

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**

First Co-respondent

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

Second Co-respondent

**AMENDED GROUNDS OF APPEAL AND
FURTHER AND BETTER PARTICULARS**

Subject to the Court's leave being granted, the Appellants amend the grounds of appeal stated in the Notice of Appeal filed on 28 January 2010 and provide the further and better particulars requested by the respondents as follows:

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, in proposing to demolish the rear of 84 Fitzroy Street, 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

AMENDED GROUNDS OF APPEAL
AND FURTHER AND BETTER
PARTICULARS
Filed on behalf of the appellants

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heritage significance of a State heritage place in circumstances where there are prudent and feasible alternatives to carrying out the development.

- (b) The rear section of 84 Fitzroy Street is noted in the heritage listing and forms part of the overall listing for the property.
 - (c) The rear section of 84 Fitzroy Street is an early addition to the building dating from prior to 1899 and possibly prior to 1882.
 - (d) The rear section of 84 Fitzroy Street provided service areas that were necessary to the service and function of the whole building and, therefore, contributes to the historic values of the whole building.
 - (e) The rear section of 84 Fitzroy Street is visible from Fitzroy Street and Haig Avenue and contributes to the streetscape character and associated heritage values of the whole of building.
 - (f) The rear section of 84 Fitzroy Street is structurally sound and in reasonably good condition.
 - (g) An underground water tank, which is likely to be representative of very early 19th century brick making and brickwork construction in Warwick, is located near the rear section of 84 Fitzroy Street and may be damaged if the rear section is demolished.
 - (h) The underground water tank near the rear section of 84 Fitzroy Street is noted in the heritage listing and forms part of the overall listing for the property.
 - (i) The prudent and feasible alternative to demolishing the rear section of 84 Fitzroy Street is not to demolish it.
4. The development application, in proposing to demolish the rear of 84 Fitzroy Street, conflicts with the planning scheme and there are not sufficient grounds to justify the decision despite the conflict.

Particulars

- (a) The development application, in proposing to demolish the rear of 84 Fitzroy Street, 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. Further, the proposed development:
 - (i) does not maintain a high standard of amenity for the reasons stated in paragraph 3(b)-(f) above;
 - (ii) does not result in a comprehensive streetscape for the reasons stated in paragraph 3(b)-(f) above; and
 - (iii) is not in a compatible form because it will destroy part of the heritage listed place in circumstances where that part is structurally sound.

- (b) The development application, in proposing to demolish the rear of 84 Fitzroy Street, 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*, for the reasons particularized in paragraphs 3(b)-(i) above.
- (c) The development application, in proposing to demolish the rear of 84 Fitzroy Street, 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*, for the reasons particularized in paragraphs 3(b)-(i) above.
- (d) The development application, in proposing to demolish the rear of 84 Fitzroy Street, 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, for the reasons particularized in paragraphs 3(b)-(i) above.
- (e) The development application, in proposing to demolish the rear of 84 Fitzroy Street, conflicts with section 4.2.4.1 (Impact Assessment Criteria – Material Change of Use – City Centre) because:
 - (i) the rear of 84 Fitzroy Street is of significance and conservation actions are feasible and viable as particularized in paragraph 3(b)-(i) above;
 - (ii) the rear of 84 Fitzroy Street has significance in terms of its historical, architectural, streetscape and other special value as particularized in paragraph 3(b)-(h) above; and
 - (iii) a conservation study has not demonstrated, at least without taking into account irrelevant considerations in relation to the proposed shopping centre that is not the subject of this development application, that the demolition of the rear of 84 Fitzroy Street will not detract from the heritage significance of the building and will be compatible with the streetscape.
- (f) The development application, in proposing to demolish the rear of 84 Fitzroy Street, conflicts with section 4.2.5.2 (Purpose – City Centre Development Code) because it does not retain 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, as particularised in paragraph 3(b)-(i) above.
- (g) The development application, in proposing to demolish the rear of 84 Fitzroy Street, conflicts with the performance objective for Heritage Context in section

4.2.5.4 (Development Controls – City Centre Development Code) because it does not ensure that heritage places are retained in a context which is appropriate to an understanding of their cultural value and respectful of their design qualities, as particularised in paragraph 3(b)-(i) above.

- (h) The development application, in proposing to demolish the rear of 84 Fitzroy Street, conflicts with section 5.3.3.1 (Impact Assessment Criteria – Carrying Out Building Work) because:
 - (i) the rear of 84 Fitzroy Street has significance in terms of its historical, architectural, streetscape and other special value as particularized in paragraph 3(b)-(h) above;
 - (ii) the rear of 84 Fitzroy Street is of significance and conservation actions are feasible and viable as particularized in paragraph 3(b)-(i); and
 - (iii) a conservation study has not demonstrated, at least without taking into account irrelevant considerations in relation to the proposed shopping centre that is not the subject of this development application, that the demolition of the rear of 84 Fitzroy Street will not detract from the heritage significance of the building and will be compatible with the streetscape.

Dated: 11 April 2011

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Solicitors for the Appellants