SUPREME COURT OF QUEENSLAND

CITATION:	*Rathera P/L v Gold Coast C C & Ors; Rathera P/L v Gold Coast C C & Anor; Rathera P/L v Gold Coast C C & Anor* [2000] QCA 506
PARTIES:	**RATHERA PTY LTD** ACN 001 447 178 (respondent/appellant) **v** **GOLD COAST CITY COUNCIL** (respondent/respondent) **SKEETA PTY LTD** ACN 010 631 437 **MAYLANE PTY LTD** ACN 078 553 072 (appellants/respondents) **RATHERA PTY LTD** ACN 001 447 178 (respondent/appellant) **v** **GOLD COAST CITY COUNCIL** (respondent/respondent) **ALH GROUP PTY LTD** ACN 067 391 511 (appellant/respondent) **RATHERA PTY LTD** ACN 001 447 178 (respondent/appellant) **v** **GOLD COAST CITY COUNCIL** (respondent/respondent) **LIQUORLAND (AUSTRALIA) PTY LTD** ACN 007 512 414 (appellant/respondent)
FILE NO/S:	Appeal No 433 of 2000 Appeal No 434 of 2000 Appeal No 436 of 2000 P & E Appeal No 538 of 1999
DIVISION:	Court of Appeal
PROCEEDING:	Planning & Environment Appeal
ORIGINATING COURT:	Planning and Environment Court at Southport
DELIVERED ON:	14 December 2000
DELIVERED AT:	Brisbane
HEARING DATE:	19 September 2000
JUDGES:	McPherson JA, White and Jones JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDER:

1. **Appeal allowed**
2. **The second respondent to pay the appellant's costs of and incidental to the appeal to be assessed**
3. **The proceedings are remitted to the Planning and Environment Court**

CATCHWORDS: LOCAL GOVERNMENT - SUBDIVISON OF LAND - CONSENT AND APPROVAL OF COUNCILS - DEVELOPMENT CONTROL PLANS – appellant made development application for material change of use of land - application related to restaurant, hotel tavern and bottle shop - irregular area of land between tenancies - whether area to be licensed

LOCAL GOVERNMENT - TOWN PLANNING - GENERAL MATTERS - PLANNING SCHEMES AND INSTRUMENTS AND LIKE MATTERS – QUEENSLAND - whether development application contained "an accurate description of the land, the subject of the application" - proper construction of statutory provision – interrelationship with other legislation - approved forms – mandatory information

Integrated Planning Act 1997 (Qld), s 2.4.1, s 3.1.9, s 3.2.1, s 3.2.1(3), s3.3.1, s 3.4.4, s 3.5.28, s 4.1.53(2)
Liquor Act 1992 (Qld)
Integrated Planning Regulation 1998 (Qld), reg 11, reg 11(7)(b)

Pioneer Concrete (Qld) Pty Ltd v Brisbane City Council (1979-80) 145 CLR 485, considered

COUNSEL: M D Hinson SC for the appellant
B G Cronin for the respondent
C L Hughes for the second respondent in Appeal 436/2000

SOLICITORS: Lazarides Development Consultant for the appellant
McDonald Balanda & Arcuri for the respondent
McCullough Robertson for the second respondent in Appeal 436/2000

[1] **McPHERSON JA:** I agree that, for the reasons Jones J has given, this appeal should be allowed with costs against the second respondent. The proceedings are remitted to the Planning and Environment Court.

[2] **WHITE J:** I agree with the reasons of Jones J. This appeal should be allowed with costs against the second respondent and the proceedings be remitted to the Planning and Environment Court.

