

Attachment M – Public Submissions

From: Michael McDonald <mick_marie70mcdonald@yahoo.com.au>
Sent: Monday, 20 March 2023 8:51 AM
To: Ballina Shire Council
Subject: CM 23/19349 Development application 2022/721.1 OBJECTION

We strongly object to any development of this land due to FLOOD RISK

We are still seeing the Impact of 2022 floods on our community and do not consider this development appropriate for Ballina residents.

Michael & Marie McDonald
7 Jabiru Pl
East Ballina 2478

Sent from my iPad

~~Stratford~~

From: jmggallagher jmggallagher <jmggallagher@bigpond.com>
Sent: Tuesday, 4 April 2023 11:22 AM
To: Ballina Shire Council
Subject: CM23/23672 DA NO : 2022 / 721 REF: PPSNTH-207
Attachments: 20230404110834.pdf

Dear Ballina Council

Please find attached a submission in relation to DA application 2022 / 721 - REF: PPSNTH-207 for consideration by the Northern Regional Planning Panel.

Kind Regards

Janice Gallagher

WJ & JM Gallagher
11 Burns Point Ferry Road
WEST BALLINA NSW 2478
04 April 2023

Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Sir/ Madam

RE: DA NO: 2022 / 721-

APPLICANT: GTH Resorts No 10 Pty Ltd-

PROPOSAL: Erection of a Seniors Housing Development Lot 1DP 124173 and Lot 1 DP 522558.

We wish to OBJECT to this proposal on the following grounds:

- The proposed development filling and retaining walls will have a major impact on surrounding areas changing tidal water flow that will flood Burns Point Ferry Road and other streets close by making the area less safe to live in.
- The proposed 2m of fill will not only have a huge effect on residents but also those using the Ferry to South Ballina and Wardell. Burns Point Ferry Road and Kalinga Street are prone to flooding during high tides. Often the council erects ROAD CLOSED signs during the peak tides. This DA does not include any flood preparation plan which is overly concerning for residents.
- We would like to see the whole area zoned C2 Environmental Conservation to protect the many species for fauna and flora including native vegetation like mangroves and salt marshes. This residential development would have an unacceptable impact on our environment.

The proposed development will severely impact flooding, tidal water and rain water flow which will have a negative effect on the surrounding houses. There is no plan for flood preparation for this DA.

Following the 2022 Floods levels and the impact on the West Ballina area we request our objection be carefully considered.

Yours sincerely



Janice & John Gallagher

Ballina

From: Pam Maxwell <bpmaxwell@hotmail.com.au>
Sent: Thursday, 6 April 2023 11:09 AM
To: Ballina Shire Council
Subject: CM23/24515 DA 2022/721.1 Gemlife development Burns Point Ferry Rd West Ballina

Categories: Krish

We object to this development.

This development will involve extensive fill causing significant runoff and drainage problems in West Ballina. The consequences of this were evident in the recent flood.

WE ARE ON A FLOOD PLAIN!!!

It is unfair to the existing residents of Ballina Quays area, to put their homes in extra danger, which would result from this loss of another section of the floodplain.

This was shown last year, when runoff from Leach Cres properties exacerbated the flooding which occurred. When is Council going to stop using the canals as a storm water drain?

B & P Maxwell

Sent from my iPad

From: Gary & Ann Potter <gapots@yahoo.com.au>
Sent: Saturday, 8 April 2023 3:25 PM
To: Ballina Shire Council
Subject: CM23/24887 Re Development Application DA2022/721 - Gem Life

Dear Sir/Madam

We would like to strongly object to this development because it will increase the risk of flooding in the whole of West Ballina.

Having just been through the worst flood in this area we are very much against any development that requires the land to be filled. If the land is filled where is the water going to go - straight to the housing already in the area and it will devalue our properties significantly. It is all very well to say that new developments are required to fill land but you need to know how this will impact the houses already in this area.

We live at 109 Riverside Drive and believe this development will greatly impact our property should we encounter another severe flooding event..

Most of the residents in this West Ballina area are retirees and we don't want to go through another trauma like we have in the last 14 months.

Hoping you will reject this Development Application and consider the impact it will have on this area.

G.J. & A.N.POTTER. gapots@yahoo.com.au. M.0428871348

From: hoeven@aapt.net.au
Sent: Monday, 10 April 2023 2:38 PM
To: Ballina Shire Council
Subject: CM23/25131 DA 2022/721.1

Categories: Krish

Dear Councillors,

Regarding DA reference number DA 2022/721.1 concerning a housing development project proposed for the wetlands on the west side of Burns Point Ferry Road just south of River street: Our names are Patrick and Lucia van der Hoeven, and we live on Kalinga Street at number 106.

