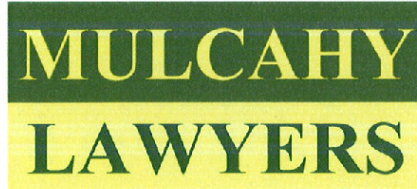


Leanne Harding

From: Tracey Hamilton [hamilton@atlaw.com.au]
Sent: Friday, 12 April 2013 3:23 PM
To: Chris Grant
Subject: Ricky Lau lease community land
Importance: High



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PO BOX 28
LENNOX HEAD
NSW 2478

Andrew Mulcahy
Principal
Public Notary

Tracey Hamilton
LLB
Licensed Conveyancer

Our Ref: ACM TAH
Your Ref: C Grant

12 April 2013

Ballina Shire Council
chrisg@ballina.nsw.gov.au

Dear Chris

PROPOSED LEASE OF COMMUNITY LAND BEING LOT 1 DP781542 TO RICKY TINWO LAU AND LING KWOK

We refer to our letter to you dated 5 March 2013 and you reply of 2 April 2015.

Our client's initial request was for a lease of community land (1/781542) and a lease over council land which we understand is road reserve which is immediately in front of lot 1 in DP781542 and lot 3 in DP525783 for a term of 5 years plus 2 five year options.

We note that public notification for the above has been undertaken.

We have now been instructed by our client that the term of both leases he is requesting be five (5) years with no options.

We await council response/

Yours faithfully
MULCAHY LAWYERS

per:

32 Cedar Crescent
East Ballina NSW 2478

26 April 2013

**The General Manager
Ballina Shire Council
Cnr Cherry & Tamar Streets
Ballina NSW 2478**

RECORDS SCANNED 26 APR 2013 Doc No..... Batch No.....

Dear Sir,

**Re: Proposal to Lease Community Land comprising
Lot 1, DP 781542 at 21 Compton Drive, Ballina,
for a Storage and Cool Room**

I consider that insufficient information has been provided in advertisements (2 off) and a site notice to enable the public to make a reasoned appraisal of the proposal.

I therefore wish to register an objection to the proposal, pending the provision by Council of satisfactory answers to the following questions:

1. What are the permitted usages of Community Land?
2. The adjacent property at Lot 3, DP 525783 appears to be large enough for a self contained restaurant. For what reasons have you assessed that it is legitimate to use Community Land for a storage and cool room to service the restaurant?
3. If relevant, do you consider that an historic misuse of Community Land justifies a continuing misuse? If so, please provide legislative references.
4. No drawings have been provided on the site notice, so that the appearance of the proposed building/s cannot be readily assessed by the public. Does Ballina Council have any obligation to provide such drawings on the site notice?
5. The general amenity of the Shaws Bay Precinct leaves much to be desired and the subject Community Land is currently an eyesore. Has Ballina Council given consideration to alternative uses and/or landscaping of the Community Land to improve the amenity of the area?
6. If the proposal is approved, will there be any requirement for the lessee to provide an aesthetically pleasing structure and to provide and maintain suitable landscaping?
7. A 5 year lease does not appear to be a viable term for the lessee. What are the intentions for the continued use of the land?

I would appreciate a response well before the closing date of 20 May 2013.

Yours sincerely



H T (Bert) Carter

Chris Grant

**Proposed Lease: Community Land Lot 1 DP781542
TRIM: 729**

1 May 2013

Mr H T Carter
32 Cedar Crescent
East Ballina NSW 2478

Dear Mr Carter

**Re: Proposed Lease of Lot 1 DP 781542 at 21 Compton Drive, East Ballina, Being
Council Owned Land Classified as 'Community' Land.**

Thank you for your letter dated 26 April, 2013, in response to the public notice regarding the proposed lease of Lot 1 DP 781542 situate at 21 Compton Drive, East Ballina, being an area of Council land classified as 'community' land under the Local Government Act 1993 (the LGA).

At the outset, I note your contention that the information provided within the public notice was insufficient to enable the public to make a reasoned appraisal of the proposal.

The public notification was published in accordance with S47(1)(a)(b)(c)(d), S47(2) and S47A of the LGA and, pursuant to S47(2), a notice of a proposal to lease community land must include:

- Information sufficient to identify the community land concerned – the real property description (Lot/DP) and street address was included within the notice;
- The purpose for which the land will be used under the proposed lease, licence or other estate - the purpose for the proposed lease area was specified within the notice;
- The term of the proposed lease, licence or other estate (including particulars of any options for renewal) – the proposed lease term was included within the notice;
- The name of the person to whom it is proposed to grant the lease, licence or other estate (if known) – the names of the proposed lessees were included within the notice; and
- A statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice. – a statement in that regard was included within the notice.

Further to the above, the notice also invited enquiries regarding the lease proposal to be directed to me, i.e. should additional information be required.

