



MORROW PETERSEN  
SOLICITORS

Our Ref: Tracy Fantin:204091  
Your Ref: 8/8/564-01(754710)

2 July 2004

The Chief Executive Officer  
Cairns City Council  
PO Box 359  
CAIRNS QLD 4870

ATTENTION: Jenny Elphinstone

Dear Ms Elphinstone

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

I act for the Applicant, Mr Brons. I refer to your acknowledgment notice dated 26 February 2004, Planning Far North's letter to you of 10 March 2004, your letter of 12 March 2004 and your information request dated 15 March 2004.

I enclose for your information:-

1. Copy letter from the Prostitution Licensing Authority to the Council dated 12 March 2004; and
2. Copy extract of opinion from Stewart Ure dated 25 June 2004.

I draw to your attention the following passages in the enclosed documents. The Honourable W J Carter QC of the Prostitution Licensing Authority states:-

*"It is arguable that there is a sound basis for concluding that the assessment of this application as an Impact Assessable development ... cannot be sustained as a matter of law.*

*... 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.*

Morrow Petersen

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*... 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".*

Stewart M Ure, Counsel engaged by the Applicant Mr Brons, states in his advice that:-

*"27. In my view, having regard to the uses in the area and the existing Strategic Plan and zoning designations, the better view is that the subject land is within, but on the periphery of, an industrial area.*

*28. If follows, in my view, that the answer to question 1 is that the third Application is Code Assessable.*

*...*


*34. As a consequence of the conclusion I have reached with respect to issue 1, it would ordinarily follow that my view would be that Mr Brons had good prospects of success in an application for a declaration that the third Application is Code Assessable."*

I hereby request that the Council reconsider the subject Application and determine that it is in fact, Code Assessable, rather than Impact Assessable (as set out in Council's acknowledgement notice).

Should the Council agree with the enclosed opinions and determine the Application is Code Assessable, the Applicant would then take steps to answer the information request to enable the Application to proceed to assessment.

I look forward to Council's response as soon as possible.

Yours faithfully



For Tracy Fantin  
for MORROW PETERSEN  
Email: [tracy@morrow.com.au](mailto:tracy@morrow.com.au)

Enc.

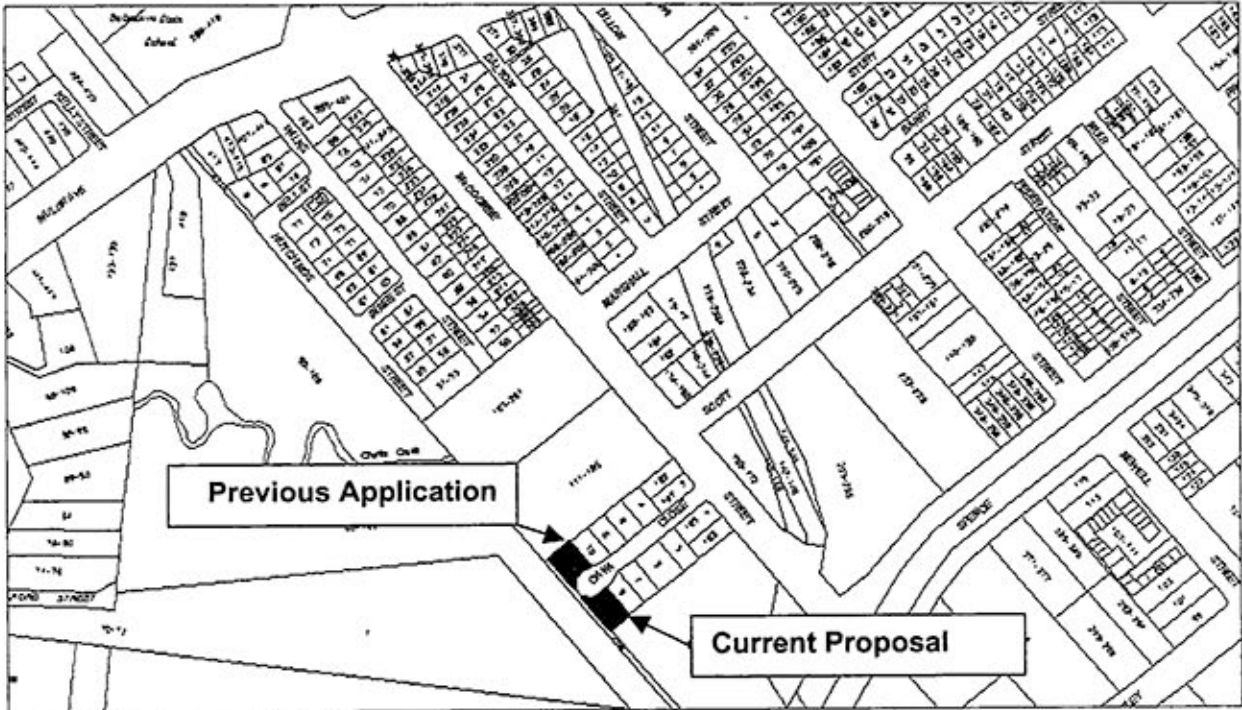
<b>ORDINARY MEETING</b> <b>22 JULY 2004</b>	<b>15</b>
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**MATERIAL CHANGE OF USE (IMPACT ASSESSMENT) – BROTHEL – 11  
CAVA CLOSE, BUNGALOW – DIVISION 5**

