small-scale businesses from their homes consistently with the objectives and principles of the Development Plan" (the Court noting that it is in the very nature of a home business that it may be operated from wherever there is a home).

The relevant question was distilled as being "*whether the use of a residence should be approved having regard to the appropriate balance between the residential amenity considerations and those provisions which speak of the need to provide dwellings and allow developments which meet the needs of the community*".

The Court identified a number of considerations:

1. The scale of any home business must be restricted so that it remains subordinate to the approved residential use of the dwelling. Conditions can be imposed to limit the scale of the operation. For example, conditions limiting the operation of the business to operation by the resident of the dwelling, the number of non-residents who may assist in the business, the type of business permitted (e.g. advisory or similar services) and the hours of operation may be imposed.
2. The nature, scope and intensity of the home business will generally need to be at the lower end of the scale (with home business operating at a higher scale to be confined to zones dedicated to commercial uses).
3. The scale of the home business will exceed the limitations imposed by the definition of "home activity" in the Development Regulations 2008 (otherwise the home business will not be 'development' and will not require approval). The Court noted that where the scale of the home business is not significantly greater than the types of home businesses that can operate without approval, that will be a factor in favour of approval of the home business.
4. The Court also recognised that there are good policy reasons for allowing people to live and work on the same land (for example, increasing transport and energy costs).

The Supreme Court remitted the matter back to the ERD Court for further hearing.

Queensland Court of Appeal

Stockland Property Management Pty Ltd v Cairns City Council & Ors [2009] QCA 311

(McMurdo P, Keane JA and Wilson J – 16 October, 2009)

Mirvac made a Development Application to expand their Mt Sheridan Plaza Shopping Centre. The Department of Main Roads (DMR) objected to Mirvac's application for the MCU on the basis that the application was inconsistent with DMR's plans for the Bruce Highway. After consultation with DMR, Mirvac amended their application to include some vacant land (lot 301) o the northern side of the existing centre which was owned by the State of Queensland. The addition of lot 301 is the source of Stockland's complaint.

Planning and Environment Court's decision (Brabazon QC DCJ)

The Planning and Environment Court held that the amendment of the original application to include lot 301 did not alter the Development Application. Mirvac's application remained the same application albeit with a change. Accordingly, his Honour Judge Brabazon held that section 4.1.5(a) of the IPA (exclusionary provision for non compliance) was available to cure the absence of the evidence required by section 3.2.1(5) of the IPA (which deals with "taking or interfering with a State resource") because the Development Application was properly made within the meaning of section 3.2.1(8) of the IPA.

Stockland sought leave to appeal to the Queensland Court of Appeal on the basis that the primary Planning and Environment Court judge had erred in law in deciding that in the absence of evidence required by section 3.2.1(5) of the IPA, the application was still properly made and as a consequence section 4.1.5(a) of IPA was not available to cure the improperly made application. Stockland argued that the development may not be amended by adding land to the application under either section 3.2.9(1) or section 3.2.9(5) of the IPA without making a new application

necessary. If Stockland's contentions were upheld, Mirvac would have no longer been able to pursue a development application because it would have been out of time to lodge a fresh development application.

Court of Appeal decision

The Court of Appeal dismissed Stockland's application for leave to appeal and upheld the primary P&E court judge's judgement, however, on materially different grounds. The Court of Appeal was unable to agree with the approach of Judge Brabazon in respect of the phrase "taking or interfering with a State resource". The Court of Appeal took the view that the words "taking or interfering" were confined to a particular kind of involvement of State resource in a proposed development which triggered section 3.2.1(5) of the IPA. The words indicated that the nature of the connection would have to be an impact that was adverse to a State's interest. In this case the Court of Appeal said that there was no adverse impact on the State resource as lot 301 was being used for what it was originally intended to be used, a public road, and therefore the change to the development did not trigger section 3.2.1(5) of the IPA. Mirvac's application was deemed to be properly made and not required to be excused under section 4.1.5 (a) of the IPA.

Barro Group Pty Ltd v Redland Shire Council and Ors (2009) 169 LGERA 326; [2009] QCA 310

(McMurdo P, Keane JA and Wilson J – 16 October 2009)

Barro Group Pty Ltd (Barro) submitted a development application to expand the quarrying activities undertaken on the subject site. In the development application Barro stated that the application did not involve the taking of or interfering with a State resource. The land the subject of Barro's application is bisected by a road as defined in the *Integrated Planning Act 1997*. Barro proposed to locate plant and equipment used in its quarrying activities on that road. There was no evidence of the attitude of the State Government to the involvement of the road in the proposed development. By reason of this submission the application was not a properly made application within the meaning of section 3.2.1 of the IPA. Nevertheless, the application proceeded to a decision by the Council. The Council ultimately decided to refuse Barro's application. Barro appealed against that decision to the Queensland Planning and Environment Court.

Planning and Environment Court decision (Searles DCJ)

During the Planning and Environment Court proceedings Barro expressed willingness, albeit relatively late in the proceedings, to remove the plant equipment from the road and, use the road as a road only. Barro further argued, in the alternative, that it would not seek any development permit over the road. The purpose of these arguments was to negate any alleged interference with the State resource. His Honour Judge Searles rejected both arguments. Both arguments, the Court found, were predicated upon the appellant being able to amend its development application and rely upon a new proposal. No application to amend the proposal had been made.

After considering the meaning of "interference with a State resource" in section 12 of the *Integrated Planning Regulation 1998*, the Court found that locating the plant and equipment on the road was an interference with a State resource. Putting the equipment on the road would inhibit full exploitations of rights attached to that road. This meant that the development application was not properly made. It had failed to comply with section 3.2.1(7)(e) of IPA due to the absence of evidence required under section 3.2.1(5) of the IPA (which deals with the taking of or interfering with a State resource). There was, then, no properly made application. The Court found that section 4.1.5(a) of the IPA (which gives the Court the discretion to excuse non-compliance) was not available to cure the defect in the application.

Court of Appeal decision

The Court of Appeal upheld the decision of the primary judge in the Planning and Environment Court and dismissed the appeal. Because Barro's application did not contain the evidence required by section 3.2.1(5) of the IPA, it was not and had never been a properly made application within the meaning of section 3.2.1(7). Council, as the