Outstanding correspondence

To

The Hon Minister for Local Government

Desley Boyle

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(3)

Northern Belle Pty Ltd

Cairns first Licensed Parlour Est. 2006

13- 08- 09

To the Honourable Minister for Local Government Desley Boyle

Subject: **"New evidence" Section 63A & S64** of the prostitution Act concerning All Cava Close building applications.

Dear Desley

I put to you, also being the member for Cairns, to put to Jason O'Brien (Deputy Speaker of the House and Member for Cook)

1 If he had any knowledge of the **'fact'** that the Parks retirement village Pty Ltd had **officially withdrawn** their submissions and selected to no longer be a co-respondent back in 2001, when Jason was division 5 councilor, and submission lobbyist for the then Cairns City Council lead by Mayor Kevin Byrne and CEO'd by David Farmer. **(Read attachments 1 & 2)**
"and it is relevant Minister" (refer to www.aartbrons.com)

2 **If he did !!** Then how could the Parks **official withdrawn submissions** still have been included in their legal brief to the court room of the Hon. Judge White **without "that deed" not** having broken the act **???**
(Read Hon Judge White reading as per attachment)

As far as Jason O'Brien's record on lying is concerned...

"Three strikes should be out !!!!"

1 Wine gate ("one bottle is not enough. We will get some more in Weipa")

2 Pinch arse in the lift gate ("I apologise to parliament for lying to the house")

3 And maybe now for lying to you minister **"as he absolutely does have knowledge"** (refer to **Jason O'Brien in www.aartbrons.com**)
There should be a **" Brothel Gate "** type inquiry.

Kind Regards
Aart Brons

11 Cava Close Bungalow CAIRNS 4870 QLD AUSTRALIA
Ph 07 4033 5955 Fax 07 4033 5971
www.northernbelle.com.au

RF
22 JAN 2001
BY:

Councillor
Jason O'Brien
Division 5

Our Ref: jokah:#256293

18 January, 2001

Australian Retirement Homes Ltd, Dr Charles MacDonald
GPO Box 2447
Brisbane Qld 4001

Dear Dr MacDonald

Recently you lodged an objection to the proposed brothel at 12 Cava Close Bungalow.

At this stage, this matter should come to Council to the full Council meeting scheduled for 7.00 pm Thursday 1 February. Fifty-seven (57) letters of objection were received regarding the application.

I have arranged for copies of all the objections to be made available to the other Councillors for their perusal. Over the next couple of weeks I will make personal representations to each of them and seek their support in rejecting the application.

The principle argument against the proposed brothel is that it is situated within 200 metres of a residential area and a place regularly frequented by children (the creek).

If you have a relationship with any of the other Councillors now might be a good time to contact them and seek their support in rejecting the brothel.

I am doing everything within my power to ensure that this brothel does not go ahead. I have recently become a resident of Dalton Street (no. 3) and share the concerns that many people have raised in their objections to Council.

Thank you for taking the time to put in your objection. If you would like further information on this matter please do not hesitate to contact me at home on 4033 7414.

I will let you know the result of Council's decision after the 1st of February.

Yours sincerely

J O'Brien

Cr Jason O'Brien
Division 5

Councillors' Rooms Cairns City Council 119 - 145 Spence St, Cairns PO Box 359 Cairns Q Australia 4870

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CAIRNS CITY COUNCIL

ENQUIRIES: Mr Brendan Nelson
PHONE: (07) 4044 3546 Fax (07) 4044 3836
YOUR REFERENCE:
OUR REFERENCE: CLP (258261) 8/34/5-01

22 February 2001

DECISION NOTICE FOR DEVELOPMENT APPLICATION – 8/34/5

PROPOSAL:	Licensed Brothel
TYPE OF DEVELOPMENT:	Material Change of Use
REAL PROPERTY DESCRIPTION:	Lot 8 on SP101286, Parish of Cairns
REFERRAL AGENCIES:	None Applicable
DECISION DATE:	13 February 2001
DECISION:	Refused

REASONS FOR REFUSAL:

1. S 64(1) of the Prostitution Act requires Council to refuse the application on the following grounds:
   a. The proposal is within 200m of a residential area (40 metres to The Parks Retirement Village).
   b. The proposal is located in an area which can easily be accessed by children. It is within 200m of areas frequented by children (less than 10 metres to Chinaman Creek, 25 metres to Earlville Pony Club)
2. The proposed brothel will have an unacceptable adverse impact on the amenity, safety and security of the surrounding area:

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The proposed brothel, comprising a relocated low set dwelling with open verandahs and outdoor swimming pool, screened by a 1.8 metre colorbond fence at the rear and sides of the allotment, provides opportunity for noise transference, loitering, concealment and other forms of anti social behaviour. The location of the proposed brothel site, immediately adjacent an unfenced drainage reserve (Chinaman Creek) further reinforces the opportunity for loitering, concealment and other anti social behaviours.

3. The inclusion of an outdoor swimming pool is contrary to S 79 (1) of the Prostitution Act which provides that a licensed brothel must not operate other than in a building, where 'building' means a fixed structure that is wholly or partly enclosed by walls and is roofed.

4. The layout of the proposed brothel does not ensure the safety and security of staff. The design of the premises provides opportunity for prostitution to occur outside identified working rooms. The layout of the premises does not provide sufficient separation between staff and client areas.

PROPERLY MADE SUBMISSIONS MADE ABOUT THE APPLICATION:

Yes, fifty-seven (57) submissions were made

APPEAL RIGHTS: See Attachment 1

for DB Farmer
Chief Executive Officer

Att.

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Councillor
Jason O'Brien
Division 5

RECEIVED
- 9 APR 2001

Your ref:
Our ref: JB/pmh #

BY:.....4 April 2001

Australian Retirement Homes Ltd, Dr Charles MacDonald
GPO Box 2447
Brisbane Qld 4001

Dear Sir

As you are probably aware the proponents of a brothel in Cava Close have appealed Council's decision to refuse the application.

