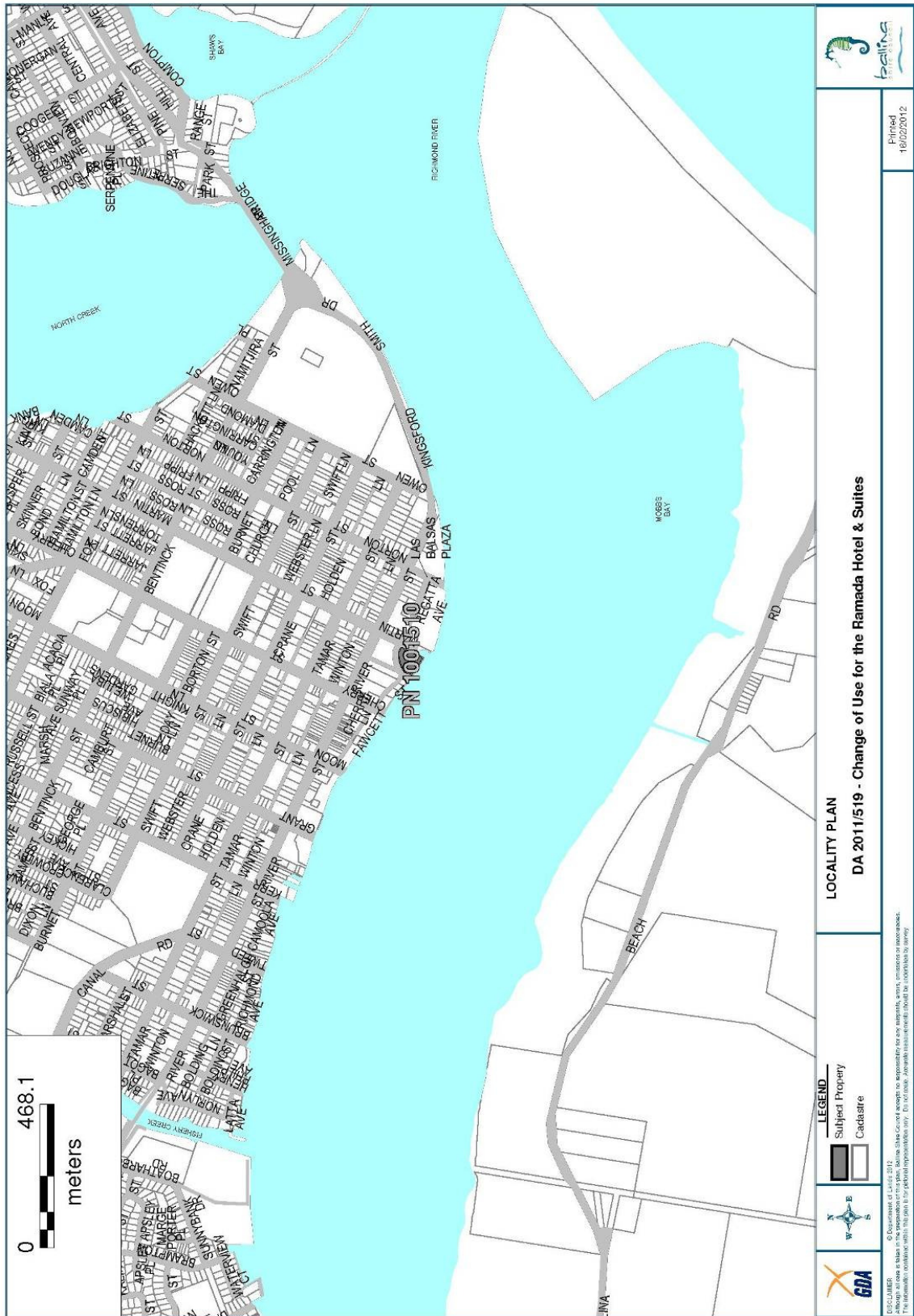


8.2 **DA 2011/519 - 'Ramada', Martin Street, Ballina**



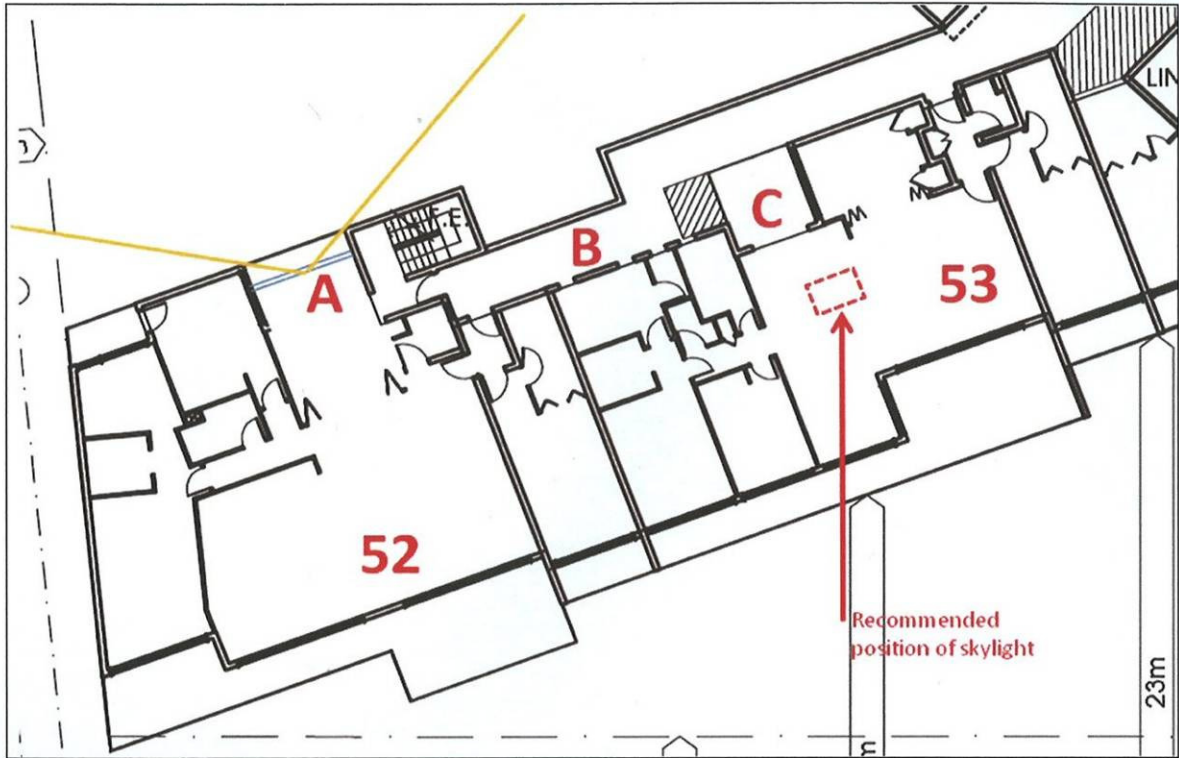


Figure 1: Plan Lots 52 & 53



Figure 2: Photograph of north façade
Showing glazing referred to in the text



14th February 2012

General Manager
Ballina Shire Council
P. O Box 450
Ballina NSW 2478

Attn: Bob Thornton
Via E-Mail: bobt@ballina.nsw.gov.au

Dear Sir

**Re: DA 2011/519 Proposed Change of Use Lots 52 & 53 Ramada Hotel
2 Martin Street Ballina**

Further to our letter dated 10th February 2012, Ballina Booking Service Pty Ltd (BBS) submits additional and more comprehensive comments in objection to the above DA.

It is worth noting at the outset, that our specialist strata property lawyer in Sydney, who deals with disputes in strata title properties, has strongly advised us that from his experience having residential lots in a Hotel, such as the Ramada, will be "a Cancer in the building".

Listed below are some of the more important points we wish to make in relation to this DA:

1. Precedent

As we mentioned in our letter dated 10th February 2012 approval of this DA will be seen as setting precedence.

No matter what is said to placate Council at this time, there appears to be nothing to prevent others and perhaps all of the Lots in this Hotel using the decision as a precedent. These Lots have been subject to being part of a previous DA that was unanimously rejected by Council whose decision was overwhelmingly supported by the Land and Environment Court. Despite this, and the huge cost to ratepayers, the same applicant appears again presumably looking to set a precedent. Clearly the plan is to get this decision through council and then lodge another DA to apply

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for other lots in the Ramada Hotel to be approved as residential use. There is absolutely no doubt this current application is **"the thin end of the wedge"**.

2. Ballina Shire Plans