We wish to present our objection to the proposed housing development. This is on the basis of the increased automobile traffic that we expect to see travelling along Kalinga Street, which already does see far too much traffic that is avoiding the main road at River Street, and which currently includes industrial vehicles as well as numerous private vehicles of people that do not reside on Kalinga or adjoining streets. The dust and noise is terrible, We are also worried about flood mitigation, given that our house was so recently impacted by the flooding of 2022. We are very worried that the required infrastructure for so many additional dwellings at the end of Kalinga street will not be established. At our house the water came off the road and up through the drains.

But mainly we are worried about the increased traffic flows on Kalinga street. We counted 296 vehicles passing directly by our house over a 1 hour time period on a Thursday afternoon. This was before the floods and the roadworks on River street. We never expected so much traffic to develop on this residential street. There is increasing traffic that is using Kalinga street as a throughfare in order to avoid River street, and the main entrance to the proposed housing development near the end of Kalinga will definitely make this worse. We would prefer to see the west end of Kalinga street completely closed such that there is no access to Burns Point Ferry Road, rather than see the increased development traffic. This would also help reduce the daily rush of vehicles along Kalinga street avoiding River Street and speeding to catch the ferry.

We would very much appreciate your consideration of our objection to the current proposal, and if going ahead, make sure that there is serious consideration of closing the west end of Kalinga to mitigate the heavy traffic, as well as all of the other infrastructure required and flood mitigation.

Thank you for your consideration,

Sincerely,

Patrick and Lucy van der Hoeven
106 Kalinga Street.
West Ballina, NSW 2478

From:

Sent:

To:

Subject:

Tuesday, 11 April 2023 8:36 AM

Ballina Shire Council

CM23/25138 (Confidential) Gemlife Da (2022/721.2)

I object to proposed development - my understanding is the significant raising off land potentially will cause increased flooding of west Ballina

Sent from my iPhone

From: [REDACTED]
Sent: Tuesday, 11 April 2023 12:01 PM
To: Ballina Shire Council
Subject: CM 23/25148 GemLife Development, West Ballina.

[REDACTED]

[REDACTED]

I am writing to express my very serious concern about the GemLife Development Application (2022/721.1) to 'deliver 148 independent living homes...in a seniors housing community' on the flood plain adjoining Burns Point Ferry Road.

I oppose this proposed development.

I experienced the flood which affected West Ballina in February 2022. It was indeed a traumatic experience for most West Ballina residents, with many homes being inundated by flood waters. I am certain that the trauma lives on in the minds of many local residents, many of whom are elderly and suffering chronic illness, [REDACTED] I believe many local residents live in fear of a recurrence of the catastrophic flooding of 2022.

I am aware of a submission to council by Isobel and Laurence Johnstone of 63 Burns Point Ferry Road, West Ballina 2478, dated 09 April 2023, in which they document their opposition to the proposed development as follow: **Reason 1: Flooding**

Potential. Reason 2: Increased Traffic. Reason 3: Increased Noise.

The submission is well-considered and thoughtful and I fully support the rationale and detail on which it is based. There is no reason for me to comment further on the case against the development application expounded by Mr and Mrs Johnstone.

Their argument is clear and unequivocal. I believe the proposal is more than likely to exacerbate the next flood, causing emotional, physical and financial hardship for many West Ballina residents. **I urge council NOT to allow our fragile wetland to be built upon. The proposal has the potential to destroy our homes again.**

I support the land rezoning to C2 (Environmental Conservation) under Planning Proposal 22/007.

Yours sincerely,

[REDACTED]

~~CONFIDENTIAL~~

From: Peter Chirgwin <mrpeterchirgwin@tpg.com.au>
Sent: Tuesday, 11 April 2023 12:39 PM
To: Ballina Shire Council
Subject: CM 23/25150 Submission re DA 2022/207, PAN-294809 & PPSNTH-207
Attachments: Our Objections to Gem Life Development.docx

Categories: Krish

I wish to submit this attached submission regarding the above development.

Regards
Peter Chirgwin

CM23/25150

Peter & Rosslyn Chirgwin
2 Marina Place West Ballina NSW 2478

To Ballina Shire Council

We wish to make a submission against DA 2022/721 by GTH Resorts No 10 Pty Ltd as per your letter dated 14 March 2023.

