



**PLANNING
FAR NORTH**

**Town Planning
Consultants**

Liz Taylor
BA, DURP, MP/IA, LGTP(Q)

Bruce Hedley
BRTP(Hons), MP/IA, LGTP(Q)

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Cairns Q 4870
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Office - Level 12
Cairns Corporate Tower
15 Lake Street, Cairns

Affiliated with
Buckley Vann
Town Planning
Consultants
Brisbane

Buckley Vann Taylor Hedley Pty Ltd
ACN 064 730 678
ABN 29 064 730 678
Trading as
Planning Far North

Our Ref: C04-023

The Registrar For Appeals to the
Independent Assessor
GPO Box 3196
BRISBANE QLD 4001

18 May, 2005

Dear Sir,

**RE: LICENSED BROTHEL APPLICATION
11 CAVA CLOSE, BUNGALOW, CAIRNS.**

In accordance with the requirements of the Integrated Planning Act and Part 4 of the Prostitution Act, please find herewith:

- A completed Form 1 - Notice of Appeal;
- A cheque for \$787.90;
- A folder containing all relevant Attachments, as referenced in the Notice of Appeal.

Thank you for your assistance in progressing this matter. On behalf of my client, Mr A Brons, I would appreciate confirmation that the Notice of Appeal has been successfully lodged, at your earliest convenience.

Yours faithfully,

**PLANNING FAR NORTH
Town Planning Consultants**

ELIZABETH TAYLOR
Director

**Notice of Appeal to the Independent Assessor against a
Decision of a Local Government (pursuant to Part 4 of
the *Prostitution Act 1999*)**

Applicant Details	
Name	MR AART BRONS
Address	4/393 DRAPER ST CAIRNS QLD Postcode: 4870
Contact daytime phone	MR BRONS - 0412509151
Contact after-hours phone	MR BRONS - 0412509151 (LIZ TAYLOR - PLANNING FAC NORTH - 40510611)
Site Details	
Address	11 CAVA CLOSE BUNGALOW QLD Postcode: 4870
Real property description	LOT 7 ON SP 101283 PARISH OF CAIRNS
Designation of area in the Planning Scheme	INDUSTRY
Owner's name (if not the same as the appellant)	AS ABOVE
Owner's address (if not the same as the appellant)	AS ABOVE Postcode:
Name of ward (or division) in which site is located	DIVISION 5
Area	
Number of square metres	1000 m ²
Application	
Aspects of development and development approval sought	MATERIAL CHANGE OF USE - DEVELOPMENT PERMIT - CODE ASSESSABLE - ATTACHMENT 1.
Details of existing use of land	VACANT INDUSTRIAL LAND
Description of proposal	LICENSED BROTHEL - 5 ROOMS.
Council file reference number	8/8/564

Lodgement date	17 TH FEBRUARY 2004 - ATTACHMENT 1.	
Lodgement fee paid	\$3,500 - (refund of \$250.00 in Sept 2004) - \$3250.00	
Local Government Area & Assessment Details		
Name of local government	CAIRNS CITY	
Address of local government	PO BOX 359 CAIRNS 4870 Postcode:	
	Please circle one only	
1. Was the application Code Assessed?	<input checked="" type="radio"/> Yes - ATTACHMENTS 1, 2 + 3	
2. Was the application Impact Assessed?	Yes → You are NOT eligible to lodge an appeal under Section 64L of the <i>Prostitution Act 1999</i> .	
Applicable Codes to the application (if more than 6 please supply additional information by attachment)	1. LDAS BROTHEL CODE 2. TRANSITIONAL PLANNING SCHEME - (relevant codes) 3. 4. - Attachment 5 5. 6.	
Was there public notification of your application (please circle)	Yes	<input checked="" type="radio"/> No
Entities advised of application either by Council or yourself (if more than 4 please supply additional information by attachment)	1. PROSTITUTION LICENSING AUTHORITY 2. 3. - ATTACHMENT 1 4.	
Was an information request made under Section 3.3.6 of the <i>Integrated Planning Act 1997</i> (please circle)	<input checked="" type="radio"/> Yes ATTACHMENT 1.	No
	Note: if 'Yes', provide copies of information requested and supplied by attachment	

Assessment Manager		
Name	CEO - CCC - MR DAVID FARMER ACTION OFFICER - SENIOR PLANNING OFFICER	
Contact phone number	MS JENNY ELPHINSTONE : 40443365	
Appeal Details		
For a code assessable development application, you are appealing against-	The assessment manager's refusal, or the refusal in part, of the application	Circle either 'Yes' or 'No' <input checked="" type="radio"/> Yes <input type="radio"/> No
	A matter stated in a development approval for the application, including any condition applying to the development	Yes No
	The length of a currency period	Yes No
	A decision to give a preliminary approval when a development approval was applied for	Yes No
	A deemed refusal	Yes No
State the grounds of appeal including why you consider the decision is wrong (if applicable, supply additional information by attachment) In supplying grounds, if applicable, identify any part of the decision which is appealed against. Such part may be identified by reference to parts of the decision notice.	ATTACHMENTS 4, 5, 6 & 7.	
Decision details		
Date decision given to you	18 APRIL 2005 - ATTACHMENT 6 (Amended DN. rec'd 17 MAY 2005)	
Is today more than 20 business days after the decision was given to you?	Please circle one: <input checked="" type="radio"/> No <input type="radio"/> Yes → You are NOT eligible to lodge an appeal under Section 64L of the Prostitution Act 1999 (section 64K of the Prostitution Act 1999 provides that an appeal must be started within 20 business days after the decision notice (or a negotiated decision notice, if applicable) is given to the applicant).	

