

PLANNING & ENVIRONMENT COMMITTEE	7
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14 APRIL 2005

**MATERIAL CHANGE OF USE (IMPACT ASSESSMENT) – BROTHEL – 11
CAVA CLOSE, BUNGALOW – DIVISION 5**

Jenny Elphinstone: 8/8/564-01 : #969465

PROPOSAL:

BROTHEL

APPLICANT:AART BRONS
4/393 DRAPER STREET
CAIRNS QLD 4870LOCATION:

11 CAVA CLOSE, BUNGALOW

PROPERTY:

LOT 7 ON SP101286, PARISH OF CAIRNS

ZONE:

LIGHT INDUSTRY

STRATEGIC PLAN:

INDUSTRY

CAIRNS PLAN:

INDUSTRY PLANNING AREA

DCP:DCP2 – HEIGHT & IMPACT OF BUILDINGS –
PRECINCT 6PLANNING SCHEME:PLANNING SCHEME FOR PART OF THE CITY
OF CAIRNSREFERRAL AGENCIES:

PROSTITUTION LICENSING AUTHORITY

NUMBER OF SUBMITTERS:

NOT APPLICABLE

STATUTORY ASSESSMENTDEADLINE:

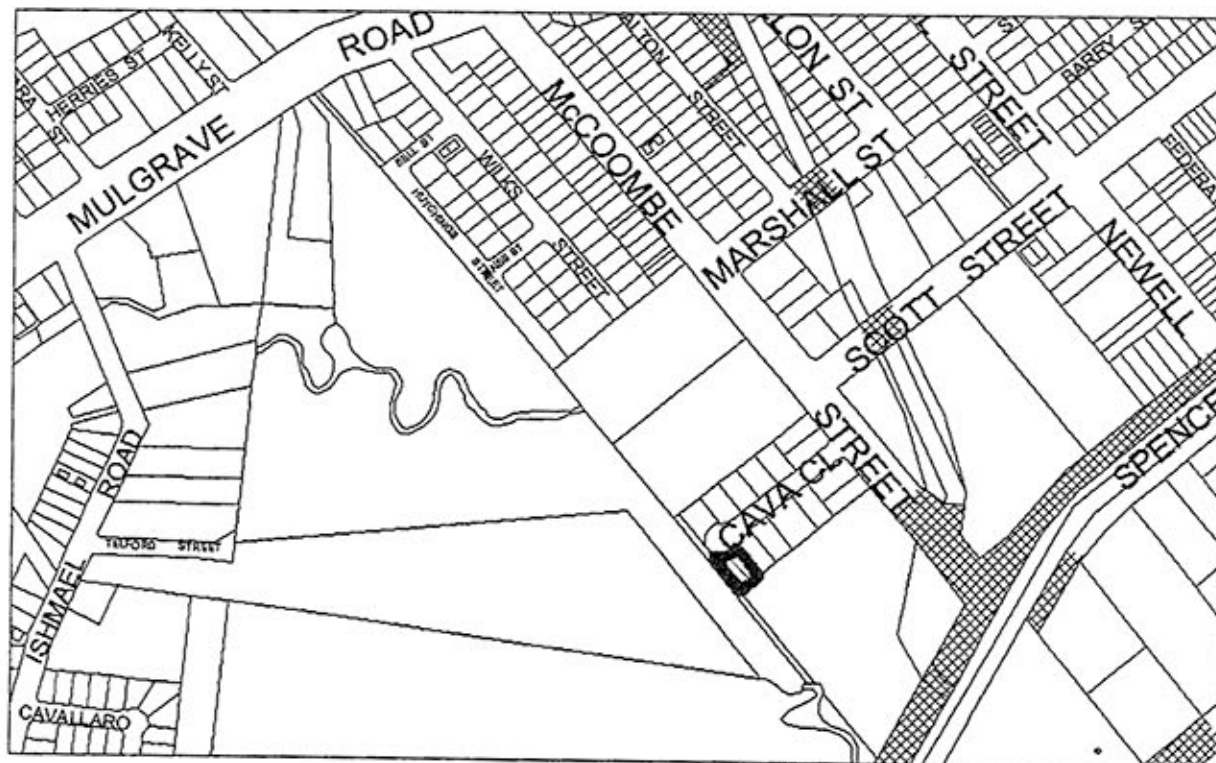
11 MAY 2005

DIVISION:

5

APPENDIX:

1. SITE LAYOUT PLAN

LOCALITY PLANRECOMMENDATION:

- A. That Council refuse the application for a Material Change of Use (Code Assessment) for a Licensed Brothel on land at 11 Cava Close, Bungalow, more particularly described as Lot 7 on SP101286 on the following grounds:
1. The Assessment Manager is required under Section 64(1)(a)(ii) Prostitution Act 1999 to refuse the application where the application land is within 200 m of the closest point on any boundary of land on which *there is a residential building* and such a building is located on land at 150-172 McCoombe Street, more particularly described as Lot 2 on RP730391 for which the Detached Dwelling existing at 150-172 McCoombe Street was established under a Consent Permit No1630 issued on the 10 January 1977 by the former Cairns City Council. The approved use has not been abandoned under the Integrated Planning Act and the use rights associated with the use of "Detached Dwelling" continue.

- B. That Council advise the Applicant that should either the Planning and Environment Court and/or the Independent Arbitrator, as appointed by the Queensland Government in reference to the arbitration of Code Assessable IDAS applications, find that Section 64(1)(a)(ii) Prostitution Act 1999, is not applicable in respect to the Dwelling at 150-172 McCoombe Street, more particularly described as Lot 2 on RP730391, then Council agrees to the following conditions being placed on a subsequent approval:

Assessment Manager Conditions

1. The applicant/owner must at all times during the development of the subject land carry out the development and construction of any building thereon and conduct the approved use(s) generally in accordance with:
 - a. The approved plans, being:

Drawing BD05.02.525/SKI, dated 5 February 2005, by Buck Design Pty Ltd;
 - b. The plans, specifications, facts and circumstances as set out in the application submitted to Council; and
 - c. To ensure that the development complies in all respects with the requirements of Council's Planning Scheme, Development Manual and good engineering practice.

Except where modified by these conditions of approval.

Timing of Effect

2. The conditions of the Development Permit must be effected prior to the issue of a Development Permit for Building Work, except where specified otherwise in these conditions of approval.

Off Street Parking

3. The amount of off street vehicle parking must be as specified in IDAS Brothel Code, Under Schedule 3 Prostitution Regulation 2000 which is 8 car spaces and one taxi drop-off space.
4. Access to the car park must remain open at all times the premises is open to the public or for service and maintenance.
5. Bicycle parking provision of four spaces must be provide on site to the satisfaction of the Chief Executive Officer

6. The landscaped areas adjoining the parking area must be protected from vehicular encroachment by a 150mm high vertical concrete kerb or similar obstruction and must be submitted and approved by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.
7. The parking must be constructed in accordance with Council's Development Manual specifications prior to commencement of the use and must be maintained at all times, both to the requirements and satisfaction of the Chief Executive Officer. In particular, all parking, driveway and vehicular manoeuvring areas must be imperviously sealed, drained and line marked.
8. The applicant/owner must erect a sign to car park entrance to the satisfaction of the Chief Executive Officer, advising of the location of the off-street parking area. Details of the sign(s) must be submitted to and endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work. The sign(s) must be erected prior to the commencement of the use.

General External Works

9. The applicant/owner must at its own cost undertake the following works external to the subject land:
 - a. Vehicular crossovers are to be provided between the roadway and the property alignment. They are to be constructed in accordance with the profile detailed in Standard Drawing S-1015. The applicant is to pay the cost of any alterations necessary to public services, mains or utilities.

Any disused crossings are to be reinstated to standard kerb and channel to the satisfaction of the Chief Executive Officer; and

Three (3) copies of a plan of the works must be submitted and endorsed by the Chief Executive Officer prior to lodgement of an application for a Development Permit for Building Work. Such work must be constructed in accordance with the endorsed plan to the satisfaction of the Chief Executive Officer prior to the commencement of the use.

