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29 April 2016

Our Ref: 2016122

Your Ref:

Paul Hickey
General Manager
Ballina Shire Council
BALLINA

Dear Colleague

Re: BYRON BAY LAND DEVELOPMENT P/L & ASSOCIATED ENTITIES
LAND OWNER - CURA B

I have been instructed by Richard Walsh on behalf of the Byron Bay Land Development and associated entities. (the Landowner)

I have been provided with a number of documents including:

- Voluntary Planning Agreement dated 13/09/2012
- Letter from Ballina Shire addressed to Planning Resolutions dated 06/09/2012
- Letter from Ballina Shire to Planning Resolutions dated 08/07/2013 together with attached letter addressed to Ardill Payne of even date
- Letter from Ballina Shire to Planning Resolutions dated 28/04/2016

My instructions include the following:

- The Landowner of CURA B entered into an agreement (the September VPA)
- One of the representations made by council, that was relied upon by the Landowner in entering into the VPA, was the representation made in the correspondence dated 06/09/2012 referred to above – to quote from



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that correspondence *'a commitment that Council will utilise its compulsory acquisition powers to secure necessary infrastructure easements'*

- In reliance upon the representations made, and the VPA, my client, acting in good faith, has incurred considerable costs and expenses. These include, but are not limited to, significant acquisition costs, holding costs, consultant fees, Application fees and other costs incurred. I do not propose, at this time, to quantify the extent of damage that my client may suffer if Council is ultimately found to have acted in a misleading or unconscionable manner, but those amounts would be calculated in the millions of dollars.
- In accordance with the obligations cast upon my client by the VPA the Landowner has used its best endeavours to obtain the relevant easement over the CURA A land. Despite having used its best endeavours, my client has not been able to obtain the consent of the CURA A landholders. If there is any dispute as to whether or not my client has indeed used its best endeavours, the letter referred to above dated 08/07/2013 should remove any such doubt
- My client has made direct approach to Council requesting that Council act in accordance with its representations made in the letter of 06/09/2012. Despite those representations, Council has refused to take any action to acquire the necessary easements over CURA A.
- In respect to your correspondence of 28 April 2016, my client's position is that it is not a matter of whether Council 'wishes to provide assistance' but rather a matter of whether Council is prepared to act in accordance with the written representations made, and the legal obligations thereby created.

I note the requirement in the VPA (Clause 20) that in the event of a dispute the parties are required to attend mediation.

Pursuant to Clause 20.2, Council should accept this correspondence as written notice that a dispute exists between my client and Council. The VPA sets out a provision for the parties to meet in an attempt to resolve the dispute within 14 days. Given however that these issues will not be put before the elected

members of Council until 26 May 2016, my client will extend the period set out in Clause 20.3 to a date within 10 days of 26 May 2016.

I look forward to your prompt response.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D Hunter', with a long horizontal flourish extending to the right.

DAVID HUNTER

If this document has been e-mailed or fax'd to you, the original will only be sent on specific request.

Planning Resolutions

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Coffs Harbour 2450

Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
Ballina 2478

Dear Paul,

Re: Cumbalum Precinct B – Provision for Stormwater and Sewerage Infrastructure

I refer to our discussions on Friday in regard to the need for Council to take a lead role in the planning and implementation of the critical infrastructure for the development of Cumbalum Urban Release Areas. These issues go beyond the current development application for Stage 1 of the development of Cumbalum Precinct B. Critically the State Government now sees Cumbalum Precinct B as a Priority Land Release Area. Cumbalum Precinct B is the only area between Tweed and Clarence LGAs nominated in the Draft North Coast Regional Plan as a Priority Land Release Area. Nomination as a Priority Land Release Area provides access to specific State Government assistance and funding to accelerate housing commencements.

In recent weeks I have attended two Council facilitated joint meetings with the proponents of Cumbalum A to discuss what I understood to be a planned approach to the provision of community infrastructure. The first meeting was in regard to sewerage on 22 February 2016 and the second in regard to stormwater on 5 April 2016. Neither meeting has resulted in a Council planned approach to the provision of the infrastructure.

Sewerage:

I refer to Council's letter dated 8 July 2013 (Ref: 13/37090 (1179-02)) in regard to facilitating the acquisition of an easement for sewage infrastructure for the development of Cumbalum Precinct B. My letter to Council dated 5 January provides a chronology of the events subsequent to your letter in regard to our negotiations with the proponents of Cumbalum Precinct A.

At the meeting held on 22 February 2016 there was a lack of support by Council staff to achieving the best planning outcome for the sewerage network. Council's engineering staff had previously consistently indicated a desire to provide an independent rising main through to the existing pump station in the Ballina Heights Estate (Pump Station No2402). Instead at the meeting we were advised that Council staff would now accept the Precinct A proposal whereby the Precinct B

sewer would be connected into their planned reticulation network. It is understood that this would not be the ultimate connection for the entire Cumbalum Precinct B development area.

Subsequent to the meeting of 22 February 2016 we told by the proponents of Cumbalum Precinct A that they have been advised that the provision for a Cumbalum Precinct B sewer connection needed to be part of their proposed development application but we have not been advised accordingly by Council staff.

Since the meeting of 22 February 2016 agreement has been reached with the proponents of Cumbalum Precinct A on providing a sewer connection through the future Cumbalum Precinct A connection. We are now proceeding to design this connection through the Cumbalum Precinct A future reticulation.

The proponents of Cumbalum Precinct B signed the Voluntary Planning Agreement on the clear understanding that the provision of the sewer connection for Cumbalum Precinct B would be achieved by the special clause in the Cumbalum Precinct A Voluntary Planning Agreement; this did not eventuate.