ATTACHMENT 6.

<p>If approved with conditions, please specify conditions.</p> <p>Supply, by attachment, a copy of the decision notice, including conditions, if applicable.</p>	<p>Attachment 6 . FINAL Decision NOTICE RE ISSUED 17 May 2005</p>
<p>Fees and documents you need to attach to this application</p>	
<p>Fee of \$787.90 (cheque made payable to the 'Prostitution Licensing Authority')</p>	
<p>Copy of development application - Attachment 1</p>	
<p>Copy of the decision notice, including conditions (if applicable) Attachment 6</p>	
<p>Copy of the information request made under section 3.3.6 of the <i>Integrated Planning Act 1997</i>, if applicable - Attachment 5</p>	

Signature:
 (Of person lodging Notice of Appeal)



Date: 18/05/05
 (Notice of Appeal completed)

Completed Notice of Appeal including copies of all relevant documentation and fees should be forwarded to:

The Registrar for appeals to the Independent Assessor
 GPO Box 3196
 Brisbane QLD 4001

INDEX TO ATTACHMENTS

ATTACHMENT 1		
<input type="checkbox"/>	Application lodged with Cairns City Council (CCC)	17 February 2004
<input type="checkbox"/>	Acknowledgement Notice issued – Application identified as Impact Assessable	26 February 2004
<input type="checkbox"/>	Planning Far North (PFN) letter to CCC	10 March 2004
<input type="checkbox"/>	Emailed copy of letter from the Prostitution Licensing Authority sent to CCC and copied to PFN	12 March 2004
<input type="checkbox"/>	CCC letter to PFN responding to PFN letter of 10 March 2004	12 March 2004
<input type="checkbox"/>	Information Request issued by CCC	15 March 2004

ATTACHMENT 2		
<input type="checkbox"/>	Morrow Petersen Solicitors (MPS) letter to CCC requesting the application be determined Code Assessable	02 July 2004
<input type="checkbox"/>	CCC report (note PLA identified as a Referral Agency, however PLA letter dated 12 March 2004 to included)	22 July 2004
<input type="checkbox"/>	CCC letter to PFN	26 July 2004

ATTACHMENT 3		
<input type="checkbox"/>	Appeal lodged in the Planning and Environment Court	03 August 2004
<input type="checkbox"/>	Copy of Judgement	10 September 2004

ATTACHMENT 4		
<input type="checkbox"/>	PFN letter to CCC	24 September 2004
<input type="checkbox"/>	CCC Acknowledgement Notice Reissued (received 28 September 2004)	15 September 2004
<input type="checkbox"/>	PFN letter to CCC	11 October 2004
<input type="checkbox"/>	CCC letter to PFN	27 October 2004
<input type="checkbox"/>	PFN letter to CCC	01 November 2004
<input type="checkbox"/>	CCC letter to PFN	13 December 2004
<input type="checkbox"/>	Email from Prostitution Licensing Authority	22 December 2004
<input type="checkbox"/>	PFN letter to CCC	23 December 2004
<input type="checkbox"/>	CCC letter to PFN	11 January 2005

ATTACHMENT 5

<input type="checkbox"/> PFN Response to Information Requested dated 15 March 2004	09 March 2005
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ATTACHMENT 6

<input type="checkbox"/> CCC letter to PFN – Extension of Decision Making Period	30 March 2005
<input type="checkbox"/> Report to CCC	14 April 2005
<input type="checkbox"/> CCC Decision Notice (in part)	18 April 2005
<input type="checkbox"/> PFN letter to CCC regarding inaccurate Decision Notice	27 April 2005
<input type="checkbox"/> Email from PFN to CCC and Response email from CCC to PFN	27 April 2005
<input type="checkbox"/> PFN letter to CCC	28 April 2005
<input type="checkbox"/> Email from CCC responding to PFN letter dated 28 April 2005	28 April 2005
<input type="checkbox"/> PFN letter to CCC	04 May 2005
<input type="checkbox"/> Report to CCC	12 May 2005
<input type="checkbox"/> Final Decision Notice Reissued	17 May 2005
<input type="checkbox"/> CCC letter outlining Assessment Manager Conditions should the Appeal to the Independent Assessor be successful	17 May 2005

ATTACHMENT 7

<input type="checkbox"/> Submission to Independent Assessor providing additional information on the issue of compliance with Section 64	May 2005
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ATTACHMENT 1

A**Common details
for all applications**

The completion of all questions on Part A is mandatory for all applications. For further information refer to the guide for completing the application form available from the assessment manager or on the IPA website at www.ipa.qld.gov.au

1. **Development description**
The description should provide a clear account of the proposed development, including any proposed works that will be undertaken by the applicant.

The lot & plan details (eg. SP / PPS) are shown on the documents of title or floor plan.

If the plan is not represented by the provided printout or will apply details.

11 CAVA CLASS
BONGALLOON Postcode 4870

Lot & plan details (Access lot if necessary)
Lot 7 OWS P. 101226

1000 M²

CAIRNS COUNCIL

2. **Proposed**
Provide details of the proposed development, including any proposed works that will be undertaken by the applicant.