As a submitter to the original application you now have the right to become a respondent to the appeal.

This means that if you are prepared to go to the Courthouse and register as an appellant (a small fee of approximately $30 applies), you will have the right to be informed on the legal process and have your views heard by the Planning and Environment Court.

If you want your views to be heard by the Court, it is important that you register as soon as possible.

You may wish to seek your own legal advice on this matter to ensure your interests are properly represented.

From my end I will try to ensure that Council vigorously defends its decision to refuse this application.

If enough people think that it is necessary, I am happy to organise a community meeting and invite Council officers along who are better equipped to explain the process and your rights under the Integrated Planning Act.

Please feel free to contact me on 4033 7414 or 0408 331 969 if you wish to discuss this matter further.

Yours sincerely

J O'Brien

CR JASON O'BRIEN

cc Peter Skorupanovic FAXED

Councillors' Rooms, Cairns City Council, 119 - 145 Spence St, Cairns, PO Box 359, Cairns Q, Australia 4870

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HAMj:TT 01/237

13 June 2002

Ms Willy Brons
4/393 Draper Street
CAIRNS QLD 4870

Dear Willy,

RE: TOWN PLANNING APPEAL

I enclose herein for your reference copy letter from Minter Ellison Solicitors 11/06/02.

You will note that the co-respondent has withdrawn from the Appeal.

I am unaware as to why the co-respondent has elected to withdraw from the Appeal, however this is good news.

Kind Regards,

H. A. MELLICK Jnr

Enc.

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MinterEllison | LAWYERS

11 June 2002

WATERFRONT PLACE 1 EAGLE STREET BRISBANE
PO BOX 7844 WATERFRONT PLACE QLD 4001 AUSTRALIA
DX 102 BRISBANE www.minterellison.com
TELEPHONE +61 7 3119 6000 FACSIMILE +61 7 3119 1000

COPY

Mr H A Mellick Jnr
Mellick Smith & Associates
PO Box 627
CAIRNS QLD 4870

Dear Mr Mellick

Mr A B Grant v Cairns City Council and Australian Retirement Homes Limited
P&E Appeal No. 9 of 2001

We enclose, by way of service, a copy of our client's Notice of Withdrawal of Election to Co-Respond.

Yours faithfully
MINTER ELLISON

Contact: James Ireland Direct phone: +61 7 3119 6265
E.mail: james.ireland@minterellison.com
Partner responsible: Amanda McDonnell Direct phone: +61 7 3119 6255
Our reference: JRI AJM 1113066
Your reference: HAMj:TT 01/237

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NOTICE OF WITHDRAWAL OF ELECTION TO CO-RESPOND

In the Planning and Environment Court

No 9 of 2001

Held at: Cairns

Between:	**MR A B GRANT**	**Appellant**
And:	**CAIRNS CITY COUNCIL**	**Respondent**
And:	**AUSTRALIAN RETIREMENT HOMES LIMITED**	**Co-Respondent**

Filed on: 03/06/2002

Filed by: Minter Ellison, Solicitors for the Co-Respondent
Service Address: Waterfront Place, 1 Eagle Street Brisbane Qld 4000
Phone: 07 3119 6000

TAKE NOTICE that the Co-Respondent's Election to Co-Respond is withdrawn.

Signed: _____
Solicitors for the Co-Respondent

Dated: 27 May 2002.

NOTICE OF WITHDRAWAL OF ELECTION TO CO-RESPOND

Filed on behalf of the CO-RESPONDENT

MINTER ELLISON
LAWYERS
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
Telephone: (07) 3119 6000
Facsimile: (07) 3119 1000
JRI AJM 1113066

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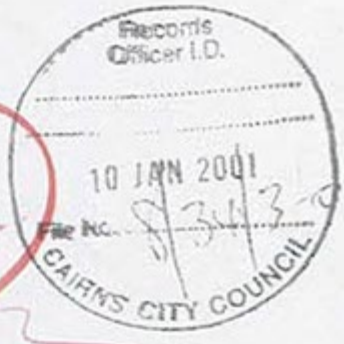

THE PARKS CO SIGNATURES

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

Dear Sir

Submission against development application by Mr AB Grant for the purpose of a licensed brothel at 12 Cava Close, Bungalow

I am writing to you because I am very concerned about the application that has been made for the development of a brothel on land less than 100 metres from The Parks Retirement Village in which I live

I believe that the application should be refused for the following reasons:

- The brothel is located within 200 metres of both The Parks Retirement Village and the Earlville Pony Club. Chinamen's Creek which runs directly behind the brothel is used regularly by children who play along the banks of the creek. The brothel is therefore clearly inconsistent with Section 64 of the Prostitution Act 1999
- This is a quiet residential area in which many people have chosen to retire. The brothel is clearly not compatible with such an environment
- The brothel will have an unacceptable impact on the amenity of residents. In particular
  - there will be a loss of security and peace of mind for residents who have chosen to retire in an area that has offered a secure lifestyle within an active and caring community;
  - it will have a detrimental impact on a happy and tranquil atmosphere; and
  - it will create a bad impression for children visiting family, attending the pony club or playing along the creek.

The area in which I live is a caring community. It provides retirees with a secure and comfortable lifestyle. Please do not jeopardise this lifestyle by allowing a brothel to be established. Please refuse this application.

Yours faithfully

05-01-01 (Date)

39 of these recieved

THE PARKS. RETIREMENT VILLAGE

Rec
Offic

- 8 JAN 2001

File No. 8/34

CAIRNS CITY COUNCIL

3 January 2001

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

Dear Sir,

Development Application by Mr AB Grant (c/- Planning Far North) for the purpose of a licensed brothel

Land situated at 12 Cava Close, Bungalow and described as Lot 8 on SP101286

is the owner of
which is located at and submits that the above application should be refused on the following grounds.