It's stating the obvious that the proposed DA is inconsistent with the standards of Ballina Shire Combined Development Control Chapter 1 - Urban Lands, and Chapter 2 - Ballina Town Centre, and is inconsistent with the objectives of Ballina Environmental Plan 1987 and is prohibited under the Draft Ballina LEP 2010.

3. Public Interest

Clearly the proposed DA is contrary to the Public Interest. There is no way anyone can successfully argue this change would be in the public interest.

4. Investment to date

It takes time, effort and lots of capital for a large new hotel to become established in the market. Despite continual interference from the Developer, Ramada Ballina is becoming a well-known, high service hotel. It will not help if Council gives encouragement to Connolly to continue his campaign to change the use of the hotel. We have all been through this very expensive process already.

It would make a mockery of Council's programmes to develop business within the Shire at this difficult time, if they allow 4 of the most popular tourist accommodation facilities to convert to Private Residential.

5. High Demand

Despite the worst tourist conditions since the pilot strike, these Lots earned a total of \$143,000 in FY 2009, \$154,000 in FY 2010, and \$173,000 last year FY 2011. These Lots accommodated 800 visitor nights last year. Most of these will be lost to Byron Bay and our hard work of the last 4 years will be lost to Ballina. Conversion will take about 1,600 visitor nights off the market. \$173,000 per annum, times an economic multiplier of say 6, **accounts for over \$1.0m in revenue out of the Ballina economy.**

The Penthouses are an important part of the Hotel offering. The Penthouse Suites attract celebrities. Commonwealth Ministers, world renowned entertainers, TV

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personalities and TV and Film Crews have all based themselves at Ramada Ballina. The “boss” stays in the Penthouse and the Hotel picks up multiple room bookings as a result.