Background:

We live on the corner of Burns Point Ferry Road & 2 Marina Place West Ballina.

Our submission addresses our concerns regarding the above development.

We are concerned that, because West Ballina is in a fragile state following the severe flood in March 2022, the flora and fauna may take a long time to recover and would be adversely affected by the huge works undertaken for the development. Our environment must take priority.

Traffic movement would be problematic as Kalinga Street is narrow and would not allow for any more traffic than the present amount.

If the development was allowed to proceed and another similar flood occurred, where would the residents living there, be accommodated because during last year's flood it was impossible to find somewhere to live in Ballina. We were among the unfortunate residents who were evacuated by a rubber duck. Our house was inundated with 400ml of filthy floodwater and it was 10 months before it was stripped and rebuilt and we could move back in. At first we had to go to Queensland to stay with relatives then we eventually moved to a flat in Ballina, so my point about accommodation is relevant considering the amount of people being out of their homes at such a time. Ballina just could not cope with all these extra people needing help.

With the huge amount of fill to build any homes in this development, we worry about the displacement of water and fear it would flow down Burns Point Ferry Road and inundate our homes much worse than before. We have stormwater problems now regardless of the works done by Ballina council and the drains in our area badly need attention as the stench from them at night is unbearable. So a lot of work needs to be done anyway let alone the burden of a development of this type would put on our existing infrastructure.

There must be a much more suitable location for a development such as this.

We strongly support Ballina Council in their proposal for the land rezoning to C2 Environmental Conservation.

Yours Sincerely

Peter & Rosslyn Chirgwin
2 Marina Place West Ballina NSW 2478
Corner Marina Place & Burns Point Ferry Road
West Ballina. 2478.
0466 427 573
11th April 2023.

From: no-reply=paperform.co@mg.paperform.co on behalf of Complaint Gilbert <no-reply@paperform.co>
Sent: Tuesday, 11 April 2023 1:15 PM
To: Ballina Shire Council
Subject: CM23/25151 Feedback Received - 11-04-2023 13:14:35

Submitted At

11-04-2023 13:14:35

What is the reason for your feedback?

Complaint

What type of Council service does your feedback relate to?

Development Applications

Details regarding your feedback

Objecting strongly to proposed Gemlife Application which must be stopped.

Being one of the displaced in the flood of March 2022 living in Quays Drive West Ballina

it would be sheer folly to let this application be approved. Having first hand knowledge of the last lot of housing in Quays Drive and the so called drainage provided which was the first to fill up and flood towards our house we definitely do not need any other " displaced water" in our area.

First Name

Kenneth

Surname

Gilbert

Email

sandraken1@live.com.au

Preferred Phone

438883030

Street Number

7

Street Address

Quays Drive

Suburb

West BALLINA

Postcode

2478

How would you prefer us to contact you?

Phone

I consent to have Ballina Shire Council collect my name, address, and email information

Yes

Submission ID

6434d09b43dc46f71207de70

From: Stephen Caple <stevecaple1@gmail.com>
Sent: Tuesday, 11 April 2023 9:34 PM
To: Ballina Shire Council
Subject: CM23/25157 Objection to Development Application (2022/721.1)

To whom it may concern

I hereby submit my objection to the proposed Gemlife Development Application(2022/721.1) My objection is based on the following concerns,

The development was ruled against by the NSW Land and Environment Court in 2021 due to the adverse environmental effects.

The development does not meet the requirements of R2 zoning.

The development will increase traffic on River St adding to the existing congestion in and out of Ballina.

The loss of wetland and introduction of hard surfaces will add to flooding concerns.

This land should be rezoned C2 Environmental Conservation in accordance with the Ballina Council proposal.

regards
Stephen Caple
Riverside Drive
West Ballina



From: CAMERON BLENKE <bienke81@hotmail.com>
Sent: Wednesday, 12 April 2023 1:13 AM
To: Ballina Shire Council
Subject: CM 23/25161 FW: Development Application No. 2022/721.1 Objection Submission

Cameron Blenke
13 Ridgeview Crescent
Lennox Head NSW 2478

To Whom it May Concern,

I would like to express my objection to Development Application No. 2022/721.1 My elderly disabled father lives at 33 Emigrant Creek Lane West Ballina, one of the adjoining properties to the proposed development and I have very serious concerns regarding the impact this development will have on flooding of the surrounding properties and West Ballina as a whole as well as the significant and irreversible threat to the threatened environmental biodiversity of the entire proposed development site as outlined by the Land & Environment court in their rejection of the previous development application for this site.