1. **The application does not comply with the provisions of Section 64 of the Prostitution Act 1999.**

   Section 64(1) of the *Prostitution Act 1999*, provides that the Council must refuse an application for a material change of use of premises for a licensed brothel where the land the subject of the application is within 200 metres of a residential area or a place regularly frequented by children for recreational or cultural activities.

   For the purposes of the *Prostitution Act 1999*, distance is to be measured according to the shortest route that may reasonably used in travel. Such a route may include pedestrian travel (eg. paths frequently used by children). The decision of the Planning and Environment Court in *Craig Leach v Council of the City of Gold Coast* (3 November 2000), makes it clear that the 200 metres should be measured from the subject site and not from the entrance to the proposed brothel. In that case, it did not matter that the shortest route in fact involved trespass and was therefore unlawful.

   The proposed brothel is located less than 100 metres from The Parks Retirement Village and the Earlville Pony Club.

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Chinamen's Creek which flows between the proposed brothel and both the retirement village and the pony club forms part of the Council's integrated open space network and is regularly frequented by children. Children play on both sides of the creek directly behind the proposed brothel and regularly cross the creek at that point by walking over the main sewerage pipe which passes over the creek.

For the purposes of measuring the 200 metres referred to in Section 64(1) of the *Prostitution Act 1999*, the shortest route that may reasonably used includes the route frequently used by children both along and across Chinaman's Creek.

The proposed brothel is therefore clearly within 200 metres of a residential area (being 'The Parks Retirement Village') and places regularly used by children (the Earlville Pony Club and Chinamen's Creek itself).

The proposed brothel is also adjacent to the Australia Post Business Centre which is frequently attended by children who come with their parents to collect mail from post boxes and to purchase items from the retail office shop.

The proposed brothel therefore does not comply with the provisions of Section 64 of the *Prostitution Act 1999* and must be refused.

2. **The proposal is contrary to the intention of the Prostitution Act 1999.**

The proposed brothel is also located in close proximity to:

- the Council animal refuge which is regularly attended by parents with their children: and
- the Cairns Croatian Club which is a family social club.

The intention of the legislation is to avoid a situation where a brothel would be located in close proximity to those uses or to a retirement village, pony club or creek land frequently visited by children.

The proposal is therefore clearly unacceptable.

3. **The proposal will have an unacceptable adverse impact on amenity.**

The application acknowledges that the subject site is on the fringe of a residential area and is within 200 metres of The Parks Retirement Village. That proximity to residents makes the subject site unsuitable for the development of a brothel as:

- the brothel is not located in a discrete position with the external pool and spa areas, in particular, being visible to children and other pedestrians from the abutting Chinamen's Creek area:
- the use is not consistent with the expectations of residents in the area, particularly the expectations of the existing and future residents of the retirement village: and

- there would be an unacceptable impact on the amenity of those residents.

The decision of the Planning and Environment Court in *Craig Leach v Council of the City of Gold Coast* (3 November 2000) recognised that "the geographical location of a brothel can reasonably be regarded as having an adverse impact on the amenity of the area in which it is located". In doing so, the Court acknowledged that adverse impacts on amenity include psychological impacts relating to the perceptions of the locality held by residents.

The proposed brothel will have the following unacceptable impacts on residents' perceptions of the locality:

- a loss of security and peace of mind for retirees in an area that has offered retirees a secure, comforting lifestyle within an active and caring community;

- a lowering of a happy and tranquil atmosphere; and

- a creation of bad impressions for children visiting family at the retirement village, attending the pony club or playing along the creek.

Having regard to the impacts of the proposed brothel on the perceptions held by the residents of the area, the proposal is clearly unacceptable.

4. **Lack of information about any need for the development.**

The application has not demonstrated that there is a need for the proposed brothel at this location. No studies were included with the application.

Yours faithfully,

Grant v Cairns City Council [2003] QPEC 76 (12 December 2003)

Last Updated: 29 April 2004

PLANNING & ENVIRONMENT COURT OF QUEENSLAND

CITATION:	*Grant v Cairns City Council*
PARTIES:	**A B GRANT** (Appellant) v **CAIRNS CITY COUNCIL** (Respondent)
FILE NO/S:	9 of 2001
DIVISION:	
PROCEEDING:	Appeal
ORIGINATING COURT:	
DELIVERED ON:	12 December 2003
DELIVERED AT:	Cairns
HEARING DATE:	27 August 2003
JUDGE:	White DCJ
ORDER:	**That the appeal be dismissed.**
CATCHWORDS:	
COUNSEL:	Mr W Cochrane for the appellant Mr A Philp for the respondent
SOLICITORS:	Mellick Smith & Associates for the appellant MacDonnells Solicitors for the respondent

[1] The appellant applied to the respondent council for a development permit for a material change of use of premises for a licensed brothel on land described as Lot 8 on SP 101286 Parish of Cairns, County

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of Nares, located at 12 Cava close, Bungalow. The respondent refused the application. The appellant now appeals against that decision. The subject land is presently vacant. It has an area of 1,013 square metres and is approximately rectangular in shape. It is the last allotment at the head of Cava Close on the right hand side. Cava Close is a small 14 lot Light Industrial subdivision. It's only access is directly off McCoombe Street which is a sub-arterial road which ends shortly after its intersection with Cava Close.

[2] The appellant proposes to relocate an existing dwelling of low-set timber construction on to the site and to renovate and convert it for brothel use. The appellant proposes at some later stage to construct additions to the building so as to expand the use. The initial stage will involve three rooms for the provision of prostitution services. The additions will provide a further two rooms. The site is to be fully fenced with a 2.4 m high rendered concrete masonry block wall along the full frontage of the site to Cava Close with the exception of driveway openings. The side and rear boundaries will be fenced by a 1.8 m high Colourbond fence. All vehicular access to the site is via Cava Close. An automatic sliding gate will provide access to the patron car park with the staff car park reliant upon a remote controlled roller door. The proposal also includes timber decks and a swimming pool.

