

Byron Shire Council

Modification of DA 10.2018.384.1 PAN-208241

Attention: Mr. Ivan Holland

Dear Ivan,

Firstly, we want to convey our thoughts and best wishes and acknowledge the enormous challenges the communities of Mullumbimby, Main Arm and surrounding areas of the Byron Shire are currently facing in the midst of these terrible floods. We hope you and your family are doing well.

With regard to our above mentioned DA, we would like to seek Council's approval for a modification to our stage 2, DA condition 14 "Legal access to property".

As you are aware, we have owned our property for almost 4 years and although the previous owners did occupy the unapproved dual occupancy after it was built in 2007, Jill and I have diligently followed Council's protocols and rules, ensuring the dual occupancy not be occupied until DA approval is granted.

We would like to thank Council and its Councillors for approving our DA back on 16th April, 2020. Though we have this approval, we have been unable to progress our Stage 2 dual occupancy to the Occupancy Stage due to delays in achieving a resolution to Condition 14, "legal access to property".

We can report we have made good progress with condition 14, resolving 2 out of the 3 legal access requirements, those being Lot 1 DP 445771 and Lot 7 DP591828. Copies of the new Rights of Carriageway for these Lots have since been submitted to Council.

The one outstanding matter is to resolve our property access through Lot 3 DP558858 by ensuring the road is wholly contained within our legal Right of Carriageway. Council has confirmed we do enjoy a legal Right of Carriageway to the public road through all 3 Lots, including Lot 3 DP558858, confirming we do have legal access to our property on Title.

As advised previously, we continue to work with the property owners of Lot 3 DP558858 to find a resolution to this matter and have the benefit of a legal team marshalled for this purpose.

Given that a resolution of the right of carriageway issue will take some time (either resolved by negotiation/agreement or by Court proceedings), to expedite our dual occupancy to completion, we ask if Council would approve a modification allowing us more time to satisfy condition 14. This would provide us the opportunity to carry out the works on the dual occupancy, obtain an Occupation Certificate and therefore make the dwelling liveable and insurable.

We note our neighbour's Lot 1 DP405191, DA 10.2001.349.1, was only recently reviewed on 21st November 2021, granting a timeframe of 5 years to resolve exactly the same legal road access that is standing in the way of us progressing.

The neighbour at Lot 1, DP405191 has had his conditions modified “and a 5-year timeframe be allowed for the satisfaction of his (legal access) requirement (rather than prior to the issue of an occupation certificate)”. This enables our neighbour a reasonable timeframe to carry out the required work on his home and to obtain an Occupation Certificate. There is no reason why Council would not approve a modification of our development consent in the same terms.

We are confident that the access issues can be resolved with Lot 3 DP558858 either by agreement or by Court determination. We also know Council are aware of the solid options available to us for resolving the matter and we are working with the owners of Lot 3 DP 558858 to finalise this matter.

*Proposed change to Condition 14:
Legal Access to Property NO LONGER REQUIRED PRIOR to issue of a
Construction Certificate for Stage 2 Building Works and Occupation
Certificate.*

Sufficient evidence is to be provided to demonstrate that the property access road through Lot 3 DP558858 is wholly contained within a legal right of carriageway with any redundant rights of carriageway /easements extinguished by 1 April 2027.

*Such evidence must include, but not limited to:
An updated survey of the access road that shows the access and any further widening wholly within suitable rights of carriageway under the Conveyancing Act 1919; and
A copy of the registered rights of carriageway and a title search of the affected Lots.*

By allowing the above modification to our DA, as with our neighbour, Lot 1 DP405191, DA 10.2001.349.3, there will be many benefits to the neighbourhood.

- Providing additional and very much needed accommodation.
- We would implement the Stage 2 RFS conditions on their advice DA-2018-03006-CL55-1 for the entire development making it safer for everyone on Coopers Lane West. These conditions include, creating Asset Protection Zone for dual occupancy, installing 40,000 litres of domestic water + 10,000 litres of water dedicated to fire fighting and installation of fire suppression pump.
- Implementation of RFS Turning Head adjacent to the 10,000 litre water supply. (Although the turning head was designed and approved for the dual occupancy, we have already implemented this but yet to implement the dedicated firefighting water supply as part of the dual occupancy build.)
- Dual Occupancy upgrade to comply with RFS requirements to BAL 29 Australian Standards for bush fire prone areas. The dual occupancy as it stands today does not meet BAL29 conditions and poses a potential bush fire risk.
- As per Condition 15, road widening & sealing would be undertaken prior to occupation.