Subsequent to lodgement of the prior Development Application No. 2020/192.1, the proposed development site, surrounding properties and West Ballina as a whole suffered catastrophic flooding twice in March 2022 with the first of the two major floods lasting a number of days from the 1st-3rd March 2022 and a 2nd major flood of the area less than a month later on the 30th March 2022. The environmentally significant Coastal Wetlands on the proposed development site currently hold a significant amount of water during such flood events reducing the impact of such floods on surrounding properties and West Ballina as a whole as shown in the photos of the site below on the 1st March 2022 at the start of the first flood before the flood peaks in the following days. Thankfully I was able to take my father to safety prior to his property being inundated by the first flood, however with the flood warning withdrawn before the 2nd flood on the 30th March 2022, my elderly disabled father became isolated in the flood waters with River Street, Burns Point Ferry Road & Emigrant Creek Lane being the 3 roads surrounding the proposed development site completely flooded for the 2nd time in less than one month and I was unable to reach my father at his home and unable to contact the SES by phone I had to drive to the SES & plead with them to rescue my elderly disabled father. I plead with you to consider if this development was approved how the SES would cope with rescuing not only my father but and additional 200 or more elderly persons that are proposed to live on this site when up to 3 meters of fill are dumped on the site and we lose this endangered Coastal Wetland forever.

CM23/25161



Add a Caption

Look Up - Landmark

Tuesday • 1 Mar 2022 • 3:41 pm

Adjust

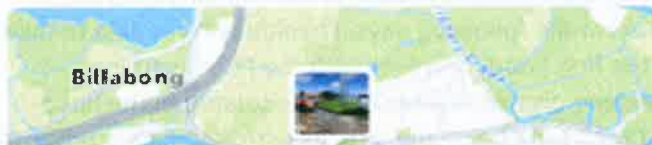
IMG_7989

Apple iPhone 8

Wide Camera — 28 mm f/1.8

12 MP • 4032 x 3024 • 644 KB

ISO 20 28 mm 0.0ev f/1.8 1/1845 s



CM 23/25161



Add a Caption

Tuesday • 1 Mar 2022 • 3:41 pm

Adjust

IMG_7956

Apple iPhone 8

12MP

Wide Camera — 28 mm f/1.8

12 MP • 4032 x 3024 • 2.1 MB

ISO 20

28 mm

G lens

f/1.8

1/2560 s



West Ballina

Adjust



CM²³/25161



Add a Caption

Tuesday • 1 Mar 2022 • 3:41 pm

Adjust

IMG_7990

Apple iPhone 8

Wide Camera — 28 mm f1.8

12 MP • 4032 × 3024 • 2.6 MB

ISO 20

28 mm

0 ev

f1.8

1/1779 s



West Ballina >

Adjust



FLOODED DEVELOPMENT SITE & BURNS POINT FERRY RD 1ST March 2022 PRIOR TO THE FLOOD PEAKS OF 2ND & 3RD MARCH 2022

FLOODED DEVELOPMENT SITE ON 1ST MARCH PRIOR TO FLOOD PEAKS ON 2ND & 3RD MARCH 2022

If this development application is approved West Ballina will lose the benefit of the endangered Coastal Wetlands that hold a significant amount of water in such flood events. I have included below some photos of surrounding properties in West Ballina from the first flood in early March 2022.



Add a Caption

Add a Caption

Tuesday • 1 Mar 2022 • 6:12 pm

Adjust

0521C99E-5979-4E47-8508-3F496E6681C3

No camera information

IMG_0

No lens information

2 MP • 1440 × 1794 • 598 KB

Add a location...



