonably required, are:
   a. SARA
      Conditions:1, 4, 5, 6, and 8.
   b. Assessment manager
      Conditions: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 17, 18, 21, 23, 24, and 25;

B. claims are denying **existing law rights** and therefore not reasonable, are:
   a. SARA
      Conditions:1, and 8

C. wishes to test the veracity of are:
   a. SARA
      Conditions:1, 8 and 9(b);
   b. Assessment manager
      Conditions:11, 12, 13, 16, 19, 20, 22, 26 and 27

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Assessment Manager's - Conditions

Condition 1

Carry out the development in accordance with the approved plans unless otherwise approved in writing by the Assessment Manager.

An applicant for the development permit, will commit an offence under section 164 of PA16, if the applicant does not *Carry out the development in accordance with* a

development permit which under Section 49(3) includes the material stated in the *decision notice*.

This condition does not constitute a 'condition' in terms of Section 60 of PA16 but is simply gratuitous advice provided by the assessment manager as to the Appellant's regulatory obligations, and as such may be provides -but not as a statutory condition of approval and therefore is not *reasonably required* [PA16-S65(1)(b)].

Condition 2

Meet the costs of all works associated with this development including any necessary alteration or relocation of services, provision of upgrading of roadworks to accommodate all vehicular access works together with all public utility mains and/or installations

PA16 does not require any organisation, including a local government, to provide funding for private development. This condition most probably reflects a fiscal policy of the 'Fraser Coast Regional Council'.

This condition does not constitute a 'condition' in terms of section 60 of PA16 but is simply gratuitous advice, provided by the *assessment manager*, possibly in relation affirming FCRC position and as such may be provides - but not as a statutory condition of approval and therefore, is not *reasonably required* [PA16-S65(1)(b)]

Condition 3

All works associated with this development must be accepted by Council as being 'on maintenance' prior to the approval of the subdivision plan unless approved otherwise by Assessment Manager.

The approval of a *plan of subdivision* is a statutory requirement under the *Land Titles Act 1994* which provides Council with a great deal of power in controlling the process for changing land titles.

Although that power is possibly somewhat constrained down to that prescribed by Schedule 18 of PR17, that Schedule provide the authority that the "…*development must be accepted by Council"*

In fact, this advice information is currently incorporated into FCRC's request for approval of plan of subdivision form. This form is required to be used when submitting a request for approval under Schedule 18 of PR17 and supported by further information, on the process, on Council website.

This condition does not constitute a 'condition' in terms of section 60 of PA16 but is simply gratuitous advice, provided by the assessment manager, as to the other regulatory authority that FCRC may further exercise, -but not as a statutory condition of approval and therefore, is not *reasonably required* [PA16-S65(1)(b)]

Condition 4

Pay any outstanding rates and charges due to Council.

See response - Condition 3

Condition 5

Submit to Council, a plan identifying the locations of all buildings, services, structures, water bodies/dams, effluent disposal areas and other improvements on the land in relation to the proposed new and existing boundaries and the distances there from.

The plan must contain the following certification duly completed by the surveyor:-

The *Surveyors Act 2003* outlines professional conduct and the standards for surveyors, which include ensuring that the information they provide is accurate and reliable. The certification of the accuracy of the plan and the requirement to produce a survey plan that comply with Council's approved conditions is already covered with these professional regulatory standards.

Plus, the *Survey and Mapping Infrastructure Act 2003* covers survey standards, guidelines, and the obligations of surveyors, including the placement of permanent survey marks and the provision of accurate site information regarding land boundaries and services even encroachments on Survey Plans. The obligation to identify buildings, services, and structures and to certify the accuracy of location is performance that fits within these existing obligations.

Overall, the obligation described in Condition 5 reflect the professional standards and obligations already existing and as outlined in both Acts.

Further, on advice from the consultant surveyor, in reference to the required wording for this Condition 5, he has advised that he would be unable to include that wording on the Survey Plan, because of the strict requirements for what information is to be recorded on that document, set down by the Titles Office and the legislation governing their operation.

Therefore, this condition does not constitute a 'condition' in terms of section 60 of PA16 it could be accepted as simply gratuitous advice provided by the assessment manager as to regulatory requirement placed on surveyors.

Except, as a development condition, it statutorily makes the Appellant responsibility for the professional performance of a person, a member of a registered profession and seek to require the Appellant, apparently, to supervision performance of registered surveyors including the production of documentation.

This is inappropriate as statutory development condition and as such is not *reasonably required* [PA16-S65(1)(b)]

Condition 6

Submit a Subdivision Plan Compliance Report and supporting documentation to Council demonstrating compliance with each condition of this approval.

A search of FCRC's website for the term "*Subdivision Plan Compliance Report*" returned a 'nil' response.

Further, on FCRC's website page ***Approval of Plan of Subdivision*** which provides guidance in relation to the approval of the plan of subdivision the term is similarly not sighted.

The closest document that can be found on FCRC's website using this criterion is a document titled *Request for Approval of Plan of Subdivision* form and the closest terminology in the form is, a *Compliance Report,* which is said is needed, to be able to achieve demonstration of compliance, with each condition of approval.

The current form which although it states, is accurate as of **August 2024,** does not reflect the circumstances currently in place for ***electronic lodgement*** of the survey plans.

However, even if Council had provided information as to what constitutes a "*Subdivision Plan Compliance Report*" It would still would not constitute a 'condition' in terms of section 60 of PA16, but is simply gratuitous advice, provided by the *assessment manager* as to administrative matters and as such may be provides - but not as a statutory condition of approval and therefore, is not *reasonably required* [PA16-S65(1)(b)]

Condition 7

All new lot boundaries must be set out and surveyed by a Cadastral Surveyor and identified by pegs marked with lot numbers as identified on the approved plan

See Response Condition 5

Condition 8

Submit an Operational Works application to Council

This condition does not constitute a 'condition' in terms of section 60 of PA16 but is simply gratuitous advice provided by the assessment manager as to a process to be undertaken in gaining cascading approvals.

As such, advice like this, maybe if thought necessary, and out of concern for an Appellants lack of competence to have discovered, on page 2 of the decision notice, under the heading **FURTHER DEVELOPMENT PERMITS,** the advice that an *Operational Works* development permit is required.

Or perhaps the assessment manager may have been of the belief that the Appellant might not know that to get a development permit, one has to lodge a development application to Council.

However -be that as it may, this not a required statutory condition of approval therefore, is not *reasonably required* [PA16-S65(1)(b)]

Condition 9

Prepare and submit to Council in conjunction with an Operational Works application a Construction and Environmental Management Plan (CEMP) for the development in accordance with the ***Planning Scheme Policy for Development Works SC6.3.***

This condition would constitute a statutory *information request* in terms of Part 3 of the Development Assessment Rules - Version 2.0 of PA16 (if the Appellant had indicated their responsiveness to accept such a process) and the DA lodged was for *Operational Works*, and the DA did not contain the required documentation to complete the assessment.