6. The proposed DA is incompatible with the Ministerial Approval

The Assessment Report prepared for the Minister states that the development is important in the development of Ballina as a strong and viable tourist destination. It will:

- Provide accommodation which will enhance Ballina as a destination for tourists
- Attract tourists which will support business and other flow-on effects to the local community
- Attract tourists which will increase the use of the regional airport and maintain its viability
- Provide training and employment opportunities
- Provide significant long term benefit to the local community

Administrative Conditions - Condition A7 - **The development is to remain for short term temporary accommodation.**

All lots are burdened with a restriction of use pursuant to Section 88B of the Conveyance Act 1919.

7. Changes to the Hotel profile

The loss of the penthouse suites will require significant changes to the profile of the Hotel on many internet sites and in the Ramada International records and publications. All of which are a detriment to Ballina and come at a cost.

8. Access and Conflicts

Permanent residents and tourists do not mix. There is no one to police a dispute. The Owners Corporation is not resident and the Manager would have no jurisdiction over private residents. A separate entrance and lift will be the minimum requirement to avoid conflict. The Courts are not a practical solution to conflicts. Who is going to manage the visitors to the residents if this becomes necessary?

The applicant has conceded that there will be **Conflict** between Residents and guests. Residents are less tolerant of noise and are likely to complain. The manager has no control over Residents and their guests. Police may have to act as

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the controller unless Council wish to. It is too messy no matter the good intentions of the Applicants, both of whom wish to sell to unknown parties.

There is no record of Residential and International standard hotels working in the proposed manner. It is seen to work superficially with some Gold Coast properties, but these are serviced apartments where guests are incidental and Standards of service are lower than the international standard provided by the Ramada Ballina.

9. Trip generation and car parking

The DA provides insufficient information to enable an informed assessment of the manner in which the proposed change of use will impact trip generation and car parking demands of occupants and their visitors previously calculated for and experienced by, the current use of the premises.

10. Review of the Strata 79299 By Laws

10.1 Noise and Behaviour of owners and occupiers.

All current By-laws have been drafted on the assumption that the Complex is to operate as a Hotel. Any change would trigger a complete review.

Noise

[By-Law 4.02(a)] [By-Law 4.02(a)]An owner or occupier of a Lot must not make noise in a way that might unreasonably interfere with another owner's or occupier's use and enjoyment of their Lot or the common property. This is currently policed by the Manager who would have no control over residential Lots.

Behaviour of owners and occupiers

[By-Laws 4.02(b) and 4.03]An owner or occupier of a Lot when on common property must be adequately clothed and must not use language or behave in a manner likely to cause offence or embarrassment to the owner or occupier of another Lot or to their visitors. Behaviour of invitees: [By-Law 5] An owner or occupier of a Lot must ensure their visitors comply with the By-Laws and leave the Hotel if they fail to comply with the By-Laws. Owners and occupiers must take reasonable care about who they invite into the Hotel.

Based on the Riverside Apartments experience, in order for BBS to control this matter on a long term basis, management will have to provide a unit for a Resident Manager within the complex and future Owners will have to agree to the Manager having authority. This may be totally impractical. The existing Night Receptionist

cannot leave the reception desk to deal with issues as the reception area and equipment cannot be locked. Consideration has to be given to the cost associated with employing a Resident Manager and securing the reception desk.

10.2 Children playing on common property in building

[By-Laws 4.02(g) and (h)] An owner or occupier of a Lot must not permit any child under the age of 12 in their care to play on common property inside the building or, unless accompanied by an adult exercising effective control, to be or to remain on common property comprising a car parking area, swimming pool or other area of possible danger or hazard to children.

This needs to be addressed. Based on the management's experience with certain Owners grand children at Riverside this can be a difficult problem to address.

10.3 Disposal of garbage

[By-Law 15]An owner or occupier of a Lot must wrap and dispose of all household garbage into receptacles kept on the common property and must sort recyclables in accordance with the requirements of the Owners Corporation and Ballina Shire Council.

BSC Residents have 3 waste disposal bins into which to sort waste.

This is of major concern to the management as to how and where. Will residents have access to back of house areas which are currently denied to guests and Owners to access loading dock; will wheelie bins be available for each resident? Where will these be stored? Who will bear the cost of public liability insurance etc.

10.4 Parking

[By-Law 16] An owner or occupier of a Lot may not park in any visitors' carparking spaces and acknowledges that all spaces on level 1 must be made available to visitors to the Hotel during normal business hours. In addition, car parking spaces forming part of a Residential Lot must be made available to any visitor to the Hotel and the Owners Corporation has an obligation to have parking at the Hotel managed in accordance with the Car Parking Plan.

A new car-parking plan may be required as the current plan which works so well has been designed for Hotel Guests where the Manager has ultimate control.

Car parking for residents and their visitors will be an extremely difficult issue for management to control. Again as experienced at Riverside, Residents may barricade and chain their parking spots. Residents and their visitors also use the visitor's spots. Policing this becomes a major problem under the proposed DA.

10.5 Duties of the Manager as Caretaker - *Onsite Management*

The parties acknowledge that under the Caretaking and Management Contract the Manager must manage the common property.

The fees received by the manager under the Caretaking Contract cater for a Short Term Holiday Letting property only. As we are all aware residents are significantly more demanding of managers services. The Caretaking Fee will have to be reviewed to ensure that the management can deliver the additional services.

