

11.1 Assistance - Removal of Camphor Laurel Trees.DOC

21 July 2014

General Manager
Ballina Shire Council
38 Cherry St
Ballina NSW 2478

Via email: council@ballina.nsw.gov.au

Dear Sir,

RE: Removal of Camphor Laurel trees at 49 Forest Rd Uralba

I have previously alerted Council to the Camphor Laurel trees that are growing on the Forest Rd Uralba road reserve and the damage they are doing to the fence which defines our boundary with that of the road reserve at 49 Forest Rd Uralba.

Due to Council not maintaining the road reserve along this boundary because of a lack of funds, the destruction of the fence caused by the Camphor Laurel trees maturing requires the fence to be replaced.

I have attached photos confirming the destruction.

Since my last communication and a change in circumstances, this is now a safety issue.

We are currently establishing a horse riding school and horse agistment business on our property and it is imperative that we have suitable fencing to ensure that horses are confined within the boundaries of the property. It is also imperative that when horses are being ridden or led that they do not escape through the fence and onto the road.

There is also the safety issue of falling limbs.

Recently, a client parked in the designated car park and could have been killed by a falling limb that fortunately landed a metre away from where she had parked.

So as to ensure the safety of persons and the community, I request that council remediate the site and in doing so remove the safety issue that Councils lack of maintenance has created.

Yours sincerely,

Ian & Johanna Paxton













11.1 Assistance - Removal of Camphor Laurel Trees.DOC

From: Ian Paxton [
Sent: Thursday, 18 September 2014 9:18 AM
Subject: 49 Forest Rd road reserve fence line

18 September 2014

Paul Hickey
General Manager
Ballina Council NSW 2478

Via email – council@ballina.nsw.gov.au

Dear Sir,

RE: Fence line at 49 Forest Rd Uralba

Further to my letter of 21 July 2014 and subsequent on site meeting with Council staff Stuart Hynes and Paul Witchard, I confirm the following:

Council agrees that there is a safety issue with regard to the road reserve fence line but Council views the safety issue as my responsibility.

Council is relying on the *Dividing Fences Act 1991* to support their argument that they are not liable to contribute financially to remediate the fence line that has been damaged by Camphor Laurel trees that are on the road reserve.

Council is aware that Camphor Laurel trees are a Class 4 noxious weed.

Council recognises that under the *Noxious Weeds Act* the growth of the plant must be managed in a manner that reduces its numbers and continuously inhibits its reproduction.

Council states that, due to a lack of funds, it does not allocate funds to ensure Council complies with its responsibility under the *Noxious Weeds Act*.

Council states it does not have the money to be able to remediate road reserve fence lines where there is an infestation of Camphor Laurel.

Council will not object to the removal of Camphor Laurel trees that have caused the destruction of the road reserve fence line, nor will Council object to these trees and any roots, stumps or branches that are removed along the road reserve fence line being placed in the road reserve. Notwithstanding this, if this occurs, Council's view is that it is within its right to fine me for littering.

Council is reliant on rural land holders to clear adjoining road reserve boundaries at their own volition and cost as Council, due to lack of money, does not allocate monies to contribute to the erection, replacement or repair of fence lines even if lack of maintenance by Council is the cause of the destruction of a fence. The principle behind this decision is that if it is done for one it could be argued that it would then have to be done for all.

Council deems my request of Council to remediate the site to be unfair, as I am running a business, earning money from that business and therefore I should be wholly responsible for the financial cost of the remediation of the site so I can erect a new fence.

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Based on the above, again I request Council to contribute monies to remediate the site and support this request on the understanding that;

Endeavouring to absolve Council of its responsibility to remediate a site to ensure the safety of others by stating it does not have the money is grossly negligent and a complete failing of Council's duty of care.

Endeavouring to absolve Council's responsibility to comply with the *Noxious Weed Act* by stating it does not have the money is grossly negligent of Council.

By Council failing to manage Camphor Laurel trees in the road reserve and allowing the Camphor Laurel trees to reproduce along the road reserve fence line, causing irreparable damage to the fence line which now needs to be replaced to ensure a safe environment is grossly negligent of Council.

The *Dividing Fence Act 1991* does not prevent Council from entering fencing agreements and making financial contributions.

Council stating that it has no objection to and no interest in clearing the road reserve of felled Camphor Laurel trees that are the cause of the destruction of the current fence line is negligent and a failing of Council's duty of care as the felled trees, if not removed will be a danger to users of Forest Rd, a fire hazard, will inhibit native vegetation and be detrimental to the environment.

Council's reliance on a multiple decade long precedent of rural land holders clearing road reserve boundaries is negligent and a failing of Council's duty of care.

In refusing my request on the basis that Council is fearful of the repercussions is grossly negligent.

Endeavouring to absolve Council's responsibility to remediate the site by stating that I am being unfair with my request is negligent and a failing of Council's duty of care as my request for Council to contribute is based on the safety of others and Council's responsibility to comply with the *Noxious Weed Act*.

Council's refusal to contribute based on an assumed income of another is grossly negligent.

Notwithstanding my request for Council to remediate the site, on closer inspection of the road reserve I have observed that a large dead hardwood trunk, approximately 6 metres in height and 60 cm in diameter is perilously close to our boundary and is a danger to us and others. Could you please give this your urgent attention and organise for this trunk to be felled immediately.

Yours sincerely,

Ian Paxton

11.1 Assistance - Removal of Camphor Laurel Trees.DOC

John Truman

Trim Ref: 14/65674, 14/68366

29 October 2014

Mr Ian Paxton
PO Box 552
ALSTONVILLE NSW 2477

Dear Mr Paxton

Re: Roadside Maintenance - Forest Road, Uralba

Thank you for your email regarding your concerns in relation to the decision by Council officers to decline your request for Council to remove Camphor Laurel trees from the road reserve adjacent to your property on Forest Road. I have reviewed your concerns and advise the following in response.