Outside of the that, this is simply gratuitous advice provided by the assessment manager, as to administrative process for a DA for *Operational Works.*

As such FCRC may provide such advice -but not as a statutory condition of approval and therefore, is not *reasonably required* [PA16-S65(1)(b)]

Condition 10

Submit to Council as part of an Operational Works application, a Site-Specific Erosion and Sediment Control Plan.

This Plan must be designed in accordance with ***Planning Scheme Policy for Development Works SC6.3****, and the* ***International Erosion Control Association (Australasia) Best Practice Erosion and Sediment Control Guidelines (Current Edition).***

See response – Condition 9

Condition 11

Design the stormwater drainage such that no restriction to existing or developed stormwater flow from upstream properties or ponding of stormwater within upstream properties, including road reserves, occurs as a result of the development, as set out in Schedule 6.3 – Planning scheme policy for development works.

Schedule 6.3 of the Planning Scheme (Scheme) is not called up as an *assessment benchmark* by **Part 5** of the Scheme, which is the section of the Scheme that identifies *assessment benchmarks,* relevant to DA24.

The term *planning scheme policies for development works* gets a mention in some of the *acceptable outcome* provisions of the *Reconfiguring a Lot* code, but there is no clarity as to what aspect of the *planning scheme policies for development works* are applicable to any particular *acceptable outcome* provision.

Further the 'Stormwater Management' provisions of the *assessment benchmark Reconfiguring a Lot* code provide, under the *Performance Outcome* PO14, that effective drainage of lot and roads should ensure **no adverse impacts** on receiving waters and surrounding lands. - PO14 provides no *Acceptable Outcome,* and the important term "*adverse*" in the *Performance Outcome* is missing within Condition 11.

Finally, Schedule 6.3 – *Planning scheme policy for development works* provides the following advice:

> *"Although drafted as **one** acceptable solution, the Planning scheme policy for development works also provides flexibility through the application of the relevant standards, policy documents and industry standards. **It does not prevent or discourage alternate solutions for individual development site**s."*

By making this a **prescribed** development condition it eliminates the flexibility provided for by Part 5 of the Scheme in achieving compliance by satisfying the hierarchy in planning codes in their *purpose* or *overall outcomes* provisions. Thus, overriding the important understanding that *acceptable solutions* as **only one** possible solution that would satisfy a *performance outcome, overall outcomes* or *purpose* of a code.

For that reason, it offends the *hierarchy principal* for compliance and therefore is *unreasonable* and should be re-engineered.

Condition 12

Any alterations to existing surface levels on the site shall be undertaken in such a manner as to ensure that no additional surface water is drained onto or impounded on adjoining properties

This condition is also interesting.

A word search was undertaken for all three relevant *assessment benchmarks* for the term "*surface levels*"- The term does not appear in any of those *assessment benchmarks*.

In order to see if a Council policy, may have been referenced in *assessment benchmark* for another type of development, and used this to provide background information, to help with the decision-making process for this condition, a search was done Council's *SC6.3 Planning scheme policy for development works*.

The term appears twice, in relation to:

(a) A newly constructed **road** and [Not Relevant to DA24]
(a) A plan of finish surface levels provided by licenced surveyor in relation to the **Q 100 flood immunity** [Relevant, but not in the context and application of this condition and the answer already address in the Stormwater Management Plan]

We have seen, in the reasoning and Condition 11, the limited authority of Schedule 6.3 and unless this condition requires compliance with a requirement of one of the

assessment benchmarks for DA21 it does not constitute a 'condition' in terms of section 60 of PA16 and therefore, is *not reasonably* required [PA16-S65(1)(b)]

Condition 14

Submit to Council as part of an Operational Works application, design details of filling works to provide appropriate flood immunity to proposed Lots 1 and 2 to reach the Storm-Tide Level for this site as to be 2.40m AHD

This condition does not constitute a 'condition' in terms of section 60 of PA16 for *Reconfiguring a Lot* but is simply gratuitous advice provided by the assessment manager as a regulatory authority and may be provides as such to assist applicant for that type of DA -but not as a statutory condition of approval and therefore, is not *reasonably required* [PA16-S65(1)(b)]

Condition 15

Submit documentation, as part of the Request for Approval of the Subdivision Plan Application from a Registered Professional Engineer of Queensland (RPEQ), which certifies that each completed allotment will achieve flood immunity as per ***Condition 16.***

This is another interesting condition.

The consulting stormwater engineers report already provides the AHD, required to be satisfied to achieve flood immunity for each lot.

In the case of DA24 this will require the placement of at least some fill on every site. The full details in this regard would properly attach to a DA for *Operational Works*.

At the very best this is a condition that may be attach the *decision notice* for that DA

Even though in that circumstance it is hard to reconcile why only a registered professional engineer can provide such documentation that placed fill has achieved a required AHD.

One would have thought there were many professions that could deliver that certification including if required Councils own professional staff.

All that aside however Condition 15 does not constitute a 'condition' in terms of section 60 of PA16 as it has no basis in any of the *assessment benchmarks* relevant DA 21, but is simply gratuitous advice provided by the assessment manager as to regulatory administrative authority and demonstrating compliance for other types of development and therefore, is not *reasonably required* for DA24 [PA16-S65(1)(b)]

Condition 16

Construct a sealed ***access*** *driveway to each allotment within the allotment's road frontage, from the edge of the road pavement to the property boundary, in accordance with the* ***Planning Scheme*** *and* ***standard drawing No FC-230-03 – Type A – Invert Crossing.***

*The **access** driveway for proposed Lot 4 is to be located at least 10.0m away from the existing 375mm stormwater pipe and concrete head wall.*

1. This condition in part, has it bases in the *Reconfiguring a Lot* code as an *Acceptable Outcome* for the *Performance Outcome* PO10 which states

   *"All new lots are to have **lawful access** from the road."*

   This *Acceptable Outcome* deals entirely with the **standard** of the '*practical access*' and in no way is designed to achieve the requirements of the *performance outcome* of delivering "*lawful access*". - **Lawful** access is demonstrated on the **survey plan.**

2. Further, while it is crucial that parcels of land have *lawful access* to a roadway, this however, is in no way to achieved that requirement.

   This condition deal with what a **trafficable standard** the lawful access shall be.

   9.4.3.2 of the *Reconfiguring a Lot* code sets out the *purpose* and *overall outcomes* for the code, which is to ensure that new lots are configured in a manner which:-

   (a) is appropriate for their intended use;
   (b) is responsive to site constraints;
   (c) provides appropriate access; and
   (d) supports high quality urban design outcomes

   There is scope within the *purpose* to consider what might be *appropriate access* but a few other issues also arise with the use of Condition 16.

3. Firstly, the condition defines the ***access*** work, that is required to be carried out within a road reserve not on private property.

