

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

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File Reference	2011/519
Applicant	SJ Connelly CPP Pty Ltd
Property	Lots 52 & 53 SP 79299 52 & 53/2 Martin Street Ballina
Proposal	To Undertake a Change of Use of Lots 52 & 53 SP 79299 from Short Term Accommodation to Long Term Accommodation
Effect of Planning Instrument	The land is zoned No 3 Business under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

This report is presented to Council due to the public interest in the development and the recent Land and Environment Court decision, in which Commissioner Brown upheld Council's decision to refuse an application to convert the majority of lots and suites in the building to short term/long term accommodation.

Some aspects of this current application are non-compliant with elements of Council's Development Control Plans.

The section 88B instrument for the Strata Plan that applies to the subject building contains a clause which requires the Owners Corporation to require the written consent of Ballina Shire Council prior to granting any person exclusive use over any part of the Common property.

This application proposes that the owners of Lots 52 & 53 be granted exclusive use of part of the common property. Council must therefore be made aware of the fact that, if it is of a mind to grant approval to this application, by including occupation of the common property as proposed, it must also grant the Owners Corporation permission to grant exclusive use of those parts of the common property.

Proposed Development

The development application seeks Council approval to change Lots 52 & 53 in SP 79299 (units 601/602 & 603/604) from short term tourist accommodation to two long term residential accommodation dwellings. The two lots occupy the top level of the west wing of the Ramada building. There are no building works involved other than the proposed placement of a security gate across a balcony to separate the long term residents from short term/tourists, and the placement of a sky light in the roof of Lot 53.

Attached to this report is a plan showing the proposed development.

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Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The matter was advertised in accordance with Council's public notification policy from 22 December to 17 January 2012.

Thirty six owners (being the owners of all the Lots within the building) were notified and subsequently five submissions were received. The contents of these submissions will be addressed later in this report.

Report

The following report is presented in accordance with the relevant heads of consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

Applicable Planning Instruments

North Coast Regional Environmental Plan (NCREP)

Part 4 Urban development

Division 2 Urban Housing

41 Objectives

The objectives of this plan in relation to housing are to promote the provision of a range of adequate, affordable and suitable housing to meet the needs of the region's population.

Part 6 Tourism and Recreation

Division 1 Tourism

67 Objectives

The objectives of this plan in relation to tourism are:

- a) to encourage tourism activity that will complement the existing natural and man made features of the region and be of positive benefit to the region's economy, and
- b) not relevant.
- c) to encourage the location of tourist facilities so that they may benefit from existing air, road, and rail services, physical services infrastructure, other tourist attractions, natural features and urban facilities, and
- d) not relevant.

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It is considered that the application is in accordance with objective 47, in that it is proposing an alternative form of housing. However, it is contrary to objective 67 (a), in that the objectives refer to the encouragement of tourism, and this application seeks to reduce the number of tourist accommodation units, be it by only 4 units, by changing existing tourist units to long term residential accommodation.

The loss of these units may be of some significance to the tourist industry as they are larger than most holiday units in the area and cater for a market that no other establishment in Ballina caters for, thereby providing accommodation to people that might otherwise not stay in the Ballina area.

Other than the above, the application complies with the objectives of the NCREP.

SEPP 65 – Design Quality of Residential Flat Development.

SEPP 65 – Design Quality of Residential Flat Development is not directly applicable to this application, for as can be seen from the definition of a *residential flat building* below, the policy only applies to developments containing 4 or more self contained dwellings.

The requirements of the SEPP and the Residential Flat Code should, however, be given a level of consideration, as they provide general guidelines for the benchmark of what is considered to be quality design of residential dwellings. These documents are also referred to by Commissioner Brown in the summation of his findings in the earlier court proceedings, and are referred to in this report for these reasons alone.

Residential flat building means a building that comprises or includes:

- a) *3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- b) *4 or more self contained dwellings (whether or not the building includes uses for other purposes such as shops)*

Clause 30 of the SEPP requires the consent authority to take into consideration the requirements of the Residential Flat Design Code.

The Residential Flat Design Code provides as follows:

"The internal layout of an apartment establishes the spatial arrangement of rooms, the circulation between rooms, and the degree of privacy for each room. In addition, the layout directly impacts the quality of residential amenity, such as access to daylight and natural ventilation, and the assurance of acoustic and visual privacy. The apartment layout also includes private open space."

Building Configuration Apartment Layout:

Apartments should be designed to make the best of opportunities to respond to the natural and built environments and optimise site opportunities, by:

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"Providing every unit with a private open space in the form of a balcony or garden. The primary balcony or garden must have a minimum depth of 2 metres."

Comment

Lots 52 & 53 both have balcony depth of more than 2.0 metres.

"Orientating main living spaces towards the primary outlook and aspect and away from neighbouring noise sources or windows."

Comment

Lots 52 & 53 are orientated towards the South and the river and away from neighbouring noise sources or windows

"Locating main living spaces adjacent to main private open space."

Comment

Lots 52 & 53 have their balconies as an extension of the living area.

"Locating habitable rooms, where possible kitchens and bathrooms, on the external face of the buildings thereby maximises the number of rooms with windows maximising opportunities to facilitate natural ventilation."

Comment

Lots 52 & 53 have a window on each side of the unit which facilitates natural cross flow ventilation.

"Requiring living rooms and private open space for at least 70% of apartments in a development to receive a minimum of three hours of direct sunlight between 9am and 3pm in mid winter."

Comment

Lots 52 & 53 face South and as such neither receive direct sunlight into their living rooms and very little to no direct sunlight into the private open space areas.

Commissioner Brown in his summation of the above mentioned Land and Environment Court hearing wrote "*i am not satisfied that the use of the building for long term accommodation can be supported on the basis of the solar access available to the majority of the units identified*". (Lot 53 was one of the lots inspected by Commissioner Brown during the viewing as part of the Land and Environment Court hearing, as an example of a unit that lacked solar access)

"Avoid locating kitchens as part of the main circulation spaces of an apartment, such as hallway or entry space."

Comment

Neither Lot 52 or 53 have kitchens located within the main circulation space (hallway).

SEPP 71 Coastal Protection

The proposed development is consistent with the applicable provisions of this Plan, in particular Clause 8 – Matters for consideration.

Ballina Local Environmental Plan 1987 (BLEP).

Clause 2 Aims, objectives etc:

- 1 the general aims of this plan are to encourage the proper management, development and conservation of natural and man made resources, to promote the social and economic welfare of the community and to provide a better environment.
- 2 the particular aims of this plan are:
 - (b) to encourage the Council to make development control plans regulating the carrying out of development in any zone:
 - (i) by restricting the carrying out of that development to a specified area within the zone, or
 - (ii) by fixing standards or specifying requirements in respect of any aspect of that development.
 - (c) to promote the efficient utilisation of land, services and support facilities in existing urban areas and to provide for the orderly growth of new urban areas which promise a high level of residential amenity,
 - (e) to contribute to continued economic growth of the Shire of Ballina by encouraging a pattern of development which will help to diversify and increase local employment opportunities.
 - (l) To encourage further development of tourist and recreational activities within the Shire of Ballina, while minimising its adverse impact on the natural attractions and amenity enjoyed by long term residents.

Council has adopted a number of Development Control Plans applicable to this application which will be discussed later in this report.

