



LUKE I. WALKER

BARRISTER-AT-LAW

Byth Chambers

Level 34

300 George Street

BRISBANE QLD 4000

T: 07 3071 9262

E: lwalker@qldbar.asn.au

21 May 2026

Attn: Samuel Hutchinson

Development Directive

884 Logan Road

HOLLAND PARK WEST QLD 4121

by email: samuel@developmentdirective.com.au

Dear Sam,

262 Bowhill Road, Willawong

Material Change of Use for a Transport Depot – A006972129

1. I am instructed by Murphy Urquhart Investments Pty Ltd (**MUI**) to provide written advice in respect of two matters concerning the above development application (**Development Application**):
 - (a) *first*, whether the Council may impose conditions that are inconsistent with conditions of development approval granted by the Court on 10 December 2009 in Planning and Environment Court Appeal No. 722 of 2008 (**Court Approval**).
 - (b) *secondly*, whether the Council may lawfully require the Development Application to be amended to include the entirety of Lot 1 on SP237974 (**Land**), in circumstances where the Development Application is made only for part of the Land (**Relevant Land**).
2. In respect of the first matter, in my opinion, the Council may impose such conditions pursuant to s 66(2) of the *Planning Act 2016* (**PA**) because:
 - (a) on the material briefed to me, it is not clear that there would be any inconsistency between conditions imposed on the Development Application and those contained in the Court Approval, having regard to relevant case law and, in particular, a decision of the Court of Appeal; and
 - (b) in any event, the Council could impose conditions inconsistent with the Court Approval because:
 - (i) MUI (who is both the applicant and the owner of the Land) will agree in writing to the conditions applying;
 - (ii) pursuant to s 496 of the *Sustainable Planning Act 2009* (**SPA**), the conditions attached to the Court Approval are taken to have been imposed by the Council; and
 - (iii) accordingly, the conditions were both imposed by the same person.

3. As to the second issue, there is no ability for the Council to require the Development Application to be amended to include the entirety of the Land. Further, that land does not need to be included in the Development Application, even if works are required on it as a consequence of any approval of the Development Application.
4. The reasons for my opinion (and the facts and assumptions upon which it is based) are set out below.

Facts

The Land

5. The Land is located at 262 Bowhill Road, Willawong and is formally described as Lot 1 on SP2937974. It is located partly within the General Industry B and partly within the Environmental Management Zone of the *Brisbane City Plan 2014 (CP2014)*.
6. On 10 December 2009, Rackemann DCJ gave the Court Approval, which granted a Development Permit for a Material Change of Use for Industry. Condition 9 of the Court Approval restricted the use authorised by reference to three areas, namely:
 - (a) Area A, which was to be used for storage and servicing of earth moving equipment;
 - (b) Area B, which was to be used for domestic activities and occasionally ancillary storage associated with the industry use; and
 - (c) Area C, which was not to be used for any purpose.
7. The Court Approval also required:
 - (a) by Condition 3, the development to be carried out generally in accordance with the approved plans (including the plan demarcating the uses onsite);
 - (b) by Condition 12, a rehabilitation plan for Area C (**Rehabilitation Plan**) to be:
 - (i) submitted, prior to (or concurrently with) any other operational works application; and
 - (ii) implemented prior to commencement of use.
8. The Court Approval was most recently changed by order of Jones DCJ in Application No. 844 of 2013.
9. The Land is presently improved and being used in accordance with the Court Approval. The submission and implementation of the Rehabilitation Plan did not occur prior to commencement of use.
10. The Relevant Land:
 - (a) comprises an area of 6,973m²;

- (b) is presently unimproved and unused;
- (c) is contained within Area C of the Court Approval; and
- (d) is entirely within the General Industry B portion of the Land.

Development Application

11. The Development Application:

- (a) was lodged, for and on behalf of MUI, by its town planning consultants, Development Directive, on 3 March 2026;
- (b) was made only in respect of the Relevant Land (by reference to its metes and bounds); and
- (c) is impact assessable, pursuant to the provisions of CP2014.