Landscaping Plan

10. The applicant/owner must landscape the subject land and street frontage in accordance with Development Manual, Part 4 - Landscaping and in accordance with a landscape plan endorsed by the Chief Executive Officer. The landscape plan must be submitted to and be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work. In particular, the plan must show:
- a. Deeply planted landscaped buffer being provided to the street frontage and the front wall / façade; and
 - b. Landscaping of setback areas at the side and rear of the building.

Areas to be landscaped must be established prior to the commencement of the use and must be maintained at all times, both to the satisfaction of the Chief Executive Officer.

Minimum Fill And Habitable Floor Levels

11. All habitable floor levels in all buildings must be located 150 mm above RL3.8 metres AHD being the Q100 flood immunity level, in accordance with Development Manual Guidelines and Planning Scheme requirements unless otherwise approved by the Chief Executive Officer.

Lawful Point of Discharge

12. The applicant/owner must ensure that the flow of all external stormwater from the property is directed to a lawful point of discharge being Cava Close or the drainage easement at the rear of the site such that it does not adversely affect surrounding properties or properties downstream from the development, all to the requirements and satisfaction of the Chief Executive Officer including:

Health Conditions

13. An area of a suitable size is to be provided at ground level to store the number of refuse bins required to service the site.

The enclosure must be imperviously paved, roofed and bunded to prevent the ingress of stormwater and drained to Council's sewer. Pre-treatment may be required for the sewer connection in accordance with Council's Trade Waste Policy.

External Lighting

14. All external lighting installed upon the premises including car parking areas must be certified by Ergon Energy (or such other suitably qualified person). The lighting must conform with the Planning Scheme, whereby vertical illumination at a distance of 1.5 metres outside the boundary of the subject land shall not exceed eight (8) lux measured at any level upwards from the ground level.
15. The applicant/owner must ensure that all lighting and landscaping requirements comply with Council's General Policy Crime Prevention Through Environmental design (CPTED), in particular that adequate illumination of the building is provide to identify the buildings and entrance during the evening periods, without drawing undue attention to the premises.

ADVICE

1. This approval, granted under the provisions of the Integrated Planning Act 1997, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of Section 3.5.21 of the Integrated Planning Act 1997.
2. Suitable access and facilities to cater for disabled persons are encouraged to be provided within the approved development to ensure the development does not conflict with the provisions of the Disability Discrimination Act.
3. All building site managers must take all action necessary to ensure building materials and/or machinery on construction sites are secured immediately following the first potential cyclone warning is received and that the relevant emergency telephone contacts are provided to Council Officers, prior to the commencement of works.
4. Builders site access and vehicle parking should be addressed as part of 'Operational Works'. Extended usage of street parking should also be addressed and shall require Council approval.
5. Use of the footpath for storage of the builders' materials is prohibited by Council.

6. For information relating to the Integrated Planning Act 1997 log on to www.ipa.qld.gov.au . To access Council's Development Manual, Local Laws and other applicable Policies log on to www.cairns.qld.gov.au
7. All signage displayed on the property, other than the directional sign for the car park area must be in accordance with the requirements of the IDAS Code for Licensed Brothels pursuant to Schedule 3, Prostitution Regulation 2000.

EXECUTIVE SUMMARY:

Application has been made to develop a Licensed Brothel on the subject land. Cava Close is located at the southern end of McCoombe Street. Council at the Ordinary Meeting held on 22 July 2004 determined that the application was Impact assessable development. The applicant sought a declaration from the Planning and Environment Court, in respect to which the level of assessment was applicable: impact assessment; or code assessment. In the matter of appeal No.340 of 2004 the Court determined on 10 September 2004 that the subject site was located within an "Industrial Area" as defined by the Section 63A Prostitution Act 1999 and therefore the application was for Code Assessable development.

Council had requested further information by letter dated 16 March 2004 and the applicant responded to this request, forwarding details of the proposed premises, by letter received 10 March 2005. An assessment of the proposed premises and use against the IDAS Code for Brothels, as contained in Schedule 3, Prostitution Regulation 2000, is contained in this report.

Approval of the use is restricted by Section 64(1)(a)(ii) Prostitution Act 1999 which requires the Assessment Manager to refuse the application where the subject land is within 200 m of the closest point on any boundary of land on which *there is a residential building*. Such a building is located on land at 150-172 McCoombe Street and this is distanced 195 metres from the subject land. Council is obliged to refuse the application and such refusal is contained in Recommendation A.

The applicant is able to appeal a determination of the Council that the building located on land at 150-172 McCoombe Street is a residential building. The applicant is also able to appeal against Council's determination that the distance between the residential building and the subject and is 195 metres. Should the applicant be successful in any such appeal, Recommendation B offers appropriate conditions to be included on any subsequent approval, thereby negating the need for the matter to be returned to Council for further consideration.

TOWN PLANNING CONSIDERATIONS:

Proposal

The land is currently vacant, has a site area of 1,000m² and a frontage of approximately 33 metres to Cava Close.

The premises consists of an "L" shaped building containing five bedrooms, with a single room for reception and waiting. A separate staff only area, at the rear of the bedroom area provides a staff lounge room, office, female bathrooms and first aid room. A unisex disabled person's toilet although part of the premises is accessed only via the car parking area.

The premises is set partly behind a 2.4 metre high solid fence and partly behind a 5.2m high front façade. All buildings and the front wall are setback at least 6m from the front property boundary. The single storey building is setback from the side and rear boundary offering a landscaped courtyard at the rear for staff use.

Behind the front fence is an open car parking area for six car spaces, one space being provided for a disabled driver. Access to this car parking area is via a roller shutter door. A further two car spaces are provided in a garage that has access from the front property boundary via a short driveway. The driveway also provides a taxi drop-off area.

A 2m high boundary fence provides security to the sides and rear of the premises behind the front wall and façade. Side boundary fences are provided in front of the wall and facade to a height of 1.2m and these will screen car headlights.

Access is controlled through security pedestrian gates, internal and exterior cameras and duress alarms in the reception, office and each bedroom.

The applicant advises that the Brothel will operate 21 hours a day with the period 6.00am-9.00am being closed to the public and used for cleaning and servicing the property for maintenance and landscaping, deliveries of linen etc.

Strategic Plan/DCP

Council's Strategic Plan makes no comment on the establishment of a Licensed Brothel as the State Government introduced the use after the Scheme's gazettal.

Land Zoning

The use is appropriately sited in a Light Industry Zone.

Public Notification/Submissions

No public notification of the application is required as the use is Code Assessable.

Assessment Against Prostitution Act 1999

The Assessment Manager is required under Section 64(1)(a)(ii) Prostitution Act 1999 to refuse the application where the application land is within 200 m of the closest point on any boundary of land on which there is a residential building.

Of concern is the residential building located at 150-172 McCoombe Street, more particularly described as Lot 2 on RP730391. The applicant contends that the use of this premises is a Caretaker's Residence in association with the building construction business that operates from the same property. A Caretaker's Residence is a Self-Assessable use in the Light industry Zone and is exempt from the 200m rule under the Prostitution Act.

However, the residential building was developed when the land was zoned Industrial and the Detached Dwelling was established under a Consent Permit No1630 issued on the 10 January 1977 by the former Cairns City Council. The approved use has not been abandoned under the Integrated Planning Act and the use rights associated with the use of "Detached Dwelling" continue.

Council has no alternative but to refuse the application at this stage.

Assessment Against IDAS Code

Schedule 3 of the Prostitution Regulation 2000 states the IDAS Code for the establishment of a Licensed Brothel and the assessment is tabled below.