VACANT LAND
NEW BUILDING

3. **Other parts of the form completed**
Complete all other parts of the form applicable to your application.

4. **Applicant details**
Complete details of the applicant, including the name of the applicant.

APPOINTMENTS

19-01-04

AS ABOVE 07 40317268

0412509151

7. **Local authority name and address**
Provide the name and address of the local authority.

4/393 DRAPER STREET
CAIRNS QLD Postcode 4870

8. **Contact of responsible person**
Provide the name and contact details of the responsible person, including the name of the person, the name of the company, and the contact details.

GABBA DEVELOPMENTS Pty Ltd 006 876 404

* Umberto Tighetta 11/02/04

OFFICE USE ONLY (applicable to assessment manager, alternative assessment manager and private certifier)

Notification of Engagement of Private Certifier (Applicable for private certifiers)
Council, I have been engaged as a private certifier for the building work referred to in this application.

To: _____
Date of engagement: / / Accreditation Number: _____
Name: _____ Signature: _____

Form 1 - Part D - Application for Assessment

D

Complete if this application involves **assessment against the**

Planning Scheme

For material change of use of premises

Completion of all questions on Part D of this form is **mandatory** for all applications for a material change of use of premises including conceptual design for any associated works that require approval under the planning scheme.

Name of the applicant

A developer/contractor is responsible for getting all the relevant information together to complete this form. If you are unsure of any of the information, please contact the Council.

1. This application is for (tick one or more if applicable)
- Preliminary approval for a material change of use of premises including conceptual design for any associated works that require approval under the planning scheme in consideration of the proposed works.

APPLICANT

- I am a natural person and I am applying for approval including conceptual design for any associated works that require approval under the planning scheme in consideration of the proposed works.

2. Is this application for a material change of use of premises? (tick applicable box) **Yes**

3. How do you intend to use the premises? (tick applicable box) **Use the Reference Checklist for Preliminary Approval for Material Change of Use of Premises**

- Use the Reference Checklist for Preliminary Approval for Material Change of Use of Premises**

4. What is the subject of the application for the planning scheme? (State the zone, precinct etc.)

LIGHT INDUSTRIAL

5. Is this application for a material change of use of premises? **Yes**

6. How do you intend to use the premises? (tick applicable box) **Use the Reference Checklist for Preliminary Approval for Material Change of Use of Premises**

- Use the Reference Checklist for Preliminary Approval for Material Change of Use of Premises**

7. If the application is for a material change of use of premises, provide aerial/photographic plans and other details for the site and its surroundings.

8. If the application is for a material change of use of premises, including conceptual design for any associated works that require approval under the planning scheme, provide details of the proposed works, including any associated works that require approval under the planning scheme.

Site area **1000 m²**

Proposed gross floor area **Approx 300 m²**

Number of on-site parking spaces **8**

Number of storeys / maximum height above natural ground **1**

Number of employees **5**

Hours and days the premises operate **24 7 DAYS**

9. Is the application accompanied by (tick applicable boxes)

- Plans
- Impact Report
- Other reports

This application cannot be accepted by the assessment authority unless accompanied by Part A of the Development Application

OFFICE USE ONLY (applicable to assessment matters)

Part H Development Application

H

Complete if this application involves *assessment for a Licensed Brothel*

The completion of all questions on Part H of this form is *mandatory* for a development application for a material change of use of premises for a licensed brothel.

Details for assessment against the Prostitution Act

A licensed brothel cannot operate lawfully until the operator has obtained a licence from the Prostitution Licensing Authority.

If you have ticked one or more of the boxes in questions 1 or 2 (other than 'none of the above') or answered 'yes' to question 3, the assessment manager MUST refuse the application under the Prostitution Act 1992.

Distance is measured according to the shortest route that reasonably may be used in travelling.

To answer question 3, seek the advice of the relevant local government.

- Is the land in or within 200 metres of: (Tick applicable boxes)
 - A primary residential area
 - An area approved for residential development
 - An area intended to be residential in character
 - None of the above
- Is the land within 200 metres of any of the following: (Tick applicable boxes)
 - A residential building (being a building or part of a building used primarily for private residential use)
 - A place of worship
 - A hospital
 - A school
 - A kindergarten
 - Any other facility or place regularly frequented by children for recreational or cultural activities
 - None of the above
- Is the land in a town with a population of less than 25 000 people where the local government, with the agreement of the Minister for Police and Corrective Services, has required that all applications within the town be refused? (Tick applicable box)
 - NO
 - YES

Details of the land

The plans accompanying this application will need to contain additional detail including details of existing infrastructure eg. water and sewerage

- How is the land zoned in the planning scheme? (Name the zone, precinct etc.)
LIGHT INDUSTRIAL
- Are there any existing basements on the land? (Tick applicable box)
 - NO
 - YES Attach plans of the location & purpose

Proposal details

The plans accompanying this application will also need to provide additional detail including:

- Access
- Sight and vision evidence to the Council
- Lighting
- Boundary treatment
- Landscaping
- Infrastructure

Provide the following particulars on this form, or alternatively clearly indicate on plans or in documents accompanying this application:

