

MILLER HARRIS LAWYERS

6 December 2006

Our ref: EBJ:2602710

DELIVERY

Mr Steven Nowakowski
10/40 Old Smithfield Road
FRESHWATER QLD 4870

Mr Steven Nowakowski
PO Box 4761
CAIRNS QLD 4870

By email: info@stevennowakowski.com

Our client: Reef Cove Resort Limited
Subject: Trespass – False Cape Resort

1. Introduction

- 1.1. We have been retained by Reef Cove Resort Limited.
- 1.2. Our client is the registered owner of a parcel of real property described as lot 108 on RP 712063, county of Nares, parish of Trinity and located at False Cape, Queensland (“**Land**”).
- 1.3. We have been instructed that you have and have encouraged others to trespass on the Land to the intent of hindering or preventing our client from undertaking lawful works on and enjoying possession of the Land.
- 1.4. We have been instructed to write to you in respect of past trespassory conduct and, as our client reasonably apprehends, any future trespass on the Land.

2. Background

- 2.1. We have been instructed, and local press clippings confirm, that you are an opponent to the construction by our client of a residential resort on the Land.
- 2.2. We are instructed that the Land is a work site and cordoned off from the access road by a 2.4 metre high chain wire fence. A series of signs prohibiting trespass on the Land are prominently displayed on the seashore boundary of the Land.
- 2.3. Our client has advised that at no material time have you had nor do you have permission or consent from our client to enter or be present on the Land.
- 2.4. We have been instructed that you have engaged in a pattern of trespassory conduct on the Land including:-
 - 2.4.1. on 4 November 2006, you entered the Land and were arrested and forcibly ejected from the Land by the Queensland Police Service;

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The Hon. Travis Lindenmayer

- 2.4.2. on 20 November 2006, at approximately 6.00 am, you physically held the gate (the gate is located on the Land) to the Land shut for the purpose of allowing another person to thread a chain and padlock through the gate to bar entry;
 - 2.4.3. on 23 November 2006, you attempted to enter the Land by the shoreline but were prevented from doing so by the Queensland Police Service; and
 - 2.4.4. on 30 November 2006, at approximately 12.00 noon, you entered the Land from the shoreline, walked up to an excavator and remained stationary in front of the machine, before leaving at the request of the Queensland Police Service.
- 2.5. Further, it is apparent from entries apparently authored by you on the website: www.futureofcairns.net that unless restrained by a court, you will continue to trespass and counsel, procure and as you have stated *train* other persons to trespass on the Land as part of the *direct action* programme to which you allude in your 5 November 2006 entry on www.futureofcairns.net.

3. Undertakings

- 3.1. Our client is entitled to possession and use the Land for any lawful purpose. Such purposes include the development of the Land.
- 3.2. Our client instructs that it holds all relevant and lawful authorities and permissions to develop the Land.
- 3.3. On our instructions, your persistent attempts to enter and entry of the Land (despite actions by the Queensland Police Service, including your arrest) amounts to a high-handed, contumelious, ongoing and self-interested course of conduct.
- 3.4. Moreover, our client reasonably apprehends that you intend to and will continue with that course of conduct, unless enjoined by a court from doing so.
- 3.5. Our client has instructed us to commence a proceeding in the Supreme Court of Queensland (held at Cairns) seeking a prohibitive injunction against your entry on the Land and your counselling or procuring any other person to enter on the Land.
- 3.6. In addition to an injunction, our client has instructed us to seek against you pecuniary damages representing the value of direct and indirect productivity losses caused by your entry on the Land and an award of exemplary damages to penalise the manner in which the trespasses have occurred as detailed in paragraph 3.3.
- 3.7. On an entirely open basis, and in lieu of a prohibitive injunction, our client has instructed us to invite you to provide an undertaking in the terms provided in paragraph 3.8.
- 3.8. The relevant terms are:-

3.8.1. you will not, whether by yourself, any other person or howsoever otherwise:-

3.8.1.1. enter upon the Land; and/or

3.8.1.2. counsel or procure any other person to enter upon the Land,

without the written permission of a director of our client, first had and obtained.

3.9. Our client asks for this written undertaking by **5 pm on Friday, 8 December 2006**, failing which our client will instruct us to proceed with a Supreme Court proceeding seeking the relief enumerated in paragraphs 3.5 and 3.6.

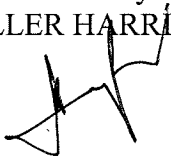
4. **Police Complaint**

4.1. On 2 December 2006, our client made an official complaint to the Queensland Police Service in respect of the trespasses in paragraph 2.4 to the intent that formal charges be laid against you in respect of those acts.

5. **Conclusion**

5.1. As this is an important matter, we ask that you provide written acknowledgement of receipt of this letter by yourself or through your legal advisors.

Yours faithfully
MILLER HARRIS LAWYERS
Per:



Elaine Jesurasingham

Partner

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Please note this office will close at 5.00pm on Friday 22 December 2006 and will reopen on Tuesday 2 January 2007. We wish you all the best for the festive season.

