PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION:	*Sunshine Coast Regional Council v D Agostini Property Pty Ltd & Ors* [2019] QPEC 19
PARTIES:	**SUNSHINE COAST REGIONAL COUNCIL** (applicant) **v** **D AGOSTINI PROPERTY PTY LTD** (first respondent) **and** **13 INVESTMENT COMPANY PTY LTD** (second respondent) **and** **ROSS WILLIAM MAUDSLEY & MARYA VERONICA MAUDSLEY** (third respondent) **and** **ROSSPROP PTY LTD** (fourth respondent) **and** **ONCE UPON A TIME ENTERPRISES PTY LTD** (fifth respondent) **and** **CEMONE LEITH TIRA** (sixth respondent) **and** **XYCON PTY LTD, KYLA MARIE VAGG, STEVEN DOUGLAS MOODY, STEPHEN PETER VAGG AS TRUSTEES** (seventh respondent) **and** **LMFC HOLDINGS PTY LTD AS TRUSTEE** (eighth respondent) **and** **MARION JOSEPHINE CRUTTENDEN** (ninth respondent)

and

VERA BRAZEL & BERNADETTE ANNE MOORE
(tenth respondent)

and

PRICELESS & UNIQUE ENTERPRISES PTY LTD
(eleventh respondent)

and

GARRY ANDREW CAMPLIN & KAREN PAMELA CAMPLIN
(twelfth respondent)

and

JOHN ARTHUR HOZIER & DENISE BETTY HOZIER
(thirteenth respondent)

and

RL & CG THOMPSON PTY LTD AS TRUSTEE
(fourteenth respondent)

and

SHUKRY SAHHAR & HELEN SAHHAR
(fifteenth respondent)

and

KAY ELIZABETH SOMERVILLE
(sixteenth respondent)

and

ROBERT JOHN BALMER
(seventeenth respondent)

and

JAMES WILLIAM BROWN
(eighteenth respondent)

and

DIDIER MARIE LAROSE & MAEVA JOSEE ROSE-MAY LAROSE
(nineteenth respondent)

and

MICHAEL JAMES HARRIS & ASMEEN LIZA HARRIS
(twentieth respondent)

and

VIVIAN ELIZABETH GREEN, PHILILP JOHN GREEN, MICHAEL ESKANDER & OLIVIA ESKANDER AS TRUSTEES
(twenty-first respondent)

GREGORY JOHN BOTT & LINDA JULIE BOTT
(twenty-second respondent)

and

HOMESHIELD THE HOME IMPROVERS (SOUTHSIDE) PTY LTD
(twenty-third respondent)

and

KEVIN BRUCE FULFORD
(twenty-fourth respondent)

and

ADRIAN RICHARD ARTHUR WATERS AS TRUSTEE
(twenty-fifth respondent)

and

RICHARD ANTHONY GARDNER & FIONA HEATHER HORNERY
(twenty-sixth respondent)

and

RAOUF NASEIF ISHAG GEORGE
(twenty-seventh respondent)

PETER JOHN JACKSON & LEAH JANE JACKSON AS TRUSTEES
(twenty-eighth respondent)

and

KELLEY SUE LACY
(twenty-ninth respondent)

and

ALISON LOUISE BERNER
(thirtieth respondent)

and

LINDEMAN PTY LTD
(thirty-first respondent)

and

WILLIAM ANTHONY WELFORD PEGLER & ELIZABETH JEAN TOWNS
(thirty-second respondent)

and

STUART REGINALD SIMMONDS & VERITY LOUISE SIMMONDS AS TRUSTEES
(thirty-third respondent)

and

DENISE KAY RUHLE
(thirty-fourth respondent)

and

DAVID NEVILLE RICHARD HANLIN, DULCIE LOUISE HANLAN & RICHARD HENRY HANLIN AS TRUSTEES
(thirty-fifth respondent)

and

ANTHONY JOHN WEST & SANDRA DIANNE WEST
(thirty-sixth respondent)

and

RCR DEVELOPMENTS PTY LTD
(thirty-seventh respondent)

and

REX WILLIAMS BARNES & JUDI MARGARET BARNES
(thirty-eighth respondent)

and

ROBERT RAYMOND SPRIGGS & BENDA JOY STICKLER|
(thirty-ninth respondent)

and

BRONWYN LOUISE HOWE & PAUL ALEXANDER HOWE
(fortieth respondent)

