

Planning Resolutions

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Coffs Harbour

General Manager
Ballina Shire Council
PO Box 450
Ballina 2478

Attn Matt Wood

Dear Paul,

Re: Cumbalum Precinct B –Easement for Sewage Infrastructure

I refer to my meeting with Council's Development Manager, Andrew Smith on 4 March 2016. One of the issues discussed was the continuing inability for the Cumbalum Precinct B proponents to obtain a sewer easement for connection of the sewer to through Cumbalum Precinct A. I have been advised by Mr Smith to again ask for Council's assistance. Attached in Appendix A is a chronology of events over the past six years trying to obtain a sewer easement from the Cumbalum Precinct A proponents.

Since 31 January 2014 the landowners of Cumbalum Precinct A have consistently indicated their willingness to provide an easement for the sewer connection but to no avail. In early 2016 negotiations between the proponents resulted in Cumbalum Precinct B proponents preparing a *CURA A and B Combine Sewer Strategy* that was acceptable to the proponents of Cumbalum Precinct A. This resulted in a letter dated 28 September 2016 from Intrapac Properties solicitors, Holding Redlich, to Richard Walsh (Cumbalum B Proponent) stating that they had been *instructed to confirm their agreement to provide an easement for sewer purposes*. A copy of the letter is included in Appendix B. Despite this letter Intrapac Properties has not been willing to provide the required landowners' consent for the lodgement of the sewer connection development application.

The proponents of Cumbalum Precinct B signed their Voluntary Planning Agreement on the clear understanding that the provision of the sewer connection for Cumbalum Precinct B would be achieved by a special clause in the Cumbalum Precinct A Voluntary Planning Agreement; this did not eventuate. An extract of the draft Cumbalum Precinct A VPA is attached in Appendix C.

Cumbalum Precinct B proponents have used their best endeavours over a period of nearly six years to obtain the necessary sewer easement. The proponents of Cumbalum Precinct A continue to stall and frustrate the process.

Again, Cumbalum Precinct B proponents ask that Council use its acquisition powers to acquire the sewer easement. Cumbalum Precinct B proponents understand that

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they will be required to pay all costs associated with securing the sewer easement (such as acquisition costs, valuations, administration etc).

Should you require any clarification of the above information please contact me on 0437859959.



Yours faithfully
Chris Pratt
Planning Resolutions
27 March 2019



Letter from Planning Resolutions re Cumbalum Precinct B Sewer Easement

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APPENDIX A**Chronology of events relating to Cumbalum Precinct B sewer connection**

- August 2012 - The issue of the required sewer easement to connect Cumbalum Precinct B (Cumbalum B) had been raised in correspondence and discussions in the formulation of the Voluntary Planning Agreement (VPA). The provision of the sewer connection was promised via a clause in the Cumbalum Precinct A (Cumbalum A) VPA. A copy of the clause in the draft VPA for Cumbalum A was provided by Council. Subsequently Council did not force Cumbalum A proponents to sign the Voluntary Planning Agreement.
- 6 September 2012 – Letter from Council attaching the final Draft VPA. Council advised in part:

In relation to your request for the Council to compulsorily acquire easements and land for infrastructure, Council has received legal advice that such obligations on the Council should not be incorporated in the VPA but instead be set out in a side agreement. Consequently, a side agreement is being drafted which will provide a commitment that the Council will utilise its compulsory acquisition powers to secure necessary infrastructure easements and land dedications to facilitate the development of the land, but only after being provided with written evidence to the satisfaction of the General Manager that the landowner has used its best endeavours to obtain the easements and land but have not been able to do so. Please note this side agreement will also obligate the developer to pay all costs associated with securing the easements and land dedications (such as acquisition costs, valuations, administration etc).
- November 2012 – Council provides Cumbalum B proponents with the acquisition agreement prepared by Lindsay Taylor Lawyers.
- 3 April 2013 – Initial letter from Northern Rivers Surveying (representing Cumbalum B proponents) sent to Ardill Payne and Partners (representing Cumbalum A proponents) following up on initial discussions. The letter sought initial landowner agreement for the sewer easement and access to the land to fully investigate the sewer alignment.
- 2 May 2013 – Meeting between Steve Connelly of Planners North (representing Cumbalum A proponents) and Tony Hart of Northern Rivers Surveying and Chris Pratt of Planning Resolutions (representing Cumbalum B proponents) to discuss the sewer easement.
- 8 May 2013 – Letter of response from Ardill Payne and Partners advising; *our clients have advised that they will not consent to the proposed sewer alignment as it crosses proposed residential land and proposes to use sewer capacity currently constructed for CURA A.*
- 29 May 2013 – Legal advice obtained from MY Lawyers that it isn't legally possible for the Cumbalum B proponents to attempt to acquire the sewer easement as required by acquisition agreement prepared by Lindsay Taylor Lawyers.

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Letter from Planning Resolutions re Cumbalum Precinct B Sewer Easement

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- 30 May 2013 - Legal advice from MY Lawyers provided to Council with a request for a meeting.
- 2 July 2013 - Meeting Paul Hickey, John Truman, and Chris Pratt (Planning Resolutions) at Council to discuss the draft acquisition agreement.
- 8 July 2013 – Letter from Council (Ref: 13/37090 (1179-02)) confirming the discussion of 2 July 2013 and advising that:

...Council would initially write to the CURA A owners in an attempt to reach agreement on the acquisition of the easement for the sewage infrastructure. I enclose a copy of that correspondence for your information. If over the next few weeks we are not able to reach agreement then it will be necessary to forward the matter to Council to determine the elected Council's position on this issue. I am hopeful we can reach agreement rather than considering legal action and any actions you can take to assist in reaching this agreement would be greatly appreciated.
- 8 November 2013 – Meeting John Truman, Andrew Wells (WGM – now Planit Engineering), Bill Payne (Ardill Payne and Associates) and Chris Pratt (Planning Resolutions) at Council.
- 2 December 2013 - Letter from Council to both Cumbalum Precinct A and B (Ref: 13/76673) clarifying issues raised at 8 November meeting.
- 31 January 2014 – Letter from Ardill Payne to Planning Resolutions advising that Precinct A landowners “are amenable to the granting of an easement for sewerage infrastructure”.
- 15 July 2014 - Meeting to discuss preferred routes between Richard Walsh (Cumbulam B proponent)/ Chris Pratt (Planning Resolutions) and Precinct A landowners and representatives at Ardill Payne & Partners.
- 26 August 2014 – Further meeting to discuss preferred routes between Richard Walsh/ Chris Pratt and Precinct A landowners and representatives at Ardill Payne & Partners.
- 1 June 2015 - WGM sewer strategy and Ecological Assessment report in relation to the planned sewer line provided to Planners North.
- 4 June 2015 – Meeting between Andrew Wells (WGM)/ Chris Pratt and Steve Connelly (Planners North) and Bill Knobel (Intrapac) at Planners North.
- 15 July 2015 – An altered Ecological Assessment report provided to Planners North as requested by them.
- 15 September 2015 – Meeting re ecological concerns between ecologists James Warren (Cumbulam A) and Ian Colvin (Cumbalum B). Facilitated by Steve Connelly of Planners North.
- 15 September 2015 – Letter from Planners North to Planning Resolutions outlining ecological concerns raised at the above meeting.
- 22 October 2015 – Letter from Planning Resolutions to Planners North advising that the Ecological Assessment report had been further altered to clarify the intended impacts. A link to a copy of the completed development application was also provided together with a further formal request seeking landowners’ consent from the relevant Cumbalum A landowners for the lodgement of this development application.