[3] **JONES J:** On 2 November, 1998 the appellant made a development application for material change of use of land situated at 103 West Burleigh Road, Burleigh

Heads. The real property description of the land is Lot 8 on RP 89264 containing an area of 4032 $m^{2.}$

[4] The land was being developed as a local business centre and for this purpose specific areas were allocated to different tenancies intended to be used by businesses as follows:-

Tenancy 1	Service Station and Shop
Tenancy 2	Takeaway Food Shop
Tenancy 3	Restaurant
Tenancy 4	Hotel Tavern and Bottle Shop
Tenancy 5	Video Rental Showroom

The remaining area of the lot was given over to internal driveways and carparking spaces in accordance with the local authority requirements for the varying uses of the tenancies. The appellant's application related to the use of the part of the land which was designated at Tenancy 3 & 4. The terms of the proposal were as follows:-

> "The application is to establish a neighbourhood tavern on part of the subject land... The tavern will be contained in Tenancies 3 & 4 shown on the plan.
>
> The proposed tavern will incorporate public bar and lounge area, poker machine area, bottle shop and restaurant and associated kitchen and back of house areas. The restaurant is separately located within Tenancy 3 but will form part of the general licence to be issued to the tavern. The area between the two tenancies will be a thoroughfare linking through to parkland to the rear and will contain children's play equipment and landscaping." [1]

Between Tenancy 3 (Restaurant) and Tenancy 4 (Hotel Tavern and Bottle Shop) there was an irregular area of land which was initially intended for vehicular and pedestrian access to parkland at the rear of the allotment. It did not adjoin any roadway and was not in any sense likely to be the regular or main vehicular access. The main access was catered for at the front of the allotment which had frontage to West Burleigh Road.

[5] On 27 November, 1998 the first respondent made an information request of the appellant concerning the use of this small area between the restaurant and the proposed hotel. In particular, the request inquired as to whether there was any intention to establish outside seating associated with the restaurant and whether patrons would be able to walk "with drinks in hand" between the restaurant and the hotel, thereby necessitating that area also to be licensed under the relevant provisions of the *Liquor Act 1992*.

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1 Record 26

[6] On 28 January, 1999 the appellant replied to these requests with a revised proposal the details of which were set out in drawing 98435B Sheet 1A ("the Plan") [2]. The revised proposal provided for 31.5 m^2 of the area to be used as external seating for the restaurant, for a children's playground to be installed, for increased landscaping and the provision of a bicycle stand. Apart from the 31.5 m^2 for restaurant use there would be no other tables or chairs in this area. The proposal expressed an intention to seek a liquor licence for the area to permit patrons to use the area with "drinks in hand". The application was in the form approved [3] by the first respondent. This form was accompanied by a detailed submission from Dredge & Bell, Planning & Development Consultants. [4]

[7] The approved form has the heading MATERIAL CHANGE OF USE. The form itself contains a number of discrete sections in which information relevantly required by the *Integrated Planning Act* 1997 ("the Act") can be recorded. The section dealing with property description on the first page of the form is set out as follows:-

APPLICANT:	Name RATHERA PTY LTD
	Company Name: C/o Dredge & Bell Planning Pty ltd.
(*approval is mailed to applicant*)	Postal address: P.O. Box 6793 GCMC Postcode: 4217
	Telephone No: (Business hours): 55268555 Facsimile No:55268070
SIGNATURE/S:	29/10/98
PROPERTY DESCRIPTION: (*If plan NOT sealed, please supply previous*):	lot No: 8 RP/ 89264
	Lot No: - RP No.: -
	Street No: 103 Street Name: WEST BURLEIGH RD
	Suburb: BURLEIGH HEADS
	Shop/Tenancy No: - Level (if applicable) -
LAND OWNER/S	Name: GEOFF SHARPE PTY LTD
	Residential Address: 18 SAYWELL, AV, SORRENTO Postcode: 4217
CONSENT:	Basis of Ownership REGISTERED PROPRIETER
SIGNATURE/S:	Date: 29/10/98
(*Company Seal or ACN*)	

[2] Record 63. The earlier plan is shown in the record book at 30.
[3] Record 31
[4] Record 25

[8] The second page of the application form contains a **Checklist** on which is to be noted whether the "mandatory information" is completed. That is a reference to the requirement of section 3.2.1 of the Act on which this appeal turns.

[9] Public notice of the application was given on 5 February, 1999 and a notice of compliance with the public advertising was lodged with the first respondent on 2 March, 1999.

[10] The first respondent approved the proposal and notified such approval by letter dated 29 March, 1999.