As either short term accommodation or permanent accommodation the use of the lots will effect the efficient utilisation of land, services and support facilities as they will help in providing accommodation diversity and will contribute to local employment opportunities. Whilst it is considered that the use of the lots for short term accommodation may have a more beneficial direct impact on employment, in this regard both uses will comply with these aspects of the aims of the Plan.

It is, however, considered that this proposal is contrary to objective 2(i) as approval would reduce the amount of tourist accommodation available. Whilst it is only four units, as will be explained later in this report, these particular units provide accommodation that is not otherwise available in the Shire.

It has been submitted that, if approval were to be granted to this application, such would prompt other owners of suites within the building to make similar applications thus creating a precedent for the progressive conversion of the building to residential use in the face of the Court's determination.

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There are, however, diverse dispositions, designs, and sizes of units in the building and the two subject suites are not mirrored anywhere else. Any future application of this type, i.e., conversion of other suites to residential use, would need to be assessed by the Council on its particular merits. Consequently, it cannot be taken that the determination of this application sets any precedent for others.

The site is zoned No 3 Business, for the purposes of clause 9 of BLEP 1987.

The proposed development is defined as a "dwelling" within a "residential flat development".

The Model Provisions 1980 define a dwelling as "a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile".

BLEP 1987 defines a residential flat development as a "building containing 2 or more dwellings".

"Dwellings" and "residential flat developments" are permitted on land zoned No 3 Business under the provisions of clause 9 of BLEP.

The zone objectives for zone No 3 are:

A The primary objectives are:

- (a) to regulate the subdivision and the use of land within the zone to maintain the status of the Ballina Central Business District as the retail, commercial and administrative centre of the Shire of Ballina,
- (b) to allocate sufficient land for retail, commercial and administrative purposes within the Shire of Ballina and to regulate the subdivision and use of that land so that it is developed in accordance with a commercial hierarchy,
- (c) to permit a wide range of uses within the zone that are associated with, ancillary to or supportive of the retail and service facilities within the zone, particularly tourist developments and industries referred to in Schedule 2, and
- (d) to permit development where it is compatible with the commercial character of the zone and provides its residents with appropriate leisure facilities to ensure a high level of residential amenity.

B The secondary objectives are:

- (a) to ensure there is adequate provision for car parking facilities within the vicinity of the zone, and
- (b) to minimize conflicts between pedestrians and vehicular movement systems within the vicinity of the zone.

C The exception to these objectives is development of land within the zone for public works and services outside the parameters specified in the primary and secondary objectives.

The application is consistent with the objectives of the zone.

Draft Ballina Local Environmental Plan 2011

The site is proposed to be zoned No B3 Commercial Core.

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The Objectives of this zone are

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximize public transport patronage and encourage walking and cycling.*
- *To maintain a distinct retail hierarchy as identified in Council's strategic planning framework.*
- *To enable residential and tourist development compatible with the commercial nature of activities in the zone.*
- *To ensure a safe and accessible built environment.*
- *To encourage development that recognises natural, cultural and built heritage.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*

The application complies with the objectives of this zone

Under the provisions of the Draft Plan the proposal would comprise "Dwellings" in a "Shop Top Housing" development.

Dwelling means "a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile".

Shop top housing means "one or more dwellings located above ground floor retail premises or business premises".

The application is permissible with Council consent.

Ballina Shire Combined Development Control Plan (BSCDCP)

The relevant sections of the BSCDCP are as follows.

Chapter 1, Policy Statement No - 2 Car Parking and Access

Policy Statement No 2 Car Parking and Access provides that the car parking requirements for a tourist unit in excess of 50sq metres is the same as that of an equivalent residential flat unit, that is 1.5 car parking spaces per unit plus 1 space per 5 Lots for visitor parking.

The Department of Planning approved the original development at a carparking rate below that required in Council's policy. The carparking rate was discounted by 0.75 space for dual key use and further discounted by 0.9 for hotel occupancy of that required in Policy No 2. The basis upon which the Department accepted this reduction was that the development provides for tourist accommodation and a number of patrons will arrive by public transport and will therefore not require a car parking space.

In accordance with the provisions of Policy Statement No 2 of the BSCDCP the proposed amended development would require the provision of 4 spaces (2 x 1.5 spaces + 1 visitor space) for long term occupation whilst the number of car parking spaces allocated to these two Lots or four units in the development approval with the applied reduced rates is 3 spaces (2 x 1 + 2 x 1.2 spaces reduced).

Car parking spaces in the building are part of the Strata Lot with each Lot owning one or two car parking spaces. The two Lots the subject of this application each own 2 car parking spaces. All car parking spaces within the building are pooled in accordance with regulations contained in the Strata Plan By-Laws with no person having the right to use a particular car parking space. The reason for the pooling of the car parking spaces is to enable people attending the other uses within the building the ability to use any car parking space which is not being used. If the spaces were not pooled there would be occasions when there would be a number of vacant spaces within the car parking area whilst at the same time people attending the other commercial uses within the building would be restricted to 6 car parking spaces.

It is considered that this pooling arrangement could be jeopardised if a long term owner was able to have the By-Laws changed to enable exclusive use to the car parking spaces they purchased even though, as Commissioner Brown noted, it must be assumed that any prospective purchaser would be aware of any constraints over onsite vehicle parking.

If the owners of these Lots were able to convince the Owners Corporation to seek to amend the By-Laws to permit sole occupancy of their parking spaces, the overall deficiency in car parking spaces for the building would be further increased, as the 2 Lots own a total of 4 car parking spaces whereas in the calculation for car parking demand they have only been counted as 3 on a pooled basis.

If Council were of a mind to grant consent to this application a condition could be imposed preventing the owners of these car parking lots from taking sole occupancy of their spaces.

Referring to car parking for the other uses within the building, Commissioner Brown states *it is necessary to determine whether sufficient car parking spaces are provided for the other uses on-site even though these uses are not the subject of this application.* When determining the car parking requirements for these other uses Commission Brown adopted a discounted rate of 0.9 for tourist staying in the building. Therefore, as the number of units change from short term accommodation to long term accommodation, this discount rate should reduce. The reduction in the discounted rate in the number of parking spaces for other uses as a result of the proposed change is 0.2 spaces. It is generally accepted that the development is substantially deficient in parking and if this application were to be approved this overall deficiency would be increased by a further 1.2 spaces.

As the deficiency rounds down to a single space, if the Council is otherwise minded to approve the application it could reasonably accept a cash contribution to its parking fund to cover this shortfall. Council normally wouldn't be advised to accept contributions in this locality as the capacity to provide additional spaces sufficiently close to the development is very limited. If the shortfall was for multiple spaces this recommendation wouldn't be made.

Ballina Shire Combined Development Control Plan
Chapter 2 - Ballina Town Centre

Clause 2.2 Development Principles provides in part "*demographic trends combined with other influences such as population growth, the low availability of 'greenfields' residential release areas and the need to support increased accessibility and mobility levels means that the provision of housing in close proximity to services and facilities should be encouraged. Housing should be provided within the Town Centre to address Shire-wide housing needs in a sustainable manner and to create a more vibrant and prosperous Town Centre by increasing the number of potential commercial customers 24 hours a day*".

The application is proposing the establishment of two long term residential dwellings in accordance with the provisions of Clause 2.2.

Part 4 – General Design and Development Controls

This part of the DCP includes both mandatory and flexible design and development controls. Variations will generally not be permitted to mandatory controls, whereas, flexible controls provide guidelines for design and development.