- Number of rooms in the brothel used for providing prostitution **FIVE**
 - Maximum number of employees at the brothel at any one time **FIVE FULL-TIME STAFF**
 - Is a recreation area provided in the brothel? (Tick applicable box)
 - NO
 - YES
 - Is a sign affixed to the brothel?
 - NO
 - YES Attach plans showing the size, format and wording of the sign
 - Number of on-site car parking spaces: **On-site 3** **Off-site 5**
 - Does the proposed brothel share road access, parking areas or pedestrian areas with any other purpose?
 - NO
 - YES Attach plans showing details of the shared areas.
 - Hours and days the brothel will operate **24 HRS. 7 DAYS A WEEK.**
- If the proposal also involves the erection of a new building or substantial works provide the following particulars on this form, or alternatively clearly indicate on plans or in documents accompanying this application:
- Site cover **1000 m²**
 - Gross floor area **Approx 300 m²**
 - Number of storeys / maximum height above natural ground **ONE.**

Plans and documents

- (B) Is this application accompanied by: (Tick applicable boxes)
- Plans
 - Proposal report
 - Other (Specify)

This application cannot be accepted by the assessment manager unless accompanied by Part A of the Development Application

OFFICE USE ONLY (applicable to assessment manager)

DATE RECEIVED

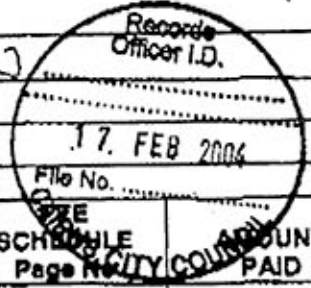
RESPONSE NUMBER

Jenny

CITY ASSESSMENT

DEVELOPMENT ASSESSMENT / SUBDIVISION SERVICES - FEE SHEET - 2003/2004

APPLICATION NO: _____ DATE: 17-2-03 RECEIPT NO: 1433289
 APPLICANT: Aart Bors CHEQUE NO: _____
 ADDRESS OF APPLICANT: 11 Cava close Bungalow
 APPLICATION NAME: Brother
 SITE LOCATION: 11 Cava close Bungalow



RECEIPT CODE	TYPE OF APPLICATION	SCHEDULE Page No.	AMOUNT PAID
130	Application for Reconfiguring a Lot	2	
138	Signing & Dating Survey Plans - Standard Format Plan Building Format Plan	2	
138	Signing & Dating Survey Plans - Building / Volumetric Format Plan	2	
128	Application for Material Change of Use - Code Assessment	3	
314	Application for Material Change of Use - Impact Assessment	4	<u>3500-00</u>
133	Planning and Development Certificates	5	
135	Modification or Cancellation of Application	5	
135,128,314	Expansion of an Existing Lawful use	5	
134	Prelodgement Enquiry / Report to Council	6	
134	Relaxation of Scheme Provision	6	
128,130,314	Extension of Currency Period / Reconsider / Appeal / Approval	6	
394	Second Hand Dealers Licence	6	
129	Public Notification Signs - additional	6	
141	Engineering Plans / Operational Works - Checking Fee	7	
142	Construction Monitoring	7	
513	Bond for Outstanding Works / Construction Security / Stormwater Management / Erosion & Sediment Control	7/8	
395	Landscaping Plans	8	
355	Road Maintenance Contribution	8	
276	Local Law Applications - Earthworks, blasting, Vegetation Protection and Extractive Industry Permits	8/9	
293	General - Extension of Time / Other Operational Works	9	<u>17 FEB 2004</u>
125	Planning Scheme / Cadastral Maps / Publications	10	
125	Photocopying	10	

317146v2 Updated 10-07-03

(Effective 1 July 2003 - 30 June 2004)

CSO NAME O Webb

DATE 17-2-03

ENQUIRIES: Jenny Elphinstone
PHONE: 4044 3365
YOUR REF:
OUR REF: 8/8/564-01 (754710)



26 February 2004

Mr Aart Brons
4/393 Draper Street
CAIRNS QLD 4870

Dear Sir

**RE: ACKNOWLEDGMENT NOTICE FOR
DEVELOPMENT APPLICATION - 8/8/564
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 3014
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 received by Council on 17 February 2004.

Please find attached the relevant Acknowledgment Notice.

It is indicated on the Acknowledgment Notice that the Prostitution Licensing Authority is a third party advice agency. Council has forwarded a copy of the application to the Authority and advised that the application will be assessed as Impact Assessable development. A copy of that referral is attached.

Your attention is "Type of Development" specified on the Acknowledgement Notice which is "Impact Assessable." A previous application was lodged for a Brothel land use at 12 Cava Close, Bungalow and this application was determined by the Planning and Environment Court (Planing & Environment Appeal No.9 of 2000 AB Grant and Cairns City Council.) The appellant sought a declaration from the Court that the application was Code Assessable development under Schedule 1 of the Integrated Planning Regulation 1998. The Court considered the requested declaration and had specific regard to the amending legislation that introduced S.63A. The Judgment / Order, in respect to this declaration, issued 18 October 2002 found the application to be Impact Assessable development. A copy of that Judgment / Order is attached.

Council also advises that the application is likely to be refused by a court if Council refuses it for reasons given in the merits judgement.

Should you have any queries in relation to this Acknowledgment Notice, please contact Mrs Jenny Elphinstone of Council's City Assessment Team on telephone number 4044 3365.

Yours faithfully

Nikki Huddy
Manager, City Assessment

Att.