Each Owners Unit Entitlement has been calculated by reference to the values of each lot. The proposed Change of use may add value to the subject Lots. Our advice is that this would trigger a dispute between the proposed residents and other Owners. This in turn may set in train a costly and lengthy court application for equity to be restored.

10.6 *Disposal of garbage into suitable receptacles on the common property.*

Discussion required re access to loading dock and storage and availability of Wheelie Bins. There has been no provision for extra storage or access.

10.7. *The behaviour or residents and that of their visitors and, in particular, that noise or offensive conduct is not allowed disturbing other Lot owners or occupiers.*

It has to be noted that The Point holds a Liquor License over the whole building. Therefore whose legal responsibility is noise or offensive conduct by intoxicated residents and their guests. Does the manager or The Point have authority over an intoxicated resident? Or does this become a police matter? If police have to be called it is not a good look for Guests who are visitors to our Shire.

11. The supervision and control of children under 12 in the Hotel

Is this a Legal/Insurance liability for BBS or the Owners Corporation?

12. Provide 24 hour on-site management of the Hotel.

BBS cannot guarantee 24 hour management.

13. Planned obstruction of level 6 corridor for use as balcony with tables, chairs, plants etc.

This would be totally unacceptable to the management in terms of public liability and management of residents utilizing the area for barbecues, entertainment etc, Use of common areas would require approval from the owners corporation for private use. Access to the Fire Reel and Fire escape may become more difficult if furniture and visitors are allowed on the current open space. This could be dangerous and give rise to compensation claims. The Point has the proposed area a licensed area under their Liquor License. We have been advised that the Liquor Licensing Authority has advised that it would be extremely difficult to separate this area for private use and is a legal minefield. Council may well become entangled in a very messy situation if anything went wrong.

14. Residential Use Only

We note that the DA is for residential only. With dual use there was always a possibility of having the lots in the Hotel pool for some periods. If this DA is approved the Hotel will permanently lose the use of 2 very popular Hotel Spa rooms and 2 Penthouses. This will impact on the viability of the Hotel and its employees.

The cost to the Ballina Community is likely to be in the order of **one million dollars** per annum based on a multiplier effect of 6. This will impact on the tourism industry at a most difficult time and on retailers and restaurant owners in particular. The impact is likely to be greatest on River Street commercial outlets.

15. Common Area Corridor

We note the Applicants proposed to “close off” a Common Area corridor to meet their residential open-space requirement and use it as a private balcony. We cannot understand how this space suddenly becomes private usage! There are major issues with this idea. To be any use as an open-space area the residents will no doubt put chairs, tables, BBQ’s etc in the corridor. It is planned to put a door across the corridor. This is ridiculous. The corridor they want to claim as “private

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use” is a Fire Evacuation Route out of the building. At the end of this corridor is the building’s west end fire escape stairs for the 6th level and a fire hose cupboard. Fire hose access may be impaired. Regulations will not stop this access being impaired. The new OH&S laws which came into force 1 January 2012 make any breaches of the OH&S a personal liability of the directors. While the Owners Corporation has approve this, we are now informed by our lawyer that approval requires written approval from all the owners of Lots on level 6. This written approval will not be forthcoming.

16. Sky Lights

Putting Sky Lights in the roof will be a disaster and is not a practical solution to the light problem and poses the following questions:

- Has the Owners Corporation approved this?
- Fire risk is likely to increase as skylights are known to burst in fires, creating wind tunnels.
- Insurance claims are likely.
- Penetrating the roof membrane is highly likely to cause leakage at some future point.
- The extra strain on the air-conditioning system is too great and environmentally unsound.

Also it will disrupt plans to put solar panels on that part of the roof. This is presently being investigated by the Owners Corporation with the aim of reducing power costs in the building's common areas.

17. Car Parking

We note that building regulations have a lower requirement for car parks for residential. Applying that argument doesn't take into account the actual situation in respect to car parking at the hotel. The hotel is not in a position to lose 4 car parks. The present car parking plan that works so well, was predicated on the complex operating as a Hotel. The loss of 4 car spaces will:

- Pose additional pressure on short term accommodation as the Residents block off their spaces and their visitors take up additional spaces.
- Give rise to conflict.

Permanent residents are much more likely to have visitors than hotel guests.

Where will the visitors park?

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The Applicant needs to provide a better car parking solution.

18. Rubbish

Permanent Residents within Ballina Shire are required to use 3 Wheelie Bins. These will need to be stored. There is no space currently available and the bins may have to be accommodated within the apartment. The proposal to allow permanent resident access through the back of the hotel cannot be allowed. The building was not designed for residential accommodation. Issues with disposal of rubbish is just another example. Connelly has suggested that Garbage Compost bins will be placed on the common area access to these Lots. This will pose an extra obstruction and also be a problem with odours. We assume they will be another obstruction in the common area corridor/fire escape route. Access to the second Penthouse Suite can only be via this common area. It is the only access. Future Owners are likely to dispute this.

19. Liquor Licensing

The Point Restaurant is responsible for the behaviour of alcohol affected residents. It is not as easy as just saying that the subject Lots are to be excluded. Even if this is possible, there is the problem of common areas such as the pool. The Manager has control over guests, but no control over residents.