Clause 4.2 Mixed use development

Objectives

- *To support the integration of appropriate retail and commercial uses with housing*
- *To create more active lively streets and urban areas, which encourage pedestrian movement, service the needs of the residents and increase the area's employment base.*
- *To ensure that the design of mixed use developments maintains residential amenity and preserves compatibility between uses*
- *To facilitate flexible building forms that can be adapted and converted over time.*

The application proposes a limited mixed use development in accordance with this policy. However, it is to be determined as to whether or not residential amenity and compatibility between uses are able to be reasonably maintained.

Commissioner Brown in his judgement found that the mix of short term accommodation and long term accommodation is in accordance with the requirements of Chapter 2 of the Ballina Shire Combined Development Control Plan (BSCDCP), although such a mixture must maintain the residential amenity and preserve the compatibility between the uses.

Referring to the incompatibility between long term and short term occupants, Commissioner Brown in his judgement referred to a previous decision he handed down where his comments have relevance to this case.

I agree that there is likely to be a difference in behaviour, living and activity patterns between short term and long term occupants. A conclusion that short-term occupants are likely to have less concern about maintaining the amenity of the building than long-term occupants is a finding that can be reasonably made, in my opinion. That is not to say that all short-term occupants are likely to have less concern about maintaining the amenity of the building than long-term occupants but only that there is likely to be a greater proportion who use the building differently through their behaviour and activities in and around the building.

The greater frequency of short-term occupants in and out of the building is potentially disruptive for long-term occupants, particularly at times such as early in the morning or late at night. These movements may not always create excessive noise but may occur at a time when long-term occupants reasonably expect not to be disturbed. These disturbances could relate to matters such as doors closing, noise from adjoining apartments and general conversation in common areas. While there may be measures, such as door closers to minimise potential noise impact, it would be unlikely that all sources of noise could be removed.

In general terms, long-term occupants would generally have a greater expectation and promote a more quiet and peaceful amenity than short-term occupants, as they would regard their apartment as a home compared to a temporary place to reside for short-term occupants. Long term occupants are also likely to be less tolerant of disturbances and likely to be more concerned with activities that may potentially cause damage to the building, as they would have a greater feeling of ownership and ultimately be responsible through the Owners Corporation for repairs.

Whilst the affect of any conflict may be seen as subjective and different people may be differently affected by any conflict, I am not convinced that it is a matter that can be simply addressed through the By-Laws to the strata plan. There was no evidence to suggest that there was the opportunity for the quick enforcement of the By-Laws in instances where there was a need to rectify an event that was disturbing a resident or occupier of the building. Any need for enforcement, in my view, would be significantly reduced if there was, at a minimum, the separation of long-term and short-term occupants on different floors of the building.

It is agreed that by isolating the long term occupants from short term occupants as is proposed in this application, a number of the issues mentioned above will be alleviated. The proposal though, still requires long term and short term occupants to access their units by common property and share the communal open space areas (swimming pool & gym), which may trigger the kind of conflicts Commissioner Brown refers to in relation to damage to the building and the enforcement of the By-Laws.

Clause 4.17.3 Waste and recycling
Mandatory requirements:

- o *Locate storage areas for rubbish bins away from the front of the development where they have a significant negative impact on the streetscape, on the visual presentation of the building entry and on the amenity of residents, building users and pedestrians.*

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- o *Waste facilities must be provided at a rate of 120litres of waste capacity per dwelling.*
- o *Recycling facilities must be provided at a rate of 120 litres of waste capacity per dwelling.*
- o *Communal waste facilities are required in the following circumstances:*
 - *where the number of dwellings in a development exceeds six.*
 - *Where the number of individual bins would not fit on the street frontage*
- o *Communal waste facilities must be stored in a designated area that is physically and visually integrated into the development at ground or underground such that it:*
 - *is not visible from the street*
 - *is easily accessible to dwelling occupants*
 - *may be serviced by collection vehicles*
 - *has water and drainage facilities for cleaning and maintenance*
 - *Does not immediately adjoin private open space, windows or clothes drying areas*

The waste collection provisions of the policy are complied with. However, concern is expressed at the fact that residents would be required to dispose of their own waste to the waste collection area. This is located on the ground floor in the back of house area of the hotel which is accessed by common property. Such an arrangement may attract both Security and Occupational Health and Safety concerns. The proposal is also contrary to the current By-Laws which require occupants to dispose of their waste in the garbage receptacle on their level.

The matter of the disposal of waste is one to be determined between the applicants and the Owners Corporation/Management, and until such arrangements have been determined to Council's satisfaction, the use of the subject Lots for long-term accommodation should not commence.

Clause 4.18.1 Solar access and overshadowing
Mandatory requirement – *provide some north facing habitable rooms and open spaces in each residential apartment in order to maximise access to sunlight.*

Referring to solar access, Commissioner Brown writes *there can be little argument that for a hotel, where short-term accommodation is the norm and where prolonged exposure to winter sunlight is largely unnecessary, this design is appropriate. In my view, it does not necessarily follow that a similar design solution is appropriate for a residential flat building where there is long-term accommodation and the need for winter sun is unquestionably greater.*

I am not satisfied that the use of the building for long term accommodation can be supported on the basis of the solar access available to the majority of the units identified. (Lot 53 was one of the lots inspected by Commissioner Brown during the viewing as part of the Land and Environment Court hearing, as an example of a unit that lacked solar access). First, the Code refers to "direct sunlight" rather than "effective sun". The use of "effective sun" significantly

dilutes the effectiveness of the Code requirement of providing direct sunlight to living areas and private open space. Second, the provision of communal open space is not a reasonable basis for the basis of good solar access to the living areas and private open space of a unit, given the different circumstances in which the two areas are likely to be used. Third I do not accept the suggestion that the more tropical climate of Ballina should be used as a basis for inadequate solar access in mid-winter. Fourth (not relevant to this matter). Fifth, the proposal is inconsistent with the objective for solar access and overshadowing in cl 4.18.1 of the DCP in that it does not "ensure that new development provides design consideration for solar access for habitable rooms/living spaces and private spaces". Sixth, the amount of sunlight is inconsistent with Principle 6- Amenity of SEPP 65 in that it does not provide acceptable "access to sunlight".

I do not accept that the site constraints and orientation prohibit the achievement of the standards in the Code. The constraint is not the "site" but the design of the existing building.

Lots 52 and 53 are both south facing Lots with limited direct solar access. Lot 52 receives limited direct sunlight via a window in the bedroom and an extension of the living room. Lot 53 receives no direct sunlight at all. This fact is acknowledged by the applicant who proposes the installation of a skylight no larger than 0.6m² in the living room of Lot 53. Such a skylight can practically afford the general amenity of a 'sunny' living area, without compromising the summer performance of the space. Whilst this overcomes the requirement for the provision of solar access to the living room it does not overcome the lack of solar access to the private open space area. At this stage Owners Corporation approval has not been confirmed for the installation of the skylight.

The applicant states that a *wide open space balcony is available to service the units and it faces north to maximise sunlight.* This statement is true, and the Owners Corporation has agreed to grant exclusive right to use this balcony. However, it should be pointed out that the balcony does not act as a direct extension of the living areas of the dwellings as required by the policy.

Clause 4.18.6 Private open space.