Column 1 (from Schedule 3, PR 2000)	Column 2 (from Schedule 3 PR 2000)		
PERFORMANCE CRITERION	AN ACCEPTABLE SOLUTION	Proposal	Compliance
Car Parking For Clients			
<p>1. For Clients:</p> <p>Adequate car parking is provided, or available, for brothel clients.</p> <p>2. For Staff:</p> <p>Adequate secure car parking is provided, or available, for brothel staff.</p>	<p>Provide 1 car parking space on the brothel premises for each room in the</p> <p>Provide 1 car parking space on the brothel premises, that is well lit and directly accessible to an entrance to the brothel, for each 2 brothel staff members at the brothel at any 1 time.</p> <p>Brothel: 6 shift staff at any one time require 3 spaces brothel.</p> <p>Total: 8 spaces</p>	<p>The 5 bedroom brothel is provided with 8 car spaces. One space is for disabled drivers and two spaces are housed in a garage.</p> <p>The car parking area (6 spaces) is located behind a 2.4m (minimum) high solid block wall which is accessed via a roller door. The roller door will be opened via an intercom contact with the driver.</p>	<p>Complies provided access to the car parking area remains open during operating hours.</p> <p>A condition of Recommendation B requires access to remain available.</p>
Vehicular access			
<p>3. The brothel is safely accessed by vehicular traffic.</p>	<p>Locate vehicular ingress and egress to allow—</p> <p>(a) vehicles to enter and exit the premises in forward gear.</p>	<p>Access and egress can be undertaken in a forward movement.</p>	<p>Complies</p>

Lighting			
4. External lighting for the brothel is designed to ensure the safety and security of brothel staff and clients without adversely affecting the amenity of adjoining premises.	Provide external lighting for the brothel that— (a) is static; and (b) has no characteristic indicating the premises are used for a brothel; and (c) facilitates surveillance; and (d) is hooded and directed downwards.	Bollard lighting is detailed on the plan, defining the landscaped areas. Discreet, lighting is provided along the front wall and facade.	Complies.
Sign			
5. Sign for the brothel is compatible with the amenity of the locality.	Comply with each of the following requirements— (a) only 1 sign is displayed for the brothel; (b) the surface area of the sign is not more than 1m ² ; (c) the sign displays only the name of the licensee and the registered business name of the brothel; (d) the sign does not display words or images that are sexually explicit, lewd or otherwise offensive; (e) the sign is affixed to the brothel.	One sign of 1m ² is to be displayed above the front entrance door on the front facade. The sign will consist of a white background and a red heart with the lettering "Nortnen Belle."	Complies.
Loitering			
7. The design of the brothel discourages loitering outside the premises.	Provide a reception or waiting area at the brothel for use by brothel clients.	A reception/ waiting room is provided.	Complies
Appearance			
8. The brothel premises are unobtrusive in appearance.	Ensure the colours and materials for the brothel premises are unobtrusive.	The building will have a textured coat finish. Colours are grey tones of cool colours (green or blue) with three shades utilized. Roofing colours will be selected from Night Sky, Deep Ocean, Ironstone, Woodland Grey or Plantation.	Complies. Proposed colours reflect toning of distant hills that surround Cairns and are appropriate.

Entrances—security			
9. The staff and clients of the brothel are provided with a secure environment within the brothel premises in the vicinity of each staff or client entrance to the brothel.	Locate the staff and client entrances to the brothel in positions that facilitate surveillance.	Entrances are secured by gates and cameras.	Complies
Entrance—clients			
10. The clients' entrance to the brothel is clearly identified.	Ensure the entrance to the brothel makes it clear to clients which premises to enter.	Vehicle entrance and pedestrian entrance within the site are clearly identifiable.	Complies
Brothel siting and design			
11. The brothel premises are sited and designed in a way that is compatible with the character or intended character of the locality.	Comply with the requirements about the character of the locality under a planning instrument, including boundary set-back, building height and bulk, and landscaping.	Building is sited with a landscaped setback. The majority of sites in this Industrial area are undeveloped. The single storey building is compatible with the few industrial premises in the immediate locality.	Complies.
Infrastructure			
12. The brothel premises are adequately serviced by infrastructure.	Comply with the requirements for infrastructure under a planning instrument applying to the locality, including the requirements to connect to sewerage and water.	Site is within a developed subdivision and is connected to infrastructure.	Complies

Access to Car Park

It is not a normal occurrence that the car parking area be accessed only via a closed roller shutter door. While the brothel be open for business the roller door should remain open and the car park fully accessible.

Other Planning Scheme Requirements

An assessment of the other scheme requirements is tabled below.

Scheme Requirement	Proposal	Compliance
Maximum site coverage of 60%	39.4%	Complies
Maximum Building height of 15m	3.2m-5.2m	Complies
Minimum Building Setback of 6m	6m	Complies
Landscaping, minimum 15% of site	15%	Complies

No pedestrian footpaths are provided in the developments constructed to date in Cava Close. Given the setback of the buildings and the short length of the street, the requirement for a pedestrian footpath is not considered necessary.

There is no set provision for bicycle parking under the IDAS Brothel Code, nor is there a specific category requirement under the Bicycle Parking – Provision for Planning Purposes Guidelines. Given the number of employees and clients four bicycle spaces would suffice. A condition of the approval requires such provision.

REFERRAL

The Prostitution Licensing Authority has not advised of any requirements.

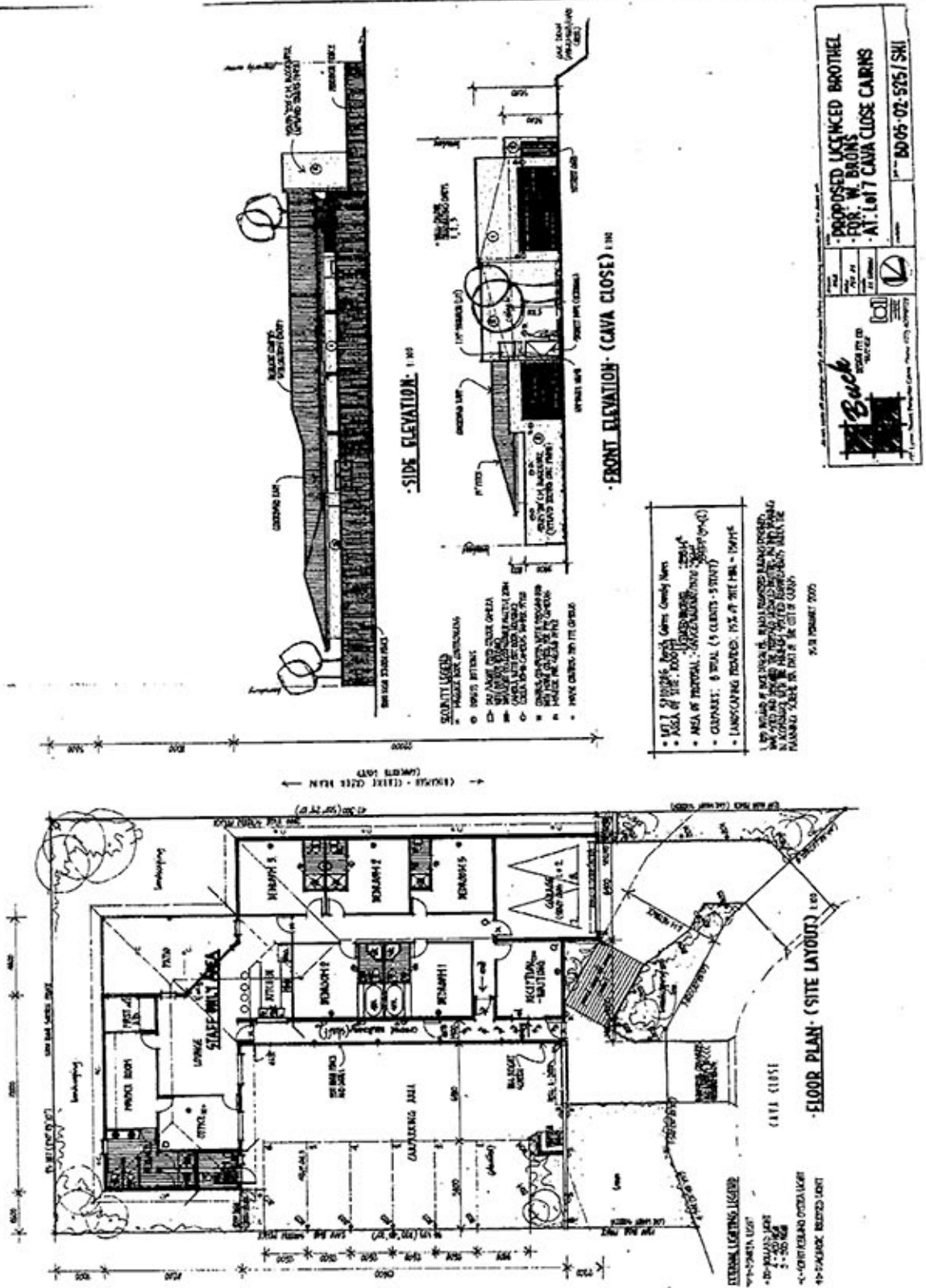
HEADWORKS / CONTRIBUTIONS:

Headworks for industrial areas are based on a site area calculation and these were paid when the land of Cava Close was originally reconfigured. No further headworks are payable.