12. The Development Application seeks a Development Permit for Material Change of Use for a Transport Depot (**Proposed Development**)

Issues raised by the Council

13. On 7 April 2026, the Council made an information request (**Information Request**), which included the following:

- “1) *The site benefits from an existing development approval (A001647647) issued by Consent order on 10 December 2009 (P&EA 722/2008) and subsequent change applications 1028/4/2012 and 844/2013. The approval imposed the ‘Section C’ area of the site to be rehabilitated. It is noted that this was never enacted and that this new application is proposing to increase the development footprint on the site within this area. In accordance with s66(2) of the Planning Act 2016 the developments conditions must not be inconsistent with a development condition of an earlier development. As the conditions of the original approval were approved by the Court and the current application is being assessed by Council there is an inconsistency and conflict with the development condition of an earlier approval. to resolve this inconsistency an option may be to lodge a concurrent change application with the court. Alternative solutions or pathways to progress the application is also accepted.*
- 2) *The proposed development has applied over part of the site. It is unclear to the exact of the site the subject of the application as the planning report, plans, and specialist reporting provide conflicting information as to the proposed extent of works on site. It is understood to facilitate the Transport depot that earthworks will need to be carried out beyond the proposed Area C, including further maintenance of the Powerlink easement from a bushfire perspective is required. This aspect of development needs to be dealt with in the current application and not in a future operational works application. Therefore, it is recommended that the application be amended to apply over the entire site as this will also resolve other issues identified relating to bushfire and ecology.*
 - a) *Provide amended plans clearly showing the area of the new development, including access, and landscaping, and a revised DA Form removing the metes and bounds limitations.”*

14. It is not explained in the Information Request as to precisely what conditions of any approval of the Development Application would be inconsistent with the Court Approval.
15. However, I have assumed that any concern as to purported inconsistency relates to:
 - (a) Condition 3, in that the Development Application involves approval of a different plan; and
 - (b) Condition 12, in that it may be suggested that there can be no development of Area C, given the requirement to submit and implement the Rehabilitation Plan.
16. To the extent that there is any inconsistency between those conditions and any conditions that may be imposed on an approval of the Development Application (for example, requiring compliance with a different plan of development, including one showing development in Area C), I am instructed that MUI would consent in writing to the later conditions (**Later Conditions**) applying.

Relevant Law

Court Approval

17. Pursuant to s 4.1.54(3) of the IPA and s 496(3) of the SPA, the decision of the Court to grant the Development Approval subject to conditions was taken to be the decision of the Council (other than for the purposes of the making of the decision itself by the Court).¹
18. For completeness, I note that s 78A(2) of the PA makes the Court the responsible entity for the purposes of a minor change application granted by the Court in certain circumstances. That is a specific exception to the position established by s 4.1.54(3) of the IPA and s 496(3) of the SPA, which is continued by s 47(3) of the *Planning and Environment Court Act 2016* (**PECA**), in the following terms:

“The appeal decision (other than one to confirm the decision appealed against or to set it aside and return the matter) is taken, for the Planning Act (other than chapter 6),² to have been made by the entity that made the decision appealed against.”

Section 66 of the PA

19. Section 66(2) of the PA is in the following terms:

“A development condition must not be inconsistent with a development condition of an earlier development approval in effect for the development, unless—

- (a) *both conditions are imposed by the same person; and*
- (b) *the applicant agrees in writing to the later condition applying; and*

¹ *Mackay & Anor v Miriam Vale Shire Council* [2009] QPELR 172, [61].

² Noting that Chapter 6 of the PA deals with dispute resolution.

