



HIGH COURT OF AUSTRALIA

10 November 2021

SUNLAND GROUP LIMITED & ANOR v GOLD COAST CITY COUNCIL
[2021] HCA 35

Today, the High Court unanimously dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of Queensland. The appeal concerned whether certain "conditions" regarding the payment of infrastructure contributions in a preliminary approval, granted pursuant to the *Integrated Planning Act 1997* (Qld), created an obligation to make infrastructure contributions.

In 2007, the Queensland Planning and Environment Court had granted a preliminary approval for the future development of land located in the City of Gold Coast, pursuant to the *Integrated Planning Act*, a predecessor to the *Planning Act 2016* (Qld) ("the Preliminary Approval"). Relevantly, the Preliminary Approval contained four "conditions" regarding the payment of infrastructure contributions by the developers to the respondent Council. Two of the conditions also provided that the calculations of infrastructure contributions would recognise existing infrastructure credits over the site. In 2015, the second appellant purchased that parcel of land. The appellants ("Sunland") applied for a series of development permits, which the Council resolved to grant in 2016.

In 1997, the *Integrated Planning Act* introduced a new regime to permit local governments to levy infrastructure charges by notice. This regime was maintained by both the *Sustainable Planning Act 2009* (Qld) and the *Planning Act*. Section 6.1.31(2)(c) of the *Integrated Planning Act* preserved, as an interim measure, the capacity for a council to impose a condition on any development approval requiring payment of infrastructure contributions. In 2016, the Council issued purported infrastructure charges notices to Sunland in accordance with the new regime in respect of each application. The infrastructure charges notices did not assess charges or allow credits in accordance with the conditions in the Preliminary Approval. At the time of purchase in 2015, there was approximately \$19 million of existing infrastructure credits applicable to the development approved in the Preliminary Approval. A dispute arose between Sunland and the Council as to whether the conditions in the Preliminary Approval created a liability to pay infrastructure contributions. The Court of Appeal found that the primary judge had erred in declaring, among other things, that the Council had the power to collect infrastructure contributions calculated under and in accordance with the Preliminary Approval.

The High Court held that the conditions in the Preliminary Approval were not of the kind authorised by s 6.1.31(2)(c) of the *Integrated Planning Act*, and therefore imposed no liability to pay infrastructure contributions. The ordinary and natural meaning of the conditions could not be said to have required any payments, because the data necessary to quantify the liability were not yet available or even identified. Rather, the conditions served the evident purpose of placing the developer on notice that contributions to infrastructure will be required in the future and when that requirement will be imposed. For that reason, the majority concluded that the power under s 6.1.31(2)(c) had not been exercised.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*