20. Caretaking

The current Caretaking and Management Contract between the Owners Corporation and the Manager was predicated on the complex being a Hotel. It has traded as a hotel for over 4 years. The Caretaking and Management Contract was based on the fact that the property is for use as short term holiday letting only. If this DA is approved this contract will need to be reviewed to address new issues brought about by a Change of Use. There is no guarantee that an amicable solution can be found.

21. Duties of Lot Owners and Occupiers

Hotel management will require time to review the By-Laws prior to responding in detail. Mixed use can cause serious operational and management issues as previously experienced at Riverside Apartments. Some of the incidents have required Police attendance which has resulted in both verbal and physical conflict.

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Overseas experience is that Residents are housed in separate towers, especially designed for residents only. Separate entrances, lifts etc. are the only way this can work.

22. Clothes

There is no satisfactory, environmentally friendly way of drying clothes. Tourists tend to take most dirty laundry home. Residents may be tempted to use their balconies for clothes drying. This is environmentally unsightly and unacceptable.

The abovementioned comments clearly indicate, in our opinion, that approval of this DA would be a very poor decision indeed and subject to appeal. This will involve more time and money for all the stakeholders, including the council. Council has already made the decision once, and this correct decision was upheld by the Land & Environment Court. There seems to be sound reasons for this to be again declined.

Yours sincerely
Ballina Booking Service Pty Ltd



Robert Righetti
Director

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25th January 2012

Mr Rod Willis

Group Manager

Regulatory Services
Ballina Shire Council
P. O Box 450
Ballina NSW 2478
Via E-Mail: bobt@ballina.nsw.gov.au

Dear Sir

**Re: DA 2011/519 Proposed Change of Use Lots 52 & 53 Ramada Hotel
2 Martin Street Ballina**

Ballina Booking Service Pty Ltd (BBS) met with the owners of Lots 52, 53 and their consultant Steve Connelly in mid 2011 and gave preliminary support of the proposed change of use for the said lots. The preliminary support was based on the information provided at that time that the application would be for dual use (both residential and short term letting).

We have since had the opportunity to review DA 2011/519 dated 2nd December 2011 and the Town Planning Report. Based on the DA application and supporting documents, BBS as the manager and caretaker of the Ramada Hotel & Suites withdraws its support for DA 2011/519.

Having taken advice, the proposal for private use of common property is not acceptable to BBS and will not pass the owners corporation because on our advice the consent of each proprietor on level 6 will at the very least be required for a by law to be passed giving exclusive use of this area. That will not be achieved. Further, the blocking of unfettered access to the fire stairs and reel at the end of the corridor alongside these units is not in the interests of the health and safety of users of the common property including workers.

We are taking further advice and will outline other concerns next week.

Yours sincerely
Ballina Booking Service Pty Ltd

A handwritten signature in black ink, appearing to read "Righetti", is written over a horizontal line.

Robert Righetti
Director

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Bob Thornton

From: John Cordina [John@cordina.com.au]
Sent: Tuesday, 17 January 2012 2:58 PM
To: Bob Thornton
Cc: simpsonsolicitors@bigpond.com.au
Subject: Objection to DA 2011/519
Attachments: 1275_001.pdf

Attention : Bob Thornton

RE : OBJECTION – DA 2011/519

Dear Sir,

In reference to DA 2011/519, relating to proposed Change of Use of Lots 52 & 53 SP 79299 from Tourist Accommodation to Residential Accommodation, I wish to OBJECT to the application for the following reasons :

1. Mixed Land Use : I do not believe Council's DCP relating to Mixed Use developments has been correctly interpreted by the applicant. The applicant states on page 47 that their proposal 'carefully separates permanent occupation from tourist occupation'. However, true separation can only be achieved where there is NO intermingling of tourist and permanent residents, such as by having separate entryways/exits to the development. As noted in 2 below, there is acknowledgement conflicts may occur that will require 'umpiring', a scenario unlikely to have been envisaged in Council's DCP. Liquor Licensing issues also arise and in this regard I refer to 4 below.
2. Management Agreement : Further to 1 above, there is no irrevocable Management Agreement in place or proposed to deal with all matters relative to Lots 52 and 53. On page 45 of the application, it is acknowledged that 'conflicts' may occur but what will be the outcome if a Unit Owner refuses to comply with Management's requests? Disputes may arise for a whole host of reasons eg. garbage removal, general conduct, parking, licensing issues etc. and it appears that there will be no real remedy to such disputes, if an owner simply refuses to cooperate with Management. This application should not be considered without a full management agreement in place which is approved by Council, covering all of Manager's and owner's obligations, dispute resolution procedures and also payments of all relevant fees and charges. Liquor Licensing is a separate issue, given the matters noted in 4 below.
3. Public Interest : I do not consider that public interest issues have been adequately addressed.

Firstly, I believe the Applicant does not meet Council's DCP in terms of mixed use. The interpretation applied by the Applicant, effectively weakens the true meaning and intent of the DCP, which could have repercussions throughout the Shire. The DCP encourages mixed use, but implied would be proper separation which can only be achieved with separate access points and NO intermingling between hotel guests and permanent residents. The obvious need for a Management Agreements as noted in 2 above and the OLGR Licensing concerns in 4 below, reinforces our view on this matter.