- (c) *if the development application for the later development approval was required to be accompanied by the consent of the owner of the premises—the owner of the premises agrees in writing to the later condition applying.”*
20. The section requires a two-step analysis: first, it must be determined if there is any inconsistency between relevant conditions and, if so, the later condition may only be imposed if all of the requirements of (a), (b) and (c) are satisfied.
21. The operation of s 66 of the PA and its equivalent sections under the IPA and the SPA was considered by the Court of Appeal in *Liquorland (Aust) P/L v Gold Coast CC & Anor* [2002] QCA 248 (**Liquorland**).³
22. That case involved a court-ordered approval for a hotel dated 5 March 2001 (**March Approval**), which contained conditions in the following terms:⁴
- “1. *The development shall be generally in accordance with the approved plan attached hereto, namely plan no. 98435D-Sheet 1C dated 26 February 2001 drawn by Hooker Design Consultants (‘the Approved Plan’) and such Approved Plan shall only be altered or modified by further Order of the Court.*
 2. *The maximum size of the area designated for bottle shop use shall be 33.3m² as shown on the Approved Plan. The maximum area of the tavern and the bottle shop (including 5m² gaming area) shall be 332 m² with a maximum combined Total Use Area of 280m².*
 3. *The 5m² gaming machine area shall be located to comply with Gaming Machine Regulations and the requirement of the Queensland Office of Gaming Regulation”*
23. Subsequently, the Council granted a development approval dated 21 September 2001 (**September Approval**) in respect of the same land for the use of “*Indoor Recreation (Gaming Machines) in association with an approved Hotel?*” for a 30m² gaming area, including an increase of approximately 16 gaming machines generally in the same area as the previously approved gaming machine area.
24. The submitter appellant, Liquorland Pty Ltd, sought to argue that the September Approval could not be granted as it would require compliance with a different plan than the approved plan for the March Approval and thereby would be inconsistent with the conditions of that approval (which was granted by the Court). Such inconsistency, it was argued, would be contrary to s 3.5.32 of IPA, the predecessor section to s 66 of the PA.
25. The Court of Appeal rejected that argument, stating:⁵
- “[19] *The approval of 5 March 2001 was not an earlier approval in effect for the development the subject of the approval of 21 September 2001, within the meaning of s 3.5.32. It was one for quite different development, namely a hotel. Mr Lyons QC, for Liquorland, whilst conceding that the phrase ‘for the development’ means ‘for the same development’, sought nevertheless to*

³ The appeal was from a decision of the Planning and Environment Court in *Liquorland (Australia) Pty Ltd v Council of the City of Gold Coast & Anor* [2002] QPELR 295.

⁴ *Liquorland*, [6] per Davies JA.

⁵ *Liquorland*, [19]-[20] per Davies JA (Williams JA and Jerrard JA agreeing).

construe it to mean ‘with respect to the land the subject of the same development’. In my opinion there is no justification for such an artificial construction.

[20] *It follows that the learned Planning and Environment Court judge was correct in the way he resolved this question. Section 3.5.32 therefore had no application in this case.”*

26. More recently, in *Wormell Pty Ltd v Gold Coast City Council & Anor* [2022] QPELR 161 (*Wormell*), Kent KC DCJ accepted the following argument of the Respondent Council and Co-Respondent developer (made in reliance upon *Liquorland*):⁶

[15] *What the respondents press is that the words “for the development” in s 66(2) are important. Reference is made in particular to Liquorland (Aust) Pty Ltd v Gold Coast City Council which considered the term in the context of a statutory predecessor to s 66(2) of the Planning Act (namely s 3.5.32(1)(a) of the Integrated Planning Act 1997 (Qld) (repealed)). In Liquorland, s 3.5.32 of the repealed Act was resolved on the basis of the earlier development and approval being for a different development from the second. The respondents refer in particular to the observations of Davies JA at [19] to [20] of Liquorland...*

[16] *The respondents continue that Sch 2 of the Planning Act defines “development” to include “making a material change of use of premises”. The present application seeks a development permit for a material change of use (indoor sports and recreation-dance studio). Thus it is argued that the earlier development approval is not a development approval in effect for the proposed development within the meaning of s 66(2); rather, it is one for a quite different development, namely the earlier material change of use for a warehouse; see the above reasoning in Liquorland. These various uses are defined separately under the City of Gold Coast Planning Scheme 1994.*

