

**In the Planning and Environment Court
Held at: Brisbane**

No. BD of 2010

Between: **JOHN EDWARD MYTTON BARNES and GEOFFREY
FREDERICK COOK**

Appellants

And: **SOUTHERN DOWNS REGIONAL COUNCIL**

Respondent

And: **THE CHIEF EXECUTIVE, DEPARTMENT OF
ENVIRONMENT AND RESOURCE MANAGEMENT**

Co-respondent

And: **McCONAGHY GROUP PTY LTD
ACN 108 353 199**

Co-respondent

NOTICE OF APPEAL

Filed on: 28 January 2010

Filed by: McIntyre Legal Services
Service Address: 24 Burchell Street, Carina Qld 4152
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John Edward Mytton Barnes and Geoffrey Frederick Cook c/- McIntyre Legal Services, 24 Burchell Street, Carina in the State of Queensland appeal to the Planning and Environment Court at Brisbane against the decision of the Respondent, the Southern Downs Regional Council, pursuant to advice from the Co-respondent, the Department of Environment and Resource Management, to approve, in whole or in part, a development application for preliminary approval for building work, demolition of heritage listed buildings in respect of land known as Plumb's Chambers, situated at 82 and 84 Fitzroy Street, Warwick, being land described as Lot 1 on RP 5801 and Lot 1 on RP 94676, and seeks the following orders or judgment:

1. That the appeal be allowed;
2. That the development application be refused;
3. Such further or other orders as the Court deems appropriate.

NOTICE OF APPEAL
Filed on behalf of the appellants
Form PEC-1

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Material facts to the grounds of appeal are:

1. The Co-respondent, McConaghy Group Pty Ltd, made a development application (“the development application”) on or about 14 September 2007 to the then Warwick Shire Council for preliminary approval for building work (demolition of heritage listed buildings) for the demolition of the building situated at 82 Fitzroy Street, Warwick and demolition of part of the building situated at 84 Fitzroy Street, Warwick, being land described as Lot 1 on RP 5801 and Lot 1 on RP 94676, respectively (“the land”).
2. The purpose of the proposed development is to facilitate a material change of use and re-development of the land to extend the existing Rose City Shoppingworld situated on adjoining land.
3. The buildings on the land are known as “Plumb’s Chambers” and at all material times were included on the Queensland Heritage Register under the *Queensland Heritage Act 1992* for the following criteria:

Criterion A Plumb’s Chambers, comprising a brick and timber building possibly dating to the 1860s and an 1874-75 stone building, is important in illustrating the transformation of Warwick in the late 1860s and 1870s from a squatters' town to the principal urban centre of Queensland's most prosperous pastoral and agricultural district. The possibly c1860s brick building may represent the beginnings of this movement, and the 1874-75 building is indicative of Warwick's first building boom. Both buildings also illustrate a tradition of masonry construction in Warwick and district dating from at least the 1860s and sustained well into the early 20th century, which sets the district apart from any other in Queensland.

Criterion B The 1874-75 building survives as an excellent example of a substantial, two-storeyed, stone building with commercial premises on the ground floor and residence on the first floor, designed to impress and inspire confidence. Few buildings of this type and material have survived in Queensland, and even fewer Georgian-styled stone shop-houses in Queensland overlook a town square. The building provides rare evidence of the nature of the accommodation and work place of a successful 1870s business family in a developing Queensland rural town. More particularly, it is important in illustrating the nature of such buildings in a town in which stone and brick construction for commercial buildings was the norm at this period.

Criterion C Both buildings are important in illustrating the design, materials and construction techniques of mid-19th century masonry building in Queensland, and both have potential to reveal further information about 19th century stone and brick construction.

Criterion D Both buildings are important in illustrating the design, materials and construction techniques of mid-19th century masonry building in Queensland, and both have potential to reveal further information about 19th century stone and brick construction.

The 1874-75 building survives as an excellent example of a substantial, two-storeyed, stone building with commercial premises on the ground floor and residence on the first floor, designed to impress and inspire confidence.

Criterion E Both buildings occupy a prominent role in the streetscape along Fitzroy Street between Guy and Palmerin Streets, and the pitch of the roofs contribute to the unity of the street.

Criterion H The 1874-75 building is significant also for its close association with Warwick

chemist and seedsman David Clarke, who made a substantial contribution to the expansion of agriculture in the Warwick district in the 1860s and 1870s.