Jenny Elphinstone
Senior Planning Officer
Action Officer

Neil Beck
Acting Manager City Assessment

APPENDIX 1



ENQUIRIES: Mrs J Elphinstone
PHONE: 4044 3365
YOUR REF:
OUR REF: 8/8/564-01 983066



18 April 2005

Aart Brons
4/393 Draper St
CAIRNS Q 4870

Dear Sir

**RE: DECISION NOTICE FOR
DEVELOPMENT APPLICATION – 8/8/654
- MATERIAL CHANGE OF USE – BROTHEL –
- 11 CAVA CLOSE, BUNGALOW**

119-145 Spence Street,
Cairns Qld. 4870
P.O. Box 359,
Cairns, Qld. 4870
Telephone: (07) 4044 3044
Facsimile: (07) 4044 3022
council@cairns.qld.gov.au
www.cairns.qld.gov.au
ABN 21 543 571 965

I refer to your Development Application, which was determined by Council at its Planning & Environment Committee Meeting held on 14 April 2005. Please find attached the relevant Decision Notice.

Should you have any queries in relation to this Decision Notice, please contact Mrs J Elphinstone of Council's City Assessment Team on (07) 4044 3365.

Yours faithfully

Neil Beck
Acting Manager, City Assessment

Att.

ENQUIRIES: Mrs J Elphinstone
PHONE: 4044 3365
YOUR REF:
OUR REF: 8/8/564-01 983066



18 April 2005

**DECISION NOTICE FOR
DEVELOPMENT APPLICATION – 8/8/564
- BROTHEL – 11 CAVA CLOSE, BUNGALOW**

PROPOSAL: Licensed Brothel

TYPE OF DEVELOPMENT: Material Change of Use
(Impact Assessment)

REAL PROPERTY DESCRIPTION: Lot 7 on SP101283, Parish of Cairns

REFERRAL AGENCIES: Prostitution Licensing Authority
P O Box 3196
BRISBANE Q 4001

DECISION DATE: 14 April 2005

DECISION: Refused

REASONS FOR REFUSAL:

1. The Assessment Manager is required under Section 64(1)(a)(ii) Prostitution Act 1999 to refuse the application where the application land is within 200 m of the closest point on any boundary of land on which *there is a residential building* and such a building is located on land at 150-172 McCoombe Street, more particularly described as Lot 2 on RP730391 for which the Detached Dwelling existing at 150-172 McCoombe Street was established under a Consent Permit No1630 issued on the 10 January 1977 by the former Cairns City Council. The approved use has not been abandoned under the Integrated Planning Act and the use rights associated with the use of "Detached Dwelling" continue.


PROPERLY MADE SUBMISSIONS MADE ABOUT THE APPLICATION:

None applicable

APPEAL RIGHTS:

See Attachment 1

*'Providing for today,
Planning for tomorrow'*


Neil Beck
Acting Manager, City Assessment

Att.

119-145 Spence Street,
Cairns, Qld. 4870
P.O. Box 359,
Cairns, Qld. 4870
Telephone: (07) 4044 3044
Facsimile: (07) 4044 3022
council@cairns.qld.gov.au
www.cairns.qld.gov.au
ABN 21 543 571 965

Our Ref: C04-023

Chief Executive Officer
Cairns City Council
P O Box 359
CAIRNS QLD 4870

BC Mr Aart Brons
PLA

27 April, 2005

Attn: Ms N Huddy/Ms J Elphinstone

Dear Sir,

**RE: DECISION NOTICE FOR DEVELOPMENT
APPLICATION 8/8/564
PROPOSED LICENSED BROTHEL – 11 CAVA CLOSE,
BUNGALOW.**

Council determined the above referenced application on 14 April 2005. A Decision Notice was issued, dated 18 April 2005, copy attached.

My client, Mr A Brons, intends to Appeal the Council's decision to the Independent Assessor.

In this regard, my client is required to provide the Independent Assessor with a copy of the Decision Notice (refer Form 1 ver. 1-08/02/2002).

The Decision Notice issued by Council is incorrect in two instances.

Firstly, the Decision Notice calls up the Type of Development as *Material Change of Use (Impact Assessable)*. However, this should correctly state: **Material Change of Use (Code Assessable)**.

Secondly, in the Reasons for Refusal it states:

..... there is a residential building and such a building is located on land at 150 – 172 McCoombe Street, more particularly described as Lot 2 on RP 730391 for which the Detached Dwelling existing at 150 – 172 McCoombe Street was established under a Consent Permit No 1630 issued on the 10 January 1977 by the former Cairns City Council.

(My emphasis).

This is also not correct. The land use approved under Consent Permit No 1630 is "A Residence To Replace an Existing Residence", and not a Detached Dwelling which is a defined land use term and as such suggests (due to the use of Capitals in its description) that this is the specific use approved on the site. (A copy of Consent Permit No 1630 is attached).

My client is seeking the reissue of a Decision Notice which can then be forwarded with his Notice of Appeal to the Independent Assessor.

On the basis of the timeframes for lodging an Appeal, I request on behalf of my client, that an amended Decision Notice be issued and that written confirmation be provided to my client at that time indicating that the Appeal period restarts upon receipt of the amended Decision Notice.

My client is the applicant for the application and receives all correspondence direct from Council. However, could I request that Council copy any further correspondence in this matter to me, to assist in expediting further action?

Thank you for your assistance in this regard and my client and I look forward to receiving an amended Decision Notice at your earliest convenience.

Yours faithfully,

PLANNING FAR NORTH
Town Planning Consultants

ELIZABETH TAYLOR
Director

ENQUIRIES: Mrs J Elphinstone
PHONE: 4044 3365
YOUR REF:
OUR REF: 8/8/564-01 983066

18 April 2005



CAIRNS
CITY COUNCIL

**DECISION NOTICE FOR
DEVELOPMENT APPLICATION – 8/8/564
- BROTHEL – 11 CAVA CLOSE, BUNGALOW**

PROPOSAL: Licensed Brothel

TYPE OF DEVELOPMENT: Material Change of Use
(Impact Assessment)

REAL PROPERTY DESCRIPTION: Lot 7 on SP101283, Parish of
Cairns

REFERRAL AGENCIES: Prostitution Licensing
Authority
P O Box 3196
BRISBANE Q 4001

DECISION DATE: 14 April 2005

DECISION: Refused

119-145 Spence Street,
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REASONS FOR REFUSAL:

1. The Assessment Manager is required under Section 64(1)(a)(ii) Prostitution Act 1999 to refuse the application where the application land is within 200 m of the closest point on any boundary of land on which *there is a residential building* and such a building is located on land at 150-172 McCoombe Street, more particularly described as Lot 2 on RP730391 for which the Detached Dwelling existing at 150-172 McCoombe Street was established under a Consent Permit No1630 issued on the 10 January 1977 by the former Cairns City Council. The approved use has not been abandoned under the Integrated Planning Act and the use rights associated with the use of "Detached Dwelling" continue.

PROPERLY MADE SUBMISSIONS MADE ABOUT THE APPLICATION:

None applicable

APPEAL RIGHTS: See Attachment 1


Neil Beck
Acting Manager, City Assessment

Att.

*'Providing for today,
Planning for tomorrow'*

T1/1630
KVW:LS

CONSENT

✓ TOWN PLANNING DEPT
BUILDING DEPT

M/S. M. & E.A. Eales
172 McCoombe Street
CAIPNS Q.4870

1630

relative to your application for the Consent of the Council to the erection
and use of a building on and use of land described as Lot 2 on R.P. 30391

located at 150/172 McCoombe Street, Bungalow for the
purpose of the erection of A RESIDENCE TO REPLACE AN EXISTING RESIDENCE
CONSENT has been given by the Council to the use of such land and the erection
and use of a building or buildings subject to the following conditions:

The erection and use and occupation shall at all times comply with the
conditions laid down and provided for in the Town Planning Scheme from
time to time.

The provisions of The Local Government Acts, the Building Act 1975 and
of the Bylaws of the Council from time to time shall at all times be observed
and performed in relation to the land, the building and the use and occupation
thereof.