[3] The respondent's Planning Scheme currently in force is a Transitional Scheme pursuant to the *Integrated* . It was gazetted in December 1996. The subject land and all of the Cava Close allotments are zoned Light Industry in the respondent's scheme. In the Table of Zones the use of land in the Light Industry Zone for the purposes of a brothel was prohibited. However, this was not expressly so. No provision at all was made in the Transitional Planning Scheme for the establishment of the use of a brothel. This is undoubtedly because such a use would have been illegal at the time of the introduction of the Planning Scheme.

[4] The commenced on 1 July 2000 with the stated purpose of regulating prostitution in Queensland. Issues arise concerning thereof. The has been amended a number of times since its commencement. The *Prostitution Amendment Act* 2001 commenced on 7 December 2001. This Act effected amendments to s 64. Section 142 introduced by the *Prostitution Amendment Act* 2001 provides as follows:-

"An appeal started in the Planning and Environment Court under the *Integrated Planning Act* before the commencement of this section in relation to an application made to an assessment manager for development approval for a licensed brothel may continue to be dealt with under that Act as if the *Prostitution Amendment Act* 2001 had not been enacted."

[5] The Notice of appeal in this case was filed on 23 March 2001. It is common ground that so far as is relevant to this appeal, s 64 of the *Prostitution Act* 1999, as it was at the date of filing this appeal, provided as follows:-

"64(1) The assessment manager must refuse the application if –

(a) The land the subject of the application is in or within 200 m of a primarily residential area or an area approved for residential development or intended to be residential in character; or

(b) The land is within 200 m of a residential building, place of worship, hospital, school, kindergarten, or any other facility or place regularly frequented by children for recreational or cultural activities; or

(c) More than 5 rooms in the proposed brothel are to be used for providing prostitution.

(2) For subsection (1) distances are to be measured according to

the shortest route that reasonably may be used in travelling.
(3) In subsection (1)(b) –
"Residential Building" means a building or part of a building used primarily for private residential use."

[6] It has been urged upon me that in spite of s 142 above I should have regard to the amendments to s 54 in order to construe s 64 as it applied to the present appeal. I am disinclined to do so. In my view as it applies to this appeal is capable of being construed by reference to the ordinary meaning of the words used without any need to resort to later and inapplicable amendments. Such resort may only give rise to potential error. It is submitted on behalf of the respondent that the respondent was right in refusing the appellant's application and the Court should dismiss the appeal on the basis that one or more of the matters referred to in subsection 64(1) arise in this case. It is necessary to describe some of the surrounding land uses in order to properly explain the arguments of the respondent in this regard.

[7] Immediately to the south of the subject land is a narrow strip of land. At present it is a flat mown grass area. Further to the south is a fairly large parcel of land described as Lot 2 on RP 735971. It is freehold land owned by the respondent Council. It is irregularly shaped and is contained in different zones under the respondent's Planning Scheme. A strip of that parcel of land which is closest to the subject land is contained in the Special Purpose Zone. This zoning reflects its use. Along that strip of Lot 2 where it passes near the subject land is the drainage path of Chinaman Creek contained within a concrete drain approximately 8.2 m in width and some unused land immediately beside the drain and further to the south. The drain is tidal. At low tide it has little or no water in it. At high tide (twice a day) it would have considerable water. It would also have considerable water in it during periods of heavy rain.

[8] Somewhat to the south west of the subject land where Lot 2 widens out is an area zoned Residential. It is presently undeveloped and a portion is currently leased to the Earlville Pony club for obvious purposes. More directly to the south of the subject land and the concrete drain is Lot 1 on RP 826307 which is the site of the Parks Retirement Village. The retirement village is being developed in stages and for the purposes of this appeal I am prepared to accept that the whole of Lot 1 is intended to be Residential in character. The argument advanced on behalf of the respondent in respect of this land to the south of the subject land is that the drainage reserve and that part of Lot 2 within the Special Purpose Zone and that part of Lot 2 leased to the Earlville Pony Club is within 200 m from the subject land and that they each are places "regularly frequented by children for recreational or cultural activities". The respondent also submits that the Parks Retirement Village and that part of Lot 2 zoned Residential constitutes an area intended to be residential in character and/or is approved for residential development and that the subject land is within 200 m thereof.

[9] Firstly, I have no difficulty in coming to the conclusion that the land where the Parks Retirement Village is located and the part of Lot 2 zoned Residential may be properly described as one or more of the following, namely "a primarily residential area or an area approved for residential development or intended to be residential in character". The issue in dispute is whether or not the subject land is within 200 m of those areas which may be conveniently described as residential in character. Further, I have no doubt that the parcel of land leased to the Earlville Pony Club may be described as "a place regularly frequented by children for recreational or cultural activities". The issue in dispute in respect of that part of Lot 2 also is whether or not the subject land is within 200 m of the area of Lot 2 leased to the Earlville Pony Club. In order to determine this issue it is necessary to give consideration to the construction of subsection 64(2).

[10] It is common ground that in order to bring the subject land within 200 m of the Parks Retirement Village, the Residential zoned area of Lot 2, and the land leased to the Earlville Pony Club the "shortest

the shortest route that reasonably may be used in travelling.
(3) In subsection (1)(b) –
"Residential Building" means a building or part of a building used primarily for private residential use."

[6] It has been urged upon me that in spite of s 142 above I should have regard to the amendments to s 54 in order to construe s 64 as it applied to the present appeal. I am disinclined to do so. In my view as it applies to this appeal is capable of being construed by reference to the ordinary meaning of the words used without any need to resort to later and inapplicable amendments. Such resort may only give rise to potential error. It is submitted on behalf of the respondent that the respondent was right in refusing the appellant's application and the Court should dismiss the appeal on the basis that one or more of the matters referred to in subsection 64(1) arise in this case. It is necessary to describe some of the surrounding land uses in order to properly explain the arguments of the respondent in this regard.