   Some codes require that in extremely hilly country, **private access** be constructed in such a manner that *practical access* can safely be achieved from the road boundary to a residence but this is not the intention of this condition, the intention of this condition is to set a standard for a 'crossover' installed within the road reserve.

   Council already exercises full authority in relation to approving crossovers in road reserves and any person desirous of undertaking work in the road reserve would, even in the absence of this condition, require approval of Council and to obtain that approval would have to comply with a specified design. Also this requirement is replicated in the *Dwelling House Code* (9.3.5-[AO2]) relevant to any building work on a lot of land.

   Finally, I have failed to find any authority in any of the *assessment benchmarks* relevant to DA24 that delegates to the *assessment manager* the power to require the Appellant to undertake certain work on land outside the scope of the development application (Subject Site for DA24)

For those three reasons this condition is considered to not be reasonably required.

Condition 17

Any existing Council infrastructure or private property (including but not limited to, services, concrete structures, pits, channels, pavement, RCP's, RCBC's, etc.) damaged due to the proposed works is to be rectified or replaced at the applicant's expense prior to the issue of a Subdivision Certificate.

The applicant must notify Council Development Engineering Unit immediately of the affected infrastructure.

If damage occurs and is not replaced by the client/contractor, Council has the right to undertake the works and charge the landowner accordingly.

The assessment manager has intimate knowledge of the Subject Site and would possess the knowledge that none of the items referred to in Condition 17 currently exists on the Subject Site.

The Condition 17 also refers to damaging infrastructure 'owned by Council'. The only infrastructure owned by Council that may be liable to damage as a consequence of *Operational Works,* which would follow as a consequence of this development approval, (DA24) would be the *trunk infrastructure* for roads.

This Condition 17 already is covered by common law, where an individual causing damage to the property of another can be sued to recover the costs of the damage. This does not require a condition to introduce and effect that outcome.

Further the Appellant is unaware of any requirements in any *assessment benchmark* that relate to an obligation to communication with Council on any issue.

If the position of the Appellant is correct, then this condition is *not reasonable.*

Condition 18

Relocate all services and structures as required to ensure that they are not contained within any other allotment unless ownership rights have been granted by way of an easement.

See Condition 17

Condition 19

Enter into an agreement with a licensed telecommunication provider to ensure that a telecommunication connection will be available to each proposed allotment **under standard tariff conditions** and without further capital contributions.

These services are to be positioned wholly within the allotment which they are to serve.

Provide a Telecommunications Infrastructure Provisioning letter as evidence of such an agreement to Council.

While the Appellant has no objections to organising for telecommunications services to be provided for the 5 lots, the subject of the development, this condition is inappropriate.

Firstly, because discussions with the telecommunication provider (Telstra and their wholly-owned subsidiary NBN-Co) reveal that the only services for telecommunications that can be provided in this location (Tuan) are **wireless** and either from **towers** or **satellites.**

There is available an agreement facility with NBN-Co to ensure the provision of **instruments** capable of delivering wireless telephone and Internet communication services.

The installation of the equipment is undertaken at the time building work under a development permit is in progress.

However, the equipment provided, in no way is related to any "*standard tariffs conditions*" and the extent to which the equipment, once installed, will to be utilised, is entirely in the hands of an individual who arranges with the *service provider* to utilise the installed equipment.

Further there are now competitors in the market or wireless telecommunications services.

ABC reports that Elon Musk's Starlink satellite internet service has become an indispensable part of the national telecoms network, used by 200,000 customers and integrated into emergency services and that State and federal departments and agencies have spent more than $50 million on Starlink hardware and services in the past three years, (Ref)

Further, the Appellant is uncertain if this condition offends some Commonwealth law on 'Competition". However, is prepared to explore some agreement with a telecommunication provider to deliver appropriate equipment at the time when a dwelling is constructed upon one of the 5 lots the subject of DA24.

However, the appellant has a zero control over whenever any future building works for the purposes of constructing a residential building on any of the 5 lots of land - will occurs.

But, under the provisions of Schedule 18 of PR 17, all development conditions are required to be complied with before a local authority is required to approve the submission of the plan of subdivision to the titles office

So, for that reason, the Appellant is prepared to accept a re-worded condition that is couched in terms of these circumstances.

Condition 20

*Each lot of this approval is to be provided with a **reticulated power connection and supply under standard tariff conditions**.*

In this regard, the developer is to enter into an agreement with an approved electricity provider, prior to the approval of the subdivision plan, to ensure that electricity will be available to each allotment under standard tariff conditions and without further capital contributions.

Evidence of such an agreement must be:
1. Provision of a Certificate of Supply, or
2. Provision of a Certificate of Acceptance, or
3. Provision of a Negotiated Connection Establishment Contract, and evidence of the following;

i. substantial commencement of the internal electrical work, and
ii. evidence of contract with electrical contractor; and
iii. evidence of the ability to fund the contract value of the electrical works.

This condition sits under the Performance Outcome PO13 of the *reconfiguring a lot assessment benchmark* which requires that 'the lots are provided with infrastructure services including *electricity*.'

Even the *Acceptable Outcome* column makes no stipulation as to the source from which the *electricity* is provided.

The decision to include in the condition of requirement for that source to be ***a reticulated supply*** must arise only from a person's opinion.

Under Australia's current commitment to the IPCC, Australia has already committed to reducing greenhouse gas emissions. Stand-alone electricity supply via solar panels and batteries can deliver electricity supply to each premises.

The overall outcomes for the *assessment benchmark* include amongst other things that 'the subdivision results in the creation of safe and healthy communities by mitigating the risks to people and property from natural hazards'

The recent cyclone event in south-east Queensland demonstrates how network electrical supplies from reticulated systems are extremely vulnerable to destruction during storm of events.

It could responsibly be argued that all new subdivisions in Australia should be required to provide their electrical supply from stand-alone renewable energy systems which are not as easily susceptible to mass interruption as a result of a ***reticulated*** system failure;

PLUS.

According to the Commonwealth government Minister responsible for alternative energy, Chris Bowen, not only is energy from renewable sources, such as solar, in the country's best interests towards meeting our commitment to a reduction in greenhouse gases by Australia by 2050 but they are also cheaper than the existing coal-fired supply which currently provides 67% of the electricity within the ***reticulated*** grid system.

Condition 20:

- does not support Australia's IPCC commitment to the greenhouse gases target reduction policy of the nation; and
- does not allow the Appellant to make a choice as to which of these two options they prefer.

Also, Condition 20 constitutes the application of a 'person's opinion' and fails the requirements of section 43 (2) (a) of PA16. PLUS does not support the best possible outcome in achieving the *Overall Outcomes* of the assessment benchmark and therefore, as presented, is unreasonable

However, for these reasons, the Appellant is prepared to accept a re-worded condition that is couched in terms of options under these circumstances.

Condition 21

Submit as part of a building application, details associated with the on-site collection, storage and treatment of a potable water supply

This condition demonstrates an understanding by the *assessment manager* that it rightly belongs to a development application for **building work**

The appellant cannot find any legislative basis for the Appellant's legislative responsible for the conduct of any development application for which they are not the applicant.