Mandatory requirements

- *Provide private open space to all dwellings in the form of a balcony, courtyard, terrace and/or roof garden, at least one of which is not located on the southern side of the building.*
- *Design private open spaces so that they act as direct extensions of the living areas of the dwellings that they serve.*
- *Clearly define private open spaces through the use of planting, fencing or landscaping features*
- *Screen private open space where appropriate to ensure privacy.*

The proposed development provides an acceptable amount of private open space as a direct extension of the living areas. However, all of the private open space is located on the southern side of the Lots.

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Clause 4.19.5 Site facilities

Provides a mandatory requirement "to provide a secure space exclusively for storage with a minimum area of four square metres per dwelling (minimum volume eight cubic metres) set aside exclusively for storage as part of the dwelling unit".

The application states that the storage area can be provided but does not indicate where or how. Until such details are provided to Council's satisfaction, the conversion of the subject Lots, for long term accommodation should not proceed.

Liquor License

The applicant has advised that the two Lots in question will be de-licensed from the requirements of the Liquor Licence, such a move will require the consent of the current holder of the Liquor License, who has advised that such permission will not be granted. This would create a mixed situation where the building including the common property will be licensed, and the two Lots will be de-licensed. This matter has been discussed with the licensing sergeant of the Richmond River Area Command who has advised that he does not see this as a concern as there are already a number of premises in the area with the same situation.

If Council were to grant approval to this application it is recommended that a condition be imposed requiring all costs associated with the change in the Liquor License to be met by the applicants.

Social and economic impacts in the locality.

The change from short term to long term will possibly result in an increased occupation of the rooms. At the moment the rooms are occupied approximately 50% of the year or the equivalent of 1600 visitor nights,

Whereas with long term occupation it cannot be assumed that the owners of these units will live in the units on a permanent basis, it would be reasonable to assume a higher occupancy rate would likely occur.

Approval of the application would likely result in the loss of convenience spending of visitors in the immediate locality. This would be countered to a degree by the expenditure of residents in the broader local economy.

Notwithstanding economic factors outlined above, a Lot owner should have a reasonable expectation that they can obtain consent to change their land-use subject to compliance with relevant policy requirements.

Submissions

Five submissions have been received which refer to the following.

Submission from the manager and caretaking service of the hotel withdrawing their support for the application.

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Comment

This is not critical to Council's assessment of the application. However, should Council resolve to grant approval to the application, there are a number of agreements between the applicant and the management company which Council should require to be resolved prior to the Lots being activated for use for long term accommodation.

Submission from the manager and caretaking service of the hotel advising that, it is their opinion, that the change of By - Laws permitting the private use of the common property will not be approved.

Comment

This is both an internal matter for the Owners Corporation and an external one for Council by virtue of the conditions of development consent for the building. The applicant has produced a change of By-laws document showing Lots 52 & 53 having exclusive right to use the area adjacent to those Lots and until Council is advised differently, this notice is accepted as an agreement of the Owners Corporation to amend the Strata By – Laws accordingly. The building managers have advised in their submissions that they haven't agreed to this By-law.

Setting a precedent for further similar application

Comment

This matter has been commented on earlier in this report. The particular orientation, floor areas and designs of the subject 2 lots and their top-floor positioning are not replicated elsewhere in the building thus the assessment merits of other similar applications are likely to be significantly different.

Changes to the structure of the of the Owners Corporation and the running of the building.

Comment

Not a matter to be considered as part of this application.

Car parking and waste.

Comment

These matters have been addressed previously.

Loss of standing with regard to attracting new internationally branded hotels.

Comment

Speculation and not a matter to be considered as part of this application.

Investment in the area and the hotel itself, based on the knowledge that the building was to be an internationally branded hotel.

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Comment

The possible loss of four units is not going to impact greatly on the working of the hotel, however, if this application is used by other owners as a precedent, which is of concern to those making the submission, the integrity of the hotel could eventually be downgraded. The terms and representations of individual purchase contracts is a private matter and not one for the Council in the determination of this application

Mixed land use

Comment

This matter has been addressed previously.

Lack of Management Agreement.

Comment

There are a number of matters still to be resolved between the applicant and the Owners Corporation/Management. These matters have been mentioned previously, and should Council be of a mind to grant consent to this application a condition should be imposed requiring these matters to be resolved to Council's satisfaction prior to the occupation of the lots on a permanent basis.

The penthouse units add a different dimension/variety to the hotel.

Comment

This opinion is agreed with and has been discussed in this report.

Liquor Licensing.

Comment

Not a matter to be considered as part of this application. However, if the application were to be approved, a condition is recommended to be imposed requiring any changes to the Liquor License to be met by the applicants/landowners and not the licensee.

Lack of utilisation of the units.

Comment

This matter has been addressed previously.

Lack of demand for penthouse accommodation.

Comment

Not a matter to be considered as part of this application.

Public Interest

If the application were to be approved, it would have little impact on the operation of the Ramada Hotel, which is the major accommodation provider in Ballina and acts as a catalyst to tourists visiting the area. What is of concern, and this has been expressed in a number of the submissions, is the possibility of this application being used as a precedent for similar applications.

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If this application was to be approved future applicants should not assume that their applications would receive an automatic approval, as each case would have to be assessed on its own merits and, as discussed above, there are likely to be substantial merit assessment differences given the design of the hotel building.

Conclusion

The application seeks to change 2 Lots (4 units) from short term accommodation to long term accommodation as 2 residences.

The application does not comply with the following requirements of Council's Development Control Plans or the Residential Flat Code.

- The units do not receive any, or alternatively, may receive very little direct sunlight in the summer months into the main living areas or private open space though this is proposed to be off-set by installation of skylighting and use of northside verandah areas;
- The application will increase the existing deficit in car parking by an additional 1.2 car parking spaces;
- The units do not have any North facing private open space other than the proposed verandah use.

The application is contrary to the Objectives of the Ballina Local Environmental Plan and the North Coast Regional Environmental Plan, in that, it is proposing the removal of tourist accommodation from the available pool; be it by only two lots or 4 units.

The units involved are unique units in the available tourist accommodation market, in that they are larger than the average units and attract a particular clientele, which would otherwise be lost to the Ballina area.

These units last year accounted for a total of 1,600 visitor nights.

It is considered that the loss of these units will have an overall minimal impact on the economy of the area.

The major concern of submitters is a fear that this application will be used as a precedent for similar applications in the building, which will, if successful jeopardise the existence of the hotel as it is currently known.

Conversely, the application, if approved, would contribute to the diversity and availability of dwellings in the Shire and thus advance the residential objectives of the applicable planning provisions.

The building would add to the mixed development in the Ballina Town Centre and to Shop Top Housing. These are two particular planning goals of the Council for the Ballina Town Centre.

Options

- 1 Approve the application subject to conditions.
- 2 Refuse the application.

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

- 3 Defer the application until all approvals of the Owners Corporation and Management have been obtained.

Should Council be of the opinion that the loss of tourist accommodation and impacts of the associated flow on effects that would follow from the approval of this application would be marginal and that the development would add to the diversity and stock of residential accommodation in the Ballina Town Centre it is recommended that Option 1 be adopted.

If Council concludes that the particular type of tourist accommodation represented by the subject suites is not represented elsewhere in the Shire and is sufficiently vital to the local tourist industry, and that the limitations of the design of the building as a hotel haven't been satisfactorily resolved then it may choose Option 2.