GRAHAM IAN POWLEY
(forty-first respondent)

and

MICHAEL LOUIS WOODBURY BUGLER
(forty-second respondent)

and

GARY WAYNE JONES & LEE MARGARET JONES
(forty-third respondent)

GARY EDWARD PENROSE
(forty-fourth respondent)

and

BRIAN JOHN PEGLER & NAOMI LORRAINE PEGLER
(forty-fifth respondent)

and

BODY CORPORATE FOR PELICAN WATERS RESORT COMMUNITY TITLES SCHEME 34816
(forty-sixth respondent)

FILE NO/S:	9/2019
DIVISION:	Planning and Environment
PROCEEDING:	Application
ORIGINATING COURT:	District Court at Maroochydore
DELIVERED ON:	10 May 2019
DELIVERED AT:	Brisbane
HEARING DATE:	12 April 2019
JUDGE:	Reid DCJ
ORDER:	**(1) By 3 June 2019 the applicant file and serve on the respondents any material, including certificates, upon which it intends to rely to determine the interpretation point.**

(2) By 8 July 2019 the respondent file and serve any materials upon which they intend to rely to determine the interpretation point.

(3) By 22 July 2019, the applicant file and serve on the active respondents any material in reply.

(4) The interpretation point be set down for hearing for two days commencing on 8 August 2019.

(5) The interpretation point is:

The interpretation of the decision notice dated 17 October 2003 for the use of premises for the purposes of a Hotel, Motel, Function Rooms, Restaurant and Multiple Dwelling, including condition 5 for that part of the premises identified as lots 201-218, 301-318 and 401-418 on SP 168156 and whether it:

> **(a) limits the use of that part of the premises to use for temporary accommodation of travelling and/or holidaymakers only; or**

(b) allows that part of the premises to be used for permanent and/or long term accommodation as well as temporary accommodation for travellers and/or holidaymakers; and

(c) what temporary accommodation means.

(6) The hearing of the proceeding, including issues relating to the court's discretion, be deferred pending the determination of the interpretation point.

(7) Any respondent that has given, or at any time gives, notice to the applicant to the effect that they will not take an active part in the Originating Application, is excused from participating in and appearing at the hearing (and any further reviews) of the Originating Application.

(8) The application can be listed for review on 19 July 2019.

CATCHWORDS: PLANNING AND ENVIRONMENT – APPLICATION – where there is a dispute about the use of residential allotments – where the applicant and represented respondents seek orders directed towards the determination of the dispute but are unable to agree on the form of such orders – whether lots can be used only for temporary accommodation – where determination involves interpretation of a clause in the Development Approval

Planning and Environment Court Act 2016 ss 11

Planning and Environment Court Rules 2018 r 8(1)

Dillon v Douglas Shire Council [2004] QPEC 50

Wagner Investments Pty Ltd v Toowoomba Regional Council [2018] QPEC 23

Wall, Director General of Environmental Protection Agency v Douglas Shire Council [2008] QCA 56

COUNSEL: H M Stefanos for the applicant
L A Manning (solicitor) for the second, third, sixth, eleventh, fifteenth, eighteenth, twenty-second, twenty-fifth, fortieth, forty-first, forty-third and forty-fourth respondents ("represented respondents")

SOLICITORS: Sunshine Coast Regional Council's Legal Services for the applicant
P&E Law for the represented respondents

Introduction

[1] The originating application before me concerns a dispute about the use of residential allotments on levels two, three and four of the Sebel Pelican Waters Resort. Both the applicant and the represented respondents seek orders directed towards the

determination of the dispute but are unable to agree on the form of such orders. Before considering the orders sought by each party it is first appropriate to consider some background history and the nature of the final relief sought in the originating application.

Background

[2] The applicant is the local authority with responsibility for the region in which the Sebel Pelican Waters Resort is built. Pursuant to a development approval of 17 October 2003 approval was given for a mixed-use 12 storey resort at Mahogany Drive, Pelican Waters. Part of the development approval provided for premises on levels two, three and four of the multi-storey resort to be used as a hotel/motel component. The first to forty-fifth respondents are the owners of those hotel/motel lots. The forty-sixth respondent is the body corporate and the owner of the common property.

[3] The dispute involves whether lots located on those three levels can be used only for temporary accommodation. This involves, significantly, the interpretation of the Development Approval, and in particular of clause 5 of it.