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Letter from Planning Resolutions re Cumbalum Precinct B Sewer Easement

- 25 November 2015 - Letter from Planners North to Planning Resolutions again seeking a route that integrates with Precinct A sewer network.
- 7 January 2016 – A development application is lodged with Ballina Shire Council for the sewer connection from Cumbalum B through Cumbalum A. This was lodged with the thought that landowners’ consent from the Cumbalum A was likely soon.
- 14 January 2014 – Letter from Council returning the development application and advising that:

As consent of each property owner has not been provided in this instance, the Development Application Form and accompanying cheque are returned to you.
- 22 February 2016 - Meeting between Cumbalum A, Cumbalum B and Council staff. Council advised that they would now accept the CURA A proposal whereby the CURA B connection would be integrated with CURA A sewer system.
- 25 February 2016 - Andrew Wells (WGM) and Bill Knobel (Intrapac) meet to discuss a joint sewerage scheme.
- 14 April 2016 – Letter from Planning Resolutions to Council requesting that Council intervene in regard to the planning of the sewer and stormwater infrastructure for the development of Cumbalum A and B.
- 16 May 2016 – Council considers the request from Planning Resolutions at the ordinary Council meeting. Council resolves:

260516/4 RESOLVED

(Cr Susan Meehan/Cr Robyn Hordern)

1. *That Council notes the contents of the letter from its legal advisors, Allens, sent to David Hunter Law, as per the attachments to this report.*
 2. *That Council note the applicant has been invited to respond to a request for information in respect of their storm water management plan prior to Council’s determination of the development application.*
 3. *That for the reasons outlined in this report Council decline the requests in the attached Planning Resolutions letter, to take further action in respect of the planning of stormwater and sewer infrastructure in response to the current development application.*
- 30 June 2016 – The final agreed *CURA A and B Combine Sewer Strategy* is provided to Bill Knobel (Intrapac) with a request for landowners’ authorities to enable lodgement of the sewer connection development application.
 - 6 July 2016 - Bill Knobel (Intrapac) emails the *CURA A and B Combine Sewer Strategy* to Council seeking Council agreement to the strategy.
 - 2 September 2016 – Council provides comments on the *CURA A and B Combine Sewer Strategy*. Council accepts the strategy subject to some minor technical adjustments.
 - 28 September 2016 – Letter from Intrapac solicitors, Holding Redlich, to Richard Walsh (Cumbalum B Proponent) stating that:

As you know, we represent Intrapac Properties.

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Letter from Planning Resolutions re Cumbalum Precinct B Sewer Easement

I am instructed to confirm their agreement to provide an easement for sewer purposes to benefit your land (CURA B), and burden our client's land (CURA A), namely Lot 2 in DP1171927, Lots 2 and 3 in DP823662, Lot 150 in DP755684 and Lot 418 in DP1215902 and Ballina Shire Council consistent with the CURA A and B Combine Sewer Strategy and plan attached.

- 23 February 2018 – Revised development application for Cumbalum B sewer connection lodged with Ballina Shire Council.
- 7 March 2018 – Council rejects the second development application lodgement. Council's letter states in part:

Despite your legal advice from Swaab Attorneys, Council considers there to be significant uncertainty as to when consent of the relevant land owners will be provided (given that there are multiple land owners affected and the consent of these land owners still has not been obtained since you last attempted to lodge this application in January 2016). Accordingly, your documentation is returned to enable you to compose a complete application for subsequent lodgement.

APPENDIX B

Letter from Intrapac Properties' lawyers agreeing to provide a sewer easement

Letter from Planning Resolutions re Cumbalum Precinct B Sewer Easement

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28 September 2016

Mr R Walsh
65 Scanlan Lane
LENNOX HEAD NSW 2478

Partner Gerard Timbs
Direct Line (07) 3135 0644
Email gerard.timbs@holdingredlich.com
Our Ref GNT 16260036

By email: rmw21@bigpond.com

Dear Richard

Intrapac - Easement

As you know, we represent Intrapac Properties.