[17] *The respondents thus argue that a development approval in effect for the development is one which has been granted for the same development. It necessarily follows that the limitation imposed by s 66(2) applies only to subsequent approvals for the same development, and does not limit a person’s right under the statutory regime to seek and obtain approvals for different development (ie different uses) on the same premises to make the most advantageous use of the land.”*

27. Relevantly for two development permits concerning the same type of use, in *Steendyk v Brisbane City Council & Ors* [2016] QPELR 868 (*Steendyk*), Bowskill QC DCJ (as her Honour the Chief Justice then was) rejected an argument, based on the SPA predecessor of s 66(2), that a Council could not approve building work to a dwelling house that was inconsistent with a condition of a court-ordered approval for earlier building work.

28. In that case, her Honour observed that:

[78] *It cannot be correct to say that an approval for development, which has already taken place and been completed, in this case in 2002, continues to bind the owner, and their successors in title, in such a way as to restrict the scope of any subsequent works that may be sought to be carried out to the house. That is not the purpose or the effect of s 245; nor of the scheme of the Planning Act more generally, which does not seek to restrict or stifle development unduly and unreasonably, but rather to regulate it in a manner consistent with the expressed purpose of the Act, set out in s 3.*

[79] *It remains to deal with the operation of s 347(a) of the Planning Act, which was also relied upon by Mr Steendyk, to support his argument that the Calder-Potts remain bound by the 2002 court approval, and that no subsequent approval, such as the 2014 change approval, could include a*

⁶ *Wormell Pty Ltd v Gold Coast City Council & Anor* [2022] QPELR 161, [35]-[36].

condition inconsistent with the 2002 court approval. He contends that the change approved in 2014, to the north western part of the verandah at the centre of this proceeding, is inconsistent with the condition in the 2002 court approval, requiring fixed privacy screens.

[80] *As already noted, s 347(a) provides that a condition of a development approval “must not be inconsistent with a condition of an earlier development approval... still in effect for the development”. The important words are “still in effect for the development”. In this context, “the development” is the development the subject of the later approval — here, the 2010 approval. The 2002 approval was not an approval “still in effect for the development” the subject of the 2010 approval, because the latter was for different “development”.”*

Conditions Issue

29. For the reasons set out below, it is my opinion that:
- (a) s 66(2) would not apply to the imposition of any Later Conditions (or indeed any condition imposed on the Development Application that is inconsistent with the Court Approval); and
 - (b) if I am wrong about that, and s 66(2) does apply, the Council nevertheless has the power to impose the Later Conditions in respect of the Development Approval (or any other condition that is inconsistent with the Court Approval).

Section 66(2) does not apply

30. In my opinion, s 66(2) does not apply in the circumstances here because the Court Approval and the Development Application are not for the **same** development. That is different from a situation, for example, where a number of approvals (material change of use, operational works and building work) need to be obtained to implement the same development.
31. In that respect, I observe that the development the subject of the Court Approval did not contain the aspects of the Proposed Development now sought to be authorised by the Development Application.
32. That is, the Court Approval does not authorise the use of the Relevant Land as a Transport Depot. Accordingly, it is not for the **same** development as the Development Application.
33. I do not consider that the comments of Kent KC DCJ at [16]-[17] of *Wormell* as suggesting that for a development to not be the **same** development, it has to be for an unrelated use. Rather, his Honour was emphasising that the different uses in that case meant that the second approval was for **quite** a different development.
34. My conclusion in this regard is fortified by the decision of Bowskill QC DCJ (as the Chief Justice then was) in *Steendyk*, where the development involved extensions to an existing house in the context of a court approval, a situation that is analogous to the extension of an existing use, the subject of a court approval, in this case.

⁷

I note her Honour had previously defined the SPA as the “*Planning Act*” at [4].