Secondly, The Ramada is an iconic Tourist Development in the Ballina Shire and its integrity should be maintained at all costs. The highest threshold should be applied to the Public Interest Test. Whilst this application may appear insignificant in isolation, its success could set a precedent for further applications from other Unit owners. Our legal advice suggests the approval of this DA could definitely be used to support similar applications, particularly if a matter were referred to the Land & Environment Court. If other applications were subsequently successful, the Ramada as a tourist destination would be severely compromised, resulting in significant loss to the Ballina Shire.

Thirdly, in our objection to Slipway's DA 2009/689, we went into considerable detail as to the losses to the Shire that could result from a Hotel change of use. Whilst this application supposedly relates only to two penthouse units i.e. with 4 rentable units, the value of these units to the Hotel cannot be underestimated. The penthouses add a

DIFFERENT DIMENSION/VARIETY to the Hotel room offer and clearly adds to the MIX OF AVAILABILITY to potential hotel guests, particularly at the high end of the market. In the last financial year, I understand the gross income earned by the Penthouses was in the order of \$150,000 with occupancy upwards of 800 room nights (based on four rentable units). These are not insignificant numbers and clearly the multiplier benefit to our business and other businesses, including employment spinoffs, cannot be ignored.

4. Liquor Licensing : The Point Restaurant holds a Hotelier's License covering the whole Hotel and should the DA be successful, the applicant proposes to (somehow) remove the two Units from coverage under the License. We have put this scenario to the Office of Liquor Gaming and Racing (OLGR) who have jurisdiction over our Licensing and in discussions they stated that the DA proposal opens up a number of complex issues, that can be best summed up as follows :

Firstly, our Licensing arrangement is highly unusual, if not unique, in that The Point Restaurant as an independent business is a License holder in a 4-5 star hotel which is strata owned and operated by a separate Management company. Having a mix of hotel guests with permanent residents would raise concerns for the Authority.

Secondly, if OLGR were presented with a proposal to 'de-license' the two penthouse units in circumstances where hotel and permanent guests shared common areas, they would REFUSE TO APPROVE the revised license area. I asked for confirmation of this in writing and whilst the Authority was guarded because of the legal complexities, they did provide me with an email response which is attached. It should be noted that our original License application was based on the Units being utilized as part of a Hotel operation and any change in this structure would certainly have legal ramifications.

Thirdly, due to the complex nature of the Licensing issue, I should get further legal advice. OLGR acknowledged the complexity of the possible outcomes and were not willing/able to advise on the various scenarios.

Clearly the Licensing issue is a legal minefield, exacerbated by the varied ownership structure of the Hotel. It is impossible to say how a mixed use scenario would operate in practical terms and there is no submitted proposal as to how conflict issues would be resolved. Accordingly, we would NOT be prepared to vary our License to facilitate a change of use application and it is unreasonable that we should be expected to do so. We consider the Licensing issue only goes to reinforce the arguments raised in 1 above.

5. Parking : The DA asserts that the change of use would have a benign impact on parking arrangements. I disagree with this conclusion. Under the current Hotel use arrangements, many of the guests do not have vehicles and overall the parking utilization would be varied. With permanent guests, although the number of vehicle allocations may not theoretically increase, the number of car spaces would be tied up every single day and made worse with visitors. Under Hotel use 3-5 spaces would be utilized rarely for the penthouses' use, however conceivably they would be permanently utilized by the permanent residents, thereby negating the effectiveness of the Hotel's carpark pooling system.
6. DA EXECUTIVE SUMMARY : In conjunction with the concerns raised above, I contend the basis underpinning the application as outlined in the Applicant's Executive Summary, is seriously flawed :
 - The claim of the penthouses' lack of demand and underutilization for tourism, is somewhat false. I understand one penthouse owner has restricted the use of his unit by setting a minimum room rate, which is his obvious right. However, surely 'underutilization' cannot then used as an argument to justify the application ! Further, based on the numbers quoted in 3 above, I estimate the returns obtained by the penthouse owners are comparable to those received by other unit owners. All Unit owners in the Hotel have suffered substantial capital losses on their original investments and this DA is seeking to place two investors in a separate category, for their personal profit and at the expense of others.
 - Lots 52 & 53 are more appropriate for Hotel Use and were designed as such by the original developers so as to provide an appropriate mix and a high level Hotel accommodation offer, in keeping for a 4-5 star Hotel, located in one of the best river front locations in the Ballina Shire.
 - The "orderly" mixed land use concept promoted by Governments, is clearly not achieved as highlighted in the outline above. It is anything but orderly, with many unresolved matters!

- It is highly questionable that there is demand for high quality penthouse units in the Ballina CBD. For instance, I am informed that there have been two purpose design penthouses in the Watermark Building which have been on the market for a considerable time and these have not been sold due to market conditions, despite being of superior quality to the Ramada penthouses.
- The application clearly has not been framed in CONSULTATION with the Hotel Manager, as proper consultation would have ensured that at least a Management Agreement be included with the application. I understand the Hotel Manager was not privy to the full details of the application, with the nature of the application changing from combined tourist/permanent residential for possible inclusion in rental pool, to permanent residential only!
- The application clearly fails to demonstrate how the mixed use is capable of mitigating adverse impacts consistent with "Council's" interpretation of zone objectives.