The *assessment manager* has at its disposal a plethora of legislation to ensure that this condition is satisfied at the appropriate part in the process of development applications and assessments for **building work.**

This condition does not constitute a 'condition' in terms of section 60 of PA16 for *Reconfiguring a Lot* and therefore is unreasonable.

Condition 22

Each lot must install ***Advanced Secondary Treatment with Nutrient Reduction to Surface*** *irrigation in accordance with the* ***Qld Plumbing and Wastewater Code and relevant Australian Standards***

This condition I suspect, is an interpretation of *Acceptable Outcome* AO13.1(c) which provides that "*Where the subdivision is not within a sewerage service area, new lots are provided with an area suitable to accommodate an on-site treatment and disposal system that complies with the requirements of the Plumbing and Drainage Act 2003"*

The *Plumbing and Drainage Act 2018* (the updated version to that cited in the planning scheme) provides for 7 options which can be chosen to meet the requirements of the Act

The installation of treatment facilities for liquid waste water under the *Queensland Plumbing and Wastewater Code*, specifies compliance for all these systems and the methodology to make determination for the number of variables required, which are not be available to the Appellant and will not become available, until site-specific decisions are made in relation to the construction of residential premises, and the choice of preference for approved systems is made and the demand upon the unit and it location, for each particular lot, is identified.

The Appellant cannot find any legislative basis for where the *assessment manager* derives the legislative authority to make this determination on behalf of a consumer for that product.

Further, even if by some undiscovered legislative authority, the assessment manager had that capacity to choose the system, then there needs to be consideration of the logistics of installing this type of infrastructure in advance of construction of a premises to demonstrate responsible decision making, regarding infrastructure, in terms of fit for purpose.

Then even if there is legislative authority for the *assessment manager* to choose which of the seven options it requires to be installed, that legislative authority would have to operate under some other facility other than *development assessment* because for the purpose of the relevant assessment *benchmark* and the application of *acceptable outcome* principal the *Appellant* need only ensure that there is **sufficient area** to accommodate any of the seven-system chosen for any of the 5 lots.

While, in the absence of capacity to determine the actual area that would be required for any particular system, installed for use in association with a residential premises, the *assessment benchmark* already makes provision for an area of 2000 m² to be provided for each of the 4 lot and the remained lot 5 has 32,548m2

Without knowing accurately, the performance requirements of any unit, it is reasonable to speculate with experience, that the maximum area required for any of the facilities would have an upper limit of 200m². That is 1/10 of the minimum land size available.

The assessment manager already has at its disposal a plethora of legislation to ensure that this condition is satisfied at the appropriate part in the process of development applications and assessments for **building work** for each lot.

From the site layout plan for APD24 it is self-evident that the DA24 complies with *Acceptable Outcome* AO13.1(c). Therefore Condition 22 *unreasonable* [PA16-S65(1)(b)]

Condition 23

Grant the following easement(s), as part of the registration of the survey plan where required:

(i) Easements for stormwater, electricity and telecommunications services as may be required to service the development.

The common material for DA24 contains no matter that would indicate that any easements are necessary for the delivery of compliance with the *assessment benchmarks* for this development

Any works for the installation of stormwater electricity telecommunication services or any other service, if required, can only be carried out under the authority of the development approval for *Operational Works*

If any works associated with that development approval required to be protected by easement facility the appropriate location for this condition is in that development approval

This condition does not constitute a 'condition' in terms of section 60 of PA16 and as such is not a lawful condition of approval and therefore, is not *reasonably required* [PA16-S65(1)(b)]

Condition 24

All existing services shall be relocated as required to ensure that they are not contained within any other allotment unless ownership rights have been granted by way of an easement.

Any alteration of services to provide for the development shall be undertaken at no cost to Council.

The common material for DA21 contains no matter that would indicate that there are any existing services on the subject site

Any works for the installation of services can only be carried out under the authority of the development approval for *Operational Works*

If any works associated with that development approval required to be protected by easement facility the appropriate location for this condition is on that development approval

This condition does not constitute a 'condition' in terms of section 60 of PA16 and as such is not a lawful condition of approval and therefore, is not *reasonably required* [PA16-S65(1)(b)]

Condition 25

All damage to Council infrastructure (including pavement and drainage damage) as a result of the development works is to be rectified to the satisfaction of Council prior to the issuing of the certificate of practical completion or approval of the plan of survey.

This condition is a rewording of Condition 17 but in essence applies the same outcome accordingly and as such does not constitute a 'condition' in terms of section 60 of PA16 but is simply gratuitous advice provided by the assessment manager as to regulatory authority and may be provides as such-but not as a statutory condition of approval and therefore, is not *reasonably required* [PA16-S65(1)(a)]

Condition 26

Include in any Contract of Sale for the lots, a copy of Conditions 21, 22 and 26 of the approval.

This condition does not constitute a 'condition' in terms of section 60 of PA16 but appears an aspirational exercise and being a party to a public information system operated by council and as such does not constitute a 'condition' in terms of section 60 of PA16 and therefore, is not *reasonably required* [PA16-S65(1)(a)]

Condition 27

Include in any Contract of Sale for lot 5, a copy of the State Assessment and Referral Agency response, 2212-26497 SRA and dated 21 November 2024

See Condition 26

.....

Referral Agency [RAP]

Condition 1

The reconfiguring a lot must be undertaken generally in accordance with the following plans:

Proposed Reconfiguring a Lot Wilkinson Road Tuan prepared by Urban Planet Town Planning Consultants, Reference 21153-02, and dated August 2024 as amended in red by SARA on 17 October 2024.

This condition amendments the planning consultant's plan document, (APD24) resulting in delivering two circumstances.

They are:

1. **Spatially defined** and **labelled** certain areas of the development site; and
2. Provided "**use conditions**" to be placed upon the labelled areas on the plan.

Putting aside for the moment, the issue of copyright and the authority to amend documents that are copyright protected by another party, where does SARA draw its legislative authority, as part of the assessment process, to draft/modify information that is

contained within the 'common material' of an applicant's development application, without approval of the applicant?

Nor is there a clear logical explanation for the necessity of the 'use conditions' detailed within APD24.

Further, putting all that aside for the moment, the important question to be answered is:

Q1 Why was the amendment of the Site Layout plan, necessary to be inserted into the plan in order for DA24 to achieve the objectives of the assessment benchmarks?

The Queensland government already has provided by email, site specific spatial mapping in PDF, website page maps, and website wetland info in this aspect, relative to DA24.

Legislative authority already existed to controlled development within the two spatial areas identified on the plan.