Should Council be of the view that the deficiencies in the details of the application with respect to by-law approvals, unit storage, skylighting provision, and on-site waste management to service the residential tenancies have not been sufficiently resolved it may choose Option 3.

Having regard for all the circumstances of the case, it is considered that conditioned development consent is warranted subject to particular conditions requiring:

- Building management details being documented and agreed to
- Providing for the servicing of the two residential suites for postal, visitor and waste management services
- Details being provided for personal unit storage
- The monetary contribution of the equivalent of 1 new parking space under Council's parking contributions plan being made
- The applicants/landowners meeting the costs associated with amendments of the liquor licensing of the building
- Owners Corporation approval being given to by-laws amendments to allow private occupancy of common property areas and to the construction/installation of roof windows to the living areas of the apartments
- The installation of sufficiently sized (minimum areas 0.6m) roof windows to the living areas of the two strata lots and
- The requirement of all car parking spaces in the building to be universally made available by a common car-pooling arrangement.

RECOMMENDATIONS

That development application 2011/519 for the change of use from short term accommodation to permanent accommodation of Lots 52 and 53 in Strata Plan 79299 being units 601/602 & 603/604 of the Ramada Hotel be **APPROVED** subject to the attached conditions of consent.

- 1) Development being carried out generally in accordance with the plans and associated documentation lodged by, or on behalf of, the applicant, except as modified by any condition of consent.
- 2) The applicants/landowners are to be responsible for the all the cost associated with any change required to the liquor licensing of the building.
- 3) The allotments are not to be used in accordance with the terms of this notification until Council has been advised that the changes required to be made to the Strata Plan By-Laws have been registered at the relevant Government agency. Such changes are to be submitted to and approved by Council prior to lodgement.
- 4) The allotments are not to be used in accordance with the terms of this notification until Council has been advised that the changes required to be made to the instrument setting out the terms of easements and restrictions pursuant to Section 88B of the Conveyancing Act, 1919 and Section (3) of the Strata Schemes (Freehold Development) Act 1973, have been registered at the relevant Government agency. Such changes are to be submitted to and approved by Council prior to lodgement.
- 5) Details are to be provided to and approved by Council for the provision of a dedicated 8m³ of personal storage within each unit in compliance with the guidelines, prior to the Construction Certificate being issued.
- 6) The payment to Council of a monetary contribution towards the provision of one car parking space, which is required as a result of this development application. The contribution amount is to be paid prior to the issue of the Construction Certificate, and is to be paid at the rate applicable at the time of payment.
- 7) The Occupation Certificate is not to be issued until the roof windows to the living areas of the two apartments, have been installed to the satisfaction of the Owners Corporation and Council. The roof windows are to be of a size (minimum areas 0.6m) to provide adequate solar access to the living areas of the two strata lots.
- 8) A Building Management Plan encompassing but not restricted to the following, is to be prepared to provide for the requirements of permanent residents. The Building Management Plan is to be submitted to and approved by Council, prior to the issue of the Occupation Certificate.
 - A dispute resolution mechanism;
 - The collection and delivery of mail and parcels;
 - The disposal of waste;

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

- A mechanism for allowing visitors to the subject allotments into the building;
 - A mechanism whereby tradesmen can be permitted into the building to attend the subject allotments
- 9) An Occupation Certificate for the Lots' permanent residential use is not to be issued until Council has been advised that the required changes to the liquor licensing of the building have been completed.
- 10) Car parking in the building is to be operated on a universal access pooled basis other than for those spaces that involve stack parking and a car parking plan showing the use of all car parking spaces in the building is to be prepared and submitted to and approved by Council prior to any Occupation Certificate for the subject lots being issued.
- 11) All conditions of this consent are to be completed to the satisfaction of Council prior to any Occupation Certificate for the permanent residential occupation of each lot being issued.

Attachment(s)

1. Locality Plan
2. Floor plan of the proposed development
3. Submissions

Elton Stone

Residence:
24 Shelly Beach Road
Ballina NSW 2478

General Manager
Ballina Shire Council
Ballina 2478



Dear Sir

DA 2011/519 - Sec 82A Review

I would like to support this application for the following reasons:

1. The existing use is incompatible with tourist activities and has the effect of inhibiting the economic use of a substantial asset in the shire.
2. The success of this application would in no way create a precedent that other unit holders in the complex could rely upon as the unit the subject of the application is substantially different to other units in the complex and does not lend itself to holiday letting.

I have no personal interest in this application.

Yours faithfully


Elton Stone



10 February 2012

Mr Robert Righetti
Ballina Booking Service Pty Limited
2 Martin Street
BALLINA NSW 2478

Via Email: robr@ramadaballina.com.au

Dear Rob

PENTHOUSE APPLICATION FOR CHANGE OF USE

Recently we have been discussing the change of use application for the penthouses on the 6th floor. I wish to confirm my advice as follows:

1. A by-law of the owners corporation giving exclusive use of the corridors to the penthouse owners, will be ineffective if the consent in writing of all persons effected by that by-law is not also given. This means every lot owner on the 6th floor and the caretaker, if they are a lot owner, will each need to give their written consent. In giving this consent, there is no requirement to act reasonably. Nor is there any requirement to give reasons for a refusal; and
2. There is a proposal to the local authority to the effect that it could give its consent on the express terms that the consent is not to be taken as a precedent by other owners who might seek approval for a change of use. This won't work. The local authority is required to consider each application on its merits. Given current market circumstances, it is inconceivable that there will not be more applications for residential use if this application is granted.

Please let me know if you need me to expand on this advice in any way.

Yours sincerely

Michael Teys
CEO & Principal Solicitor
TEYS Lawyers

TEYS Lawyers Pty Ltd
Strata Law Specialists
ABN 11 127 707 671
Suite 73 Lower Deck, Jones Bay Wharf
26 - 32 Pirrama Road, Pyrmont NSW 2009
GPO Box 4167, Sydney NSW 2001

Michael Teys
CEO & Principal Solicitor
E: Michael@teyslawyers.com.au
T: 02 9562 6500
F: 02 9562 6555

Liability limited by a scheme approved under Professional Standards Legislation



16th July 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 Determination Review
Proposed Change of Use Lots 52 & 53 Ramada Hotel
2 Martin Street Ballina**

Ballina Booking Service Pty Ltd, as the manager/operator/franchisee of the Ramada Hotel & Suites, Ballina objects to the proposed review of Councils Determination of the above DA and reaffirms its objection letter dated 10th February 2012.

The Ramada Hotel & Suites, Ballina is an iconic hotel in the Northern Rivers and:

- Contributes directly to the employment of over 60 local employees to 100's indirectly
- Is a major supporter to local charity organisations, social/community groups and schools
- Annually contributes to fuel costs of Marine Rescue
- Spends over \$500,000 per year promoting Ballina and the region nationally and internationally
- Is a major financial contributor to the regional economy
- Its existence directly impacts on the financial viability of other business including but limited to:
 - The Point Restaurant & Bar
 - La Cucina di Vino Italian Restaurant
 - Mumtaj Indian Restaurant
- Hosts major tourist and corporate events that contribute to the Ballina economy
- Is home to guests from major national and international business organisations that conduct business in the Ballina Shire including but limited to:
 - Baulderstone
 - GHD Engineering
 - Leightons
 - Mirvac
 - Coles Myer
 - Telstra
 - Woolworths
 - Kraft Foods
 - Bunnings
 - Boral
 - GM Holden
 - Holcim

Ballina Booking Service Pty Ltd
ABN 51 102 946 118
2 Martin Street, Ballina NSW Australia 2478
P ~61 2 6618-1000

- Hosts world celebrities, musicians, national and international politicians
- Has won a number of tourism awards highlighting Ballina as a provider of international standard 4.5 star tourist and corporate accommodation

It has to be noted that senior executives from major national and international business organisations and celebrities would not utilize the Ramada if Penthouse Suites were not available and would relocate their patronage to the Tweed Coast Region that have similar quality hotels.