Saved from Instagram

Tuesday • 1 Mar 2022 • 3:43 pm

Adjust

IMG_7993

Apple iPhone 8

IMG_7

Wide Camera — 28 mm f/1.8

12 MP • 4032 × 3024 • 2.1 MB

ISO 20

28 mm

0 ev

f/1.8

1/2000 s



West Ballina

Adjust



CM 23/25/61



Photo Camera

Tuesday • 1 Mar 2022 • 3:44 pm

Adjust

IMG_7099

Apple iPhone 8

HEVC



No lens information

1080p • 1920 • 1080 • 13.5 MB

30.0 FPS

00:14



West Ballina

Adjust



EMMIGRANT CREEK LANE WEST BALLINA ON THE WESTERN SIDE OF THE DEVELOPMENT SITE ON 1ST MARCH 2022
PRIOR TO THE FLOOD PEAKS ON THE 2ND & 3RD MARCH 2022



Add a Caption

Tuesday • 1 Mar 2022 • 5:13 pm

Adjust

IMG_8009

Apple iPhone 8

Wide Camera — 28 mm f/1.8

12 MP • 4032 × 3024 • 2.5 MB

ISO 32 28 mm 0 EV f/1.8 1/1499 s



West Ballina

Adjust



Add a Caption

Look Up — Landmark

Tuesday • 1 Mar 2022 • 3:41 pm

Adjust

IMG_7991

Apple iPhone 8

Wide Camera — 28 mm f/1.8

12 MP • 4032 × 3024 • 2.5 MB

ISO 32 28 mm 0 EV f/1.8 1/1171 s



CM 23/25161



Add a Caption

Look Up - Landmark

Tuesday • 1 Mar 2022 • 3:41 pm

Adjust

IMG_7991

Apple iPhone 8

Wide Camera — 28 mm f1.8
12 MP • 4032 × 3024 • 2.5 MB

ISO 20 28 mm 0 ev f1.8 1/1171 s



BALLINA WATERFRONT VILLAGE AND TOURIST PARK , WHICH ADJOINS THE NORTH WESTERN END OF THE PROPOSED DEVELOPMENT SITE FLOODED ON THE 1ST MARCH 2022

CM 23/25161



Add a Caption



Add a Caption

Monday • 7 Mar 2022 • 12:04 pm

Adjust

IMG_8143

Apple iPhone 8

Wide Camera — 28 mm f1.8

12 MP • 4032 × 3024 • 665 KB

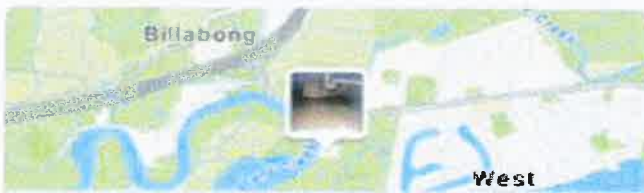
ISO 25

28 mm

0 ev

f1.8

1/16 s



West Ballina

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Tuesday • 1 Mar 2022 • 3:41 pm

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IMG_7990

Apple iPhone 8

Wide Camera — 28 mm f1.8

12 MP • 4032 × 3024 • 2.6 MB

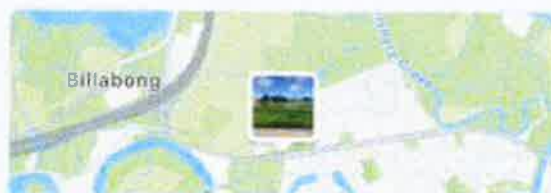
ISO 20

28 mm

0 ev

f1.8

1/1779 s



West Ballina

Adjust



FLOOD WATERS TRAPPED UNDER MY FATHERS HOME AT 33 EMMIGRANT CREEK LANE WEST BALLINA ADJOINING THE PROPOSED DEVELOPMENT SITE ON THE 7TH MARCH A WEEK AFTER THE FLOOD STARTED & MUD THROUGH HIS GARAGE ON 4TH MARCH 2022 FROM THE FLOOD WATERS THAT SWEEPED THROUGH IT AND THE REST OF HIS PROPERTY WHICH ADJOINS THE SOUTH WESTERN END OF THE PROPOSED DEVELOPMENT SITE.



Add a Caption

Add a Caption

Tuesday • 1 Mar 2022 • 3:41 pm

Adjust

IMG_7990

Tuesday • 1 Mar 2022 • 3:41 pm

Adjust

IMG_7990

Apple iPhone 8

Wide Camera — 28 mm f/1.8
12 MP • 4032 × 3024 • 2.6 MB

ISO 20 28 mm 0 ev f/1.8 1/1779 s

Apple iPhone 8

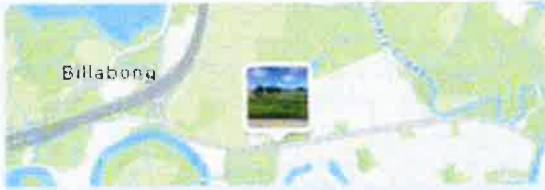
Wide Camera — 28 mm f/1.8
12 MP • 4032 × 3024 • 2.6 MB