It shall be a further condition that the building or buildings shall be
erected in every particular in accordance with the plans and specifications
approved by the Council and thereafter used and or occupied in accordance
with this Consent.

The issue of this Consent in no way implies approval, either in principle
or in detail, of any plans of the proposed development which may have been
submitted and approval of such plans shall be the subject of a separate
application in accordance with the Council's Bylaws.

Unless within a period of 2 years from the date of this Notice of Consent
substantial progress has been made in erecting the building or other structure
or the land is substantially used accordingly, as the case may be, of the
purpose for which Consent has been granted, such Consent shall lapse and
be so to have force and effect.

there shall at any time be any breach of any of the above conditions this
consent to the use and or occupation of the building or buildings and or erection
thereof becomes null and void and in such case the building or buildings or
structure or structures shall be deemed to be an unlawful building and may be
demolished in accordance with the Local Government Act and the Bylaws of this
Council.

GRANTED at CAIPNS this TENTH day of JANUARY, 1977

16/
W.M. TRUNDLE,
TOWN CLERK

Planning Far North

From: Huddy Nikki [n.huddy@ Cairns.qld.gov.au]
Sent: Wednesday, 27 April 2005 12:30 PM
To: Planning Far North
Subject: RE: Application 8/8/564

the amended notice will be in the post today, and faxed.
It is ok for the appeal period to start from today also.

-----Original Message-----

From: Planning Far North [mailto:planningfarnorth@ozemail.com.au]
Sent: Wednesday, 27 April 2005 11:43 AM
To: Huddy Nikki
Subject: Application 8/8/564

Dear Nikki,

Please find attached a letter which is being posted to Council today.

I understand Jenny is on leave and so thought it best to send this direct to you for action (sorry!).

Discuss, as necessary.

Regards,

Liz Taylor

<<...>>

PLANNING FAR NORTH

Town Planning Consultants

P O Box 7801

CAIRNS QLD 4870

Phone: 07 40510811

Fax: 07 40510866

Cairns City Council Disclaimer

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Opinions expressed in this e-mail are those of the sender and do not necessarily represent the views of the

27/04/2005

ENQUIRIES: Mrs J Elphinstone
PHONE: 4044 3365
YOUR REF:
OUR REF: 8/8/564-01 986823



27 April 2005

Aart Brons
4/393 Draper St
CAIRNS Q 4870

119-145 Spence Street,
Cairns Qld. 4870
P.O. Box 359,
Cairns, Qld. 4870

Telephone: (07) 4044 3044
Facsimile: (07) 4044 3022
council@cairns.qld.gov.au
www.cairns.qld.gov.au
ABN 21 543 571 965

Dear Sir

RE: DECISION NOTICE FOR
DEVELOPMENT APPLICATION – 8/8/654
- MATERIAL CHANGE OF USE – BROTHEL
- 11 CAVA CLOSE, BUNGALOW

I refer to your Development Application, which was determined by Council at its Planning & Environment Committee Meeting held on 14 April 2005. Please find attached an amended Decision Notice. The amendment is a change the Type of Development from Impact Assessment to Code Assessment.

I confirm that Council is willing to consider that the appeal period commences from the date of this amended decision notice.

Should you have any queries in relation to this Decision Notice, please contact Mrs Jenny Elphinstone of Council's City Assessment Team on (07) 4044 3365.

Yours faithfully

Neil Beck
Acting Manager, City Assessment

Att.

ENQUIRIES: Mrs J Elphinstone
PHONE: 4044 3365
YOUR REF:
OUR REF: 8/8/564-01 983066



CAIRNS
CITY COUNCIL

18 April 2005

DECISION NOTICE FOR
DEVELOPMENT APPLICATION – 8/8/564
BROTHEL – 11 CAVA CLOSE, BUNGALOW

119-145 Spence Street,
Cairns Qld. 4870
P.O. Box 359,
Cairns, Qld. 4870
Telephone: (07) 4044 3044
Facsimile: (07) 4044 3022
council@cairns.qld.gov.au
www.cairns.qld.gov.au
ABN 21 543 571 965

PROPOSAL: Licensed Brothel

TYPE OF DEVELOPMENT: Material Change of Use
(Code Impact Assessment)

REAL PROPERTY DESCRIPTION: Lot 7 on SP101283, Parish of Cairns

REFERRAL AGENCIES: Prostitution Licensing Authority
P O Box 3196
BRISBANE Q 4001

DECISION DATE: 14 April 2005

DECISION: Refused

REASONS FOR REFUSAL:

1. The Assessment Manager is required under Section 64(1)(a)(ii) Prostitution Act 1999 to refuse the application where the application land is within 200 m of the closest point on any boundary of land on which *there is a residential building* and such a building is located on land at 150-172 McCoombe Street, more particularly described as Lot 2 on RP730391 for which the Detached Dwelling existing at 150-172 McCoombe Street was established under a Consent Permit No1630 issued on the 10 January 1977 by the former Cairns City Council. The approved use has not been abandoned under the Integrated Planning Act and the use rights associated with the use of "Detached Dwelling" continue.

PROPERLY MADE SUBMISSIONS MADE ABOUT THE APPLICATION:

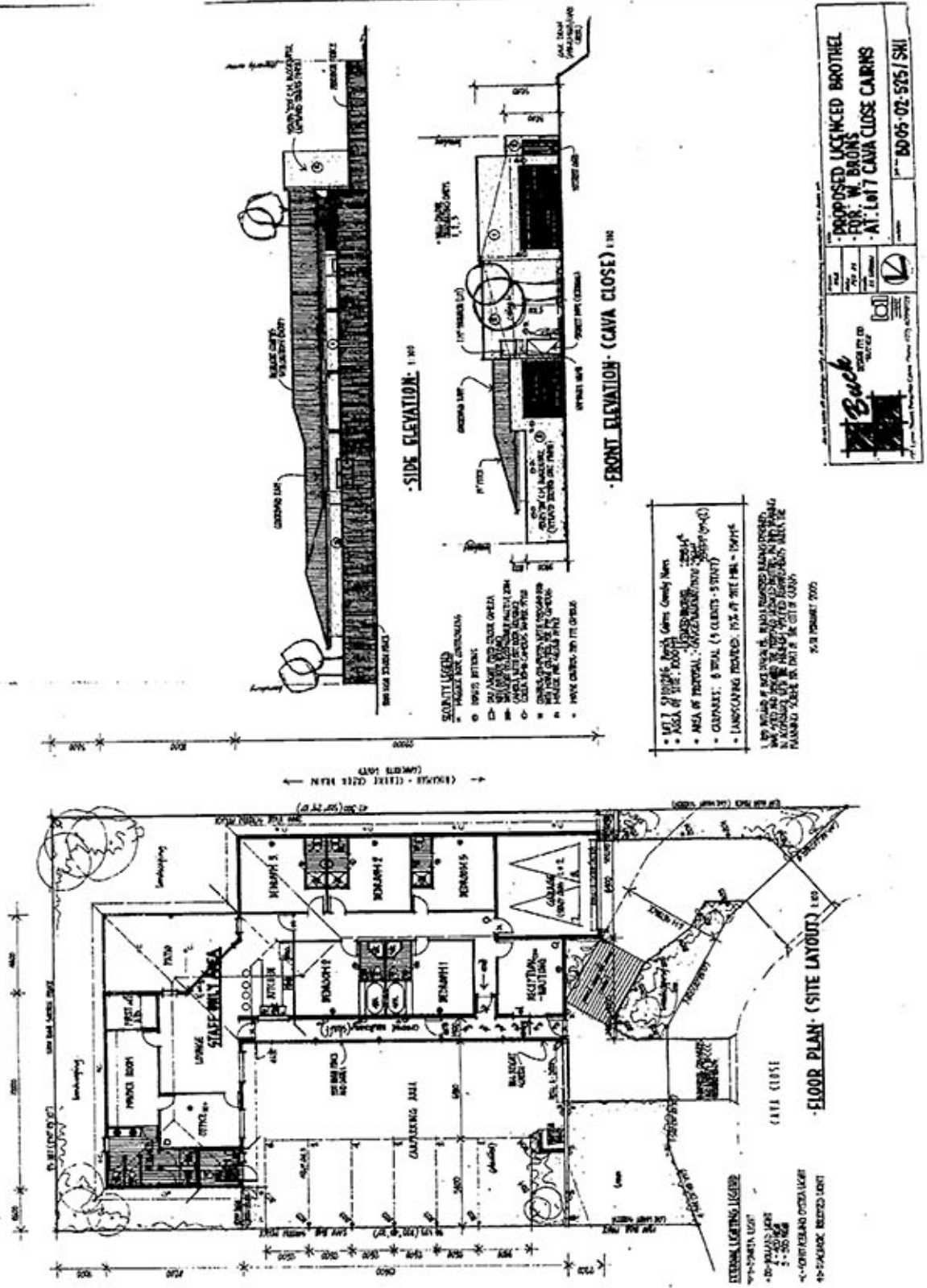
None applicable

APPEAL RIGHTS: See Attachment 1

Neil Beck
Acting Manager, City Assessment

Att.