Other issues that will be addressed.

- The current roof will be replaced with a new lower roof line to satisfy the complaints from our neighbour at Lot 1 DP405191.
- Building and Public Liability Insurance can be taken out once there is an Occupation Certificate which will be a big relief to us. At present we are unable to obtain any insurance.
- Implementation of Onsite Sewerage Management System as approved 70.2018.1077.1
- Building Information Certificate to meet the Building Code of Australia.
- Vegetation and screening put in place.

We know there are major housing and accommodation shortages in the area, which has now worsened tremendously since the major flooding events. Surely, by allowing this modification to condition 14, it makes very good sense to allow the completion of such buildings works to provide additional housing. It is regrettable that a 15 year old 2 bedroom cottage, once occupied by previous owners, is sitting empty, close to legal occupation except for a previously unknown issue with the access road which has been in constant use for at least 65 years.

This modification application is clearly of minimal environmental impact and Council can be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted:

- The relevant access road remains in constant use by a wide variety of benefitting property owners.
- The dual occupancy development is already the subject of approval and there is no proposed change to that approved use.
- The modification simply alters the timing of satisfaction of one condition in the development; the development remains the same as what was and is approved.

We look forward to your response. Kind regards,
Wayne & Jill Weisse
183 Coopers Lane West, Main Arm

Attached:

Letter from Mr Ivan Holland, BSC confirming we enjoy a Right of Way 21 April 2021
Email from Land Registry Services Mr Gavin Bartier confirming our Right of Carriageway 6th August 2021



Mr W S Weisse
183 Coopers Lane West
MAIN ARM NSW 2482

21 April 2021

Email: waynew59@gmail.com

Dear Mr Weisse

DA No. 10.2018.384.2
Applicant: S4.55 to Correct Conditions to be Consistent with those Approved by Council
Parcel No. 181870
Property LOT: 2 DP: 445771
Address: 183 Coopers Lane West MAIN ARM

Right of carriageway - rectification of anomalies

I refer to the development application described above and your email of 23 March 2021.

Based on a review of the information provided, Council is able to confirm that the anomaly referred to in our letter of 9 March 2021 has been addressed, the error corrected by Land Registry Services and that Lot 2 DP 445771 enjoys the benefit a registered right of way from the property to Coopers West Lane.

Yours sincerely

Mr IC Holland
Senior Planner

CC: Luke Spooner, Building Certifier



TRADITIONAL HOME OF
THE BUNDJALUNG PEOPLE

ALL COMMUNICATIONS TO BE
ADDRESSED TO THE GENERAL MANAGER
PO Box 219 Mullumbimby NSW 2482 (70-90 Station Street)
E: council@byron.nsw.gov.au
P: 02 6626 7000 F: 02 6684 3018
www.byron.nsw.gov.au ABN: 14 472 131 473

Jill Weisse

From: Gavin Bartier <Gavin.Bartier@nswlrs.com.au>
Sent: Friday, August 6, 2021 4:31 PM
To: jillw@bigpond.net.au; waynew59@gmail.com
Subject: Right of Carriageway

Dear Jill,

Thank you for your email

I have reviewed your email and the correction made to the register by the amendment action earlier this year and reply as follows:

1. The Registrar General correctly recoded the right of carriageway created by H629559 and on registration the principles of indefeasibility applied to this easement
2. I confirm a right of carraigeway was vaildily created in favour of your land (Folio of the Register 2/445771) over Folio of the Register 3/558858
3. The amendment undertaken by NSW LRS to refer to Volume 8399 folio 84 merely updated the reference to the site of the right of carriageway. This update in no way altered or changed the original grant of right of carriageway in dealing H629559

I trust my response will assit you

Reagrds

Gavin Bartier

Head Of Legal Registry Services

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