ENQUIRIES: Jenny Elphinstone
PHONE: 4044 3365
YOUR REF:
OUR REF: 8/8/564-01 (754710)



26 February 2004

**RE: ACKNOWLEDGMENT NOTICE FOR
DEVELOPMENT APPLICATION - 8/8/564
MATERIAL CHANGE OF USE – BROTHEL
11 CAVA CLOSE, BUNGALOW**

PROPOSAL: Material Change of Use - Brothel

APPLICANT: Aart Brons
4/393 Draper Street
CAIRNS QLD 4870

LOCATION OF SITE: 11 Cava Close, Bungalow

REAL PROPERTY DESCRIPTION: Lot 7 on SP101286, Parish of Cairns

TYPE OF DEVELOPMENT: Material Change of Use – Impact Assessment

CODE ASSESSMENT REQUIRED: Yes. IDAS Code, Prostitution Regulation 2000

IMPACT ASSESSMENT REQUIRED: Yes – Under the Planning Scheme For Part of The City of Cairns and the Development Manual.

You are required to carry out Public Notification in accordance with the Integrated Planning Act. Public Notification details are attached.

ASSESSMENT MANAGER DOES INTEND TO MAKE AN INFORMATION REQUEST Yes (This will be sent under separate cover)

REFERRAL AGENCIES: Prostitution Licensing Authority
GPO Box 3196
Brisbane QLD 4001
(Third Party Advice)

REFERRAL COORDINATION REQUIRED: No

119-115 Spence Street,
Cairns Qld, 4870
PO 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

Nikki Huddy
Manager City Assessment

Att.

Our Ref: C04-023

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

BC Mr Aart Brons

10 March, 2004

Attn: Ms Jenny Elphinstone

Dear Sir,

RE: DEVELOPMENT APPLICATION – 8/8/504.

Planning Far North has been engaged by Mr Aart Brons in relation to the above referenced development application.

My client seeks to place on the public record his objection to the application being required to be impact assessable rather than code assessable.

My client has paid for and made an impact assessable application only because Council Officers refused to allow a code assessable application to be lodged.

It is clear in the Prostitution Act/Regulation that land zoned Light Industry triggers a code assessable application.

In any event, I note that you have referred the application to the Prostitution Licensing Authority (PLA) for their comment, and both my client and I would be keen to know the outcome of the advice provided to Council from the Authority with regard to this application.

I look forward to hearing from you upon receipt of the advice from the PLA, as this may assist the Council to progress the application as a code assessable application, in accordance with the requirements of the Prostitution Act/Regulation.

I await your advices.

Yours faithfully,

**PLANNING FAR NORTH
Town Planning Consultants**



ELIZABETH TAYLOR
Director

Our Ref: C04-023

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

BC Mr Aart Brons

10 March, 2004

Attn: Ms Jenny Elphinstone

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ELIZABETH TAYLOR
Director

Our Ref: C04-023

Chief Executive Officer
Cairns City Council
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CAIRNS QLD 4870

BC Mr Aart Brons

10 March, 2004

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I await your advices.

Yours faithfully,

PLANNING FAR NORTH
Town Planning Consultants



ELIZABETH TAYLOR
Director



ENQUIRIES: Mrs Jenny Elphinstone *JE*
PHONE: 4044 3365 Fax 4044 3836
YOUR REF: C04-023
OUR REF: 8/8/564-01 (763413)

12 March 2004

Planning Far North
PO BOX 7801
Cairns QLD 4870

Copy to: Prostitution Licensing Authority

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

Attention Ms Liz Taylor

Telephone: (07) 4044 3044

Dear Madam

Facsimile: (07) 4044 3022

council@cairns.qld.gov.au

REQUEST FOR CODE ASSESSMENT, DEVELOPMENT APPLICATION
8/8/564, PROPOSED MATERIAL CHANGE OF USE FOR A BROTHEL AT 11
CAVA CLOSE, BUNGALOW, ON L7 ON SP101286

www.cairns.qld.gov.au

ABN 21 543 571 965

Council acknowledges receipt of your correspondence dated 10 March 2004 in which request is made for Council to consider the above application to be Code Assessable.

Council takes issue with your statement that Council officers refused to accept your client, Mr Brons, making a Code Assessable application. Mr Brons was advised that Council considers the application to be Impact Assessable and that a requirement of the Integrated Planning Act is that the application must be accompanied by the appropriate fee. No officer refused to accept the application being lodged as Code Assessable. However, if so lodged the applicant would be advised that such an application was not properly made.

Council officers further advised Mr Brons that he was welcome to accompany his application with a formal request seeking that the application be considered as Code Assessable. No such request has been received until your letter received yesterday.

The issue was formally clarified to your client by way of the Acknowledgement Notice and the accompanying Council letter. A copy of these documents is enclosed for your reference.

Council respects the Planning and Environment Court decision on this particular issue for the land at 12 Cave Close (Planning and Environment Court Appeal No 9 of 2000 AB Grant and Cairns City Council) and given the close proximity of the subject land does not consider that there is any reason for Council to determine otherwise. Council understands that should the applicant seek any further determination on this issue then the appropriate forum would be the Planning and Environment Court.

The application has been referred to the Prostitution Licensing Authority for two reasons: firstly as a requirement of Section 63B which requires the Assessment Manager to forward a copy of the application to the Authority and advise the Authority the level of assessment (Code or impact); and secondly, as a third party advice agency under IDAS.

In regards to the first reason for referral the requirement of the legislation is a straightforward statement of advice, not a request for the Authority to reconsider Council's determined level of assessment.