The issue

[11] The only point in issue on this appeal for which leave has been given is whether the development application contained, for the purpose of s 3.2.1(3) of the Act, "an accurate description of the land, the subject of the application". This question requires a consideration of the proper construction of that section. Should the "accurate description" be of the allotment where the development work is to occur or should the description be more specific and describe the part of the allotment on which the development is to occur?

[12] In his reasons the learned primary Judge made the following remarks:-

> "It is over simplistic to say that the application is made in respect of a particular lot and then reserve the right to create a licensed area on any part of that lot. A lot may be large and a proposal for a hotel or a licensed area on one part of it may be acceptable, whereas on another part it may not. An "accurate" description is required. I consider that the omission to give details of the extent and position of all the proposed licensed areas on the lot the subject of the application constitutes a failure to give "an accurate description of the land the subject of the application"." [5]

[13] Relying on that assessment, his Honour expressed the view that the application did not comply with the relevant provisions of the Act and he went on to consider whether he should exercise his discretion pursuant to s 4.1.53(2) of the Act to allow the application to proceed, notwithstanding that non-compliance. He determined that the non-compliance was "of such significance" that he was not satisfied he should exercise that discretion.

[14] It is from these two determinations that the appellant now seeks the intervention of this Court.

Statutory provisions

[15] The development proposal had to be made and progressed in compliance with the provisions of the Act. The terms of s 3.2.1 should be set out in full -

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[5] Record 94

"**3.2.1(1)** Each application must be made to the assessment manager.

(2) Each application must be made in the approved form.

(3) The approved form –

(a) must contain a mandatory requirements part including a requirement for –

(i) an accurate description of the land, the subject of the application; and

(ii) the written consent of the owner of the land to the making of the application; and

(b) may contain a supporting information part."

[16] This provision forms part of the Integrated Development System ("IDAS") which is provided for in Chapter 3 of the Act. Section 3.1.9 provides that IDAS involves four stages:-

- Application stage
- Information and referral stage
- Notification stage
- Decision stage

The purposes of the first three stages are found in ss 3.2.1, 3.3.1, and 2.4.1 respectively.

The procedure

[17] The purpose of s 3.2.1 and the role of the application form itself must therefore be seen as part of this detailed and complex procedure which precedes a local authority making a decision on a development proposal. The first step is the lodgment of the application. Only when the assessment manager is satisfied that adequate information about the proposal has been supplied, including the assessment of any referral agency, does the IDAS process proceed to the next stage.

[18] That information and referral stage requires the applicant or the assessment manager to give notice of the development to the public and to the owners of all lands adjoining the subject land. This notice then supplies the basic information to interested persons as to the land where the identified development is to take place, how to obtain details of the proposal and the time within which submissions about the proposal must be made.

[19] In form, the application itself is little more than a broad record of the parties, property and type of development. But by the end of the information and referral stage the assessment manager ought to know in precise detail what the development

proposal entails. This information comes, not so much from the application form, but from accompanying documents, from requests for further information and from the assessment of referral agencies.

[20] For members of the public or the adjoining land owners the place at which the precise details of the proposed development is to be obtained is not the public notification - be it by newspaper advertisement or by notice board - but rather at the local authority office which is identified in the advertisements along with the time within which submissions would need to be made.

The submissions

[21] The appellant argues that the purpose of requiring an "accurate description of the land" is threefold.

- To identify the landowner who must give written consent to the proposal (s 3.2.1(3)(a)(ii));
- To identify the land on which the public notice is to be erected and to identify the adjoining landowners (s 3.4.4); and
- To identify the land to which will be attached the approval and any conditions (s 3.5.28).

[22] To meet these objectives, the appellant contends that the land which is to be described is the whole of the allotment – in this case Lot 8.

[23] The appellant also contends that more significant factual detail in the application is the description of the proposal – in this case "hotel". The choice of this term rather than "tavern/bottle shop and restaurant" was dictated by the definitions of uses set out in the local authority's planning scheme. No point was taken by the respondents on this variation in nomenclature.