Then, the 'use conditions' inserted in the APD24 provided for development restrictions greater than those provided for in the relevant assessment benchmarks for the identified overlays

On **23 October 2024** the Appellant canvased these issues with SARA

Issue 1 - Wetland Protection Area

The part of the text placed on the APD24 for Lot 5 reads:

> *"Areas shaded in blue represents the Wetland Protection Area 50m buffer and is to remain development free for the purposes of protecting the wetland environmental values…."*

When read in conjunction with Condition 9(a) the significance of the words is complexing because Condition 9a requires the development to "*Provide a 50m wide buffer for the purposes of*…"

It can only be assumed, by the boundary of the area in blue, that it is SARA representation of 50m radius from the edge of the map wetland. -The buffer is **already** '*provided*'.

NEXT

The amended APD24 contain no dimensions, making it practically impossible to physically determine the reach of the area in blue. It has to be assumed that represents a 50m radius from the declared wetland border.

If correct only a **portion** of the 50m buffer falls with lot 5

Perhaps intention of the condition is a **reminder** of the statutory obligations, that such a buffer area brings to the use of that portion of lot 5.

The position of the Appellant is that the wording, '*area shaded in blue*' does not '*represent the… 50m buffer*' it represents a portion of the "buffer" relevant to ADA24 and should so clearly state that position.

NEXT

On the **30 October 2024** SARA in response, sought further clarification and **31 October 2024** the Appellant responded requesting amongst other things - a change of the wording to:

*Areas shaded in blue represents **the portion of Lot 51** impacted by Wetland Protection Area 50m buffer.*

And

The remining portion of the statement be removed to any Advice Notes included with the Development Permit

SARA declined to redraft the condition.

……

Issue 2 - Wetland Protection Area

Portion of the wording, relevant to lot 5, reads *"…and is to remain development free for the purposes of protecting the wetland environmental values."*

This Condition requires that this defined area must remain "*development free*".

When read in conjunction with Condition 9(b) the significance of the drafting becomes more concerning, because Condition 9(b) requires the development to "*Provide buffer elements in the locations shown on…."*

One has to assume that the '*buffer elements'* referred to, are to be placed within the wetland buffer area, defined in blue, on APD24.

Putting aside for the moment the situation where nowhere in the conditions are the terms *buffer elements,* identified or defined, it would be reasonable to assume that, depending what *buffer elements* are required, it would be most unlikely to be able to carry out the work of installation then without constituting a *development* of some type.

If that assumption turns out to be true it would be an offence under PA16 (Condition 1) to comply with that aspect of Condition 9(b) - But we will get to that in due course.

Further

The 52-page report SCR24 addressed all the issues associated with both:

(a) **overland flow from the adjoining areas** above the contour level for the subject site (including the wetlands); and

(b) the **stormwater** that would fall upon the development.

The findings of the report were that while 'the property is affected by overland flow from a catchment to the west, the flows coming from west of the site, passes through the site and discharges in the north-eastern site corner'. [Maps[31]]

All this overland flow comes from uphill of the site, where the wetland is located and in the absence of any modification of the development, to reverse that flow, there is no possibility that stormwater from the development could ever have any influence at all, on the wetland's water quality.

SCR24 confirmed this by advising[32] that:

> *The proposed development would comply with PO3, PO4 and PO5 of State Code 9*

No modification to that circumstance occurred by DA24

NEXT

In the Conditions response, the Appellant also brought to the attention of SARA, the existence of a document published by the *Department Environment and Science* in 2022 (Guidelines) that in relation to 'wetland buffers', clearly provided advice to the effect that:

(PO1- Context)

> *"Alternatively, PO1 can be achieved by designing a **reduced** buffer distance to accommodate both a development proposal and wetland values to suit the specific site circumstances in accordance with the Queensland Wetland Buffer Planning Guideline."*[33]

And (PO1- development Considerations)

> *"Whilst development is intended to be located outside the buffer, it is possible for low-impact elements of the development proposal to be located within the buffer…"*[34]

And (under the *Scope* of the Guideline_ –

> "that mapping for the wetland can be amended'[35]

Condition No 1 as proposed would preclude, in the future, any of these opportunities for any development in the 'defined area' – even if it could be delivered in compliance with the requirements of legislation, guidelines or *assessment benchmarks*.

And, there is no facility under PA16 to amend, in the future, a development permit condition, once a development is complete. Thus, permanently denying any of the above accorded facilities.

……

[31] Stormwater Management Plan J9009 v1.1 Appendix A (P25-29)
[32] Stormwater Management Plan J9009 v1.1 Appendix A (P6)
[33] SC9 Guidelines [P10]
[34] SC9 Guidelines [P9]
[35] SC9 Guidelines [P6]

Issue 3- Erosion Prone Area

The text placed on the APD24 for Lot 5 reads:

> *"Area shaded in red represents the Erosion Prone Area and is to remain development free for the purposes of coastal protection.*

The matter of contention again is the **prohibition** for future development in that location.

On **24 June 2024** IR24 provided advice to SARA, including ICM24 that:

- filling to the AHT+ 800mm; or
- infrastructure design (Revetments)

could achieve an **alternative solution**, to remove the land from the *erosion prone area* classification - **thus allowing for development.**

Further, one of the conditions of Condition 1 had already provided that solution:

> *Lots 1 and 2* (currently effected by the erosion prone area) *shaded in grey represent the lots that must be filled to a level of Highest Astronomical Tide plus 0.8m vertical elevation to be removed from the Erosion Prone Area.*

The effect of this work, would removes that section of land, from the *erosion prone area* overlay, to allow development to proceed.

Yet there is no explanation as to why the filling of lots 1 and 2 was an *acceptable solution* and that filling of lot 5 **would not** similarly be an *acceptable solution.*

This matter was brought to SARA attention in the **31 October 2024** request seeking to change the wording to:

> *Areas shaded in red represents the **portion of Lot 51** within the Erosion Prone Area*

With the remining portion of the condition to be removed and if necessary, into an **Advice Notes** included with the Development Permit materials

Suggested wording:

> *Development in the area shaded red in the Plan defined by SARA Condition 1 is restrained to that permitted by State Code 8 while the area is designated as Erosion Prone*
>
> *Note: The solution, in the information submitted by the applicant's consulting engineer, International Coastal Management dated 25 March 2024, provides a solution that accords with State Code 8*
>
> *The implementation of the solution required a further Development Permit and will triggers further referral*

This request was declined.

……

On **21 November 2024** SARA in its advice to the assessment manager under ***General Advice*****,** provided this:

> *The following clarification is provided to assist the applicant in interpretation of the SARA approved plan:*
>
> *- the blue shaded area within proposed Lot 5 on the SARA approved plan indicates the 50-metre buffer from the mapped High Ecological Significance (HES) wetland*
>
> *- the red shaded area within proposed Lot 5 represents the mapped erosion prone area*
>
> *- all SARA conditions only relate to the subject site and have no bearing on any adjoining allotments*

The Appellant remains perplexed as to reason why the above suggested amendments **were not** also relegated to the **General Advice** section in which they carry no legislative weight.