Connection of the Cumbalum Precinct B sewer via the Cumbalum Precinct A sewerage reticulation is clearly not ideal in terms of infrastructure planning and I now ask that Council formally seize responsibly for planning and implementation of this key infrastructure.

Stormwater Infrastructure:

It clearly emerged at the meeting held on 5 April 2016 that the stormwater management is a joint issue affecting both the drainage of Cumbalum Precinct A and B and Ross Lane. It seems that the drainage depends on the functioning of the Richmond Valley County Council managed drain NR1. However as you can see from the attached action list from that meeting the responsibility for analysis of the issue principally falls to the proponent of Cumbalum Precinct B. Even though Cumbalum Precinct A relies on drainage across Cumbalum Precinct B land; significantly via weir on Cumbalum Precinct B land.

In a submission from NSW Fisheries dated 4 April 2016 they recognise the need for an integrated approach to stormwater infrastructure for Precincts A and B.

I urge Council to take a lead role in the planning and implementation of this critical sewer and stormwater infrastructure for the development of Cumbalum; part of a Priority Land Release Area. Should you require any clarification of the above information please contact me on 0437859959.



Yours sincerely
Chris Pratt
Planning Resolutions
14 April 2016



**CURA A and B stormwater conveyance system
Meeting action list**

Date: Tuesday 5 April
Time: 11:00am
Venue: Ballina Shire Council, Committee Room

1. Present

John Truman (chair BSC), Kyme Lavelle and Gillian Marchant (RRCC), Bill Noble & Steve Webb (CURA A), Chris Pratt & Mark Bayley (CURA B), Paul Wilson, Richard Jerome, Patrick Knight, Peter Drew and Dave Kelly (BSC).

2.0 Actions

BSC to provide CURA B with both CURA A stormwater reports following the lodgement of the CURA A development application.

- Restoration of Drainage Paths BNR & Surrounds, Preliminary Draft for Discussion, October 2015
- Cumbalum Views, Stormwater Management: Assessment of Stormwater flows, March 2016

BSC to contact NPWS and investigate what framework is required to handover the management and maintenance responsibilities of NR1.

BSC to clarify technical issues raised in Councils RFI to CURA B. Additionally BSC to clarify expectations of modelling flows from the south discharging to NR1 from the BNR.

CURA B to model the capacity of their proposed conveyance channel (NR1) to its confluence with North Creek in accordance with Councils previous RFI's and the information contained in the CURA A stormwater reports nominated above.

RRCC to provide the management plan for NR1 and what potential liabilities Ballina Shire Council would be inheriting with the handover of the drain.

RRCC to provide BSC with NR1 drain profiles as part of the management plan for maintenance and modelling purposes.

RRCC to provide a background of the weirs construction on CURA B land. Comments from the meeting suggested it was to protect rural cane farming land, at the time, from salt incursion. RRCC to confirm the catchment\properties being protected from salt water incursion by the rock weir.

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11 May 2016

David Hunter
David Hunter Law
172 Molesworth Street
Lismore NSW 2480

By Email

Dear David

Cumalalum Urban Release Area B - Voluntary Planning Agreement (VPA) Notice of Dispute

We act for Ballina Shire Council and respond to your letter dated 29 April 2016 as follows.

- 1 We are instructed that Council has previously indicated that it will not become involved in disputes of a proprietary or commercial nature which may arise between the proponents of CURA A and B during the course of the development of the land. Such disputes are properly to be resolved between the parties.
- 2 The requirement for an easement for sewerage works was the subject of early consideration by the parties and Council, aimed at identifying a solution for an issue which has the potential to become a point of contention between the parties. This work resulted in the execution of a VPA by your clients which identified the preferred route for the easement.
- 3 Your letter states that Council, by its letter dated 6 September 2012, made representations to your client that it would utilise its compulsory acquisition power to secure the necessary infrastructure easements. Council made no such representation. The reference by Council to the possible use of compulsory acquisition power was made in contemplation of a side agreement with your clients at the time of negotiating the VPA. No side agreement was agreed with your clients. The letter makes clear that the exercise of power was subject to your clients having first used best endeavours to acquire the easement.
- 4 Contrary to your assertion, Council's correspondence of 8 July 2013 does no more than identify compulsory acquisition as an option to secure the easement, such option being subject to consideration by and resolution of Council. The correspondence encouraged the parties to continue negotiations to reach agreement on the issue. No inference can be drawn from the correspondence as to your client's best endeavours to secure the easement.
- 5 Point 7 of Schedule 3 of the VPA states that the obligation to acquire the easement rests with your client. It is Council's position that this remains the case. Council expects that your client will make every effort to satisfy this obligation.
- 6 Whilst Council has facilitated meetings to assist the parties in reaching agreement on this issue, Council does not intend to directly intervene in commercial negotiations or exercise statutory powers in circumstances where the parties have not exhausted negotiations.

Our Ref PNL:NJSS:120600098
soas A0136233853v3 120600098 11.5.2016

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- 7 Council understands that since the meeting on 22 February 2016, further discussions between the parties have occurred, and that an agreement on provision of a sewer connection may be possible. In these circumstances, Council awaits the provision of detailed information in this respect and will carry out its assessment accordingly.
- 8 Council acknowledges the formal notice of a dispute in accordance with cl 20.3 of the VPA. Council further acknowledges the extension to the time set out in cl 20.3 and will arrange to meet with your client with respect to the dispute on or before **6 June 2016** (being the next business day following the 10th day after 26 May 2016 pursuant to cl 1.2.3. of the VPA).
- 9 However, if in light of the above your client is no longer of the view that a dispute exists, please notify us in writing as a matter of urgency.

Yours sincerely



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