35. Further, there is no inconsistency between Condition 12 of the Court Approval and the use of Area C for a Transport Depot. That is because although Condition 12 required the preparation of a Rehabilitation Plan in respect of the whole of Area C, it did not in fact require that whole area to be rehabilitated (and thereby sterilised for development). Rather, it required that any Rehabilitation Plan be approved by the Council's delegate.
36. Noting that the Relevant Land is:
- (a) a relatively small portion of Area C;
 - (b) cleared and gravelled; and
 - (c) physically isolated from the vegetated parts of Area C by a Powerlink easement for high voltage transmission lines (Easement A on RP107245), which is presumably required to remain cleared,
- it would have been open to (and indeed logical for), the delegate to approve a Rehabilitation Plan focussing on those parts of Area C with the potential to deliver greater ecological benefits.
37. Accordingly, no inconsistency arises.

Council can impose inconsistent conditions in any event

38. The Court Approval (including the conditions attached thereto) was deemed to be a decision of the Council, by operation of the provisions of IPA and SPA addressed above.
39. Accordingly, even if I am wrong about there being no inconsistency between conditions of the Court Approval and any Later Conditions, the Council would still be entitled to impose the Later Conditions because:
- (a) the same person would be imposing both conditions because:
 - (i) the Council is taken to have imposed Conditions 3 and 12; and
 - (ii) the Council, as the assessment manager for the Development Application, would impose any Later Conditions; and
 - (b) MUI, as both the applicant and land owner, will consent to the conditions in writing.
40. It follows that the Council would have the power to impose conditions in respect of the Development Application that are inconsistent with the Court Approval.

Land issue

41. There is no statutory requirement for a development application to be made in respect of the entirety of a lot. Indeed, the definition of "*premises*" under Schedule 2 of the PA includes a "*building*", which in turn is defined as including part of a building. It follows that there is no requirement for the "*premises*" the subject of a development application to be coextensive with the owner or applicant's legal interests in the land.

42. I understand that the Council's primary concerns in respect of the metes and bounds identification of the Relevant Land is that it may impose conditions requiring bushfire and ecological mitigation to occur elsewhere on the Land (ie on land that is not the subject of the Development Application).
43. There is, however, no legal impediment to that occurring. As was recognised by Rackemann DCJ in *Bon Accord Pty Ltd v Brisbane City Council & Ors* (2008) 163 LGERA 288 (***Bon Accord***), in respect of the statutory predecessor to the PA (being the IPA):

“[22] What then does the IPA require? Section 3.2.1 contains requirements for applications for development approvals. It is the section which provides the context for the application of Pioneer to a development application made under the IPA. What subsection 3.2.1(2)(a) requires is an accurate description of the land the subject of the application. Pursuant to s 3.2.1 applications are made with respect to assessable development and, in this case, for building work and the start of a new use. Consistently with Pioneer, the land the subject of the application is the land the subject of the assessable development for which approval is sought by the application – in this case the land the subject of the proposed building work and the new use for which approval was sought. The IPA does not require the application to include all land which, although not part of the assessable development for which approval is sought would, in some way, have a nexus with, or be affected in some way by, the development, or be the subject of external works as a consequence of the development.”

(emphasis added)

44. Here, the statutory requirements articulated in *Bon Accord* have been fulfilled. The Relevant Land is where the development the subject of the Development Application (ie a material change of use for Transport depot) will occur. That works may be needed on other land to support that change of use does not mean that it is required to be included in the Development Application.
45. By way of analogy, it is often common to achieve stormwater or other connections over land that does not form part of a development application (and indeed, is usually in separate ownership). The situation here is appreciably better as the Land is controlled by the applicant for the Development Application.
46. It follows that there is no warrant to include additional land in the Development Application and that these matters may be appropriately conditioned.

Conclusion

47. For the reasons set out above, I am of the opinion that there is no impediment to the Council imposing conditions in respect of the Development Application that are inconsistent with those of the Court Approval because:
- (a) the approvals will not be for the **same** development and accordingly, s 66(2) of the PA would not apply; or

(b) if s 66(2) of the PA does apply, the Council has the power to impose inconsistent conditions in any event (as it is taken to have imposed the conditions of the Court Approval).

48. Further, there is no need to include additional land in the Development Application.

49. I trust this advice is of assistance.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'L.I. Walker', written in a cursive style.

L.I. Walker
Chambers