CONCLUSION : At first glance, this change of use application appears insignificant in terms of the impact on the Hotel and Shire. However on closer inspection, significant concerns are identified as to the appropriateness of approving this application. The DA is predicated on the assumption that a scaled down change of use application should not be of concern to Council or community, with objections raised in the DA2009/689 Land & Environment decision, supposedly overcome. Whilst a number of superficial matters may have been overcome, the substance of objections in my view still remain. These major issues relate to MIXED USE, PUBLIC INTEREST, LIQUOR LICENSING and PARKING. The DA has not made its case to justify a change of use, even based on its own criteria, and in these circumstances the DA should be DECLINED.

Yours faithfully,

John Cordina
Summertime Holdings Pty Limited

John Cordina

From: Bennett, Andrew <andrew.bennett@olgr.nsw.gov.au>
Sent: Monday, 16 January 2012 2:25 PM
To: John Cordina
Subject: RE: Re The Point Ballina - Hotelier's License 440010005

From looking at what is proposed the use of the common area would be a problem that more than likely would not be able to be resolved form excluding those units from the boundary of the hotel.

I suggest you seek your own independent legal advice on this matter

Andrew Bennett | Team Leader, Customer Service Unit
Office of Liquor, Gaming and Racing
Level 6 | 323 Castlereagh Street | Sydney NSW 2000
GPO Box 7060 | Sydney | NSW 2001

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W: www.olgr.nsw.gov.au

From: John Cordina [mailto:John@cordina.com.au]
Sent: Thursday, 12 January 2012 5:18 PM
To: Info OLGR
Subject: FW: Re The Point Ballina - Hotelier's License 440010005

Attention : Erica Luiz

Erica,

Further to my conversation today with Geraldine Holmes, I am formally seeking OLGR's position in relation to a Licensing Issue within a Development Application currently being considered by Ballina Council – that may impact on my obligations as Licensee of the Ramada Hotel.

The basic facts :

1. The Point Restaurant (Summertime Holdings P/L) is located within the Ramada Hotel in Ballina, with the individual Units being Strata Titled i.e. the Units are individually owned with a Body Corporate arrangement in place and a separate Hotel Management Company providing the Hotel services.
2. The Point Restaurant operates as an independent restaurant business servicing the public but also provides exclusively all food and beverage services for the Hotel, including room service.
3. Under our original purchase agreement we were required to acquire a Hotel License to service all the Hotel's requirements, including functions and room service, hence the need to obtain the License covering the whole Hotel.
4. Whilst this arrangement is somewhat outside the norm, it has proven to be effective and we have been able to meet our License obligations. All rooms in the Hotel are essentially in a rental pool and to all intents and purposes, operates the same as any other 4 or 5 star Hotel.

In the application before Council, the owners of the two penthouse units on the sixth floor are seeking to change the use of their units from tourist occupation to permanent residency. As such they would remove their Units from the Hotel rental pool and in turn it is proposed permanent residents would then occupy the properties. The sixth floor has other Units which will continue to be used in the Hotel rental pool and it is proposed that the areas will be separated by a sort of corridor gateway system. The Applicant has also advised Council that the two Units will be removed from The Point's Hotel License although no details have been provided how this would occur!

We have concerns with the above proposal for a number of reasons. Clearly we would have little control over a private resident (as opposed to Hotel Guests) and the removal from our License would appear logical. However, issues remain in that the private residents will be using Licensed common areas covered under our License, including pool area and we have real concerns as to potential conflicts arising, possibly impacting on our License obligations. It should be noted that there will be no separate entry/exit point for the penthouse units, with the permanent residents and hotel guests, utilizing the main entry on the ground floor and accessing their rooms via common lifts and corridors.

Given the above circumstances, what would the OLGR's position be if an application were made to remove the two sixth floor units from my current License area, given that the private residents would have to access their rooms via common property/lifts and the Hotel main entry? Secondly, does the OLGR consider I would be able to adequately fulfill License obligations under the above proposal?

For your information, Council are currently considering this application and understand that Licensing is a key issue in their decision making process. I accept that this issue is somewhat complex, however this is all the more reason we need the Department's expert advice upfront, to avoid any flawed decisions being made.

I would appreciate your early response and should you wish any further clarification on any matter please do not hesitate to contact me.

Thankyou for your assistance

Regards,

John Cordina
Summertime Holdings P/L

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From: rick michell [rick.michell@bigpond.com]
Sent: Wednesday, 11 January 2012 9:25:55 PM
To: Ballina Shire Council
Subject: DEVELOPMENT PROPOSAL

Jamison Nominees p/l is totally opposed to the Penthouses at the Ramada being turned into RESIDENTAL.

Yours sincerely

Rick Michell

Jamison Nominees P/L owner of 501/502 Ramada Hotel

RICK MICHELL
5 ARMSON AVE
MAGILL STH AUST 5072
MOB 041 980 6075
FAX 08 8364 1207

From: john heaton [john-heaton@hotmail.com]
Sent: Wednesday, 11 January 2012 4:00:11 PM
To: Ballina Shire Council
Subject: DA 2011/519

I refer to the above which aims to amend the use of Units 52 and 53 at the Ramada from Tourist Accommodation to Residential.

