

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

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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.

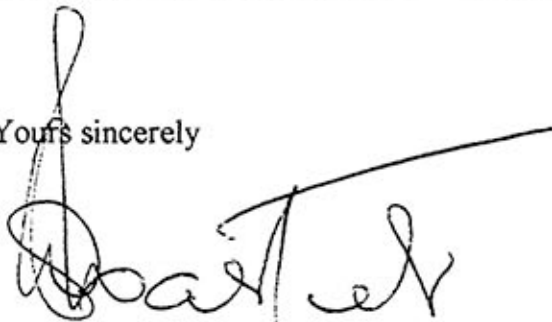
Secondly, the decision in Grant was one decided with reference to Schedule 1 of the IPA Regulation prior to the amendment of the Prostitution Act 1999 which inserted Section 63A – that is, prior to the statutory definition of "an industrial area", as also was the case of Leach referred to above.

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