The Ramada Ballina is rated number 7 out of 130 plus Ramada Hotels and Resorts in Asia Pacific and provides service standards that exceed and compete with 5 Star properties throughout Asia.

The Ballina Shire Council, "NOTICE TO APPLICANT OF DETERMINATION" for DA 211/519 dated 7 March 2012 was based on the following:

- *Non compliance with objective 67(a) of the North Coast Regional Environmental Plan "to encourage tourism activity that will complement the existing natural and manmade features of the region and be of positive benefit to the region's economy.*
- *Non compliance with objective (i) of the Ballina Local Environmental Plan 1987 "to encourage further development of tourist and recreational activities within the Shire of Ballina, while minimising its adverse impact on the natural attractions and amenity enjoyed by long term residents".*
- *Non compliance with the car parking requirements of Ballina Shire Combined Development Control Plan Chapter 1, Policy Statement No 2 - Car Parking and Access.*
- *Non compliance with the requirements Ballina Shire Combined Development Control Plan Chapter 2 - Ballina Town Centre clause 4.18.1 solar access and overshadowing mandatory requirement "provide some north facing habitable rooms and open space in each residential apartment in order to maximise access to sunlight".*
- *Non compliance with the requirements Ballina Shire Combined Development Control Plan Chapter 2 - Ballina Town Centre clause 4.18.6 Private open space mandatory requirement "provide private open space to all dwellings in the form of a balcony, courtyard, terrace and/or roof garden, at least one of which is not located on the southern side of the building".*
- *The proposal is not in the public interest.*

The applicant has not demonstrated how it has been able to overcome the above reasons for the determination of DA 2011/519 and why a review should overturn Councils determination of 7 March 2012.

Excluding legal, technical, and financial reasons in the Councils Determination that council officers have to take into account, it is imperative to note the 5th reason of the determination:

"THE PROPOSAL IS NOT IN THE PUBLIC INTEREST"

Ballina Booking Service Pty Ltd
ABN 51 102 946 118
2 Martin Street, Ballina NSW Australia 2478
P +61 2 6618 1000

The supporting letter from Mr Elton Stone stated:

"The existing use is incompatible with tourist activities and has the effect of inhibiting the economic use of a substantial asset in the shire"

"The success of this application would in no way create a precedent that other unit holders in the complex could rely upon as the unit as the subject of the application is substantially different to other units in the complex and does not lend itself to holiday letting"

The above statements are incorrect and the writer has not consulted the manager/operator or other businesses within the complex. The writer is aware and was party to the original DA for the Ramada Hotel & Suites as a former Director of Slipway Properties Pty Ltd. The writer is also aware of the negative impact of mixed use developments through his direct involvement at the Riverside Suites (formerly Ramada Riverside Suites).

Mr Stone also stated that the application will "in no way create a precedent". Legal advice received from Teys Lawyers dated 10 February 2012 (attached) and submitted to Council in February 2012 stated:

"There is a proposal to the local authority to the effect that it could give its consent on the express terms that the consent is not to be taken as a precedent by other owners who might seek approval for a change of use. This won't work. The local authority is required to consider each application on its merits. Given current market circumstances, it is inconceivable that there will not be more applications for residential use if this application is granted"

Ballina Booking Service Pty Ltd does sympathise with the Messer's Gosper and Mills that the economic climate and in turn the real-estate market has had a negative impact on the value of their units. Mr Mills as a former Director of Slipway Properties Pty Ltd (developer of Ramada Hotel & Suites) and Mr Gosper as a sophisticated investor were aware of and had full knowledge of the original DA and restrictions when they purchased their units.

Ballina Booking Service therefore reaffirms its prior objection.

Yours sincerely

Peter Nair

Peter Nair
Representative For
Ballina Booking Service Pty Ltd

Ballina Booking Service Pty Ltd
ABN 51 102 946 118
2 Martin Street, Ballina NSW Australia 2478
P +61 2 6618-1000

Jodi Granger

From: John Cordina [John@cordina.com.au]
Sent: Tuesday, 17 July 2012 4:29 PM
To: Bob Thornton
Cc: Louise Cordina
Subject: FW: S.82A Review of Determination DA 2011/519

Mr. Rod Willis
Group Manager
Regulatory Services
Ballina Shire Council
P.O. Box 450, Ballina NSW 2478

Via Email : bob@ballina.nsw.gov.au
Attention : Bob Thornton
Re : DA 2011/519 - S.82A Determination Review

Dear Sir,

I wish to reaffirm my support of Council's REFUSAL determination on the 23 February, 2012 of the above development application. The Council vote to refuse the application was also supported by the Deputy Mayor, David Wright chairing the meeting, confirming that the decision by Council was resounding. Due to the iconic nature of the Ramada development in the Ballina Shire, there was considerable community support to retain the Ramada as an important tourist destination, as originally approved.

The Applicants, via the S.82A Review are seeking to change the use of their Lots 52 & 53 from Tourist to Residential accommodation in order to increase the value of their properties and reduce their borrowing costs under a revised zoning. Whilst the position of the Applicants does attract some sympathy, there are two major issues which cannot be disregarded :

1. The Applicants' (with Mr. Ian Mills a director in the original developer company), purchased their Units as did all other investors in the Hotel, on the premise that the Ramada was to exclusively operate as a Hotel and not as a mixed or hybrid development; and
2. The application disregards the impact on all other investors. Similar to the Applicants, initial investors in the development have probably lost nearly half of their original investment value. Removing the penthouses from the letting pool, I believe reduces the quality and flexibility of the Hotel's 'letting offer' and also creates a precedent where other like applications could be made in the future. Both of these matters, either together or separately adversely affects the investment values of both the Hotel and individual Units in the development.

In their original determination Council gave specific reasons for their refusal of the application and I am not aware of any new submissions from the applicant, which responds to these reasons. Notwithstanding, I would like to add some additional points that need to be considered in context of the S.82 Review :

1. It is clear that all investors in the original Hotel development have lost heavily on their original investments, including myself. There are several factors which have contributed to these losses including the current poor financial climate, which is outside investors' control. I have recently acquired a second 6th floor unit for \$385,000, adjoining my original purchase. This Unit was originally marketed for over \$700,000 demonstrating that the initial investment values have near halved over the period. Therefore, apart from the refusal reasons put forward by Council, it would improper for two investors to be singled out and given preferential zoning treatment, which would have the effect of negatively impacting on the investment value of the Hotel and individual units and businesses. The Point Restaurant, does depend on Hotel lettings to generate part of its income including subsidizing long trading hours to maintain Hotel standards, including its current four and half Star rating. Any reduction in letting capabilities can only have a detrimental impact

on Hotel activities, including to other businesses – the Indian Mumtaj Restaurant and La Cucina di Vino Restaurant.