APPENDIX 1



Back

PROPOSED LICENSED BROTHEL
FOR W. BRONS
AT LOT 17 CAVA CLOSE CARNS

50-05-02-575/SKI

Planning Far North

From: Planning Far North [planningfarnorth@ozemail.com.au]
Sent: Wednesday, 27 April 2005 2:23 PM
To: 'Nikki Huddy'

Dear Nikki,

Thank you for the quick response regarding the amended Decision Notice for the Brothel application.

I note an additional reference has been added to the Reasons for Refusal, which states *The approved use has not been abandoned under the Integrated Planning Act and the use rights associated with the use of "Detached Dwellings" continue.*

My client's concern, raised in my letter, is not whether the existing use rights continue under Consent Permit No 1630, it is that the approved use under the Consent Permit is not for a Detached Dwelling as defined in the 1971 Planning Scheme, the approved use is for "A Residence to Replace an Existing Residence" which is an undefined term in the 1971 Planning Scheme.

On this basis, my client is seeking an amended Decision Notice which accurately reflects the approved use under Consent Permit No 1630, as this may be critical to his success or otherwise with the Independent Assessor.

Discuss, as necessary.

Regards,
Liz

PLANNING FAR NORTH
Town Planning Consultants
P O Box 7801
CAIRNS QLD 4870

Phone: 07 40510811
Fax: 07 40510866

Our Ref: C04-023

Chief Executive Officer
Cairns City Council
P O Box 359
CAIRNS QLD 4870

BC Mr Aart Brons

28 April, 2005

Attention: Mr Peter Tabulo/Mr Neil Beck

Dear Sir,

RE: DEVELOPMENT APPLICATION 8/8/564.

I am in receipt of an amended Decision Notice issued on 27 April 2005 for the above referenced application.

The amended Decision Notice goes some way towards resolving the concerns of my client with regard to the original Decision Notice but fails to satisfactorily resolve all of his concerns.

Item 1 – Type of Development

A change has been made in the amended Decision Notice by tracking the document to exclude "Impact" and correctly state "Code". However the tracked change has not been accepted and the word "Impact" remains, albeit crossed out. My client has instructed me to require a clean version with the word "Impact" removed and replaced by the word "Code".

Item 2 – Use of the Defined Land Use Term "Detached Dwelling"

No change has been made to the Reasons for Refusal which incorrectly reference a "Detached Dwelling" instead of "A Residence to Replace an Existing Residence".

Mr Neil Beck has advised me that this has not been changed because this is the Council Resolution and cannot be changed without going back to Council.

My client has instructed me to require the Resolution to be reconsidered by Council and to accurately state the correct land use which was approved under Consent Permit No 1630. In particular, the Reasons for Refusal should state:

REASONS FOR REFUSAL:

1. The Assessment Manager is required under Section 64(1)(a)(ii) Prostitution Act 1999 to refuse the application where the application land is within 200 m of the closest point of any boundary of land on which there is a residential building. Such a building is located on land at 150 – 172 McCoombe Street, more particularly described as Lot 2 on RP 730391 for which a “Residence Replacing an Existing Residence” was established under Consent Permit No 1630 issued on the 10 January 1977 by the former Cairns City Council. The approved use has not been abandoned under the Integrated Planning Act and the use rights associated with the use of “Residence Replacing an Existing Residence” continue.

As stated in my previous letter, my client intends to Appeal the Council’s decision to the Independent Assessor and on that basis considers it absolutely essential that the Council’s Reasons for Refusal accurately reflect the situation.

Please advise, as a matter of urgency, your position with regard to this request as it has a bearing on the timeframes for lodging an Appeal.

Thank you for your assistance in this regard.

Yours faithfully,

PLANNING FAR NORTH
Town Planning Consultants



ELIZABETH TAYLOR
Director

Planning Far North

From: Beck Neil [n.beck@cairns.qld.gov.au]
Sent: Thursday, 28 April 2005 2:32 PM
To: Planning Far North
Subject: RE: Development Application 8/8/564

Liz,

I have read your letter attached and wish to advise as follows.

A further amended Decision Notice will not be forthcoming. The tracked change is necessary as it provides a clear indication as to what was changed in the original decision notice. This is standard practice.

The wording of the ground for refusal will also remain unchanged as that is a resolution of Council. Your clients claims could be investigated and the matter put back up to Council, however this will not occur until the meeting of 26 May 05. In any event this is a matter for the appeal process.

Regards

Neil Beck
Acting Manager, City Assessment

-----Original Message-----

From: Planning Far North [mailto:planningfarnorth@ozemail.com.au]
Sent: Thursday, 28 April 2005 2:15 PM
To: Beck Neil
Subject: Development Application 8/8/564

Dear Neil,

As discussed, please find attached further letter regarding Brothel Application. Your response as a matter of urgency is appreciated.

Regards,

Liz Taylor

<<...>>

PLANNING FAR NORTH

Town Planning Consultants

P O Box 7801

CAIRNS QLD 4870

Phone: 07 40510811

Fax: 07 40510866

28/04/2005

Copy given
to Surgeon by hand
6/05/04
GA



Our Ref: C04-023

Chief Executive Officer
Cairns City Council
P O Box 359
CAIRNS QLD 4870

BC Mr Aart Brons

PLANNING
FAR NORTH

Town Planning
Consultants

04 May, 2005

Attention: Mr Peter Tabulo/Mr Neil Beck

Dear Sir,

RE: DEVELOPMENT APPLICATION 8/8/564.

Further to my letter dated 28 April 2005 and your subsequent email received 28 April 2005, I advise as follows.

My client has read your email and instructed me to request, as indicated in your email, that the matter be reconsidered by Council at the May meeting to be held on 26 May 2005.

However, I note under Section 3.5.17 of the Integrated Planning Act (IPA) that my client cannot "stop the clock" to make representations to Council regarding the refusal of the application.

The amended Decision Notice was received by facsimile on 27 April 2005 and on that basis the Appeal period closes on or about the 26 May 2005.

There is clearly no opportunity for my client to be in receipt of any Council correspondence from the Council meeting held on 26 May 2005, prior to the close of his Appeal period.

Therefore it is requested that this matter be included in the agenda for the Planning and Development meeting to be held on 12 May 2005. It is of critical importance to my client that the Decision Notice be corrected to accurately reflect the approval granted under Consent Permit No 1630.

The current reading suggests there is no doubt that the residence approved under Consent Permit No 1630 is a "Dwelling House" and therefore a "Residential Building" for the purposes of Section 64(1)(a)(ii) of the Prostitution Act 1999. This, in my view and the view of my client, is not

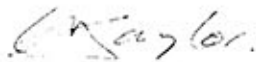
correct as approval was not given for "Dwelling House" as defined in the Planning Scheme current at the time.

As a matter of urgency, I request that you confirm that the matter will be tabled for the reconsideration of Council at the Planning and Development meeting to be held on 12 May 2005.

Thank you for your assistance in this matter.