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Mr H T Carter
1 May 2013

Whilst I note your 'objection' pending the provision by Council of answers to the questions raised by you, and that are satisfactory to you, you are respectfully reminded that where a submission is by way of objection to the leasing proposal, the grounds of objection must be specified in the submission.

In response to your seven questions, you are advised as follows:

1. Community land is used and managed in accordance with, inter alia, the plan of management applying to the land (S35 of the LGA). Council's Principal Generic Plan of Management (PoM) as it applies to Lot 1 DP 781542 identifies the use of the site for a public reserve or general community use land. The Special Provisions contained within Section 6 of the PoM outlines that the scale and intensity of permitted future uses for the site as "same scale as current usage". Further, the PoM references the 'Current Use' of the land as "... the lease area adjoining Shaws Bay Café for its use' (as you may recall, 'Shaws Bay Café' was a former trading name for the restaurant/café located on Lot 3 DP 525783). It should be noted that Council is able to lease areas of community land subject to S46 of the LGA.
2. While the adjoining freehold land, Lot 3 DP 525783, has a land area of approximately 537.5m², the site has significant constraints and is reliant upon existing consents.
3. Lot 1 DP 781542 has an area of approximately 158.1m², and, as you have noted, has previously been leased to owners or lessees of the adjoining restaurant/café. The use of Lot 1 for the proposed purpose is permitted pursuant to the PoM referenced at Point 1, above. It should also be noted that a previous Building Application was approved for a cool room and storage area located on Lot 1 DP 781542. Although part of this building/structure has been demolished, the consent notice can still be relied upon.

For your further information, Lot 1 is bounded by private, freehold, land at the western (rear) and northern side, and public road reserve on the eastern and southern boundaries. Council does not accept your proposition that the proposed lease of Lot 1 is a 'misuse' of this small pocket of land.

4. The public notification provisions for the proposed lease of an area of community land are as previously advised. Those provisions do not include an obligation to include drawings or plans of the proposed development upon the land should the lease be granted.

Furthermore, Council is not as yet in possession of any drawings or plans from the applicant. However, it is understood that the proposed cool room and storage area will be similar in size to the cool room and storage area that was demolished or otherwise relocated from the site in 2012 (occupying approximately 27.4m² of the site, or some 17.33% of the total 158.1m² land area).

5. While your comments are noted, the proposed use of the 158.1m² site is permissible pursuant to the PoM as referenced at Point 1, above. Maintenance of the site will be a requirement of the lease, if granted.
6. Matters regarding the design of the proposed cool room and storage area, and landscaping requirements, will be addressed within the development application and

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Mr H T Carter
1 May 2013

the assessment process. However, as outlined at Point 3 above, the applicant may rely upon the previous Building Application applying to Lot 1 (subject to landowners consent). If that occurs, the applicant would need to construct the cool room and storage area in accordance with the approved plans and conditions.

7. The application before Council is for a lease term of 5 years.

I trust the above information satisfactorily answers your questions, and helps address or otherwise allay any concerns you may have.

If you have any further enquiries in regard to this matter please do not hesitate to contact me on 66861224.

Yours faithfully

Chris Grant
Property Manager
General Manager's Group

32 Cedar Crescent
East Ballina NSW 2478

¹³
~~10~~ May 2013

**The General Manager
Ballina Shire Council
Cnr Cherry & Tamar Streets
Ballina NSW 2478
Attention: Chris Grant**

RECORDS SCANNED 14 MAY 2013 Doc No..... Batch No.....

Dear Sir,

**Re: Proposal to Lease Community Land comprising
Lot I, DP 781542 at 21 Compton Drive, Ballina,
for a Storage and Cool Room**

Thank you for your informative letter dated 1 May 2013, written in response to my letter dated 26 April 2013.

I wish to object to the proposal for the following reasons:

1. The proposed use of the land does not comply with the permitted use as stated in Council's Plan of Management, which you have advised is "public reserve or community use".
2. You have indicated that you consider the proposal complies because of the precedent set by the previous Building Approval. However, you have not indicated if the previous Building Approval complied with the then current regulations. In view of the current permitted use, previous compliance appears to be unlikely, therefore the precedent argument may not be valid. Note that other local previous approvals do not indicate previous compliances, e.g., the many level residence at 31 Compton Drive and the three-story blocks of residential units in Range Street adjacent to Shaws Bay Hotel.
3. No drawings have been provided on the site notice showing the proposed buildings, other uses and landscaping. Further, such details were not submitted with the Development Application, as advised by you. This appears to be quite irregular.
4. The high profile nature of the site requires special aesthetic attention.
5. It is most likely that a further lease will be applied for. Approval of the proposal would consolidate the precedent argument which, as stated above, may not be valid.

Yours sincerely



H-T (Bert) Carter