[4] In the originating application the applicant outlines the nature of the overall development. It identifies that the hotel/motel lots on levels two, three and four consist of 54 strata title lots containing, in all, 102 suites. Some are single lots containing two suites and others contain only one suite.

[5] The originating application sets out condition 5 of the Development Approval as follows:

> "The use of the premises for the purposes of a Hotel, Motel, Function Rooms, Restaurant and Multiple Dwelling shall at all times accord with the criteria set out within the Hotel, Motel, Function Room, Restaurant and Multiple Dwelling definitions in Section 9.2 of the Planning Scheme."

[6] The originating application outlines various changes to the original Development Approval not presently relevant. The resort was completed and commenced use in early 2006.

[7] Under the relevant Planning Scheme both Hotel and Motel are defined. Relevantly, ""Motel" means premises used or intended for the temporary accommodation of travellers, where such accommodation is provided in serviced guest rooms or suites, each containing its own bathrooms."

[8] The originating application alleges that a number of the lots on levels two, three and four are being used other than for temporary accommodation of travellers, including for permanent residential accommodation, and that this is not a currently existing lawful use and is not authorised by the Development Approval.

[9] It is alleged that following receipt of complaints about the issue, the applicant wrote to the body corporate about the issue and subsequently wrote to individual lot owners "that were, at that time" said to be using the units other than for the temporary accommodation of travellers. Between April and July 2018 it is said the applicant issued show cause notices to those owners but that nevertheless a number of lots continued to be used other than for temporary accommodation of travellers.

[10] In such circumstances the applicant seeks orders in the originating application substantially as follows:

1. A declaration pursuant to s 11 of the *Planning and Environment Court Act* 2016 ("*PEC Act*") that, pursuant to the Development Approval for the resort the 102 premises approved for the hotel/motel component of the resort are:

   (a) the lots located on levels two, three and four of the resort; and

   (b) approved only for the temporary accommodation of travellers (including tourists and holidaymakers).

2. A declaration pursuant to s 11 of the *PEC Act* that the Hotel/Motel lots cannot lawfully be used for permanent residential accommodation.

3. A declaration pursuant to s 11 of the *PEC Act* that for the purposes of the Development Approval the occupation of the Hotel/Motel lots by the same person or persons cannot exceed a period of three consecutive months.

4. Such consequential orders as may be necessary, pursuant to s 11(4) of the *PEC Act* to:

   (a) provide that any current use of the Hotel/Motel lots for other than temporary accommodation of travellers (including tourists or holidaymakers) must cease;

      (i) for those Hotels/Motel lots that are subject to a fixed term tenancy agreement; at the expiration of the term of the relevant agreement; or

      (ii) otherwise, within three months from the date of the order;

   (b) restrain the use of the hotel/motel lots for anything other than temporary accommodation of travellers (including tourists and holiday makers) unless and until all appropriate town planning approvals are obtained.

[11] Before moving to the application before me it is useful to make some brief observations about the relief sought in the originating application. Whilst no orders are sought against individual lot owners, and the relief claimed in (1) and (3) of the previous paragraph is framed in the form of declarations concerning the Development Approval, the orders sought in (2) and (4) of the originating application are more general. They include seeking a declaration that lots cannot lawfully be used for permanent accommodation and for orders that if a lot owner is using a unit for other than temporary accommodation of travellers such occupation must cease, either on the expiration of any fixed term tenancy or otherwise within three months. The originating application also seeks, in 4(b) above, an injunction restraining a lot owner from use of the lot other than for temporary accommodation of travellers. Thus, whilst orders are not sought against individual lot owners the effect of any order made in terms of the originating application would be such as to specifically proscribe the use of lots by the owners other than for temporary accommodation of travellers.

Application

[12] The application before me first seeks orders relating to service of the originating application on those respondents not represented before me and other orders including substitution of a number of named respondents by new respondents and minor amendments to the originating application. Those orders were not the subject of dispute at the hearing and I made orders in terms of paragraphs 1 to 5 of a draft prepared by counsel for the applicant.

[13] The other orders in that draft order were the subject of dispute before me.

