

8.1 Review of Contribution Charges - 11 Tara Downs, Lennox Head.DOC

11 Tara Downs
LENNOX HEAD NSW 2478
P: 0404679899
E: adamusashi@hotmail.com

3 September 2014

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Paul Hickey
General Manager

Dear Mr. Hickey

Re: Section 94 and Section 64 Fees and Charges
Development Application 2011/274
11 Tara Downs, Lennox Head

Reference is made to our correspondence dated 9 December 2013 and Council's response of 14 January 2014 in respect of our request for Council to reconsider the level of contributions and charges applicable under Section 94 of the Environmental Planning and Assessment Act 1979 and Section 64 Water and Sewer Contribution Charges for the development of a dual occupancy building upon the abovementioned land.

It is advised that the proposal for the construction of the dual occupancy building is to provide a separate residence for one of the parties currently residing at the property. Due to financial constraints I, Adam Garvin together with my sister and brother in law decided to purchase the property with a view to constructing the dual occupancy building. We have been long term residents of the area however due to the escalating cost of properties in the area found it difficult to acquire a property in which my sister and husband were able to raise their family. The opportunity was provided to purchase the property and prior to the acquisition we undertook the necessary steps to determine if a dual occupancy was permitted on the site thus providing the ability for us both to contribute to the cost of the development. Following determination of the original Development Consent and notification of the terms of the consent we struggled to maintain payments on the property mortgage together with setting aside funds for the construction of the dual occupancy building. As I work within the construction industry, the effects of the Global Financial Crisis resulted in work becoming patchy and a consistent income stream was difficult to maintain.

As indicated it was our intent to purchase the property and construct a dual occupancy building for separate occupancy for myself and a separate occupancy for my sister and her family. We accepted that we would initially have to reside together whilst the approval process was undertaken and sufficient funds were obtained. That was some eight (8) years ago. I advise that the circumstances are unchanged and the conditions are now placing severe limitations on our family unit. My sister's children are now teenagers and are seeking their own space for study and personal time.

We are aware that Council is proactive in the development of affordable housing solutions and has adopted a number of initiatives to encourage affordable housing, in particular the waiving of contributions for secondary dwellings. We support and encourage these initiatives and whilst we accept that the payment of contributions is necessary for developments outside the secondary dwelling criteria, we are unable to afford the contribution costs coupled with the construction costs. We consider that our circumstance constitutes a need for affordable housing which is appropriate for the needs low to moderate income households and so

8.1 Review of Contribution Charges - 11 Tara Downs, Lennox Head.DOC

that we can continue to meet other basic living costs such as food, clothing, transport, medical care and education.

As discussed above, an application for Development Consent for a dual occupancy building was submitted on 28 April 2006 and was assigned application number 2006/690. This application was subsequently approved on 24 August 2006 subject to conditions including the payment of \$6,617.00 Section 94 contributions.

In accordance with the provisions of the Environmental Planning and Assessment Act 1979 the Consent was due to lapse on 24 August 2011.

As the date for the lapsing of the Development Consent approached, I approached Council to seek an extension of time in which to activate the Consent. I was advised that the maximum term of the Consent was five (5) years and if commencement of the Consent was not activated a fresh application would need to be lodged. As we were unable to gather the funds necessary to pay the contributions the Consent unfortunately lapsed.

We accepted that Council was constrained by the limitations of the Act and on the advice of Council Officers lodged a fresh Development Application on 27 June 2011. The revised application was determined on 10 August 2011 however advice which was not conveyed to us at the time of our discussions with Council Officers was that the Section 94 contributions had escalated to \$25,567.20. The contributions being subject to CPI movements have now increased to in excess of \$27,000.00.

This significant increase in the contribution rate has again placed our ability to undertake the proposal outside of our economical reach.

Whilst we acknowledge Council's need to recoup development and infrastructure costs we are seeking Council's consideration for a reduction of the payable contributions to the level of the original application.

It should be stressed that the proposal is not for resale and capital gain. As indicated we are long term residents of Ballina Shire with employment in the area and children attending local schools. It is our desire to remain in the area and allow the children to continue their education at local schools.

We therefore respectfully request that Council give favourable consideration of our request to levy the rates of the Section 64 and Section 94 contributions applicable to the development at the rates originally imposed on Development Application 2006/690 being \$6,617.00. We accept that an average CPI increase over the past eight (8) years of 3% would gross the contribution rate up to \$8,382.00. We feel as though we can incorporate these costs in the development process however the additional costs will make it prohibitive.

Should Council assist in this instance it will enable us to finally provide each of our families with our individual dwelling units and provide an affordable housing outcome.

Yours sincerely

Adam Garvin

Mr. TA Collins

Mrs TL Collins

cc: davidwright@ballina.nsw.gov.au
robynh@ballina.nsw.gov.au
kenj@ballina.nsw.gov.au
smeehan@ballina.nsw.gov.au
crsharonc@nor.com.au
jeffjohnson@ballina.nsw.gov.au
keithw@ballina.nsw.gov.au
kjohnson@ballina.nsw.gov.au
bens@ballina.nsw.gov.au
pworth@ballina.nsw.gov.au

8.1 Review of Contribution Charges - 11 Tara Downs, Lennox Head.DOC

Bede Cooney

DA 2011/274

14 January 2014

Mr TA Collins, Mrs TL Collins and Mr AJ Garvin
C/- Mr A J Garvin
11 Tara Downs
LENNOX HEAD NSW 2478

Dear Mr and Mrs Collins & Mr Garvin

Re: Development Application 2011/274 – Section 64 charges and Section 94 fees

I refer to your letter of 9 December 2013 and provide the following response.