……

Issue 4

The text placed on the APD24 reads:

> *Amended in red by SARA to maintain development free buffers in the Erosion Prone Area and wetland Protection Area and to ensure proposed Lots 1 and 2 are developed outside the Erosion Prone Area.*

The inclusion of this condition and it's drafting is confusing, because:

If one is to assume that the notes on the plan constitute development conditions, then the plan already contains 3 conditions that refer to the area in:

1. blue
2. red and
3. grey.

These 3 conditions are self-explanatory.

It is perplexing why this particular condition (No.4) is included as this is just reiterating the substance of the other 3 conditions; and as discussed

- under Condition 9(a) the development is required to '**Provide** (and maintain) a 50m wide buffer for the purposes of….' and
- under Condition 9(b) 'to **provide** development elements within this Wetland Protection Area of the site'.

……

On **13 November 2024** -SARA provided a Draft of changed condition

On **15 November 2024** -The Appellant responded to the Draft

On **21 November 2024** SARA issued the final advice to the Assessment Manager, showing SARA not only again **declined** the Applicants request of the 15 November but had also **reversed** its position of the 13 November 2024.

For all the above reasons, the current Condition No1 presents as unnecessary and therefore unreasonable *imposition* on the development and *not reasonably required* to ensure the developments achieve the overarching requirements of the *assessment benchmark* and PA16.

.....

Condition 3

Ensure proposed Lots 1 and 2 are created with a minimum finished surface level of at least the level of Highest Astronomical Tide (HAT) plus 0.8m vertical elevation.

Condition No 3 is technically an addendum to Condition No1 in APD24 but dealing precisely as it does, with the *erosion prone area* circumstance of Lot1 and Lot2.

As from the **21 December 2021**, SARA had it it's possession, as Referral (concurrence) Agency the PR21 for DA21.

PR21 advised, in relation to state mapping, the existence of the *erosion prone areas* within the subject site and on advice of the consultant planner, the site was '*not subject to coastal processes*' and further indicated that a section effected by *erosion prone areas* mapping '*…will be **required to be filled** to levels specified by the assessment manager*'.[36]

This would provide future security for persons and property as a consequence of the development.

The PR21 also advised that works for filling of the site was to be addressed by a 'future development application' (*Operational work) that would accommodate delivery of the required performance outcome.[37]

*The PR17 in Schedule 10 Part 17 provides for assessment and referrals for Operational work in coastal management district.

On **7 January 2022** SARA issued an *Information Request*, (SIR).

The material in that request indicated their knowledge that a portion of the site was expected to be inundated by sea level rise by the year 2100 and the heights of the sea was determined to be 800mm above the present-day sea level's HAT.

Funnily enough though the information request also advised that

"*No information had been provided to demonstrate how this coastal hazard would be mitigated for the subject site*".

This, despite being in possession of the PR21 which had already clearly identified this issue and prescribed a compliance solution.

[36] Planning Report-Urban Planning-Nov 2021 [p27]

[37] Planning Report-Urban Planning-Nov 2021 [p68;84]

On **25 January 2022** FCRC issued a Flood Search Report (FSR) for the subject site.

The FSR indicated the "Property was within the Storm-Tide Hazard" area and provided a Defined Storm-Tide Level (DSTL) value of RL 2.4m AHD, for the development.

FCRC's planning scheme required that land for development, within a Storm-Tide Hazard area was required to:

(a) be filled to the DSTL; and
(b) with the standard of work as defined within Council's development works policies.

The development type for the filling of land, is *Operational Works.*

On **20 June 2024** the Appellant 's planning consultant responded to the SARA information request (SIR) by providing a copy of the material, provided to the *assessment manager* on that date.

The material provided, included advice from a firm of consulting engineers, *International Coastal Management*, specialists in coastal engineering developments.

The advice identified the exact height that would represent the 2100 sea level rise for that particular parcel of land (RL 2.33 AHD) and advice as to options that were available to meet current requirements to protect land in the development from prescribed, future inundation sea levels.

The assessment benchmarks under FCRC's planning scheme, for a RAL requires lot filling for land in Storm-Tide Hazard area to RL 2.40 AHD.

That is higher than the RL AHD required for the 2100 sea level rise.

Thus, the requirements under the planning scheme are in excess of those required by Condition 3

Further and more importantly the requirement of Condition 3 is already mandatory under Condition 1. Reproduced as Condition 3 appears as nothing more than a reminder to comply with the lawful requirement of Condition 1.

While the retention of SARA's Conditions 3 could be tolerated, as simply a frustration of the conduct of bureaucracy, if it did not produce other unacceptable circumstance but Section 259 of PA16 makes it an offence not to comply with a development condition.

The retention of Condition 3 creates a circumstance for a double jeopardy style outcome for a single event. [Breach of condition 1 and 3] Plus a development condition run with the land title and I and AI are unaware of any facility to change a permit or a condition once issued and works completed.

For this very reason Condition 3 is unreasonable and should be deleted, even if Condition 1 is retained or modified.

Condition 4

For the works referenced within Condition No. 3, only use clean materials which are free from prescribed water contaminants.

This condition refers to the 'standard' of a product, (material used for filling) as part of the performance of 'work', required by Condition 3.

This *work* would constitute a development for *Operational Works.*

This particular *Operational Works* would be required to be carried out under the authority of a development permit for *Operational Works.*

Putting aside for one moment that particular circumstance, the condition refers to a term "*clean material'* and defines that term as being, material "*free from prescribed water contaminants".*

No reference is made to:

(a) the *assessment benchmark*, which underpins this requirement to be considered as part of the Code assessment process for DA24; or
(b) the reference documents called up under the authority of the *assessment benchmark* to provide the scope for materials that are "*prescribed water contaminants*," and their quantitative values - to be avoided in fill material, within residential development.

One could of course, speculate that this circumstance is the 'interpretation' of an assessing officer in SARA of *Performance Outcome* PO4 of the *assessment benchmark.*

However, there are a number of complications

1. Surely, it is not the function of the Appellant to determine the nature and extent of a requirement, under a statutory condition of an assessing authority; and
2. It would be reasonable that conditions contain sufficient information for an applicant to be easily arrive at a position where the applicant know precisely what is required; and
3. Even if 1 and 2 were satisfied the use of the term '*unacceptable'* in PO4, is not defined within the *assessment benchmark*; PR17 Schedule 24; or PA16 Schedule 2, and therefore subjective in quality and its relevance in the assessment process - a matter of a 'person's opinion'.

As well as that anomaly, DA24 is for *Reconfiguring a Lot* (RAL), and not *Operational Works.*

No *works* are required to be delivered by a DA for a RAL other than the pegging and drafting of a survey plan and the physical effort required to produce the document and perform the administrative process of delivering the document to the Titles Office.

Operational Works for DA24 will be required to be carried out under a separate development approval, in order for this development be completed.

*The PR17 in Schedule 10 Part 17 provides for assessment and referrals for Operational work in coastal management district.