Jenny Elphinstone: 8/8/564-01 : 774223

<u>PROPOSAL:</u>	BROTHEL
<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>DCP:</u>	DCP 2 HEIGHT AND IMPACT OF BUILDINGS – PRECINCT 6
<u>REFERRAL AGENCIES:</u>	PROSTITUTION LICENSING AUTHORITY
<u>NUMBER OF SUBMITTERS:</u>	NONE AS YET
<u>STATUTORY ASSESSMENT DEADLINE:</u>	NOT YET COMMENCED
<u>DIVISION:</u>	5
<u>APPENDIX:</u>	1. SITE LAYOUT PLAN

**LOCALITY PLAN – CHANGE MAP SHOW LOCATION OF PREVIOUS SITE AND NEW SITE**



**RECOMMENDATION:**

That Council advise the applicant that it determines that the application shall be Impact Assessable and requires Public Notification.

**EXECUTIVE SUMMARY:**

Previous application for a Brothel at an address opposite to the subject site was refused by Council and this determination was upheld by the Planning and Environment Court. Council and the Court both found the previous application to be Impact Assessable. The current applicant, Mr Brons, contends that such finding is inconsistent with the Prostitution Licensing Act and has gained a legal Counsel opinion supporting this alternative position.

The current application was lodged with minimal detail and appears as a test of Council on this issue. Morrow Petersen Solicitors has lodged an extract of advice from Mr Stewart M Ure, of Counsel, suggesting that the current application is Code Assessable and the application would have good prospects before the Court in determining this matter. Council officers are not satisfied with the extent of advice submitted and seek that Council continue to respect the Court's determination until it is otherwise varied.

## **TOWN PLANNING CONSIDERATIONS:**

### **Background**

Previous application was made to establish a Brothel at 12 Cava Close, Bungalow (Development Application 8/34/5). Fifty-seven submissions were lodged against the proposal. Council found the development inappropriate for a number of reasons including the proximity of the proposed use to a residential area (the Parks Retirement Village) and the accessibility of the area to children. Council refused the application.

The applicant appealed Council's refusal. The Planning and Environment Court heard the matter in Cairns (Planning and Environment Appeal 9 of 2001 AB Grant v Cairns City Council). A preliminary matter was heard by the Court as to whether the application was correctly assessed as an Impact Assessable development.