[7] Immediately to the south of the subject land is a narrow strip of land. At present it is a flat mown grass area. Further to the south is a fairly large parcel of land described as Lot 2 on RP 735971. It is freehold land owned by the respondent Council. It is irregularly shaped and is contained in different zones under the respondent's Planning Scheme. A strip of that parcel of land which is closest to the subject land is contained in the Special Purpose Zone. This zoning reflects its use. Along that strip of Lot 2 where it passes near the subject land is the drainage path of Chinaman Creek contained within a concrete drain approximately 8.2 m in width and some unused land immediately beside the drain and further to the south. The drain is tidal. At low tide it has little or no water in it. At high tide (twice a day) it would have considerable water. It would also have considerable water in it during periods of heavy rain.

[8] Somewhat to the south west of the subject land where Lot 2 widens out is an area zoned Residential. It is presently undeveloped and a portion is currently leased to the Earlville Pony club for obvious purposes. More directly to the south of the subject land and the concrete drain is Lot 1 on RP 826307 which is the site of the Parks Retirement Village. The retirement village is being developed in stages and for the purposes of this appeal I am prepared to accept that the whole of Lot 1 is intended to be Residential in character. The argument advanced on behalf of the respondent in respect of this land to the south of the subject land is that the drainage reserve and that part of Lot 2 within the Special Purpose Zone and that part of Lot 2 leased to the Earlville Pony Club is within 200 m from the subject land and that they each are places "regularly frequented by children for recreational or cultural activities". The respondent also submits that the Parks Retirement Village and that part of Lot 2 zoned Residential constitutes an area intended to be residential in character and/or is approved for residential development and that the subject land is within 200 m thereof.

[9] Firstly, I have no difficulty in coming to the conclusion that the land where the Parks Retirement Village is located and the part of Lot 2 zoned Residential may be properly described as one or more of the following, namely "a primarily residential area or an area approved for residential development or intended to be residential in character". The issue in dispute is whether or not the subject land is within 200 m of those areas which may be conveniently described as residential in character. Further, I have no doubt that the parcel of land leased to the Earlville Pony Club may be described as "a place regularly frequented by children for recreational or cultural activities". The issue in dispute in respect of that part of Lot 2 also is whether or not the subject land is within 200 m of the area of Lot 2 leased to the Earlville Pony Club. In order to determine this issue it is necessary to give consideration to the construction of subsection 64(2).

[10] It is common ground that in order to bring the subject land within 200 m of the Parks Retirement Village, the Residential zoned area of Lot 2, and the land leased to the Earlville Pony Club the "shortest

route that reasonably may be used in travelling" involves crossing over the concrete drain referred to in the evidence. No serious argument has been put that a person would reasonably cross the drain in a motor vehicle. I have no doubt that the word "travelling" in subsection (2) includes walking. In order to cross the drain on foot a person would either have to walk down the concrete sides of the drain across the bottom of it and up the other side or alternatively walk across two sewerage pipes which span the drain near the eastern corner of the Cava Close subdivision. I have no doubt that a reasonably healthy person, not physically disabled in any way, would be able to cross the drain by going down into it or by balancing across the sewerage pipes.

[11] I reject the submission made on the appellant's behalf that to cross the drainage reserve land and the Special Purpose zone part of Lot 2 would necessarily be a trespass. The land is in the ownership and/or control of the respondent Council. It is unfenced. There is no evidence to suggest that the Council has ever made any attempts whatsoever to prevent people from entering upon that land. There is uncontested evidence from Mr Murphy, a resident of McCoombe Street that people regularly enter upon at least parts of the drainage reserve land and the Special Purpose zone land. On that evidence the inference which must be prima facie drawn is that the Council consents to people entering upon those areas of land. That being so I am not satisfied on the evidence that to cross the drain by either walking through it or over the sewerage pipes would amount to a trespass. I feel bound to observe that I expect the respondent's public risk insurer would be alarmed to hear that it is seriously asserting in a court of law that it consents to people, including children, crossing an unfenced drain which regularly contains a significant depth of water.

[12] However, that is not an end to the matter. In order to give rise to the refusal of the application it is necessary to conclude that the route across the drain is one that reasonably may be used in "travelling". In my view it is not sufficient that the crossing of the drain might be lawful and physically possible to demonstrate that it may reasonably be used. The purpose of is obviously to provide a degree of separation between the site of a brothel and what were described by His Honour Judge Hanger in *Leach v Council of the City of the Gold Coast* 2001 QPELR 139 as "sensitive areas". The distance of 200 m is obviously an arbitrary figure. It is equally obvious that it was not intended that the physical separation of a brothel from a sensitive area be determined according to straight-line distances. Subsection (2) my view makes it tolerably clear that the regulation of separation was directed towards people travelling between the proposed brothel and the sensitive areas.

[13] What is of significance to me in this case is that there is no evidence that anybody ever crosses over the drain in order to get from the subject land to the sensitive areas described in this case. **Mr Murphy's affidavit ex 7 discloses that he has lived in the area for more than five years. Although he lives at 245 McCoombe Street, apparently the respondent council thought** he was sufficiently familiar **with the area to be able to provide informed information to the Court.** Certainly his affidavit is **uncontested. In paragraph 5 thereof he deposes to members of the public of various classes doing a wide variety of things in the vicinity of the subject land. The one thing that he does not claim to have ever observed is anybody crossing over the drain.** There is no evidence to suggest any reason good or otherwise, reasonable or otherwise as to why people would presently cross the drain. There is no reason suggested on the evidence to believe that if the brothel were established that for some reason people would start crossing over the drain. In my view the drain provides a reasonably effective physical barrier between the subject land and the sensitive areas on the other side of it. I am satisfied that the shortest route that reasonably may be used in travelling between the subject land and the sensitive areas does not involve the crossing of the concrete drain, either through it or over it. I am therefore satisfied that the subject land is not within 200 m of those sensitive areas and I am therefore of the view that the application cannot be refused on those grounds.