[24] The use of tenancies 3 and 4 carried with it an obligation to provide carparking spaces. The number of such spaces for each tenancy is detailed in the **Site Analysis** section of the plan. The total carparking space required for this development from that analysis totalled 36.3 spaces. Access to this number of carparking spaces was available over the whole of that part of the allotment which was set aside for carparking. In that sense it would be impossible to define the area of land required for the proposal and carparking with the degree of specificity which the second respondent argued was necessary.

[25] The second respondent contends that by reliance on the ordinary meaning of the words "land, the subject of the application", they refer to the specific area of the proposal. It seeks to draw support from regulation 11 of the *Integrated Planning Regulation* which sets out requirements for the positioning of the public notice board "on the land" and, where the land has no road frontage, on the "other land" (Reg 11(7)(b)).

[26] The second respondent sought to place emphasis on the epithet "accurate" pointing to dictionary meanings of – "exact, precise ...executed with care". It sought thereby to argue that what was intended by that epithet was something akin to "specific".

[27] I cannot see how the terms of this regulation assists in the construction of s 3.2.1. The requirement that a notice be placed on road frontages would equally be satisfied in this instance by the interpretation for which the appellant contends. Nor does it seem to me the issue is resolved by any consideration of the general meaning of "accurate".

[28] The second respondent adopted the approach of the learned hearing Judge who attached significance to the fact that the application did not define specifically the area which would be subject to a liquor licence, particularly as part of that area was external to the buildings. The second respondent argued that regard had to be had to the inter-relationship between the legislative regimes under the *Liquor Act* and under the *Integrated Planning Act* and that is why it was important for the application to specify the land to which the liquor licence would attach.

[29] It seems to me that the precise area of the proposal to which the liquor licence would attach is simply a matter of detail of the proposed use. Such detail is in fact set out in the accompanying documents as indeed are such other matters relevant to planning issues such as carparking spaces. It is not envisaged that every detail of the proposal would be included in the application form. Were this to be so then the application would have to include every detail relating to the other tenancies, every detail relating to carparking and to access and internal vehicular movement. That does not seem to me to be the purpose of mandatory requirement to provide a description of the land. Further, the construction of the subsection must satisfy all situations and not be dependant on interrelationships with other legislation.

[30] In this connection the remarks of Stephen J in *Pioneer Concrete (Qld) Pty Ltd v Brisbane City Council* [6] are pertinent, his Honour said:-

> "In any such scheme for the control of land use the two critical integers, land and use, each involves a question of definition, what land and what use? The intending user of land will, in his application for consent, have to specify these two integers but it will be one of them, the integer of use, that will dictate the precise identity and extent of the other integer, the land the subject of the application. This is a necessary consequence of the fact that the consent being sought is consent to use for a particular purpose. The land is merely the passive object which is being used; the active integer, use, will determine its extent." [7]

[31] It would not be expected that an objector to the proposal would frame a submission based on the information contained in the public advertising, nor indeed in what is set out in the application form. It is the accompanying maps, sketches, site plans and development details which one expects would be relevant to any intending objector.

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6 (1979-80) 145 CLR 485

7 *ibid.* 501

Conclusion

[32] The reason for having a description of the land in the application form is to meet the purposes of the IDAS provisions. I take the view these are the matters referred to in the appellant's argument as detailed in paragraph [21] hereof. It is these matters which guide the proper construction of s 3.2.1(3). The identification of the consenting owner and of the land to which the approval and conditions will attach are the significant matters which leads me to the view that the required description of the land is the whole of the parcel of the land on which the proposed development is to occur and not the various parts of the parcel which the development and the ancillary services are likely to affect.

[33] Accordingly, it is my view that the application does comply with the provisions of s. 3.2.1(3)(a)(i) and consequently there is no need to consider any question of the exercise of a discretion for relief from non-compliance.

[34] I would therefore allow the appeal and remit the matter to the Planning and Environment Court at Southport. The second respondent should pay the appellant's costs of and incidental to the appeal to be assessed.

[35] The first respondent appeared on the appeal but did not make submissions in support of the approval which it had given to the proposal. In these circumstances I would make no order for costs in its favour.