2. We note that as part of the original application, the applicant proposed exclusive use of the corridor common area, despite not receiving approval for this from the Owners' Corporation (OC), as required by law. Our legal advice suggests that this matter would need to get approval from the OC and a By-Law passed granting exclusive use. Furthermore, individual 6th Floor owners, being in close proximity to the applicant units, are entitled to object even if the OC were to give such approval. As the owner of two units on the 6th Floor, I do certainly object to the applicant being given exclusive use of common areas.
3. The penthouse unit owned by Mr. Ian Mills is now under mortgagee possession and is due to be auctioned in August, 2012. I understand that legally Mr. Mills has lost his ownership rights and therefore it is doubtful Mr. Mills can still be party to the application. Furthermore, I understand the mortgagee, the Commonwealth Bank has not given their formal approval to the S.82A Review. It begs the question as to how Council can vote upon a zoning matter impacting on a property, without the owner declaring its position on the matter. This in our view may well place in doubt the validity of the Review process.

In respect of the letter of support for the applicant from Mr. Elton Stone, received by Council on 12 July, 2012 the reasons provided for support must be questioned. Firstly, the use of the penthouses is certainly not incompatible with tourist activities and to the contrary, form an important part of the Hotel offer to the high end of the market. The Ramada presents itself as an iconic Hotel in the Ballina Shire and any equivalent four and a half star Hotel would always have similar high end letting offers to tourists. Secondly, Mr. Stone states the success of any application would not create a precedent to further applications. I do not believe such a position can be substantiated. If this application were successful and a further application made that proceeded to the Land and Environment, the precedent set would most certainly be used in support of any court action. Council need also consider the precedent in terms of other developments in the Shire, where its zoning objectives could be undermined.

CONCLUSION : There has been overwhelming community support to retain the Ramada in accordance with its original approval, as an iconic Hotel tourist destination in the Ballina Shire. Council resoundingly rejected the original application to grant 'change of use' and the Applicant has provided no further substantiation to justify reversing the original council decision. The financial plight of the Applicants certainly deserves sympathy, however their position is no different to all of the original investors in the development. Hotel operations, including our Restaurant business have been considerably affected by the ongoing instability from the various change of use applications that have come before Council. The current financial environment has exacerbated the trading difficulties with many businesses closing to the detriment of the Ballina community e.g. Café 29 in receivership, Wicked Restaurant closed, Pelican 181 closed, La Cucina di Vino Italian Restaurant at Ramada closed and since reopened and Shelly's on the Beach closed and under renovations.

Ballina Shire needs to support all remaining tourist/destination related venues, particularly in the Town Centre, with the Ramada/The Point providing one of the very few quality eateries (servicing breakfast, lunch and dinner), in the Ballina Centre. This matter needs permanent resolution and for Council to stand firm behind its original decision – **AND AGAIN REFUSE THE APPLICATION.** Ultimately, it is in the Public Interest that the Hotel be retained intact together with its associated business operations, in accordance with the original development approval.

Yours faithfully,

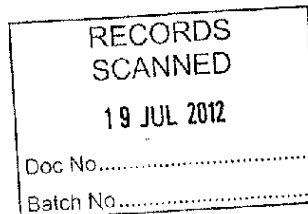
John Cordina
Director
Summertime Holdings Pty Limited – The Point Restaurant

18th July 2012

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

By Hand

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



Dear Sir

Re: DA 2011/519

So...Here we go AGAIN!!!.....

About six months ago I received a similar letter from you in regard to DA 2011/519.

I am truly saddened and somewhat confused though to receive another such letter, however, thank you for the opportunity to comment.

In my response today, I am sure you will notice several familiar statements. How could there not be?

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

I ask you, please, whatever is so difficult to understand about the word "NO"?

As I recall, Council went to great lengths, devoting an enormous amount of time, energy and so much money (which belonged to ALL ratepayers of Ballina Shire) in court over this very subject.

Only to have just 6 months ago, another request brought to Council by the very same Applicant (who applied for the original defeated C of U) with the lodgment of DA 2011/519.

Even I thought that the ruling given by Council on 23rd February 2012 in regard to this DA 2011/519 meant that no more time effort or ratepayers money would be given or wasted on this subject.

How is it possible that all this time, energy and money (which could be spent in numerous areas or on many deserving needs by so many in the Ballina Shire) can be given to a select few ratepayers, time and again ?

Just how many more avenues (backdoors) are there available to allow this type of tactic before it is considered laughable, or straight out "abuse"?

What percentage of Applicants who after previous unsuccessful attempts to lodge a DA are advised of or afforded this ongoing service at the expense of other ratepayers of Ballina?

I urge you to uphold the dignity of this Council and so command the respect for its decisions.

As mentioned earlier, I am saddened a review of this DA has been lodged.

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

To just keep lodging in some form or other in the hope that it will gradually wear Council staff and Councillors down...(Bully boy tactics at their best)!

So, once again I ask that, this property be left as an uncompromised first class internationally branded Hotel in Ballina and so be able to function without any further interference of this type.

If successful this will serve as a precedent to being able to place more Units into the next Application.

Surely ENOUGH IS ENOUGH ALREADY!

For, I ask you, in life who has the luxury of this much time and energy, to keep trying to frustrate people's livelihoods AND of course the backing of dollars \$\$\$'s involved to permit this type of behavior.

Wouldn't it be just wonderful for all of us in the Ballina Shire if Ballina Shire Council had this sort of treasure chest, to be able to go to for its many needed things in the Shire...BUT alas they do not.

Also, I wonder who really wants to say....GOODBYE TO BALLINAS FIRST AND ONLY INTERNATIONALLY BRANDED HOTEL thus sounding the death knell for any other major hotel brand risking any \$\$\$'s in establishing itself in Ballina.

Actually Byron Bay and the Tweed accommodation suppliers probably would!

Some of the following is taken from my letter of 6 months ago....

- So begins...first step a DA ...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 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 other fronts.

1. By pulling 2 Lots (which of course is actually 4 Rooms not two) out of the Hotel, this will alter the whole structure: hotel operating costs will be spread amongst those remaining.
This is also very unfair.
Other Lot Owners, who have acted in good faith, should not have to be responsible to contribute for the changing circumstances to other people's private investments.
2. Another area of concern of course is the parking, just one thing that comes to mind, permanent residents will use up car spaces otherwise attended for tourists to our Town.
3. Oh! And what about rubbish, a real health concern.
4. Ballina CBD and community will be worse off with a loss of tourist income.
5. At the time I invested, the Developer provided me (and I feel certain any other interested purchasers) 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. They bring business to the whole hotel complex.

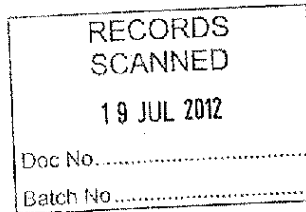
SO, PLEASE, JUST LET THIS HOTEL ALONE TO FUNCTION AS WAS ALWAYS INTENDED WITHOUT CONSTANT INTERFERENCE....ALL OF BALLINA WILL BENEFIT.

Thank you for your time.

Gail Stotter. *Gail Stotter*

16th July 2012

Mr Rod Willis
Group Manager
Regulatory Services
Ballina Shire Council
P. O Box 450, Ballina NSW 2478



DA 2011/519 Determination Review

Dear Sir

Pyara Enterprises T/A Indian Mumtaj Restaurant, objects to the proposed review of Councils Determination of DA 2011/519.