I object to the proposal.

The Ramada is a world wide brand name and the original approval for the Ramada was based on that world wide brand name being preserved as an up-market tourist hotel at Ballina. Businesses that bought into the surrounding commercial & retail areas based their business plans on the Ramada being and remaining an up-market tourist hotel.

The Land & Environmental Court has previously ruled against the proponents asking for 94 of the 115 units being amended from Tourist Accommodation to Residential.

If Council approves the change in use for these two units, it will set a precedent for other unit owners to lodge a similar DA. This will change the original intention of the developers of the Ramada and it will become just another residential unit complex and Ballina. Ballina will never again be considered by a world wide hotel chain to invest in Ballina and therefore will be bad for the economic development of the Ballina Shire.

Regards

John Heaton
128 Platypus Drive
URALBA NSW 2477
Phone 0266287163
0448 934663

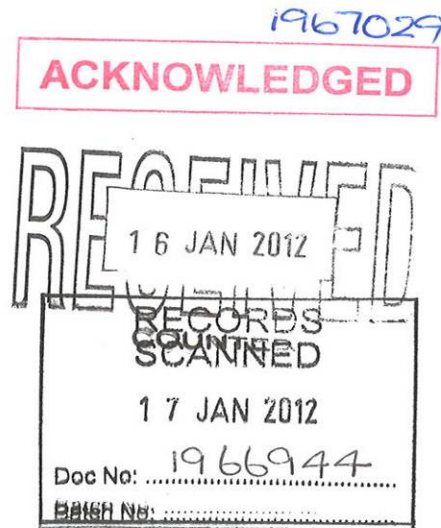
16 January 2012

From: Mrs. Gail Stotter
14 Suvla Street
Ballina NSW 2478

To: Bob Thornton
Ballina Shire Council
Cnr Cherry and Tamar Streets
Ballina NSW 2478

Dear Sir

Re: DA 2011/519



As an Owner of a Unit in Ramada Ballina and more importantly a rate payer of Ballina Shire I am very concerned about the above.

There should be no such avenue for this DA to be seriously entertained in any way or form.

As I recall, Council went to great lengths, devoting an enormous amount of time, energy and so much money (part of it mine as a ratepayer) in court recently over this very subject.

Council appeared to be addressing and standing up to some of the underhand tactics and disregard shown to it and the ratepayers of Ballina.

Thankfully common sense prevailed and a judgment ("umpire's decision") was awarded to Council. Hooray...I thought, now surely this will put an end to this nonsense.

Also, which meant (I thought) that it was to leave this property as an uncompromised first class internationally branded Hotel in Ballina able to function without any further interference of this type.

This "umpire's decision" also helped to regain and hopefully uphold the dignity of this Council.

I think it is gross arrogance and disrespectful to council staff to be once again subjected to this type of behaviour.

It seems to me to be a case of...Here we go again...For exactly the same reason!

Seems the thinking is....Let us test the water, by putting a DA in for a couple of Units.

Then if successful this will serve as a precedent to being able to place all the Units into the next Application.

GOODBYE TO BALLINAS FIRST AND ONLY INTERNATIONALLY BRANDED HOTEL and dare I suggest sound the death knell for any other major hotel brand risking any \$\$\$s in establishing itself in Ballina. Byron Bay accommodation suppliers win again!

So begins...first step a DA for two Units.....

This is not a new strategy.

If one DA does not work, just re-work it and come in the back door. Sound familiar?

It is also curious to me that once again, this DA is being lodged by the very same applicant who applied for (the defeated) C of U mentioned earlier.

It is time to put this issue to bed once and for all.

Council should be fair, allow the "umpire's decision" stand and so uphold the previous decision of Ballina Shire Council.

As a Lot holder in Ramada Ballina since 2007, I am quite worried on a couple of other fronts.

By pulling Lots out of the Hotel, this will alter the whole structure: hotel operating costs will be spread amongst others. This is also very unfair of these two Lot Owners.

Also WHAT ABOUT THE PARKING, just one thing that comes to mind, permanent residents will use up car spaces otherwise attended for tourists to our Town. Oh! And what about rubbish, etc. etc.

At the time I invested, the Developer provided me with a Product Disclosure Statement and copies of the various Agreements and By-laws, these helped form part of my due diligence and so my investment in "Ballina & Area First & Only International Standard Hotel (Ramada branded)..... NOT an investment into residential or a part residential hotel complex!

Couple my concerns with talk of a Marina being built and other initiatives (Ballina Airport Greeting etc.) encouraging visitors to stay, spend and play in Ballina...Does this not require first class accommodation to be available?

What a terrible debacle inviting guests into our Shire and then having to send them up the road to Byron for accommodation. All sounds pretty sad to me. Actually, the two relevant Lots are amongst the attractions of the hotel.

You can forget any other leading hotel brand being bothered with developing or establishing themselves in Ballina if this sort of behavior is permitted.

SO, PLEASE, JUST LET THIS HOTEL ALONE TO FUNCTION AS WAS ALWAYS INTENDED WITHOUT CONSTANT INTERFERENCE....ALL OF BALLINA WILL BENEFIT, NOT JUST A SELFISH FEW...

Thank you for your time


GAIL STOTTER