I am instructed to confirm their agreement to provide an easement for sewer purposes to benefit your land (CURA B), and burden our client's land (CURA A), namely Lot 2 in DP1171927, Lots 2 and 3 in DP823662, Lot 150 in DP755684 and Lot 418 in DP1215902 and Ballina Shire Council consistent with the CURA A and B Combine Sewer Strategy and plan **attached**.

Yours sincerely

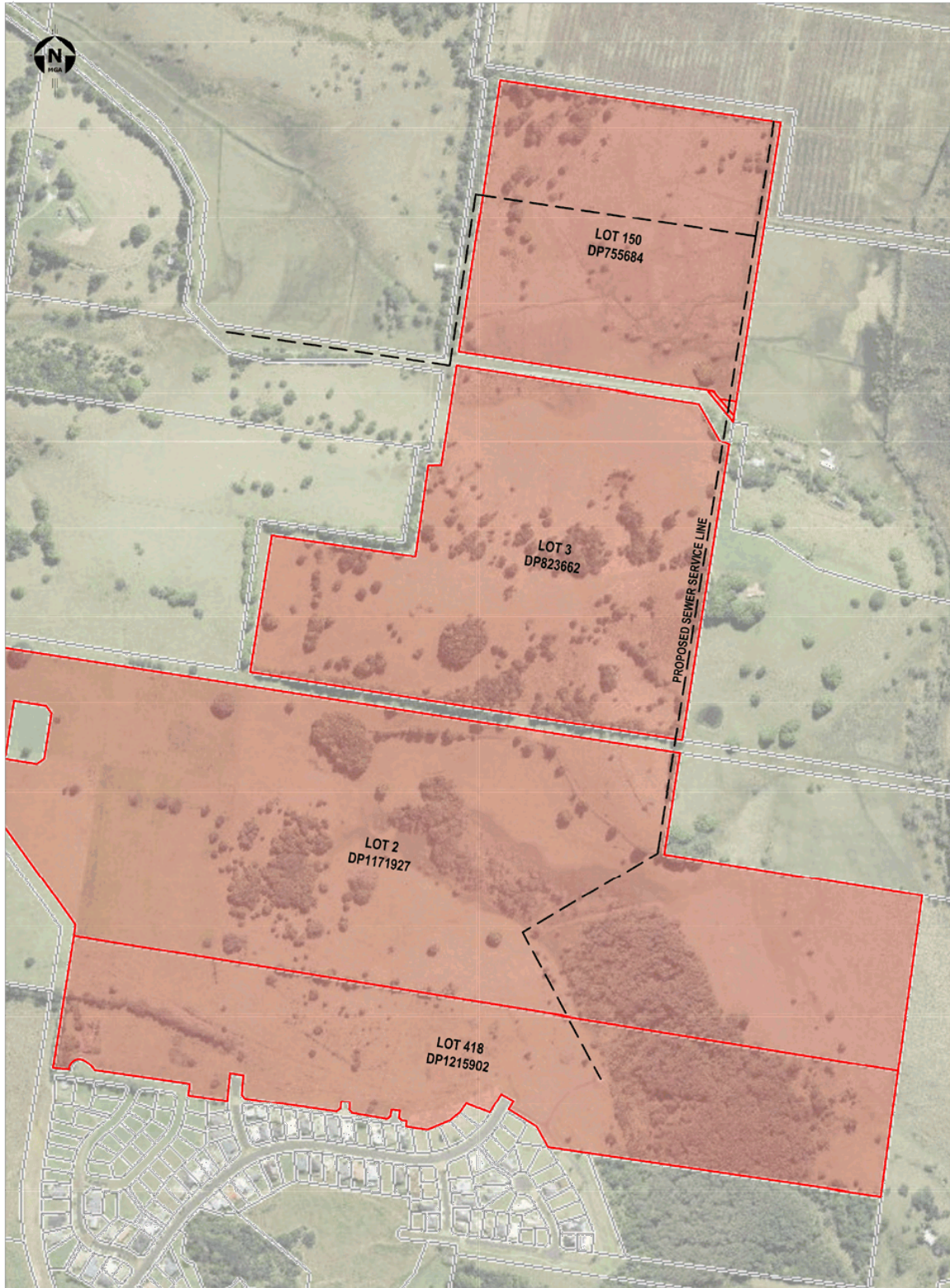
A handwritten signature in black ink, appearing to read 'Gerard Timbs', written in a cursive style.