[14] In essence the applicant sought that the matter progress by the making of the following orders:

> "6.. By 3 May 2019 the respondents are to file and serve on the applicant a statement of Facts, Issues and Contentions that outlines:
>
> (a) the matters in the Amended Originating Application that are admitted, and the matters that are in dispute;
>
> (b) for those matters that remain in issue, the matters of fact and law that form the basis of the dispute; and,
>
> (c) to the extent not dealt with in subparagraph 6(b) above, the grounds in respect of which the respondents contend that the relief sought in the Amended Originating Application should not be granted.
>
> 7. By 24 May 2019 the applicant is to file and serve upon the active parties the affidavit material that it intends to rely upon at the hearing of the Application.
>
> 8. By 14 June 2019 the respondents are to file and serve upon the applicant any affidavit material that they intend to rely upon at the hearing of the Application.
>
> 9. By 5 July 2019 the applicant is to file and serve upon the active parties any material in reply.
>
> 10. Any respondent that has given or at any time gives notice to the applicant to the effect that they will not take an active part in the application, is excused from participating in and appearing at the hearing (and any further reviews) of the application.
>
> 11. The Application be listed for a two day hearing commencing on 5 August 2019.
>
> 12. The Application be listed for review on 19 July 2019.
>
> 13. Liberty to apply."

[15] The represented respondents by a proposed draft order sought the following alternate orders:

> "6. By 26 April 2019 the applicant file and serve on the respondents any material, including certificates, upon which it intends to rely to determine the interpretation point.
>
> 7. By 30 June 2019 the respondent file and serve any materials upon which they intend to rely to determine the interpretation point.
>
> 8. The interpretation point be set down for hearing for two days commencing on 5 August 2019.
>
> 9. The interpretation point is:

The interpretation of the decision notice dated 17 October 2003 for the use of premises for the purposes of a Hotel, Motel, Function Rooms, Restaurant and Multiple Dwelling, including condition 5 for that part of the premises identified as lots 201-218, 301-318 and 401-418 on SP 168156 and whether it:

(a) limits the use of that part of the premises to use for temporary accommodation of travelling and/or holidaymakers only; or

(b) allows that part of the premises to be used for permanent and/or long term accommodation as well as temporary accommodation for travellers and/or holidaymakers; and

(c) what temporary accommodation means.

10. The hearing of the proceeding relating to the courts discretion be deferred pending the determination of the interpretation point.

11. The application can be listed for review on 17 July 2019.

12. Any party shall have liberty to apply upon the giving of two days' notice."

[16] The applicant's counsel submits that the orders proposed substantially provide for the identification of facts, matters and contentions in issue and provide a suitable timetable for the exchange of material to allow for a final hearing of the originating application. She also submits the orders excuse those respondents who do not seek to take an active role in the proceedings.

[17] Ms Stefanos submits the respondents' proposal seeks a preliminary determination of the effect of condition 5 of the development application and is inappropriate, and that the lawful use of the lot should be determined by reference to the development application as a whole and not simply by reference to condition 5 of it. She submits that the respondents' proposal could well cause unnecessary delay and expense in the determination of the real issues between the parties since, if the applicant is successful on the interpretation point, the parties would then have to rehear the matter with evidence about the issues raised in the originating application.

[18] In her oral submissions Counsel submitted:

1. The represented respondents' proposals do not allow for appropriate identification of the issues in dispute since no statement of Facts, Issues and Contentions is called for.

2. The respondents' proposal limits affidavit material only to the interpretation point, at least until determination of that point. Only then would the issues described in the respondents' submissions as relating to the court's discretion be addressed. She submitted that the "interpretation point is a recast of the relief sought by the Council" and that the interpretation point identified by the respondent essentially reframed the very declarations sought by the applicant and submitted that the applicant, rather than commencing proceedings against particular owners engaged in unlawful use of their lots has elected instead to seek declarations about the effect of the development application and "consequential orders about when people must cease using it for what Council

says is the unlawful use". She submitted that determination of the interpretation point was really "precisely the nature of the declaration sought by Council" but that the question involved a mixed question of fact and law and not merely a preliminary point of law.

[19] Counsel for the applicant also referred to a decision of Everson DCJ in *Wagner Investments Pty Ltd v Toowoomba Regional Council* [2018] QPEC 23 in which his Honour refused an application for determination of a preliminary point concerning interpretation of Council's charges in relation to trunk road infrastructure. At paragraph 7 of his judgment his Honour said:

> "The discretion to make such an order is obviously a wide one. The principles that govern the exercise of this discretion were considered recently by Daubney J in *Queensland Harness Racing Ltd v Racing Queensland Ltd & Anor* [2011] QSC 125 at [32] where his Honour stated, inter alia:
>
> > 'In *Reading Australia Pty Ltd v Australian Mutual Providence Society*, Branson J summarised the principles that govern an application such as the present. Those principles include (omitting references):
> >
> > (a) The judicial determination of the question must involve a conclusive or final decision based on concrete and established or agreed facts for the purpose of quelling a controversy between the parties;
> >
> > …
> >
> > (c) Care must be taken in utilising this procedure to avoid the determination of issues not "ripe" for separate and preliminary determination. An issue may not be "ripe" in this sense where it is simply one of two or more alternative ways in which an applicant frames its case and determination of the issue would leave significant other issues unresolved…'"

[20] It was also submitted that determination of the interpretation point would not properly resolve all of the issues. She submitted the interpretation point suggested by the represented respondents was not "ripe" for preliminary determination, to use the language of some of the cases concerning preliminary determination of issues, since it would not be determinative of the dispute. In contrast it was submitted determination of the declaration sought in the original application would allow the Council to then proceed against individuals who breached their legal entitlements with respect to occupancy of the lots. Essentially the applicant's position is that the interpretation point unacceptably recasts the relief sought by the applicant by confining it solely to resolution of clause 5 of the development application and ignores factual issues involved in the approval, such as the factual background of the whole of the development application in consideration of what approvals had been sought and given.

[21] Ms Stefanos submitted that determination of preliminary points is generally appropriate only in very limited circumstances. She referred to observations of McMurdo P in *Wall, Director General of Environmental Protection Agency v*

Douglas Shire Council [2008] QCA 56; 157 LGERA 327 where at paragraph 38 (on page 339 of the reported decision) her Honour said:

> "… the report nevertheless raised matters at the preliminary hearing which provided a sound basis for the judge to conclude that the Council's application was inappropriate. The Council's application was premature. Occasionally, there may be cases where it is constructive to determine preliminary legal points before the determination of associated factual issues. Savings in time and costs may result. This case was not in that limited category. It was impossible to determine the scope of the application of Item 5(b)(i) to the work associated with the construction of the toilet block until the relevant facts were established. The judge was right in finding that the Council's for determination of preliminary points of law was inappropriate."

[22] In contrast, Mr Manning, who appeared for the represented respondents, submitted that the order sought by the applicants, that the respondent file and serve on the applicant a statement of Facts, Issues and Contentions, was entirely inappropriate because it would require the respondents to "produce material" in proceedings that have a criminal nature. In both oral and written submissions he submitted that order 6 of the applicant's draft order effectively reverses the onus of proof because of its requiring the respondent to file a Statement of Facts, Issues and Contentions. And orally he submitted that the order requires the respondents to put on affidavit material prior to the applicant doing so (T1-24 of 32/34 and T1-26, 138).

[23] A difficulty with that submission is that the order does not require the respondent to produce "material", which I take to be a reference to producing evidence. It was submitted in oral submissions (T1-26, l 38) that: "The order requiring my client to put affidavit material on is contrary to the onus of proof". Order 6 in my assessment contemplates that the respondents will respond to the allegations in the originating application in a way one might to a pleading in a civil case and not by way of evidence. After the respondents file that Statement of Facts, Issues and Contentions, the applicant's proposed order then provides for it to first file affidavit material, and only then for the respondents to file their affidavits.

[24] As I have said the respondents' contention is in my view contrary to a proper reading of the applicant's proposed order. All that the respondent is required to do, by proposed order 6 of the applicant's draft, is to file a Statement of Facts, Issues and Contentions and not to file material until after the applicant has first done so.

[25] I do not accept that the applicant's proposal effectively reverses the onus of proof in the matter suggested by requiring that the respondent first file material.

[26] It was also submitted that neither the originating application nor the service letter identifies any one of the respondents as an entity "directly affected" by the relief sought (see paragraph 15(a) of the written submissions). It is submitted that the applicant was "required to form a reasonable belief as to the lawfulness of the use" prior to issuing show cause notices in April 2018. It is said that the applicant does not identify any respondent allegedly using the unit in contravention of the conditions of the development approval.

[27] It is clear that the originating application lists all owners of units as respondents and does not seek to identify that any particular unit holder is breaching the terms of the development approval. Indeed the affidavit of Mitchell Brinks filed on 9 April 2019 refers specifically to that issue as follows:

> "The (applicant) has had to list all of these owners. If it only listed the 15 or 16 that are being used for long term accommodation, then others, who are presently using the units for short-term stays, later on start to use them for longer term stays, the SCC may have to start over again for those units. I do apologise if this was not clear from my letter, and hopeful that you can understand the Council's approach a little better now."