Yours faithfully,

PLANNING FAR NORTH
Town Planning Consultants



ELIZABETH TAYLOR
Director



PLANNING
FAR NORTH

Town Planning
Consultants

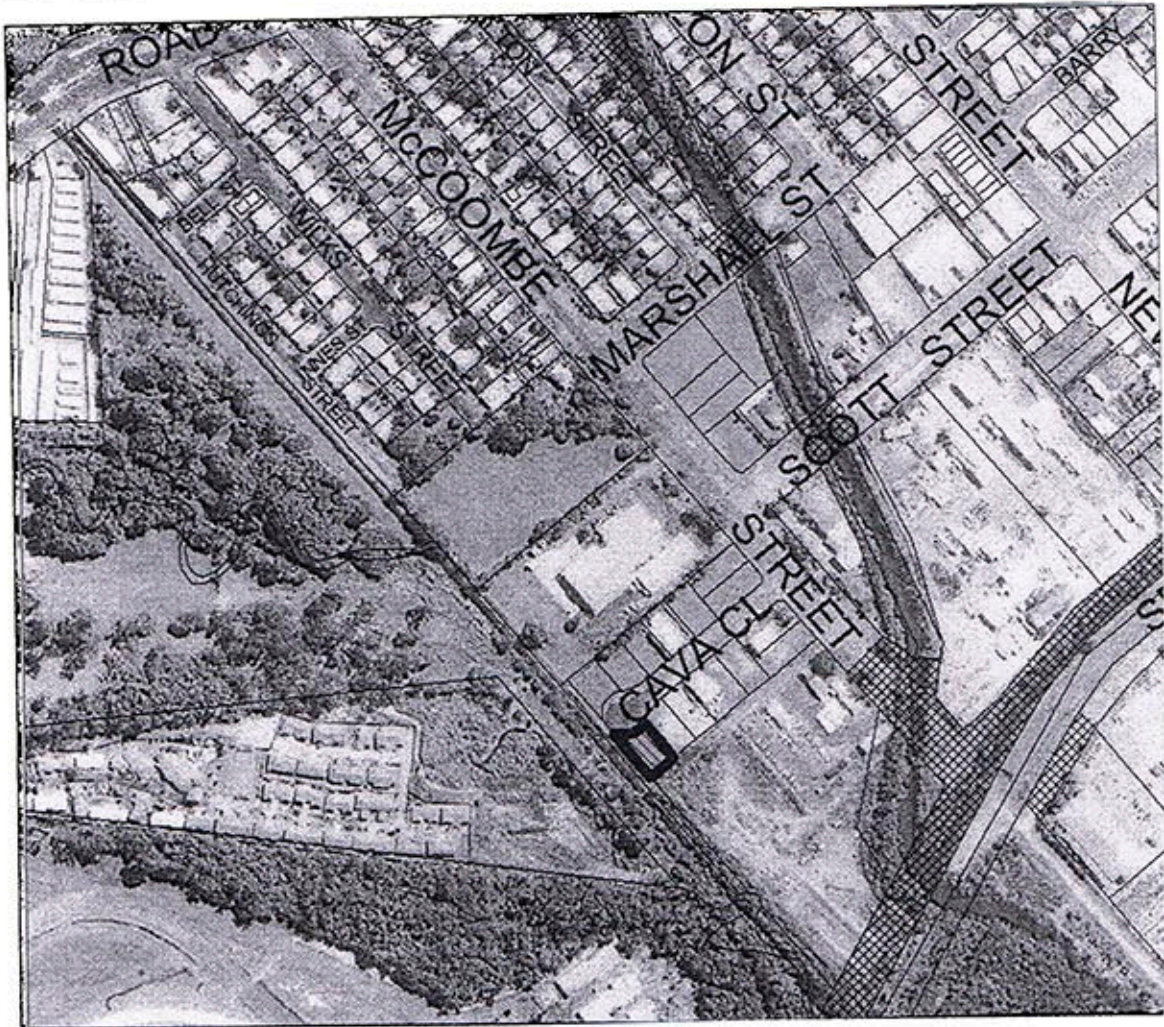
PLANNING & ENVIRONMENT COMMITTEE – LATE ITEM	19
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12 MAY 2005

CLARIFICATION OF DECISION FOR MATERIAL CHANGE OF USE (CODE ASSESSMENT) – BROTHEL – 11 CAVA CLOSE, BUNGALOW – DIVISION 5

Jenny Elphinstone: 8/8/564-01 : #992286

<u>PROPOSAL:</u>	CLARIFICATION OF DECISION
<u>APPLICANT:</u>	AART BRONS 4/393 DRAPER STREET CAIRNS QLD 4870
<u>LOCATION:</u>	11 CAVA CLOSE, BUNGALOW
<u>PROPERTY:</u>	LOT 7 ON SP101286, PARISH OF CAIRNS
<u>ZONE:</u>	LIGHT INDUSTRY
<u>STRATEGIC PLAN:</u>	INDUSTRY
<u>CAIRNS PLAN:</u>	INDUSTRY PLANNING AREA
<u>DCP:</u>	DCP2 – HEIGHT & IMPACT OF BUILDINGS – PRECINCT 6
<u>PLANNING SCHEME:</u>	PLANNING SCHEME FOR PART OF THE CITY OF CAIRNS
<u>REFERRAL AGENCIES:</u>	PROSTITUTION LICENSING AUTHORITY
<u>NUMBER OF SUBMITTERS:</u>	NOT APPLICABLE
<u>STATUTORY ASSESSMENT DEADLINE:</u>	NOT APPLICABLE, NOW WITHIN APPLICANT'S APPEAL PERIOD
<u>DIVISION:</u>	5
<u>APPENDIX:</u>	1. SITE LAYOUT PLAN

LOCALITY PLANRECOMMENDATION:

That Council amend the Council Resolution of the Meeting held on 14 April 2005, whereby:

1. Part A of the Resolution is amended to include the correct reference to the Consent approval issued for land at 150-172 McCoombe Street and this Part of the Resolution now read as follows:

That Council refuse the application for a Material Change of Use (Code Assessment) for a Licensed Brothel on land at 11 Cava Close, Bungalow, more particularly described as Lot 7 on SP101286 on the following grounds:

1. The Assessment Manager is required under Section 64(1)(a)(ii) Prostitution Act 1999 to refuse the application where the application land is within 200 m of the closest point on any boundary of land on which *there is a residential building* and such a building is located on land at 150-172 McCoombe Street, more particularly described as Lot 2 on RP730391 for which a "Residence Replacing an Existing Residence" was established under the Consent Permit No1630 issued on the 10 January 1977 by the former Cairns City Council. The approved use has not been abandoned under the Integrated Planning Act and the use rights associated with the use of "Residence Replacing an Existing Residence" continue.
 2. Part B of the Council Resolution remain unchanged.
-

EXECUTIVE SUMMARY:

Application has been made to develop a Licensed Brothel on the subject land. Cava Close is located at the southern end of McCoombe Street. Council at the Ordinary Meeting held on 22 July 2004 determined that the application was Impact assessable development. The applicant sought a declaration from the Planning and Environment Court, in respect to which the level of assessment was applicable: impact assessment; or code assessment. In the matter of appeal No.340 of 2004 the Court determined on 10 September 2004 that the subject site was located within an "Industrial Area" as defined by the Section 63A Prostitution Act 1999 and therefore the application was for Code Assessable development.

Further information was submitted by the applicant and Council determined the matter at the Planning and Environment Committee meeting held on 14 April 2005. Council's resolution was in two parts. Part A reflected the technical matter of a residential building being located within 200m of the brothel site and the legislative requirement for Council to refuse the application under the Prostitution Act 1999. Part B of the resolution anticipated a possible appeal by the applicant, against Council's refusal, and advice to the Court or Independent Assessor of Council's preferred conditions, should the Court or Assessor be of the opinion to issue an approval.

Approval of the use is restricted by Section 64(1)(a)(ii) Prostitution Act 1999 which requires the Assessment Manager to refuse the application where the subject land is within 200 m of the closest point on any boundary of land on which *there is a residential building*. Such a building is located on land at 150-172 McCoombe Street and this is distanced 195 metres from the subject land.

The wording of the Refusal refers to the application being "Impact Assessment" and the ground of Refusal refers to the Consent Permit being described as "Detached Dwelling." This is clerically incorrect. The determination of the Planning and Environment Court found the application to be Code Assessable rather than Impact Assessable. Secondly, the Consent Permit described the approval as being for a "Residence Replacing an Existing Residence." The applicant has requested the Resolution be amended to reflect the correct wording.

No issue is raised with the request.