GERARD TIMBS

Copy to: Tony Hart
tony.hart@nrls.com.au

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0.0001001 4 CMF



SCALE: 1:5000 (A3)
 SURVEYOR: APH
 DRAWN: azc/cad
 DATE: 20th SEP '16
 CAD REF: 12001-12

PROJECT: CURA A & B COMBINED SEWER
 SERVICING STRATEGY
 LGA: BALLINA
 SOURCE: AERIAL- SIX

**PLAN SHOWING PROPERTIES DETAILS
 FOR PROPOSED SEWER CORRIDOR
 CUMBALUM**

(BORDER AND SERVICE LINE ARE APPROXIMATE) **ISSUE: A**

APPENDIX C

Extract of Draft Cumbalum Precinct A VPA

Letter from Planning Resolutions re Cumbalum Precinct B Sewer Easement

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Premit A VPA

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14. Sewerage trunk main easements	Sewerage management	6 is located. Creation of a minimum 3m wide easement (subject to asset size & depth) in favour of the Council registered on the title to the land on which Item 7 is, or is to be, located.	Within 90 days of the completion of Item 7, or upon receipt of a written request from the Council for the dedication of land for the purpose of a sewerage easement, whichever occurs first.	<ul style="list-style-type: none"> • Lot 20 DP 1022777, • Lot 18 DP 1022777, • Lot 2 DP 1171927, • Lot 3 DP 517149, • Lot 3 DP 823662, and • Lot 284 DP 1141745.
15. Sewerage pump stations	Sewerage management	Dedication of land on which Item 7 (pump stations) is, or is to be, located. Where development is staged, temporary easements for access and electricity are to be provided, where required by the Council.	Within 90 days of the completion of Item 7, or upon receipt of a written request from the Council for the dedication of land for the purpose of a sewerage pump stations, whichever occurs first.	<p>Landowner of:</p> <ul style="list-style-type: none"> • Lot 150 DP 755684, • Lot 20 DP 1022777, • Lot 3 DP 517149, • Lot 2 DP 1171927, • Lot 3 DP 823662, and • Lot 284 DP 1141745. <p>Landowner of:</p> <ul style="list-style-type: none"> • Lot 150 DP 755684, • Lot 20 DP 1022777, • Lot 2 DP 1171927, • Lot 3 DP 517149, and • Lot 284 DP 1141745.
16. Recycled water supply main easement	Water supply management	Creation of a minimum 3m wide easement (subject to asset size & depth) in favour of the Council as shown on the Map.	Within 90 days of the receipt of a written request from the Council for the creation of an easement for recycled water mains.	<p>Landowner of:</p> <ul style="list-style-type: none"> • Lot 150 DP 755684, • Lot 333 DP 755684, • Lot 20 DP 1022777, • Lot 18 DP 1022777, • Lot 2 DP 1171927, • Lot 3 DP 517149, • Lot 3 DP 823662, and • Lot 284 DP 1141745.
Monetary Contribution 17. Monetary Contribution	Various	\$21,169 per hectare of the Net Developable Area to be paid to the Council and applied towards the following public purposes in the following proportions:	Immediately prior to the issue of the Subdivision Certificate for the creation of Final Lots in per hectare contributions of \$21,169.	A Landowner that applies for a Subdivision Certificate referred to in Column 4.

12/31057