

Wardell Memorial Hall

December 8, 2011

Ballina Shire Council
Cnr. Tamar and Cherry St
Ballina. 2478.

Dear Sir or Madam:

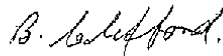
We the undersigned, being the trustees for the " School of Arts", are acting on their behalf as custodians for the Wardell Memorial Hall.

As the said trustees we grant permission for the Ballina Shire Council to become the new trustees of the Wardell Memorial Hall. This will become effective as soon as the new trust is established.

This action has been decided on after extensive community consultation.

Sincerely,

Barry Clifford



David Delaney



Ron Rosolen



Trustees of the Wardell Memorial Hall.





Principal
Clive Barr
Lawyer
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(Property Law)
Solicitor
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under Professional Standards Legislation

Our Ref: CLH:LM:120140
Your Ref: Steve Barricr

12 April 2012

Ballina Shire Council
DX 27789
BALLINA NSW

Also by email: stephenb@ballina.nsw.gov.au

Dear Sir

RE: TRANSFER OF PROPERTY: WARDELL AND DISTRICT WAR MEMORIAL HALL

We refer to your letter dated 30 April 2012.

We confirm receipt of copies of following:-

1. Pamphlet published May 2006 by NSW Dept Lands titled "School of Arts: Future Management Options".
2. Letter marked Attachment B from Crown Lands to unspecified recipients dated 2 June 2006;
3. Letter from NSW Dept Lands to Barry Clifford dated 2 March 2010;
4. Letter Trustees of Wardell Memorial Hall to Council dated 8 December 2011;

Ownership of the property

We have undertaken a title search of the property known as Wardell War Memorial Hall referred to in the letter from Department of Lands to Barry Clifford comprised in Identifier 1/312334 and we enclose a copy.

The title search confirms the registered proprietors are Barry Charles Clifford, David Thomas Delaney and Ronald James Rosolen as Joint Tenants.

Based upon that information we can confirm the title to the property at Wardell and known as Wardell War Memorial Hall is indeed held in trust by Barry Charles Clifford, David Thomas Delaney and Ronald James Rosolen as trustees pursuant to the provisions of the Schools of Arts Enabling Act 1902. The property is therefore subject to the provisions of Section 54B of the Local Government Act 1993.

Transfer of the property

The letter from the trustees to Council dated 8 December 2011 appears to offer to transfer the land comprised in Identifier 1/312334 to Council without consideration, that is, there is no reference to requiring any payment.

Section 54B (2) of the Local Government Act provides etc "A council and the trustees of private trust land may enter into an agreement for the land to be transferred to the council" Due to the provisions of section 54B(4), (5) and (6) of the Local Government Act the only limitations that will continue to apply to the land after it is transferred are:-

1. Any requirements of the trustees that are included in the agreement for the transfer and
2. That the land must be held by Council as community land.

Requirements for Community Land

The requirements governing "community land" are found in Division 2, Part 2 of the Local Government Act. Among other things Section 35 requires community land to be used and managed in accordance with the plan of management applying to the land. Section 36 then sets out requirements for preparation of a draft plan which includes, among other things, categorising the land as one of the following:-

- (a) a natural area,
- (b) a sportsground,
- (c) a park,
- (d) an area of cultural significance,
- (e) general community use.

You have mentioned in your letter to us that current use of the premises as a community hall is likely to continue. In our opinion the appropriate category for the land would therefore be "general community use". (In any event, Regulation 106 of the Local Government (General) Regulation requires categorisation of land for general community use where it is not required to be categorised as natural area and does not satisfy the guidelines for the other categories, which it would appear this land does not.)