In regard to your request to remediate the area by the removal of the camphor laurel trees, the Council has considered this request having regard to our work priorities for the allocation of funds available to manage our road reserves. Regrettably we advise that other maintenance activities have been assessed as a higher priority for these limited funds. While we agree there is an advantage in removing the trees as per your request, the Council removes vegetation in the road reserve only where there are significant risks to persons or property. Typically this will involve the need to address traffic management issues or significant risks to adjoining property where there is a threatened building or a regular volume of pedestrian traffic. The reason for this approach is the Council has many hundreds of kilometres of road reserve to manage and it is not practical or affordable for the community to manage this vegetation under an alternative approach.

I confirm the advice of our officers to you that we are able to approve, subject to certain conditions, you undertaking the removal of the trees. Our approval requires the removal to be conducted in a manner that is compliant with Work Health and Safety regulations and the site being left with a clean and tidy presentation, which usually includes the removal of the felled vegetation.

Camphor laurel is a Class 4 noxious weed under the NSW *Noxious Weeds Act 1993*. This means the control requirements are that 'the growth of the plant must be managed in a manner that reduces its numbers spread and incidence and continuously inhibits its reproduction and the plant must not be sold propagated or knowingly distributed'. Therefore, in making our decision in response to your request, Council denies its position is in breach of the provisions of the *Noxious Weeds Act 1993*. Furthermore, having inspected the site and considered the risks, we also deny that we have not met our common law duties to reasonably take care to avoid harm. In regard to your claim of negligence, it is necessary for an actual harm to be caused before a person can be considered to be negligent.

In regard to the final paragraph in your letter regarding the removal of specific large tree trunk, I have arranged for Council's qualified arborist to inspect this tree and make a recommendation.

While I understand that my decision on this occasion is not the outcome you were seeking, I trust the above response is able to explain to you our position in this matter.

Yours faithfully

John Truman
Group Manager
Civil Services

I D Paxton



8 October 2014

John Truman
Civil Services
Ballina Council

Via email: council@ballina.nsw.gov.au

Dear Sir,

RE: Fence line at 49 Forest Rd Uralba

Thank you for your letter dated 29 October 2014.

I note that Council has stated *“the site being left with a clean and tidy presentation, which usually includes the removal of the felled vegetation”*.

Please advise Council’s interpretation of clean and tidy presentation and is Council insisting that the felled vegetation be removed.

Furthermore, if Council *“denies its position is in breach of the provisions of the Noxious Weeds Act 1993”* please advise when Council has undertaken work to manage Camphor Laurel trees in a manner that reduces its numbers spread and incidence and continuously inhibits its reproduction along the Forest Rd Uralba road reserve.

I reference to the dead tree trunk, I am still awaiting Council’s attendance to having it inspected.

Yours sincerely,

Ian Paxton

enquiries refer

John Truman
in reply please quote

Trim Ref: 14/70580, 14/73165

20 October 2014

Mr Ian Paxton
ipaxton@gotalk.net.au



Dear Mr Paxton

Re: Roadside Maintenance Request – 49 Forest Rd Uralba

I refer to your letter dated 8 October 2014 in response to our letter sent to you on 29 September 2014.

In response to your inquiry seeking an interpretation of what we mean by leaving the site with a clean and tidy presentation, our requirements are simply the ordinary meaning of these words. As per our previous letter and my advice in our telephone conversation, the Council has not insisted that the felled vegetation be removed. We have indicated that removal is our preference, however we have also recognised that in a rural context leaving this material in the roadside area can be acceptable, subject to the conditions that the site is clean and tidy, does not present a traffic hazard, or reduce the operation of any drainage path. If you need, our officers are able to consult with you further in this regard at a site meeting.

In regards to the request in your letter dated 18 September 2014 for an inspection of a tree trunk, Council's Mr Lucas Salmon, our qualified tree management specialist, inspected the area on 7 October 2014, immediately following his return from leave. The assessment of Mr Salmon is set out in the following information;

This morning's inspection of the "large dead hardwood trunk" referred to by Mr Paxton and located on the road reserve at 49 Forest Road Uralba, has revealed the following:

- *The tree is probably a Guioa sempervirens, a native rainforest tree endemic to the region.*
- *The tree is approximately 95% dead with only two small live branches arising from the main stem close to the top. This suggests active connective tissue with some live roots.*
- *The tree is located 2.1M from the fence and displays a slight lean in a direction parallel with the fence line.*
- *The presence and condition of fungal fruiting bodies suggests the greater part of the tree has been dead for a considerable time.*

Given the extent of decay, protection from prevailing winds and lack of sail area, the likelihood of failure is possible but not imminent. Target consists only of vegetation. (In the event of failure it might be possible that the tree would drag neighbouring vines and other vegetation down with it causing some minor disturbance to an already severely dilapidated fence). Occupancy rate of the target zone by humans would be zero to extremely rare.

From a tree risk management perspective, and considering the above, I see no need for mitigation measures.

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Mr Ian Paxton
20 October 2014

Our position in respect of your claims in relation to our statutory obligations remains unchanged. That is, we have decided that it is not appropriate for us to allocate resources to your request at this point in time for the reasons set out in our previous letter.

We again advise our regret that we cannot provide you with a more favourable response to your request. While we are not in a position to undertake the felling of the vegetation ourselves, we do however understand your interest in this matter and in response we have provided our approval for you to remove the vegetation subject to some reasonable conditions.

Yours faithfully

John Truman
Group Manager
Civil Services