In regards to the second reason for referral this is for the purpose of determining any further information request. In the light of the minimal information submitted with the application the Authority has been nominated as a Third Party Advice Agency to assist Council in clarifying the further information request.

Should you require any further assistance on this matter please do not hesitate to contact Jenny Elphinstone of Council's City Assessment Branch on 4044 3365.

Yours faithfully



NIKKI HUDDY

Manager City Assessment

Att.

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Should you require any further assistance on this matter please do not hesitate to contact Jenny Elphinstone of Council's City Assessment Branch on 4044 3365.

Yours faithfully



NIKKI HUDDY

Manager City Assessment

Att.

PFN

From: Isaac.MargaretW@police.qld.gov.au
Sent: Friday, 12 March 2004 4:55 PM
To: j.elphinstone@cairns.qld.gov.au
Cc: planningfarnorth@ozemail.com.au
Subject: RE: proposed Brothel at Cava Close, Cairns
Importance: High

Jenny

Please find attached a copy of a letter posted to Ms Huddy today.

Regards

Margaret Isaac

CONFIDENTIALITY: The information contained in this
electronic mail message and any electronic files attached
to it may be confidential information, and may also be the
subject of legal professional privilege and/or public interest
immunity. If you are not the intended recipient you are
required to delete it. Any use, disclosure or copying of
this message and any attachments is unauthorised. If you
have received this electronic message in error, please
inform the sender or contact securityscanner@police.qld.gov.au.

This footnote also confirms that this email message has
been checked for the presence of computer viruses.

14/03/2004



12 March 2004

Manager, City Assessment
Cairns City Council
PO Box 359
CAIRNS QLD 4870

Dear Ms Huddy,

**RE: DEVELOPMENT APPLICATION – 8/8/564 MATERIAL CHANGE OF
USE – BROTHEL, 11 CAVA CLOSE, BUNGALOW**

I refer to your letter dated 26 February 2004 which was received in this office on 3 March 2004.

It is noted that Council is assessing the above application as an Impact Assessable development and has indicated that the basis for determining the application will be the decision of the Planning and Environment Court in Grant v Cairns City Council (18.10.02).

Your letter refers to the provision of “advice” and/or comments by this Authority.

The Authority would never presume to offer advice to a local government on the merits or otherwise of a particular development application. It recognises that the determination of any such application is entirely a matter for local government whose decision on the merits, the Authority will accept unequivocally.

In this case the Authority responds to your offer for “comments” only because it is arguable that there is a sound basis for concluding that the assessment of this application as an Impact Assessable development and that the application should be determined by reference to the abovementioned decision of the Planning and Environment Court cannot be sustained as a matter of law.

I hasten to add that the following is offered only by way of comment and in the hope that it may be seen as relevant and as being of some assistance. You will no doubt seek the advice of the Council’s legal advisors before finally deciding the matter.

There is however, a sound basis for submitting that the application is Code Assessable and that the prior decision in Grant v Cairns City Council is clearly distinguishable and not relevant for the purposes of this application.

From the date of the commencement of the *Prostitution Act 1999* on 1 July 2000, the Prostitution Licensing Authority (PLA) and local government encountered not insignificant difficulties in the administration of the Act in many respects not the least of which was the proper assessment of what was meant by “an industrial area” in Schedule 1 of the Integrated Planning Regulations so as to properly identify those applications for a brothel which were Code Assessable. These difficulties arose essentially from the fact that the Act and Regulation did not define “an industrial area”. Inconsistency in interpretation by local governments meant that certain councils took a broader view of how “an industrial area” should be interpreted. Others took a much narrower view.

The matter came to a head with the decision of the District Court at Southport in Leach v Council of the City of Gold Coast (Southport- Hanger DCJ – 3 November 2000). Mr Leach had applied for approval in respect of premises at 37 Upton Street, Bundall and had also applied to the PLA for a brothel licence. The Council refused his application on the ground that the application was Impact Assessable (not Code Assessable) and in the circumstances decided that it should be refused. The reported case was decided by Hanger DCJ upon Mr. Leach’s application to the Court for a declaration that the subject area was in “an industrial area” and therefore Code Assessable. The Court refused Mr. Leach’s application.

It is clear from the decision that Hanger DCJ adopted what he called “a relatively narrow interpretation” of “industrial area”. He commented that as the phrase “industrial area” was not defined, “regard may be had to the dictionary definition” and that it was more likely that “an industrial area” was meant to apply to an area which was “truly industrial” – “an area devoted to heavy industry or industry in the traditional sense”, which is one “where the general public has little reason to visit”. He had earlier stated his view that “it is unlikely that the legislature intended to deprive the public of the right to object to a proposal to establish a brothel in an area frequently visited by the general public”.

This process of reasoning led the Judge to the conclusion that since the area in question as described in the decision was one “frequented by the public”, it was not “an industrial area” and the application was therefore Impact Assessable.

This decision gave rise to considerable discussion and conjecture because of its likely impact on the administration of the Prostitution Act 1999. As a result the PLA and others made representations to the Minister for the amendment of the Act in this and other respects.

In December 2001 an amendment to the Act was passed which inserted Section 63A to define “an industrial area”. Reference to the definition will disclose that “an industrial area” is defined as alternatives, either, –

- land that is designated in a planning scheme or other planning instrument under the IPA as industrial or
- land that is predominantly industrial in character having regard to the dominant land uses or the provisions of a planning scheme or instrument.