[14] The respondent also raises the proposition that the area of the drainage reserve and the Special

Purpose zoned part of Lot 2 which is on the same side of the drain as the subject land also falls within a sensitive character as described in subsection 64(1)(b) namely "a place regularly frequented by children for recreational or cultural activities". There can be no dispute that those areas of land are within 200 m of the subject land, that distance being measured in accordance with subsection 64(2). However, in my view there is just no evidence at all to support the view that this land is "a place regularly frequented by children for recreational or cultural activities." The closest the evidence comes is once again the affidavit of Mr Murphy. In paragraph 5 of his affidavit he states –

"In particular I have observed –

...

(d) adults and children utilising the grassed verge of the stormwater drain which adjoins the subject premises."

> What these adults and children may have been utilising the area for remains a mystery. In my view the language of subsection 64(2) cannot be tortured to the extent that an application to establish a licensed brothel must be refused simply because from time to time children may appear or may be within 200 m walking distance of the proposed site.

[15] Finally, I turn to a parcel of land located at 150-172 McCoombe Street (not 187-201 McCoombe as described in the written submissions of counsel for the respondent). This land is sometimes referred to in the submissions as the Richardson residence. As may be observed from the maps this parcel of land has a frontage to McCoombe Street on the opposite side of the entrance to Cava Close. There is a residence on this land. It is not disputed that the nearest point on the Richardson land to the nearest point on the subject land is something less than 200 m. It is also not disputed that the nearest point of the residence itself to the nearest point on the subject land is greater than 200 m, measuring that distance in accordance with subsection 64(2).

[16] It is submitted on behalf of the respondent that for the purposes of subsection 64 the distance should be taken between the nearest point on the boundary of the subject land and the nearest point on the boundary of the land upon which the residential building is located. It is argued that support for this proposition is contained in the judgment in the *Leach* case to which I have referred above and also in a judgment of the Victorian Civil and Administrative Tribunal in *Frankston v Kiwiforce Pty Ltd* (31 March 2000). In my view neither of those cases support the proposition contended for. In the *Leach* case His Honour Senior Judge Hanger was not dealing with the measurement of the distance between the proposed site of the brothel and a residential building. In the Victorian case the Tribunal was dealing with the measurement of the distance between the proposed brothel site and the site of a kindergarten.

[17] In my view the point on the "sensitive site" to or from which the measurement must be calculated will often depend on the facts. In the case of a pre-school or kindergarten it is not uncommon that there will be a building within a parcel of land and an outdoor area, all of which is used for the purposes of the pre-school or kindergarten. Such was the case I apprehend in *Frankston*. I have no doubt that in such circumstances the proper way of measuring the distance between the proposed brothel site and the kindergarten would be to take the nearest locations on the boundaries of each of the relevant parcels of land. However, in this case the relevant words in paragraph (b) are "residential building". In my view, therefore, the nearest point on the Richardson residence (that is the building) is more than 200 m from the nearest point on the subject land measured in accordance with subsection 64(2) and therefore gives

rise to no proper basis upon which the application should be refused.

[18] A further basis upon which the respondent argues that the application should be refused pursuant to is that on the land upon which the Richardson residence is located is a place regularly frequented by children for recreational or cultural activities which is within 200 m of the subject land measured in accordance with subsection 64(2). The evidence relied upon to support this proposition comes solely from Alison Wright, the Town Planning Consultant, who gave evidence for the respondent. It appears at page 4 of her report which was tendered as exhibit 5. The evidence is as follows:-

"Lot 2 on RP 730391, located at 150-172 McCoombe Street is currently used to house the depot and office of Richardson's building services. This site also contains a dwelling house in which the owner and operator of Richardson's Building Services resides with his family (wife and children).

A bike track has been constructed in the front yard of the dwelling house. An examination of the bike track shows that it is in regular use. This bike track was not on the site at the time that I inspected the premises in 2002 prior to the Court's hearing of appellant's preliminary application."

[19] An inspection of the site reveals that there is no doubt a substantial residence constructed on the Richardson land. As to anything further the following appeared in cross-examination of Ms Wright:-

"Q: Did you have any discussions with the Richardsons themselves?—No I did not.

Q: You did not. I see. So you're not able to glean whether the bike track that you have seen is for motor bikes or push bikes? -- The tracks would indicate mountain bikes, BMX type things from my knowledge of bicycles but no, I was not able to glean that.

Q: And can I ask you this, since you express on how extensive is your knowledge of mountain bikes? -- Not extensive.

Q: OK and you didn't see any children playing in that yard? -- Not – no."

[20] After this, one is left to wonder at the factual basis for the assertions made in Ms Wright's report. If she had no discussions with the Richardsons and never saw any children playing at the residence, how does she know that children even live there? In my view this evidence falls far short of demonstrating that any part of the Richardson land within 200 metres of the subject site may be fairly described as "a place regularly frequented by children for recreational or cultural activities".

[21] Brief attention was given during the evidence to land located at 187-201 McCoombe Street. Located on this land is a derelict building that may have once been used as a residence. The land is zoned General Industry and non-urban. I am satisfied that nothing about this building or the land upon which it is located gives rise to any matter which requires the application to be refused pursuant to I am further satisfied that there is no circumstance which requires the application to be refused pursuant to of the

[22] The respondent raises an issue about the swimming pool in relation to subsection 64(1)(c). It is submitted that the swimming pool is an area that would be used for prostitution. There is no evidence to support such a proposition. The proposal by the applicant is for the pool to be reserved for staff use only. A condition can be imposed to that effect.

[23] On 18 October 2002 I ruled that the application was one which required Impact Assessment. In this

respect the only issue raised in the appeal is one of amenity. However, this issue has two distinct aspects to it. The first aspect relates to the effect that traffic generated by the brothel will have on the amenity of the residential area of McCoombe near Mulgrave Road.