[28] The respondent submits that pursuant to r 8(1) of the *Planning and Environment Court Rules*, 2018 an originating application must name as a respondent the entity "directly affected" by the relief sought and provide grounds on which the relief is sought. It was submitted, on behalf of the represented respondents that to identify a directly affected party the originating application ought have alleged particular unit holders that are using, or intended to use, their unit contrary to the terms of the development approval. He refers to a decision of Skoien DCJ in *Dillon v Douglas Shire Council* [2004] QPEC 50 in which his Honour said that the term "directly" effected meant effected "immediately" or "straight away". His Honour said in that case:

> "If an originating application seeks an order that a person do something or refrain from doing something that person is directly affected."

[29] It seems to me in this case that by the terms of the orders sought in the originating application – in particular that declarations be made that lots on levels 2, 3 and 4 of the resort "cannot lawfully be used for permanent residential accommodation" or occupation of the lots by the same person "cannot exceed a period of three consecutive months" – clearly means the lot owners on those floors are persons that are by the order sought, required to do something or refrain from doing something. Accordingly there is no breach of the requirements of r 8(1) of the *Planning and Environment Court Rules.*

[30] The respondents' solicitor submits that the orders sought in the respondents' proposed draft allows the interpretation point to be determined without;

1. the need for the applicant to identify particular allegations against any particular lot owner;
2. avoids issues of any of the respondents waiving privilege against self-incrimination; and
3. avoids the need for undertakings about the use of evidence in the enforcement proceedings not being used in any subsequent prosecution action.

[31] Ultimately I am persuaded of the merit of the respondents' approach. In particular I conclude that the following factors are of particular relevance in that determination

(i) Whilst the orders sought in paragraphs 1 and 3 of the originating application are framed so as to involve a declaration concerning the development approval, the orders otherwise sought, and in particular those sought in paragraph 4, may well raise issues of fact concerning particular lots relevant to whether injunctive or declaratory relief ought to be

granted. Such factual matters may well involve issues well beyond the determination of what is involved in the interpretation points, and beyond consideration of the development approval.

(ii) If the respondents are successful with the interpretation point that may well dispose of the whole of the originating application. Furthermore a determination of that matter is unlikely to depend on significant factual issues and could thus significantly limit the scope of the controversy between the parties. The determination of the effect of the development application is necessary in any case and is not, in my assessment, likely to unnecessarily prolong the litigation.

(iii) Contrary to the applicant's submission, the interpretation point is not confined to consideration of condition 5 of the development approval but involves interpreting the whole of the development approval including condition 5 and whether it has the effects set out in subparagraph (a) and (b) of paragraph 9 of the respondents'' proposed orders, together with a determination of the meaning of "temporary accommodation", a term used in the definition of "motel" in section 9.2 of the Caloundra City Planning Scheme 1996 applicable to the approval.

(iv) There is likely to be little if any overlap between issues raised on the interpretation point and those likely to be raised in relation to what were described as discretion issues. Such issues may very well be peculiar to particular units and not of general application.

[32] It is in my view therefore appropriate to make orders as set out in paragraph 15 of this judgment but with appropriate amendments to the dates therein.

[33] After hearing submissions from the parties, I order:

(1) By 3 June 2019 the applicant file and serve on the respondents any material, including certificates, upon which it intends to rely to determine the interpretation point.

(2) By 8 July 2019 the respondent file and serve any materials upon which they intend to rely to determine the interpretation point.

(3) By 22 July 2019, the applicant file and serve on the active respondents any material in reply.

(4) The interpretation point be set down for hearing for two days commencing on 8 August 2019.

(5) The interpretation point is:
The interpretation of the decision notice dated 17 October 2003 for the use of premises for the purposes of a Hotel, Motel, Function Rooms, Restaurant and Multiple Dwelling, including condition 5 for that part of the premises identified as lots 201-218, 301-318 and 401-418 on SP 168156 and whether it:

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(c) what temporary accommodation means.

(6) The hearing of the proceeding, including issues relating to the court's discretion, be deferred pending the determination of the interpretation point.

(7) Any respondent that has given, or at any time gives, notice to the applicant to the effect that they will not take an active part in the Originating Application, is excused from participating in and appearing at the hearing (and any further reviews) of the Originating Application.

(8) The application can be listed for review on 19 July 2019.