Section 63A then provides examples of the ways for describing industrial areas for the purposes of Section 63A including "light industry" to which the relevant land belongs.

Therefore the application of Section 63A to the land in question should properly lead to the conclusion that the land is in "an industrial area" and the application is therefore Code Assessable.

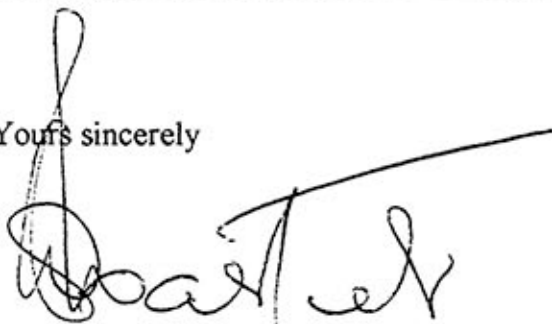
Secondly, the decision in Grant was one decided with reference to Schedule 1 of the IPA Regulation prior to the amendment of the Prostitution Act 1999 which inserted Section 63A – that is, prior to the statutory definition of "an industrial area", as also was the case of Leach referred to above.

Incidentally you may be interested to know that the land at 37 Upton Street, Bundall, has since been approved by the Gold Coast City Council, as has land opposite it at 44 Upton Street, Bundall. You may be assisted by inquiry of the Gold Coast City Council.

Therefore the PLA offers the comment that Section 63A of the Prostitution Act 1999 has made a significant statutory extension to the lands which constitute "an industrial area" far beyond that envisaged by the decisions in Grant and Leach and so neither of those cases are relevant to the application in question which was made to your Council after the enactment of Section 63A of the Prostitution Act 1999.

I advise that a copy of this letter has today been forwarded to Ms Taylor, Planning Far North, who acts on behalf of Mr Brons, at her request.

Yours sincerely

A handwritten signature in black ink, appearing to read 'WJ Carter', with a long horizontal line extending from the end of the signature.

Hon. WJ Carter QC
Chair

ENQUIRIES: Jenny Elphinstone *JE*
PHONE: 4044 3365 Fax 4044 3836
YOUR REF:
OUR REF: 8/8/564-01 (758152)



15 March 2004

Mr Aart Brons
4/393 Draper Street
CAIRNS QLD 4870

Dear Sir

**REQUEST FOR FURTHER INFORMATION FOR
DEVELOPMENT APPLICATION - 8/3/564
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 received by Council on 17 February 2004. I advise after a preliminary examination of the abovementioned application, the following further information is required to complete a satisfactory assessment of the proposal:-

Prostitution Act Requirements

The Prostitution Act limits the premises to five (5) rooms where prostitution will be provided. The application form states that five rooms will be provided.

1. Clarification is required as to the extent of development proposed. Please provide a minimum dimensioned 1:50 metric scale plan of the proposed building and site, including the internal layout of the premises. The purpose and dimensions of all rooms must be detailed on the plan.

General Requirements

A previous application was made for a property opposite the subject premises, at 12 Cava Close. This application was Impact Assessable development and was refused by Council as being inappropriate development. The applicant for this proposed development appealed Council's decision. The Planning and Environment Court dismissed the appeal (AB Grant and Cairns City Council P&E Appeal No.9 of 2000). The application submitted for 11 Cava Close, the proposed development, is virtually identical to the previous development application for 12 Cava Close.

2. Please demonstrate how the current application varies in detail from the previous application.
3. Please demonstrate how such variation:
 - 3.1 Suitably and adequately addresses the concerns and issues raised by Council's determination of the development proposed at 12 Cava Close; and
 - 3.2 Suitably and adequately addresses issues mentioned by the Court in the determination of the Appeal 9 of 2000,

/...2

to the extent and reasons whereby a different determination would be made by either Cairns City Council or the Planning and Environment Court.

IDAS Brothel Code

Car Parking for Clients

4. Please provide a minimum dimensioned 1:50 metric scale plan of the proposed building and site detailing all car parking areas for clients. The car parks must be designed in accordance with Australian Standards and the requirements of the Planning Scheme for Part of the City of Cairns. In particular adequate separation and screening must be provided to boundaries and pedestrian movement areas.
5. It is known that a proportion of clients visit a brothel premises by taxi. Please provide details of the proposed drop-off and collection area(s) and whether such area(s) occurs on-site or off-site.
6. Please provide detail of whether there is any intention to provide group services. If there is any such intention then at least one car parking space should be of adequate dimensions to provide parking for a minibus type vehicle. If any larger buses are anticipated please demonstrate how the site and location can adequately cater for this operation. Please provide the location of any such drop-off and collection area for these services and whether this area is provided on or off site.
7. Please provide a statement as to whether there is any intention to offer a minibus type private transport service for clients. If such a minibus private transport service is to be provided by the establishment then please demonstrate that one car parking space of adequate dimensions must be provided in addition to any other client parking.
8. Please provide details of how the spaces will be identified to any visitor or employee of the premises that the spaces are for brothel client use.

