

20 June 2023

Enquiries: Neil Beck
Our Ref: CA 2023_5420/1(1165280)
Your Ref: KRDP5:GURNER

Administration Office
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P 07 4099 9444
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Kelly Reaston Development & Property Services
51 Sheridan Street
CAIRNS QLD 4870

Email: kelly@kellyreaston.com.au

Dear Kelly

ACTION NOTICE
(in accordance with Section 3.1 of the Development Assessment Rules)

Reference is made to the development application lodged with Council on 4 June 2023.

The application is not a properly made application in accordance with Section 51(5) of the *Planning Act 2016*.

Applicant Details

Name: Kelly Reaston Development & Property Services
Postal Address: 51 Sheridan Street
CAIRNS QLD 4870
Email: kelly@kellyreaston.com.au

Property Details

Street Address: 107 Davidson Street PORT DOUGLAS
Real Property Description: LOT: 2 RP: 723702
Local Government Area: Douglas Shire Council

Application Details

Application Number: CA 2023_5420/1
Nature of Development Proposed: Combined Application
Description of the Development Proposed as described by the Applicant: Combined Application – Material Change of Use for Short Term Accommodation, Food & Drink Outlets, Multiple Dwellings & Reconfiguring a Lot (4 Lots into 45 Lots & Common Property)

Reasons why the application is not properly made

The following is a statement of reasons why the application is not a properly made application:

- The amended DA Form 1 received on 13 June 2023 nominates the 'trustee' of the two separate trusts listed as the Applicant. The nomination of a trustee without disclosing the full name of the trustee is not sufficient. The full name of the trustees of the nominated trusts on DA Form 1 is required.
- Owner's consent has not been provided to the Applicant lodging the development. The statement of consent provided by the owner of the land is for a different entity to that nominated on DA Form 1. Details of the development proposal as listed on the statement of consent provided by the owner differs to the details of the proposed development as contained within the development application.
- The development as proposed constitutes a Resort Complex as defined in the 2018 Douglas Shire Planning Scheme.
- The applicable fee for administering the application has not been provided. The application fee is calculated at \$88,963.00 using the Resort Complex land use definition for the Hotel Resort Complex component and calculating the material change of use for the proposed 44 villas separately. It is acknowledged Council has not issued the invoice to enable the fee to be paid.

Actions to be undertaken

The following actions must be undertaken in order to make the application a properly made application:

- Amend the development application to include the land use definition of Resort Complex and assess the development accordingly;
- Provide a clear statement covering owners consent which is consistent with the details of the application;
- Resubmit DA Form 1 to state the full name of the Applicant;
- Pay the prescribed fee.

Other Commentary

Council notes the legal opinion provided in support of the development application as submitted, and in particular, the interpretation of the land use definition of Resort Complex. The position as detailed in the legal opinion provided is not concurred with.

It would appear that the legal opinion has overlooked the operation of section 1.3.1 of the Planning Scheme which specifically deals with the interpretation of definitions under the scheme.

The operative effect of section 1.3.1 is that, in the event a Resort Complex has been assigned a meaning in one or more of the instruments listed, the meaning contained in the instrument highest on the list will prevail. It follows that the meaning of Resort Complex assigned in the Planning Regulation 2017 prevails over the meaning of the definition contained in Schedule 1 of the Planning Scheme.

Due Date

Please note that in accordance with section 3.7 of the *Development Assessment Rules*, the application will be taken to have been not made if the above actions are not complied within 20 business days of this action notice unless otherwise agreed.

If the requirements within this notice are not undertaken within this period, Council will return the application and refund any paid application fee as soon as practicable.

The assessment period for the application will not commence until the application is taken to be properly made.

Other

Please quote Council's application number: CA 2023_5420/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Neil Beck on telephone 07 4099 9451.

Yours faithfully



For
Paul Hoyer
Manager Environment & Planning