

19 August 2019

Enquiries: Jenny Elphinstone  
Our Ref: CA 3238/2018 (Doc ID 914927)  
Your Ref: C-1114

Administration Office  
64 - 66 Front St Mossman  
P 07 4099 9444  
F 07 4098 2902

Niramaya Developments Pty Ltd  
C/ Victor G Feros Town Planning Consultants  
PO Box 1256  
CAIRNS QLD 4870

Attention Mr Nick Hardy

Dear Sir

**Development Application CA 3238/2019  
Lot 906 on SP277141  
Bale Drive Port Douglas**

Council refers to your development application submitted to Council. The following preliminary comments are provided at this stage on a without prejudice basis in order to clarify the "properly made status" of the intended application in respect to land ownership. Concern is also with the piecemeal nature of the application, which may also render the application as being not properly made.

**Owner's Consent and right to propose development**

The application seeks to develop a large, mixed-use development (multiple dwellings, short term accommodations units, food and drink outlet and a function centre) over part of Lot 906 on SP277141.

Lot 906 is part of a Community Management Statement that identifies the future development of Lot 906 with design plans reflecting the continuing approval CA50. The CMS also notes the balance Lot 906 holds a contribution of 57 and has an interest of 229. The entitlements for Lot 906 are far greater than those for other lots in the CMS, reflecting the future expected development of this balance Lot.

While the application states that there is to be no reciprocal relationship between the development on Lot 906 and the other lots already developed under the CMS, this position is not reflected in the CMS. Council is concerned that there may not be any entitlement to lodge the application given the lack of land owner's consent respective to the CMS.

### **Piecemeal design**

The application was made over Lot 906 on SP 277141. Lot 906 has two parts. The planning report explicitly states that the proposed development is only over the southern part of the Lot. The plans show the neighbouring Lot 905 on SP165909 as including the existing drainage pond on aerial imagery. However, the design plans show Lot 905 together with the northern part of Lot 906, will be landscaped with grass and trees. The drainage pond is bisected by the common boundary between Lots 905 and 906. There is no discussion within the application as to how the boundary and current drainage infrastructure will be maintained or developed. As the pond is partly over Lot 905 on SP165909 any development thereon to enable the development on Lot 906, would require Lot 905 to be included in the application.

The planning report accompanying the application notes that infrastructure servicing the development will be further investigated and resolved with Council. The report states there is no intention for the new development to have a continued relationship with the present Niramaya developed area to the north and vice versa. Council notes the proposed development will create a much larger demand for infrastructure servicing for water supply and sewer infrastructure than has been previously anticipated on the land. Where existing infrastructure is required to be upgraded, then the land owner's consent would be required where this infrastructure is on land owned by others. This matter should be clearly expressed in the application. The consent may include land owned by another body corporate. The existing Niramaya development accesses Council's water supply through Lot 906, it is expected that the appropriate Body Corporate and/or owner's consent accompany the application in regards to this infrastructure arrangement. You may also need to amend the original development approval (Development Permit CA50 and the associated Development Permit for Operational Work) in light of the Body Corporate infrastructure to reflect these changes.

## **Council request for qualified legal advice**

In the light of the issues raised above Councils seeks that you provide Council with written legal advice from a reputable legal firm actively engaged in planning and property law on the ability for the application to lodged in respect to the lot and related CMS, in respect to obligations and duties advice under that statements, whether amendments to the original approval are necessary, whether an ROL and owner's consent is necessary to service the existing and future developments on the land known as the Niramaya development and the necessity to include Lot 905 given the complexity of the boundary though the drainage pond.

## **Other**

Please quote Council's application number CA 3238/2019 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this matter, please contact Jenny Elphinstone on telephone 07 4099 9482.

Yours faithfully



**Paul Hoyer**  
**Manager Environment and Planning**