When you attended the Council offices in May 2011 to discuss the issue of Development Application 2006/690, you were aware that unless you commenced work prior to 27 July 2011, the consent would lapse.

As you know, work could not legally commence on the site unless a Construction Certificate had been issued, your predicament was that you were not in a position to pay the Section 64 and 94 fees levied against that consent.

Therefore, at the time of your inquiry, Development Consent 2006/690 was going to lapse on 27 July 2011, and due to your situation there was nothing that could be done about that.

The concern to Council staff, was that with the Ballina Shire Local Environmental Plan (LEP) being under review at the time, with the likely adoption date unknown, it was possible, had the LEP been adopted prior to you obtaining a new Development Consent, zoning changes may have occurred that may have prevented you from obtaining future development consent for a Dual Occupancy at 11 Tara Downs.

You should note, now that the new LEP (Ballina Shire Council LEP 2012) has been adopted there are some allotments that under the Ballina Local Environmental Plan of 1987 (BLEP 1987) were zoned for Dual Occupancy that have now lost that entitlement.

Council staff did not want you to lose your entitlement, and considered it important and in your best interest for you to lodge a new Development Application for the same development as soon as possible, which would be assessed under the same planning standards as Development Application 2006/690, which almost guaranteed an approval.

There was no discussion regarding the level of Section 68 and 94 fees, it was assumed you would be aware those fees would be applied at the rate applicable at the time of determination of the application.

At the same time the LEP was under review, so was the Combined Ballina Shire Development Control Plan, subsequently replaced by the Ballina DCP 2012.

Similar concerns were had with regard to what Planning standards may be applied to a new development under the new DCP, that may severely affect the design of your project,

Page 2
DA 2011/274
14 January 2014

another reason to encourage you to obtain a new consent as soon as possible following the lapsing of the original consent.

The recommendations offered to you by Council staff, have resulted in a consent being issued to you for a Dual Occupancy on the site, of essentially the same design of the original project.

That consent will remain valid until 10 August 2016.

The plans you lodged and which were approved under DA 2011/274, were the same plans (including the original stamped plans for DA 2006/690) which avoided you the cost of having to alter the plans architecturally to meet the new DCP requirements, and also avoided you the cost of having new plans drafted.

With regard to the Section 64 and Section 94 charges, the increase in the charges are considerable as explained in the attached email from Council's Infrastructure Planning Manager, Mr Dave Kelly.

It is unfortunate you believed the fees that would be levied against this project would be similar to those levied under the original DA, the Section 64 and Section 94 fees are varied from time to time subject to Council policy and in accordance with the Consumer Price Index, and are applied at the time consent is issued.

Therefore Council cannot reduce the fees as applied.

Mr Kelly has re-calculated the charges and has confirmed the charges applied under DA 2011/274 are correct, he has also noted those charges have already risen (due to CPI) to \$26,726.00 an increase of \$1,159.00 since 10 August 2011.

It is acknowledged this letter will not satisfy your concerns, Council recommends you develop a strategy to ensure that you secure the funds necessary to be able to pay the fees, obtain a Construction Certificate and commence works prior to this consent lapsing in August 2016.

If you have any enquiries in regard to this matter please contact Bede Cooney on 66 861 415.

Yours faithfully

Peter Craig
Acting Manager Building Services
Development and Environmental Health Group

8.1 Review of Contribution Charges - 11 Tara Downs, Lennox Head.DOC

Rod Willis

14/86571 & D.A. 2011/274

10 December 2014

Mr T A Collins, Mrs T L Collins and Mr A J Garvin
C/- Mr A J Garvin
11 Tara Downs
LENNOX HEAD NSW 2478

Dear Mr and Mrs Collins and Mr Garvin

Re: Development Application 2011/274 – Development Contributions and Charges

I refer to your letter of 3 September 2014 sent under cover of your e-mail of 1 December 2014 seeking concessional relief from the payment of the current levied development contributions and charges relating to development application 2011/274 for the construction of a dual occupancy project at 11 Tara Downs, Lennox Head.

The matters raised in your letter have been considered. The contributions and charges levied are standard fees that apply to all residential development across the Shire. These assist the Council to provide for the augmentation and extension of the public infrastructural services that are required by incoming residents. They are applied consistently to all developments and are an essential element of infrastructure financing.

Your circumstances as explained in your letter are understood but it would not be proper for the Council to provide relief to you on affordability grounds that it cannot extend to all other applicants. The Council has a duty to apply its fees and charges fairly to all applicants. Consequently, your request has not been supported.

If you have any enquiries in regard to this matter please contact me on 66 86 1233.

Yours faithfully

Rod Willis
Group Manager
Development and Environmental Health