TOWN PLANNING CONSIDERATIONS:

Applicant's Appeal Process

The Integrated Development Assessment System (IDAS) process of the Integrated Planning Act does not give opportunity for a Negotiated Decision where the application is refused. The application is now within the Appeal Stage of IDAS and the applicant seeks this clarification now so that the refusal correctly references the Consent Permit previously issued and secondly, the wording of the refusal does not become a preliminary matter of any subsequent appeal.

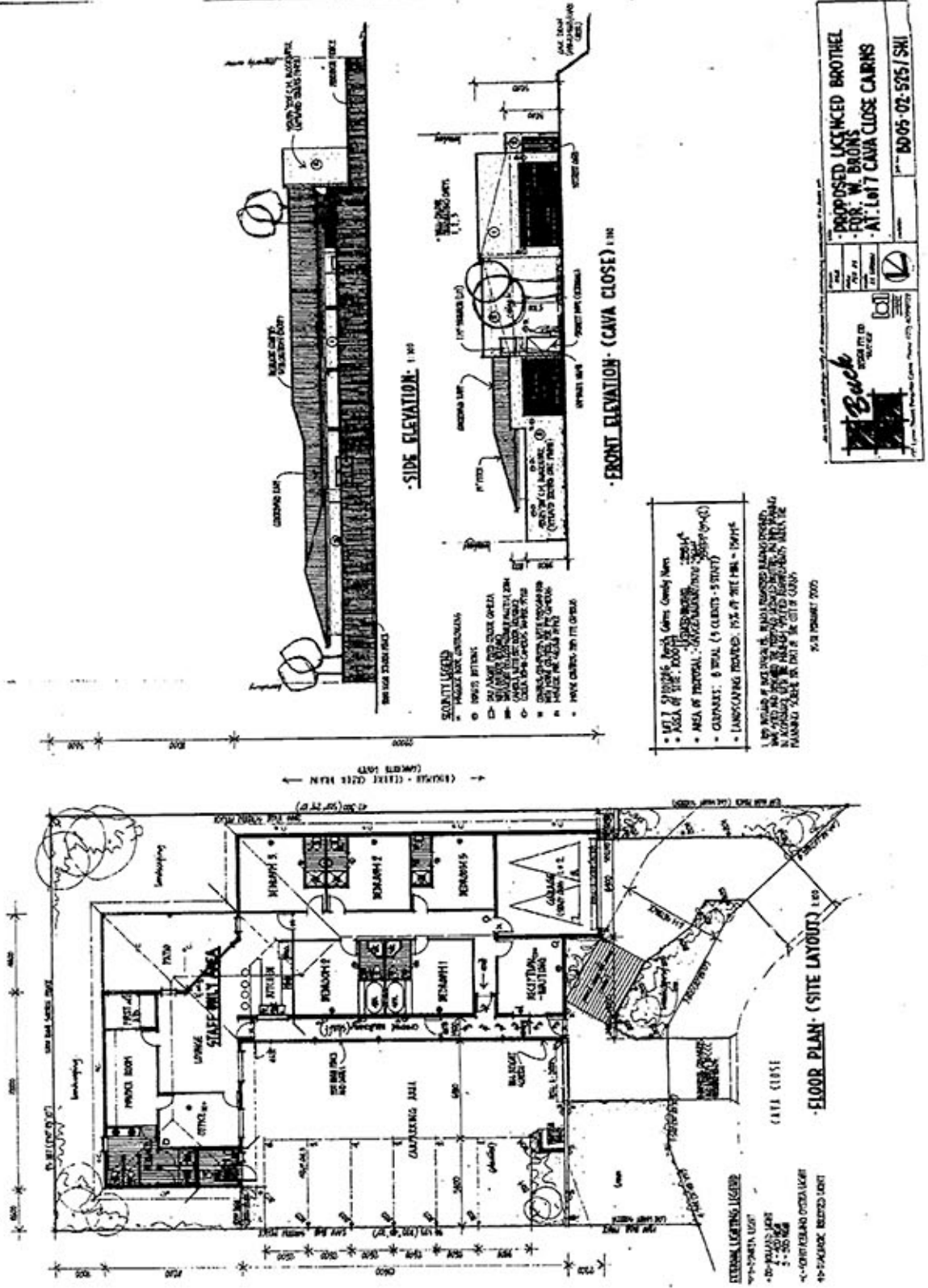
There is no change to the intent or any other detail of the Council Resolution. Part A of the Resolution currently reads as follows:

- A. That Council refuse the application for a Material Change of Use (Impact Assessment) for a Licensed Brothel on land at 11 Cava Close, Bungalow, more particularly described as Lot 7 on SP101286 on the following grounds:
 1. The Assessment Manager is required under Section 64(1)(a)(ii) Prostitution Act 1999 to refuse the application where the application land is within 200 m of the closest point on any boundary of land on which *there is a residential building* and such a building is located on land at 150-172 McCoombe Street, more particularly described as Lot 2 on RP730391 for which the Detached Dwelling existing at 150-172 McCoombe Street was established under a Consent Permit No1630 issued on the 10 January 1977 by the former Cairns City Council. The approved use has not been abandoned under the Integrated Planning Act and the use rights associated with the use of "Detached Dwelling" continue.

Jenny Elphinstone
Senior Planning Officer
Action Officer

Neil Beck
Acting Manager City Assessment

APPENDIX 1





CAIRNS
CITY COUNCIL

ENQUIRIES: Mrs J Elphinstone
PHONE: (07) 4044 3365
FAX: (07) 4044 3836
YOUR REF:
OUR REF: 8/8/564-01 995603

16 May 2005

Aart Brons
4/393 Draper Street
CAIRNS QLD 4870

Dear Sir

119-145 Spence Street,
Cairns Qld, 4870
P.O. Box 359,
Cairns, Qld, 4870
Telephone: (07) 4044 3044
Facsimile: (07) 4044 3022
council@cairns.qld.gov.au
www.cairns.qld.gov.au
ABN 21 543 571 965

**RE : CLARIFICATION OF DECISION FOR
MATERIAL CHANGE OF USE (CODE ASSESSMENT) –
BROTHEL – 11 CAVA CLOSE BUNGALOW**

Your request for clarification was considered by Council at the recent Planning & Environment Committee Meeting held on 12 May 2005 and the Decision Notice is attached.

Should you have any queries in relation to this advice, please contact Mrs J Elphinstone of Council's City Assessment Team on (07) 4044 3365.

Yours faithfully

Neil Beck
Acting Manager, City Assessment

ENQUIRIES: Mrs J Elphinstone
PHONE: 4044 3365
YOUR REF:
OUR REF: 8/8/564-01 995603

16 May 2005

**DECISION NOTICE FOR
DEVELOPMENT APPLICATION – 8/8/564
- BROTHEL – 11 CAVA CLOSE, BUNGALOW**

119-145 Spence Street,
Cairns Qld, 4870
P.O. Box 359,
Cairns, Qld, 4870
Telephone: (07) 4044 3044
Facsimile: (07) 4044 3022
council@cairns.qld.gov.au
www.cairns.qld.gov.au
ABN 21 543 571 965

PROPOSAL: Licensed Brothel

TYPE OF DEVELOPMENT: Material Change of Use (Code Assessment)

REAL PROPERTY DESCRIPTION: Lot 7 on SP101283, Parish of Cairns

REFERRAL AGENCIES: Prostitution Licensing Authority
P O Box 3196
BRISBANE Q 4001

DECISION DATE: 14 April 2005

DECISION: Refused

REASONS FOR REFUSAL:

1. The Assessment Manager is required under Section 64(1)(a)(ii) Prostitution Act 1999 to refuse the application where the application land is within 200 m of the closest point on any boundary of land on which there is a residential building and such a building is located on land at 150-172 McCoombe Street, more particularly described as Lot 2 on RP730391 for which a "Residence Replacing an Existing Residence" was established under the Consent Permit No1630 issued on the 10 January 1977 by the former Cairns City Council. The approved use has not been abandoned under the Integrated Planning Act and the use rights associated with the use of "Residence Replacing an Existing Residence" continue.

PROPERLY MADE SUBMISSIONS MADE ABOUT THE APPLICATION:

None applicable

APPEAL RIGHTS:

See Attachment 1



Neil Beck
Acting Manager, City Assessment

Att.