



1 May 2026

Mills Oakley
ABN: 51 493 069 734

Your ref: A006919431
Our ref: GEPB/RXNB/9489798

Brisbane City Council
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Dear Nicholas

**Development Application for Reconfiguring a Lot – Boundary Realignment (2 into 2 lots)
(Council Ref. A006919431)
99 - 101 Honour Avenue, Chelmer – Lots 8 & 9 on RP29370**

1. We act for Oliver Gjorgioski, the applicant in respect of the above development application (**Development Application**).

Background

2. The land the subject of the Development Application is located at 99 – 101 Honour Avenue, Chelmer, more particularly described as Lots 8 & 9 on RP29370 (**Land**).
3. The Development Application seeks approval for a development permit for reconfiguring a lot – boundary alignment (2 into 2 lots).
4. The Land has the benefit of an approval granted in 1966/1967 for multiple dwelling (Council Ref. 2857/66) (**1966 Approval**).

Information Request

5. On 19 January 2026, Council issued an information request for the Development Application (relevant extract below).

Existing Use

1) Council records show that the existing building on site was registered as a Multiple dwelling accommodation in 1966/1967. As the proposed reconfiguration would result in the approved Multiple dwelling accommodation no longer complying with conditions of approval, clarify if the existing building is to remain and function as a Multiple dwelling or if it is to be repurposed as a Dwelling house. A material change of use application for a house on a small lot in the Traditional Building Character (TBC) overlay may be required to retain the structure as a house on proposed Lot 1.

Identify the intent for the existing structure proposed for retention on proposed Lot 1: If the Multiple dwelling accommodation use is to be maintained, demonstrate compliance with relevant criteria; or

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If the Multiple dwelling accommodation use is to be abandoned, provide relevant applications and assessment material to justify the proposed new use. It is recommended that the option of a dwelling house with sufficient setbacks and land at the rear for a 300m² flood free pad be considered.

6. On 30 March 2026, you sent correspondence to the applicant indicating that Council may be supportive of a material change of use for a dwelling house application being submitted:

Accordingly, the current proposal to subdivide land remains not supported at this stage.

As discussed over the phone and as mentioned in the Information Request, Council could consider an MCU for a dwelling house at this location to facilitate the location of one additional dwelling house residential lot at the rear of the property. Due to the Traditional building character overlay, the existing 1946 or earlier structure would need to be retained on site and would be expected to be established as a Dwelling house.

A development permit for a Material change of use may be required to be added to the current proposal to facilitate a dwelling house approval (existing building).

1966 Approval

7. The 1966 Approval is subject to the following conditions:
- (a) *The rear yard to be either graded to allow proper access to the yard area or the rear of the yard to be filled to give a usable area for 45 feet from the rear of the building.*
 - (b) *Compliance with all relevant Council Ordinances.*
8. It is uncontroversial that implementation of the Development Application would create non-compliance with condition (a) of the 1966 Approval.
9. That is because it would no longer be possible to provide the usable area of 45 feet from the rear of the building because that is now proposed as a separate lot.

Legal Position

10. The issue to be resolved here is in the event that:
- (a) the Development Application is approved; and
 - (b) the development approval for boundary reconfiguration is implemented,
- how does the existing residential building on proposed new lot 1 becomes a lawful land use.
11. This planning objective of securing a lawful land use outcome for the residential building can be secured in 2 ways:
- (a) a change application to the 1966 Approval to amend condition (a) (to provide an alternative usable area for open space and/or car parking purposes); or
 - (b) convert the existing building to a dwelling house through a material change of use application.
12. Either of the above options is available to secure a lawful land use outcome for proposed lot 1.
13. In the above circumstances, the Development Application should be approved (absent any reason for refusal), subject to a condition requiring a lawful land use outcome is achieved for the residential building on proposed lot 1, prior to sealing the plan of subdivision.

14. Such condition may read:
- Prior to a request for Council to seal the plan of subdivision, demonstrate the building to be retained on proposed lot 1 is lawful. That can be demonstrated by the following:*
- (a) *obtaining and implementing a change approval to amend the 1966 Approval; or*
 - (b) *obtaining and implementing a development approval for a material change of use for dwelling house; or*
 - (c) *obtaining and implementing another appropriate approval.*
15. Implementing any of the above options to achieve a lawful building on proposed lot 1 is only required in the event the Development Application is approved and the approved reconfiguration is implemented.
16. There is no reason or utility for the applicant to undertake the steps above without first having the certainty there is an approval of the Development Application in place.
17. As the resolution of the lawful land use outcome for the building to be retained on proposed lot 1 is contingent on both the Development Application being approved and implemented, this is not a matter for refusal of the Development Application.
18. Rather it is a matter for a condition of approval to ensure the retained building on proposed lot 1 is lawful should the reconfiguration of a lot approval be implemented. There are a number of possible pathways open to achieve that outcome.

Planning & Environment Court Authority

19. The approach above is consistent with the Court authority on this point.
20. In *KCY Investments (No.2) Pty Ltd v Redland City Council & Anor*¹, the Court considered an appeal against a refusal of a development application for a material change of use that was subject to code assessment. The development application was refused by Council on the basis that it was inconsistent with the unaltered 1994 conditions that were incorporated into the existing 1998 approval (**Development Approval**) on the land which contained conditions that provided:
- (a) for the protection and retention of vegetation and dunal topography; and
 - (b) no further development was permitted in the area that was allocated for the protection and retention of vegetation.
21. The issue that was before the Court was whether the 1994 conditions that were adopted in the existing Development Approval:
- (a) continued to apply to the land; and
 - (b) whether the proposed development contravened those conditions.
22. The Court found that:
- (a) the 1994 conditions continued to apply to the land; and
 - (b) the proposed development would contravene the 1994 conditions.
23. The Court found that the inconsistency could be remedied by the implementation of a condition and stated:²
- [82] ... I consider that the appellant would commit a development offence if it commenced the development, by contravention of the conditions of the earlier approval. ...*
- ...

¹ *KCY Investments (No.2) Pty Ltd v Redland City Council & Anor* [2012] QPEC 17.

² *Ibid* [82] – [84].

[84] ... *The development application should be approved subject to the appellant taking the necessary steps to free the land of the conditions of the earlier approval.*

24. The outcome of the Court decision was that the Court granted the approval, but subject to the condition that implementation of the approval must be rendered consistent with the 1994 conditions that applied to the land. This was to be achieved by a separate and subsequent change application to the 1994 approval but was only required in the event the new proposed development was to be implemented.

Conclusion

25. The residual issue of non-compliance with condition (a) of the 1966 Approval, can be resolved in an orthodox way by a condition of approval. The proposed wording of such a condition, is contained in paragraph 14 above.
26. The proposed condition is consistent with the decided authority of the Court on this issue.
27. As such, achieving a lawful land use outcome for the building to be retained on proposed lot 1 is a matter for conditions of approval and cannot be a reason for refusal of the Development Application.

If you have any questions or require further information please do not hesitate to contact Gabrielle Perkins on +61 7 3010 8025 or gperkins@millsoakley.com.au.

Yours faithfully



RAYNE NELMS
PARTNER