[24] In the reasons I gave on 18 October 2002 I said:-

"The brothel is to be located a considerable distance form the central business district, Tourist Areas, and major residential areas of the city. Such that in my view the vast majority of its patrons will travel to it by motor vehicle usually a private vehicle or taxi. Cava Close is a short cul-de-sac running off McCoombe Street. A few hundred metres from Cava Close to the west along McCoombe Street is that street's intersection with Mulgrave Road. Mulgrave Road is a major arterial road for a considerable distance both to the north and south of that intersection. McCoombe Street is also a major arterial road where it extends to the west of that intersection. The result, in my view, will be that a large majority of the brothel's patrons will travel to the brothel by entering McCoombe Street at its intersection with Mulgrave Road."

[25] There was no evidence in the earlier proceeding or on the hearing of this appeal to support that view. I **formed that view on the basis of my long-time residence in Cairns.** I consider it was a matter about which I was entitled to take judicial notice. **Neither party to the appeal submits that I could not** take such a view and I adhere to it.

[26] However, elsewhere in those reasons I said:-

"However there is one thing about which I think I can draw conclusions. It is proposed that the brothel will be open for business 24 hours per day, seven days a week. Whilst there will no doubt be times when no patrons at all will visit the brothel I consider it most likely that the brothel will be at its busiest at night, particularly late at night and on weekends."

And a little later:-

"Further, whilst there will no doubt be the odd patron with the time, money and physical energy to stay at the brothel for a long time, human nature being what it is, I expect that most patrons will stay for a relatively short time. Perhaps one hour on average.

In summary, therefore, in my view the establishment of the brothel will create a real potential that the volume of traffic travelling along McCoombe will be substantially increased, that is, it will potentially impact upon McCoombe to the east of Mulgrave Road in a planning sense."

[27] There was no evidence to support these tentative views. I do not consider these matters to be such which would permit me to take judicial notice of them. Those views were tentative views expressed solely for the purposes of deciding whether or not the site of the proposed brothel was in an industrial area for the purposes of deciding whether or not the application to establish the brothel required code assessment or impact assessment. It was certainly not my intention that those matters should be taken as proved for the purposes of the hearing of the substantive appeal. I have no knowledge of the operations of a brothel and whether in fact there is a time at which a brothel is likely to be busiest and what that time would be. Nor do I have any knowledge about what the likely traffic generation would be in terms of the numbers of vehicles travelling to and from the brothel. Both counsel in their submissions appeared to accept that I can proceed on the basis that the brothel will be at its busiest at night, particularly late at night and on weekends. But beyond that I am not prepared to draw any conclusions about the volume of traffic in the absence of any evidence about the actual operation of a brothel to

assist. Neither party called any evidence about the practical operations of a brothel to assist in this regard. However, I am not persuaded that I should draw any adverse inference against the appellant. Whilst the appellant has the burden of proof it was equally open to the respondent to call evidence as to operational aspects of a brothel.

[28] The fact is that in the area surrounding the proposed brothel site and which would be accessed through the residential area of McCoombe Street, there is a substantial area of land zoned for industrial uses of which the following are examples –

(a) A freight depot;

(b) A warehouse;

(c) A transport depot;

(d) A vehicle hire premises;

(e) Manufacturer shops;

(f) Commercial laundries.

> All of these uses have the potential to generate traffic at all hours of the day and night. Further, they have the potential to generate the use of McCoombe Street by large commercial vehicles which might well generate significant noise. Consistent with my earlier findings as accepted by the parties, at least the traffic generated by the brothel will largely consist of smaller motor cars and the like. Although it is possible that more detailed evidence on the issue could have been led, on the basis of the evidence put forward during the hearing of the appeal I am satisfied that the establishment of the brothel will not generate so much traffic as to unduly interfere with the amenity of those people who live in the residential area of McCoombe Street.

[29] The other aspect of amenity addressed by the parties was described by counsel for the respondent in written submissions as "psychological". This was no doubt a reference to the subject matter of the decision of the Court of Appeal in *Broad v Brisbane City Council and the Baptist Union of Queensland* 1986 2 QR 317. In that case the application was for rezoning of land from Residential A to Special Uses (Old Persons' Home). An adjacent property was owned by the applicant Union and contained an existing old persons' home. The intention of the Union was to enlarge the existing institution. Evidence was given and was accepted by the Local Government Court that the extended institution would have an unmistakable "air" or "feel" to it which would have an adverse effect on a residential amenity and this was held relevant in determining the effect upon amenity. At p 319 Thomas J said:-

"The wide ranging concept of amenity contains many aspects that may be very difficult to articulate. Some aspects are practical and tangible, such as traffic generation, noise, nuisance, appearance and even the way of life of the neighbourhood. Other concepts are more illusive such as the standard or class of the neighbourhood and the reasonable expectations of a neighbourhood. The creation of an institution within a neighbourhood is, in my view, capable of altering its character in a greater respect that can be measured by the additional noise, activity, traffic and physical effects this is likely to produce. All counsel agreed that the provision of a funeral parlour was a good example of an institution which whilst discreet in its conduct and relatively small in its production of physical consequences would be likely to have an effect in the way of "atmosphere".

[30] I have no difficulty accepting that the establishment of a brothel in a neighbourhood could have such a detrimental effect on the amenity of those people using the neighbourhood. I have some difficulty with the evidence of such a negative impact on the "atmosphere" of the neighbourhood in this particular case. The only evidence relevant to the issue is contained in the submissions made to the local authority in respect of the application, contained in ex 1. No submitter was called to give evidence so as to confirm his or her concern about the adverse effect of the establishment of the brothel on the amenity of the neighbourhood. However, Mr Murphy was a submitter. He swore an affidavit dealing with the use which residents of the McCoombe Street neighbourhood make of the area around the subject site. He could have been cross-examined about his submission. This is not to say that I draw any adverse inference against either party for failure to call any such witness. The appellant could hardly be expected to call as his own witness a person who was likely to give evidence-in-chief adverse to his interests in a situation where he could not test that adverse evidence in cross-examination. In light of the fact that the appellant has the burden of proof I would also not draw any adverse inference against the respondent for not calling any such witness. 37 of the submissions were from residents of the Parks Retirement Village on a pro forma letter.