Further, under the provisioning of titling legislation in Queensland, local governments are required to approve the *Plan of Subdivision* for RAL's.

If there is other associated development work, outside the RAL, that is required to be completed, then under Schedule 18 of PR17 compliance is required, otherwise local governments will not authorise the documentation, necessary for lodgement to the titles office.

The activity described in Condition 4 does not form part of DA24. It will however invariably form part of the performance of work under any future *Operational Work* development application

Therefore Condition 4 is not relevant to the DA24 and therefore is *not reasonably required* and should be removed.

Condition 5

Development must prevent the release of sediment to tidal waters by installing and maintaining erosion and sediment control measures in accordance with the Best Practice Erosion and Sediment Control (BPESC) guidelines for Australia (International Erosion Control Association).

This condition presents the same circumstances as outlined above, in Condition 4, and accordingly therefore Condition 5 is not relevant either, to the ADA24 and therefore is *not reasonably required* and should be removed.

Condition 6

This condition is an exact copy of Condition 1.

When referral agencies act as an assessing authority for a development, often there will be a number of *assessments benchmarks* they are required to assess against. There is no logical requirement in the assessment process to replicate a condition that delivers the same compliance outcome applicable for multiple *assessments benchmarks.*

There are no reasonable grounds for it to be replicated and therefore is *not reasonably required* and should be removed.

Condition 8

Erosion and sediment control measures which are in accordance with the Best Practice Erosion and Sediment Control (BPESC) guidelines for Australia (International Erosion Control Association) are to be installed and maintained to prevent the release of sediment to the wetland.

This condition presents the same circumstances as outlined above, in Condition 4 and Condition 5 and accordingly therefore is not relevant to ADA24 and therefore is *not reasonably required* and should be removed.

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Condition 9

(a)

Provide a 50-metre-wide buffer for the purpose of maintained and protecting the wetland environmental values as shown on Proposed Reconfiguring a Lot Wilkinson Road Tuan prepared by Urban Planet Town Planning Consultants, Reference 21153-02, and dated August 2024 as amended in red by SARA on 17 October 2024 21 November 2024.

The wording "*Provide a 50-metre-wide buffer*" is not accurate.

The buffer has already been 'provided' by legislation.

It is held by the Appellant that the intention of this Condition 9(b) is to reiterate and remind the Applicant of their obligation under legislation "*of maintained and protecting the wetland environmental values*" within the defined buffer that fall within an area of lot 5 of ADP24

This condition is superfluous and if not superfluous, at its best, replicates the objectives defined in existing legislative requirements an serve no useful purpose in ensuring the development meets the objectives set within the provisions of the *assessment benchmark* under PA16 and therefore *not reasonably required* and should be removed.

.....

(b)

*Provide **buffer elements** in the locations shown on Proposed Reconfiguring a Lot Wilkinson Road Tuan prepared by Urban Planet Town Planning Consultants, Reference 21153-02, and dated August 2024 as amended in red by SARA on 17 October 2024 21 November 2024 to achieve the **purposes** set out in the Queensland Wetland Buffer Planning Guideline 2011*

There are a number of elements to this condition

Element 1

Firstly, this condition buildings upon the conditions outlined in Condition 1 and Conditions 3 by now requiring that the provision of 'buffer elements' within the area shown on the

ADP24 and presents as a condition, 'to assure the development achieves the "purposes" set out in the *Queensland Wetland Buffer Planning Guideline 2011*." (QWBPG11)

The Condition contained no information as to:

(a) **what** might constitute a required 'buffer element'? or
(b) **which** buffer elements are required? or
(c) **why** are those particular 'buffer elements', required? or
(d) **how** one might place a 'buffer element', (if the doing of which constitute a 'development'), in an area where 'development has just been prohibited' by Condition 1.

So, one has to assume that the answer to those questions can be found in the cited documentation QWBPG11.

The relevant *assessment benchmark* for this component of DA24 is *State Code 9*. (SC9)

SC9 in the section "*Using This Code*", provides advice that 'this code includes a glossary of terms for definitions in the code' and reference documents "including the *guideline State Development Assessment Provisions State Code 9: Great Barrier Reef wetland protection areas*" (SC9-Guidelines)

Firstly, SC9 Guidelines **are not** statutory *assessment benchmarks.*

Guidelines are provided to help clarify requirements or provide general, not mandatory, advice. The Guideline reinforce this position on Page 4 -" *This guideline is not a statutory document*."

It would appear the QWBPG11 cited in Condition 9(b) is called up via the SC9 Guideline **not an** *assessment benchmark*

Further SC9 Guideline provide in *Part 4.0 Information requirements,* states at dot point 2

> *If proposing a **reduced buffer** or **wetland area**, an ecological values assessment demonstrating compliance with the Queensland Wetland Buffer Planning Guideline.*

and provides a hyperlink to a copy of the QWBPG11.

Nowhere in DA24, is it proposed to 'reduce a *buffer'* or 'develop a "*wetland area'*, for which guidance of the QWBPG11 may then need to be referenced.

Next, nowhere in the QWPB11 is there information that clearly identified the "*Purpose*" of the Guidelines. However, using Section 2 of QWPBG11 headed '*Purpose and Scope'*, a *purpose* can be extrapolated/deduced from within the opening paragraph.

The QWPBG11's primarily functions, it appears is, 'to support a '***Buffer Design Method***' which is intended to evolve from fundamental concepts and using a systematic approach in the design.

Its purpose, it would seem, is to assist those involved with ***wetland development planning,*** by providing a series of steps and considerations associated with '*designing a wetland'* and

also provide some support to those involved in the '**management** of ***wetlands'***, though it is not abundantly clear in what form that support takes.

And then the statement in the QWPBG11:

*Wetland buffers also need to be distinguished from wetland **trigger** areas under legislation.*

> '*Trigger areas are those areas which **trigger an assessment** of the impacts for a development — the resulting buffer may be significantly narrower than the trigger area depending on the nature of the development'*

Some evidence exists within the online mapping that the area interpreted as a '*buffer* area' by SARA is actually in fact a '*trigger* area'.

If one looks at the online mapping this is reinforced by the area in the map for the Subject Site. It has a different colour hue, within the so called 'buffer area' of lot 51 than the buffer area **outside** of it. See Here

Further, QWPBG11 is not a CODE *assessment benchmark*; as it clearly is IMPACT based and requires the application of a *'personal opinion'* and nor is it called up in an *assessment benchmark* - relevant to DA24.

Finally, putting aside for one moment the fact that the documentation referenced (QWBPG) is not cited in the *assessment benchmark*, the 66-page document cannot clearly answer the questions posed above.

What, buffer elements and where?

The labelled buffer area (as scaled by reference to APD24), is estimated somewhere in the vicinity of 1500 m² total, or 3.75% the 40,000 m² that comprises the Subject Lot of ADA24.