4. As a registered place on the Queensland Heritage Register, Plumb's Chambers constitute:
 - (a) a State Heritage place for the purposes of section 68 of the *Queensland Heritage Act 1992*; and
 - (b) a Queensland Heritage Place for the purposes of the *Integrated Planning Act 1997*.
5. The Co-respondent, the Department of Environment and Resource Management ("DERM"), formerly known as the Environmental Protection Agency, was a concurrence agency for the development application in respect to development on a Queensland Heritage Place.
6. The planning scheme in force at all material times was the *Warwick Shire Planning Scheme 1999* ("the planning scheme") and the land is located in the City Centre Land Use Area under the planning scheme.
7. At all material times the building at 84 Fitzroy Street was included on the register of cultural heritage places maintained by the Respondent under its *Planning Scheme Policy No. 1 – Cultural Heritage*.
8. The development application was impact assessable.
9. The appellants made properly made submissions against the development application.
10. On or about 25 November 2009, pursuant to advice from DERM, the Respondent resolved to approve that part of the development application relating to the partial demolition of 84 Fitzroy Street, Warwick, being the land described as Lot 1 on RP 94676.
11. The Respondent has not decided that part of the development application relating to the demolition of 82 Fitzroy Street, Warwick, being the land described as Lot 1 on RP 5801.
12. The Respondent issued a Decision Notice on 24 December 2009.
13. The appellants appealed to the Court against the decision within the appeal period.

The grounds of appeal are:

1. The development application was not a properly made application because it failed to include an application for preliminary approval for a material change of use of the land to extend the Rose City Shoppingworld.
2. Contrary to section 3.5.11 of the *Integrated Planning Act 1997*, the Respondent failed to decide that part of the development application concerning demolition of 82 Fitzroy Street, being the land described as Lot 1 on RP 5801, and there is no valid decision for that part of the development application.

3. The development application conflicts with the laws and policies administered by DERM as a concurrence agency.

Particulars

- (a) The development application is contrary to section 68 of the *Queensland Heritage Act 1992* because it would destroy or substantially reduce the cultural heritage significance of a State heritage place in circumstances where there are prudent and feasible alternatives to carrying out the development.
4. The development application conflicts with the planning scheme and there are not sufficient grounds to justify the decision despite the conflict.

Particulars

- (a) The development application conflicts with section 4.2.1 (City Centre – Key Policy Statements) of the planning scheme by not maintaining a high standard of amenity, with a cohesive streetscape character in which buildings of heritage significance are protected and new development occurs in a compatible form.
- (b) The development application conflicts with section 4.2.2 (City Centre – Intent) of the planning scheme by not protecting the heritage values of the building at 84 Fitzroy Street, being a building listed in *Planning Scheme Policy No. 1 – Cultural Heritage*.
- (c) The development application conflicts with section 4.2.2 (City Centre – Intent) of the planning scheme in relation to the demolition of the building at 82 Fitzroy Street by not being compatible with the protection of the heritage values of the building at 84 Fitzroy Street, being a building listed in *Planning Scheme Policy No. 1 – Cultural Heritage*.
- (d) The development application conflicts with section 4.2.5.2 (City Centre Development Code – Purpose) by not retaining the heritage qualities of the City Centre through the retention of highly significant and significant heritage places in a streetscape context which provides for sympathetic alterations to existing buildings and the incorporation of new development which is compatible with, and respectful to, the existing streetscape character.

Dated: 28 January 2010

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Solicitors for the Appellants

NB If you are named as a respondent in this notice of appeal and wish to be heard in this appeal you must:

- (a) within ten (10) days after being served with a copy of this Notice of Appeal, file an Entry of Appearance in the Registry where this Notice of Appeal was filed or where the court file is kept; and**
- (b) serve a copy of the Entry of Appearance on each other party.**

The Entry of Appearance should be in Form PEC-5 for the Planning and Environment Court.

If you are entitled to elect to be a party to this appeal and you wish to be heard this appeal you must:

- (a) within ten (10) business days of receipt of this Notice of Appeal, file a Notice of Election in the Registry where this Notice of Appeal was filed or where the court file is kept; and**
- (b) serve a copy of the Notice of Election on each other party.**

The Notice of Election should be in Form PEC-6 for the Planning and Environment Court.

TO:

Respondent:	Southern Downs Regional Council
Respondent's address:	PO Box 26, Warwick Qld 4370
Co-respondent:	Chief Executive, Department Environment and Resource Management
Co-respondent's address:	GPO Box 2452, Brisbane Qld 4001
Co-respondent:	McConaghy Group Pty Ltd c/- Urbis Pty Ltd
Co-respondent's address:	GPO Box 3205, Brisbane Qld 4001
Chief Executive:	Chief Executive, Department Infrastructure and Planning
Chief Executive's address:	PO Box 15009, City East Qld 4002