Our objection is based on the same reasons as given by Council in its determination:

- Non compliance with objective 67(a) of the North Coast Regional Environmental Plan "to encourage tourism activity that will complement the existing natural and manmade features of the region and be of positive benefit to the region's economy".
- Non compliance with objective (i) of the Ballina Local Environmental Plan 1987 "to encourage further development of tourist and recreational activities within the Shire of Ballina, while minimising its adverse impact on the natural attractions and amenity enjoyed by long term residents".
- Non compliance with the car parking requirements of Ballina Shire Combined Development Control Plan Chapter 1, Policy Statement No 2 - Car Parking and Access.
- Non compliance with the requirements Ballina Shire Combined Development Control Plan Chapter 2 - Ballina Town Centre clause 4.18.1 solar access and overshadowing mandatory requirement "provide some north facing habitable rooms and open space in each residential apartment in order to maximise access to sunlight.
- Non compliance with the requirements Ballina Shire Combined Development Control Plan Chapter 2 - Ballina Town Centre clause 4.18.6 Private open space mandatory requirement "provide private open space to all dwellings in the form of a balcony, courtyard, terrace and/or roof garden, at least one of which is not located on the southern side of the building.
- The proposal is not in the public interest.

Yours sincerely

A handwritten signature in dark ink, appearing to read "DK" followed by a flourish.

Harbir Singh Gill
Managing Director

2 Martin Street
Ballina NSW 2478

16th July 2012

Mr Rod Willis
Group Manager
Regulatory Services
Ballina Shire Council
P. O Box 450, Ballina NSW 2478



Dear Sir

la Cucina di Vino Ristorante Italiano supports the objection made by Pyara Enterprises T/A Indian Mumtaj Restaurant, to the proposed review of Council's Determination of DA 2011/519.

Our objection is based on the same reasons as given by Council in its determination:

- Non compliance with objective 67(a) of the North Coast Regional Environmental Plan "to encourage tourism activity that will complement the existing natural and manmade features of the region and be of positive benefit to the region's economy".
- Non compliance with objective (i) of the Ballina Local Environmental Plan 1987 "to encourage further development of tourist and recreational activities within the Shire of Ballina, while minimising its adverse impact on the natural attractions and amenity enjoyed by long term residents".
- Non compliance with the car parking requirements of Ballina Shire Combined Development Control Plan Chapter 1, Policy Statement No 2 – Car Parking and Access.
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- Non compliance with the requirements Ballina Shire Combined Development Control Plan Chapter 2 -- Ballina Town Centre clause 4.18.6 Private open space mandatory requirement "provide private open space to all dwellings in the form of a balcony, courtyard, terrace and/or roof garden, at least one of which is not located on the southern side of the building.
- The proposal is not in the public interest.

Yours sincerely



Danny Singh
Owner/Proprietor

2 Martin Street
Ballina NSW 2478

16th July 2012

Mr Rod Willis
Group Manager
Regulatory Services
Ballina Shire Council
P. O Box 450, Ballina NSW 2478



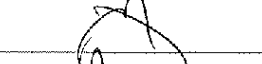
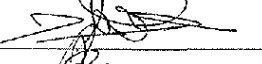
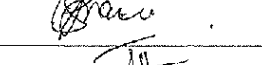
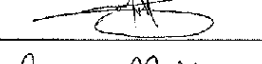
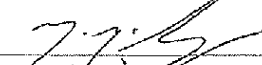


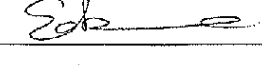

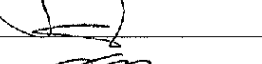

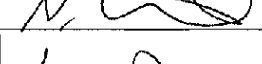
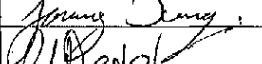
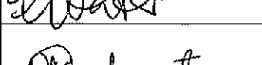
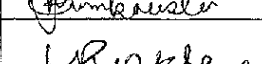
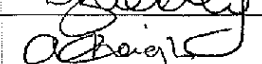
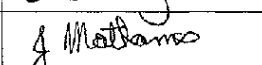
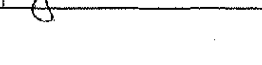
DA 2011/519 Determination Review

We the local community and rate payers object to the proposed review of Councils Determination of DA 2011/519.

Our objection is based on the same reasons as given by Council in its determination:

- *Non compliance with objective 67(a) of the North Coast Regional Environmental Plan "to encourage tourism activity that will complement the existing natural and manmade features of the region and be of positive benefit to the region's economy".*
- *Non compliance with objective (i) of the Ballina Local Environmental Plan 1987 "to encourage further development of tourist and recreational activities within the Shire of Ballina, while minimising its adverse impact on the natural attractions and amenity enjoyed by long term residents".*
- *Non compliance with the car parking requirements of Ballina Shire Combined Development Control Plan Chapter 1, Policy Statement No 2 – Car Parking and Access.*
- *Non compliance with the requirements Ballina Shire Combined Development Control Plan Chapter 2 – Ballina Town Centre clause 4.18.1 solar access and overshadowing mandatory requirement "provide some north facing habitable rooms and open space in each residential apartment in order to maximise access to sunlight.*
- *Non compliance with the requirements Ballina Shire Combined Development Control Plan Chapter 2 – Ballina Town Centre clause 4.18.6 Private open space mandatory requirement "provide private open space to all dwellings in the form of a balcony, courtyard, terrace and/or roof garden, at least one of which is not located on the southern side of the building.*
- *The proposal is not in the public interest.*

We also believe that this is a backdoor attempt by a Slipway Properties Director Mr Ian Mills to set a precedent.

Name	Signature	Address
K. Whiteford		70 The Ridgeway Ballina 2478
L. Cawley		87 Buret St Ballina
D. Hoanillos		3/21 MARTIN ST. BALLINA
Isabel Nair		70 THE RIDGEWAY
Diana King		43 Meridian Drive Coolgardie
Sean Mueshall		43 MERIDIAN ST E. BALLINA
Thini	Rose Molinar	12 Bolding St Ballina
Matthew McKay		40 GRANA PATRICKY BALLINA
Jamie Lee Morris		21 Silverquill Drive East Ballina NSW
Claudine Grantham		811 Short St, Ballina
Emily O'Brien		5/15 Jarrett St Ballina NSW 2478
Tania Kortick		22 Bohana Ave Mistonville 2477
ROBERT MERZ		4 TUDENZ PL MISTONVILLE 2477
VANESSA MORRIS		13 HOWARD CR BALLINA 2478
Natalie Guest		78 BYRON ST BANGALOW 2479
Tammy Jung		6 Princess ave Ballina
GINA WATERS		20 Keith Hall Lane Keith Hall 2478
JOANNE ARMBRUSTER		12 Brampton Ave Ballina 2478
LEANNE BUCKLEY		112 Ravenswood dr oponellabah 2480
Alex Haigh		36 Luban street Wollongbar 2477
SENNA MATHAMS		127 TAMMERT DRIVE MISTONVILLE 2477

K. HOWELL	<i>Howell</i>	3/59 TENNYSON ST BYRON BAY NSW 2481
Kerrie Carmichael	<i>Kerrie</i>	1/6 Aurora Place Lennox Head 2478
Tania Edwards	<i>T Edwards</i>	22 Queens Drive Ballina NSW