It is impossible for the Appellant to know what, of all the material in the cited document, is lawfully required, and the expected process to comply with the requirements of Condition 9(b) -relevant to DA24.

.....

(c)

Written evidence from an appropriately qualified person(s) that (*Condition 9 *a) and (*Condition 9 *b) have been fulfilled is to be provided to palm@des.qld.gov.au or mailed to:*

Places a requirement on the Appellant for the production, by an undefined but 'appropriately qualified person', of documentation, that it is assumed, would contain evidence of, what is termed:

- The 50 m wide buffer as identified in Conditions 1; 6; and 9(a) are still in existence; and
- The provision of undefined buffer elements in undefined locations, has occurred,

at some stage, prior to when the local government, in accordance with the requirements of the subdivision of land titling laws, issues their approval to the Titles Office to approve the Plan of Subdivision documentation, is as it is best, hopelessly aspirational, and at its worst - a nonsense.

One has to assume that if this condition remains in place, the condition would expire on compliance with 9(c) (On sealing of the survey plan - is the time frame) and one would have to ask the question,

" In what way does this ensure ongoing maintenance of the buffer area, into the future, and ensure the compliance with the 'purposes' set out in the document called up by Condition 9".

Lot 5 of the proposed DA24, which is the subject of the prohibitions placed by Conditions 1, 6, and 9 has ample space to accommodate future development, in accordance with both the zoning and the planning scheme's *assessment benchmarks* and *state assessment codes.*

The inclusion of conditions to prohibit future development in the areas identified on APD24, no matter how much the development can be supported would, because of the lawful nature of development conditions, presents as permanent block to any further development considerations, even if such developments were to demonstrate in the future development in those area can demonstrate accommodating compliance within both legislative and guideline documentations.

For these above reasons Condition 9 (in total) is *unreasonable* and should be deleted.

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Conclusion

Assessment process

The assessment process for a DA for RAL's purpose is to prescribe the required planning target set by a relevant *assessment benchmark*, thus provide the focus for scope of preparation of subsequence development application for 'works' which will detail the practical delivery, not to offer gratuitous advice about how one might go about the subsequent processes.

Other venues are available for that function.

Further while the process of assessing development applications since IPA (1997) heralded the move to *performance-based* process, the situation in relation to CODE assessment in reality ended up delivering a hybrid, comprising an overarching component of the former **prescriptive-based** system, that existed prior to IPA, nestled in **performance-based** jacket.

The performance-based system, as we know rely on providing ***qualitative*** statements (global wish-list) while the prescriptive-based system provided ***quantitative*** values (medical scripts).

The Government provided system, since IPA, for **Code** assessment, is a hybrid, where *assessment benchmarks* were couched in overarching *qualitative* performance requirement (**Purpose & Overall Outcomes**) then incorporated within the document what was intended to be quantitative values (**Acceptable Outcome**) that acted as a reliable (but not sole) mechanism for achieving compliance with the qualitative value.

Unfortunately, many of these, so called, *Acceptable Outcomes* were also couched in very loose *qualitative* terms.

The intention, no doubt, was to provide flexibility for applicants to meet **performance** compliance within a development application.

Further, there undoubtedly exist, for **Code** assessment, incompatibility in the application of the system and also in the legislation, as code assessment is not to include a component of a "*persons opinion*", but, once you move to compliance with a *qualitative* statement it **can only** be achieved, based on the '*opinion* of a person/s' be that the 'applicant' or 'assessment manager'.

In theory a competent assessor will seek out the opinions formed by a group of professional in that field related to a compliance requirement of an assessment benchmark, rather than an forming an individual position.

But in reality, assessment for anything, but a larger development, is undertaken by a single individual, delegated under the legislation, the power to act as sole *assessment manager.*

So therefore, even when an applicant provides solutions that the applicant believes satisfies the prescriptive *qualitative* requirement, the assessment manager in that case can form another view and often that view is, the proposal doesn't satisfy the prescriptive *Acceptable Outcome*.

This is an element that never existed in the era of the system of quantative criteria.

As pointed out in professionals published papers on the matter, this is one of the reasons why a number of appeals end up in the planning environment court.

An example is where an objector to development approval, under **code** assessment, has read the *Acceptable Outcome* criteria within the relevant *assessment benchmark* and when approval has been at issued contrary to the *Acceptable Outcome*, holds the view the *assessment manager* was required to refused the application - solely on that basis.

It could be reasonably speculated that this is a carryover from a prior era, where all thing were all ***prescriptive***.

Assessment benchmark

The assessment process is not the only quagmire one wanders into for **Code** assessable developments.

Except for building work, there are no *assessment benchmarks* that are exclusively developed towards a type or a Code category of development assessment. Even those in planning schemes which have requirements to be a referral agency in relation to development approval for *building works*

The *assessment benchmark* for a particular development is chosen like the speed limit, from a number of criteria and because they do not address the specifics, relevant to any particular development application, they are couched with very wide margins, almost to the extent of being a one size fits all.

And not just in relation to the particular development, but can be used one day for **code** and another day for **impact** - *assessable* developments.

And depending upon the experience and competence of a particular *assessment manager* there exists a tendency to deal with **code** assessable developments as if they were impact assessable.

And if that's not enough difficulty, since the introduction of IDAS where several development types can be the subject of the one development application, the assessment manager could be required to assess some application or parts of the global applications as **code** assessable and others as **impact** assessable. This certainly has the potential to deliver a situation where the confines required for **code** assessable are forgotten.

And then of course there's the circumstances where an experienced assessment manager understanding the global project to which a particular assessment relates, and may find it hard to concentrate on the compartmentalisation that the specific development application requires.

Conditioning Process

There has been a trend over the last 20 years for local governments to accept more and more responsibility for the communities in which they function. Unlike the original concept where local governments had very descripting areas of responsibility now local governments are seen as being responsible for any aspect within their community, on a performance-based style.

It has been this trend which has seen the conditioning of developments morph into more than just that which is prescribed by the legislation, into an 'information service' with an obligation to assist others, possibly with the intent of hopefully preventing members of their community from wandering uninformed into problems, caused by ignorance.

Warren Bolton

Monday, 24 March 2025

Hierarchy

PLANNING SCHEME
Part 5 Tables of assessment

5.3.3 Determining the requirements for assessment benchmarks and other matters for assessable development [Page 5-4]
(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__ of the *assessment benchmarks* identified in the "*assessment benchmarks for assessable development and requirements for accepted development*" column; - [*Contrary to PR17- Section 26(3)]

(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 sub-section 5.3.3(2);

(ii) comply with all required *acceptable outcomes* identified in subsection 5.3.3(1), other than those mentioned in sub-section 5.3.3(2);

(c) that complies with:

(i) the **purpose** and ****overall outcomes*** of the code, complies with the code;

(ii) the **performance outcomes** 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.

Editor's note — Section 27 of the Regulation also identifies the matters that code assessment must have regard to.

*The term "***overall outcomes"** not defined in Part 5