During the time in which this previous matter was being heard and determined by the Court an appeal was lodged for a Brothel on the Gold Coast and the issue of whether the application was code or Impact Assessable was raised. The case determined by Justice Hanger of the District Court, discussed "area" and "industrial" separately. In the determination Justice Hanger states that neither "area" nor "industrial", at the time of his determination, is clearly defined by the legislation. He also stated that "area" should not be limited to the 200m travel distance as a distance as is used by other sections of the Act. As a consequence of this appeal the State Government amended the Prostitution Licensing Act clarifying the interpretation of "industrial area." The amendments to the legislation further define "industrial" and do not give clarity as to the physical parameters of the word "area."

While Judge White was not bound to have regard to the amending legislation, in the determination of the AB Grant appeal, he considered the matter as if the amendment was in force. Judge White's findings raised the issue of defining the "area." Once this was clarified, he then used both the then and the amending legislation to determine whether this "area" was "industrial." On consideration of the above issues it is likely that Judge White was aware of the previous determination by Justice Hanger. Judge White determined area to include from the intersection of Mulgrave Road, along McCoombe Street and to the subject site. To this extent the Court determination makes a finding as to what is the "area" and that area can be more than just the subject site of the proposed premises. Of this "area" part was clearly industrial and part was residential. On this basis the Court determined that the use was appropriately assessed.

The Court then considered the Council's refusal of the application and disallowed the appeal upholding Council's decision.



## **Current Application**

A new application has been lodged to use land opposite the previous site as a Brothel. The application content was minimal and deficient of details to enable assessment against the IDAS code for Brothel applications found in the Prostitution Licensing Regulation. Upon lodgement of the proposal the applicant was advised that Council considers such application to be Impact Assessable and required that the Impact Assessment fee be paid in order that the application may be considered as properly made. The applicant, Mr Brons, has disputed Council's determination that the application is Impact Assessable and contends that interpretation of the legislation finds the development Code Assessable. Mr Brons has gained a legal opinion that finds the development Code Assessable and that the applicant would have good prospects before the Court in concurring with this opinion.

## **Planning Comment**

The two applications are similar to the extent that the sites are in very close proximity to each other and the surrounding area is the same. There has been no change of circumstance other than the amending legislation is now enacted for all applications. However, as the previous determination of the Court, in the preliminary finding, applied the amending legislation as if it was in force the applications remain virtually identical in their primary purpose – to establish a five room Brothel on the land.

It is considered that Council preference is for the matter to be Impact Assessable in order for the community to have their views considered by Council, and also to be able to participate in any subsequent Appeal if such occurs.

Jenny Elphinstone  
Senior Planning Officer  
**Action Officer**

P M Tabulo  
**General Manager – City Development**

26 July 2004

**ENQUIRIES:** Mrs Jenny Elphinstone  
**PHONE:** (07) 4044 3365  
**FAX:** (07) -002  
**OUR REF:** 8/8//564-01 820775



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Cairns Qld. 4870  
P.O. Box 359,  
Cairns, Qld. 4870

Attention Ms Tracy Fantin

Telephone: (07) 4044 3044

Facsimile: (07) 4044 3022

[council@cairns.qld.gov.au](mailto:council@cairns.qld.gov.au)

[www.cairns.qld.gov.au](http://www.cairns.qld.gov.au)

ABN 21 543 571 965

Dear Madam

**RE: DECISION NOTICE FOR  
DEVELOPMENT APPLICATION – 8/8/564  
MATERIAL CHANGE OF USE (IMPACT ASSESSMENT)  
BROTHEL – 11 CAVA CLOSE, BUNGALOW**

Council acknowledges receipt of your correspondence dated 2 July 2004 in which request is made for Council to reconsider the above application to be Code Assessable. Council considered your request at its Ordinary Meeting held on 22 July 2004 determined that the application shall be Impact Assessable and requires Public Notification.

Council suggests that should the applicant seek any further determination on this issue then the appropriate forum would be the Planning and Environment Court.

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

Yours faithfully

P M TABULO  
**General Manager, City Development**

Att.