In addition to the requirements of Division 2, Section 54B (7) contains further requirements for the draft plan namely:-

- (7) *In preparing a draft plan of management in relation to any land transferred to it under this section, the council must, in addition to the other requirements under Division 2:*
 - (a) *advise the Minister that it is preparing the draft plan, and*
 - (b) *take into account the purposes for which the land was reserved, dedicated, granted or held as an institution, and*
 - (c) *comply as far as practicable with the agreement entered into between the trustees of the private trust land concerned and the council, and*
 - (d) *before giving public notice of the draft plan in accordance with section 38, consult with such persons or bodies as the council considers appropriate or as the Minister directs."*

In relation to Section 54B(7)(b) we have ordered a copy of the original crown grant for the property to enable Council to comply with this provision when preparing its draft plan. We will forward a copy with our further advices when it is to hand.

Community Land categorised for general community use

Section 36I of the Local Government Act sets out the core objectives for land categorised as general community use namely:-

"36I Core objectives for management of community land categorised as general community use

The core objectives for management of community land categorised as general community use are to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:

(a) in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and

(b) in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities). "

Lease of the property

Given your comments that Council might consider a lease of the property, consideration must be given to the provisions of Section 46 of the Local Government Act as to leases of community land. Crucially, section 46(1)(b)(i) provides that a lease "may be granted, ***in accordance with an express authority in the plan of management***" (our emphasis) *for a purpose prescribed by subsection (4)...*" Subsection (4)(a) specifies in turn as follows:-

(4) The following purposes are prescribed for the purposes of subsection (1) (b) (i):

(a) the provision of goods, services and facilities, and the carrying out of activities, appropriate to the current and future needs within the local community and of the wider public in relation to any of the following:

(i) public recreation,

(ii) the physical, cultural, social and intellectual welfare or development of persons.

Provided therefore the lease is for these purposes and provided this appears in the draft plan, a lease can be granted.

Summary

In summary therefore it is our advice that:-

1. Council should negotiate a transfer of the property from the trust to Council on agreed terms. This agreement would be in the form of a contract for the sale of land which would normally be prepared by the vendor. As from Council's perspective the broader and least restrictive the terms the better, we would suggest Council prepare such a contract. We anticipate our fees for acting for Council in such a matter would not exceed \$2000 plus GST. Disbursements

would not exceed \$300.00. We note your comments that Council is not required to pay stamp duty and can confirm that is the case.

2. Once the land is acquired, Council should prepare a draft plan in accordance with the provisions of Division 2, Part 2 and Section 54B (7) of the Local Government Act which must include specific provision for lease of the land for the purposes set out in Section 48(4)(a)(ii). We have not given you specific advice as to the provisions of Division 2, Part 2 of the Local Government Act in this regard. Please advise if you require us to do so.
3. After completion of the transfer, Council should notify the Minister of preparation of the draft plan, which notification should include reference to the proposed leasing provisions and to the nature of the grant which we expect to have to hand shortly.

Please do not hesitate to contact us should you require our further assistance in the meantime.

Yours faithfully

CLARISSA HUEGILL

Search Results

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Legal Liaison Services

LPI On-Line

Legal Liaison Services hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with Section 96B(2) of the Real Property Act. Information provided through Tri-Search an approved LPLWSW Information Broker

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 1/312334

SEARCH DATE	TIME	EDITION NO	DATE
30/3/2012	3:05 PM	3	29/12/2008

LAND

LOT 1 IN DEPOSITED PLAN 312334
 AT WARDELL
 LOCAL GOVERNMENT AREA BALLINA
 PARISH OF BINGAL COUNTY OF ROUS
 TITLE DIAGRAM DP312334

FIRST SCHEDULE

BARRY CHARLES CLIFFORD
 DAVID THOMAS DELANEY
 RONALD JAMES ROSOLEN
 AS JOINT TENANTS

(AP AE398301)

SECOND SCHEDULE (3 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 B190971 CAVENT BY THE REGISTRAR GENERAL
- 3 6378617 EASEMENT TO DRAIN SEWAGE 5 METRE(S) WIDE AFFECTING THE PART(S) SHOWN SO BURDENED IN DP267856

NOTATIONS

DP267856 NOTE: PROPOSED EASEMENT
 UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

<http://www2.legalls.com.au/LLSLTO.nsf/Search+Results/8CE09AC45C51EC1ACA2...> 30/03/2012