Employee Car Parking

9. Please provide details of all staff that will attend the site, including management, prostitutes, reception staff, security personal, cleaners, landscape maintenance staff and any anticipated additional services such as money collectors and anticipated deliveries. Details are to include the number of staff, approximate frequency of attendance at the premises and anticipated length of attendance.
10. Please provide a minimum dimensioned 1:50 metric scale plan detailing all car parking areas for all employees and persons anticipated to attend the premises in the course of the normal operation of the premises. The car parks must be designed in accordance with Australian Standards and the requirements of the Planning Scheme for Part of the City of Cairns. In particular adequate separation and screening must be provided to boundaries and pedestrian movement areas and at least one disabled driver car space must be provided.
11. It is known that a proportion of employees would attend the premises would utilize taxi services. Please nominate on the plan proposed drop-off and collection areas and whether these areas are on-site or off-site.

12. Please provide a statement as to whether there is any intention to retain any commercial transport vehicle to assist with the operation of the premises (for example, to assist in the collection and delivery of linen services).
13. If such a commercial transport vehicle is to be retained then please demonstrate on the plans that one car parking space of adequate dimensions is dedicated to this use in addition to any other employee parking.
14. Please provide details of how the spaces will be identified to any visitor or employee of the premises that the spaces are for brothel employee use or associate employee use.

Vehicle Access

15. Please provide a minimum dimensioned 1:50 metric scale plan of the proposed building and site (including the head road way of Cava Close and the vehicle entrances of nearby and adjoining properties) detailing the location of vehicle site entrance and exit (providing for all vehicles to be capable of entering and exiting the site in a forward gear). Vehicle crossovers and driveways should be of adequate dimensions to cater for all intended vehicles utilising the site.
16. Please provide details of whether there is any intention that any other part of the site will be used for any land use other than Brothel.
17. If there is any intention to use part of the site for use other than for a Brothel then the please demonstrate as to how any parking, vehicle manoeuvring and pedestrian movement for the brothel will be undertaken without adversely affecting the safety of traffic using the land.

Lighting

18. Please provide a minimum dimensioned 1:50 metric scale plan of the proposed building and site detailing the proposed external lighting together with a report by a qualified Architect. The type of illumination to be used is to be static, hooded and directed downwards with no characteristic indicating the premises are used for a brothel. The plan and report should detail all external lighting details including proposed colour and arc of illumination. The plan and report should detail areas of concerns in regards to surveillance and how proposed illumination addresses the areas of concern.

Signage

19. Please provide a minimum dimensioned 1:50 metric scale plan of all proposed signage, the location of where it will be positioned on the premises and an elevation of the building if the signage is to be affixed to a wall or roof of the building. Details of all proposed content, colour, illumination and whether the sign is to be two or three dimensional, and/or animated must be included on the plan.

Loitering

20. Please provide a minimum dimensioned 1:50 metric scale plan of the proposed building and site, including the internal layout of the premises. The purpose and dimensions of all rooms must be detailed on the plan. The plan must demonstrate that a reception area and waiting room(s) of adequate size to cater for the number of Brothel rooms to be established. The plan must demonstrate that the reception and waiting areas are suitably located within the building and the proximity of the brothel entry to reflect a design that discourages loitering outside the premises.

Appearance

21. Please provide a minimum dimensioned 1:50 metric scale plan of all building elevations and to detail building materials, finishes, colours and any illumination. The plans are to be accompanied by a report by a qualified architect demonstrating how the design and building finishes ensure that the colours and materials for the brothel premises are unobtrusive having particular regard to the development of surrounding environs.

Entrances – Security

22. Please provide a minimum dimensioned 1:50 metric scale plan of the proposed building and site, including the internal layout of the premises. The purpose and dimensions of all rooms must be detailed on the plan. The plan is to be accompanied by a report by a qualified security professional. The qualifications and suitability of the security professional preparing the report must be demonstrated in the report. The plan and report must demonstrate how the proposed design demonstrates the staff and client entrances to the brothel are positioned to facilitate surveillance from both within and external to the premises and how security within the premises is to be achieved and maintained.

Entrance – Client

23. Please provide a minimum dimensioned 1:50 metric scale plan of the proposed building and site, including the building elevations, internal layout of the premises, client entry and proposed illumination of external facades. The plans should demonstrate how the client entrance is identifiable to any visitor.

Brothel Siting and Design

24. Please provide a minimum dimensioned 1:50 metric scale plan of the proposed building and site, including the building elevations, car parking and vehicle access, pedestrian entries, proposed landscaping and proposed illumination of external facades. The plans should be accompanied by a written report (or these details are to be included on the plan) certifying that the proposed siting and design achieve the minimum requirements for such under the Planning Scheme for Part of the City of Cairns.

Infrastructure

25. Please provide a minimum dimensioned 1:50 metric scale plan of the proposed internal building layout detailing all proposed plumbing fittings and fixtures (including the extent of laundry facilities if, any) are to be provided on site. This detail must also include the number of washing machines and drivers.
26. Please provide details of proposed hard waste collection. If a commercial bin is to be provided the location of this facility must be detailed on the plan together with the specification of any screening and waste truck movements. Details of the frequency of collection must also be specified.

If necessary, Council is willing to convene a meeting to discuss the above information request.

As an applicant, your responsibilities in regard to the information request are outlined in Section 3.3.8 of the Integrated Planning Act 1997, which is attached for your information. You are reminded that a response to the request for further information must be submitted prior to the commencement of any public notification of the development application.

Your attention is also drawn to Section 3.2.9 of the Integrated Planning Act 1997 and that if the information request response materially changes the nature and detail of the application submitted, other than responding to the information request, then the application will return to the Acknowledgement Notice stage of the IDAS process.

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

Yours faithfully



Nikki Huddy
Manager City Assessment