[31] I have read all of the submissions and there is no reason to believe that any of the concerns are not genuinely felt. Many expressed concern about the traffic issue with which I have already dealt. Other issues raised are as follows:-

(a) An increase in crime, drug use etc.

(b) Harassment by patrons of the brothel;

(c) Loss of property value;

(d) Anti-social activity requiring the attendance of police, ambulance etc.

(e) Disruption to business;

(f) A risk of violent crime directed towards people in the neighbourhood;

(g) The adverse reputation of the area as being the location of the brothel;

(h) A loss of security and peace of mind of residents;

(i) Risk to the moral values of children who live in the area and the likelihood of children living in the area being in the vicinity of the brothel;

(j) A detrimental effect on the ability of children and adults to use the public areas in the vicinity of the site of the brothel for informal recreation;

(k) The immorality of prostitution.

[32] There is no evidence that any of these concerns are likely to be realised. On the other hand I am satisfied that these are concerns which would be widely held in the general community if a brothel were established near a residential area.

[33] One of the submissions was received from the property manager of Australia Post which has a major mail centre immediately adjacent to the subject land. The balance of the submissions were

received from residents of McCoombe Street and Dalton Street as well as the submissions from the residents of the Parks Retirement Village.

[34] In spite of the somewhat unsatisfactory nature of the evidence of concern about the establishment of the brothel I have come to the conclusion that the level of objection from residents in the neighbourhood is of decisive weight. I should say that I give less weight to the objections from the residents of the Parks Retirement Village than I do to the objections of the residents of McCoombe Street and other nearby residential streets. In my view the drain and the immediate surrounding land provides sufficient physical separation from the retirement village to substantially dilute the concerns of the residents who live there. However, in my view that is not the case in relation to the residents of McCoombe Street and the surrounding streets. of the provides a form of code which specifies circumstances in which an application to establish a licensed brothel must be refused. However simply because the establishment of a licensed brothel should not be refused pursuant to the provisions of does not mean that the establishment of a licensed brothel close to a residential area should be approved or should be likely to be approved.

[35] The residential amenity of the people who live in McCoombe Street and the surrounding streets is not particularly high. The presence of the industrial area at the eastern end of McCoombe Street does not make it a highly attractive area in which to live. On the other hand I have no doubt that the residents of that area value the amenity as it exists. The neighbourhood of McCoombe Street East is relatively small. It is discretely identifiable, surrounded as it is by Mulgrave road and two substantial drainage courses. According to Mr Murphy's uncontested affidavit residents of the neighbourhood presently make significant use of the industrial part of the neighbourhood. The people who live in the neighbourhood must cope with the industrial uses to the east and may well have to cope with further industrial uses in years to come. Although the encourages brothels to be located in industrial areas this does not make a brothel an industrial use. The establishment of a brothel would bring a new, different, and negative impact upon the amenity of the residents. In my view the establishment of a licensed brothel so close to this particular residential area will detrimentally affect the amenity of the residents in the way described in *Broads* case. I am not satisfied that the application should be approved. I propose to dismiss the appeal.

Desley Boyle MP
Member for Cairns

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6th November 2008

Mr Aart Brons
Northern Belle Pty Ltd
11 Cava Cl
BUNGALOW QLD 4870

Dear Mr Brons

I have followed up your concerns with the Cairns Regional Council.

They have advised that despite the former Cairns City Council originally recommending the refusal of your application, the brothel was lawfully established under the Integrated Planning Act, through the P&E Court. They acknowledged that the files relating to your application have been reviewed a number of times with the Council decision making and the officers actions not being considered contrary to the Act.

Given these prior investigations, I will not be calling for an enquiry into the actions of the former Cairns City Council.

You may wish to re-open investigations with the Cairns Regional Council if you have any new evidence that has come to light. Failing this you are within your rights to contact the Crime and Misconduct Commission on 1800 061611 to seek further assistance.

Regards,

Desley Boyle MP
Member for Cairns

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(4)

Northern Belle Pty Ltd

Cairns first Licensed Parlour Est. 2006

16-09-09

To the Hon Minister for local government Desley Boyle.

Dear Desley,

I am **absolutely** disappointed that you did not take this opportunity to right - wrong, and **I WILL** be putting this matter **as adviced by you** to the Ombudsman, and thank you for that advice.

In the meantime I am still waiting for response to my letter sent to your Ministry to the attention of the Hon Desley Boyle on the 13-08-09. (refer to attachment "A"

This needs urgent attention as I have also put this matter to the University of Queensland "T.C.Beirne school of law" and to the attention of Professor Dr Andreas Schloenhardt on the 10-09-09. (as per attachment "C")

Section 63A & 64 of the prostitution act needs to be sorted because(refer to attachment "D"), and there for **"AS IS"** leaves Councils to be able to remain **"narrow minded"** as per **"withheld letter" from the authority**, and or as "The Aardvark" calls it **"fraudulently diverting the cause of justice!!"** (as per attachment "B")

As you are aware of the **fact** that the prostitution act amendments are before you as we speak. Section 63A & 64 of the act should therefore be of particular interest to you as now being the Minister for local Government, and should (in my opinion) be included to the amendments currently before Parliament as to give more power to the "Independent Assessor" as also submitted by the Prostitution Licensing Authority (refer to attachment "D")

The law should **never have to be tested again** as it has been by the Cairns City Council, and now so extremely defended by the Cairns Regional Council of which in my opinion are just **covering up "perjury"** as per attachments sent to your office previously. Remember you were also asked by me Aart Brons to intervene back in January of 2001 **(refer to www.aartbrons.com)**

This matter is crying out for a **"brothel type"**, and or as the **L.N.P.** is calling for a **"royal inquiry" (So if not addressed the act is bound to remain flawed.!!!)**

Kind regards
Aart "The Aardvark" Brons.

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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

14/03/2004

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Prostitution Licensing Authority
Queensland Government

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.

Telephone
Facsimile
Website

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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.

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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

Hon. WJ Carter QC
Chair