ISO 20 28 mm 0 ev f/1.8 1/1779 s



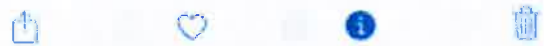
West Ballina

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West Ballina

Adjust





Add a Caption

Tuesday • 1 Mar 2022 • 3:41 pm

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IMG_7990

Apple iPhone 8

Wide Camera — 28 mm f/1.8

12 MP • 4032 × 3024 • 2.6 MB

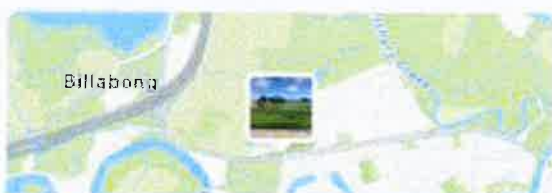
ISO 20

28 mm

0 ev

f/1.8

1/1779 s



West Ballina

Adjust



FLOODING IN WEST BALLINA SURROUNDING THE PROPOSED DEVELOPMENT SITE ON THE 2ND & 3RD MARCH 2022.

I note that in November 2021 the Chief Judge of the Land and Environment Court refused the previous development application for this site finding development of the R2 Zoned part of this site would have Serious & Irreversible impacts on the Ecologically Endangered Communities (EECs) & that it could not be demonstrated that developing this site would not have serious indirect impacts on the EECs present within the remainder, RU2 Zoned part of the site. The evidence of the joint ecology experts provided to the Land & Environment court demonstrated that the entire R2 zoned land contained Ecologically Endangered Communities.

In considering the evidence presented in the Land & Environment Court, the Chief Judge determined: "I consider that in circumstances where both experts agree that the vegetation in the slashed area is of a plant community type that is part of an endangered ecological community, either PCT 1235 (Swamp Oak) which is part of the Swamp Oak Floodplain Forest EEC or PCT 1808 (Estuarine Reedland) which is part of the Freshwater Wetlands EEC, the finding should be made that the vegetation is part of an endangered ecological community, whichever one does not matter. The upshot is that the whole of the northern part of the site zoned R2 is comprised of three endangered ecological communities, Coastal Saltmarsh EEC to the east and south, grading to the west into a mosaic of Freshwater Wetlands EEC and Swamp Oak Floodplain Forest EEC, depending on the different microhabitats across the site,

ending in the north-western corner with Swamp Oak Floodplain Forest EEC. There is a small stand of mangrove to the west adjoining Emigrant Creek”.

I find it extremely concerning that despite the evidence provided in the land and environment court and the ruling made by the Chief Judge regarding the vegetation that is part of an endangered ecological community that the developer completely disregarded the finding and significantly increased the frequency of slashing of the proposed development site on the 8th November 2022 in what is arguably a deliberate attempt to degrade or destroy the Endangered ecological Community including Coastal Saltmarsh EEC, Freshwater Wetlands EEC & Swamp Oak Flood plain Forest EEC. This is shown in my photos below taken of increased slashing commencing on the site on the 8th November 2022 and the photo taken on 11th April 2023 showing the destruction of the EEC's caused by the developer. I respectfully request that you respect the findings of the Land and Environment Court regarding the significance of these Ecologically Endangered Communities & refuse all development of the site zoned R2 & restrict any development to the North Eastern corner of the site Zoned R3 & allow Ballina Council to complete their current proposed rezoning of this site to C2 Environmental Conservation.

CM^{23/}25161



Add a Caption

Add a Caption

Tuesday • 8 Nov 2022 • 7:36 am

Adjust

IMG_9049

Apple iPhone 8

No lens information

1080p • 1080 x 1920 • 115.1 MB

30.01 FPS

01:58



West Ballina

Adjust



Tuesday • 8 Nov 2022 • 7:36 am

Adjust

IMG_9049

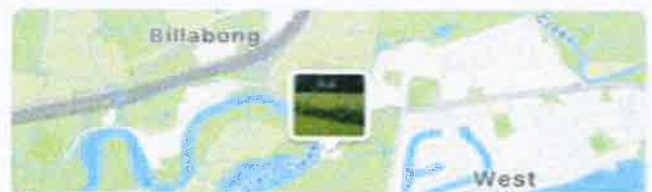
Apple iPhone 8

No lens information

1080p • 1080 x 1920 • 115.1 MB

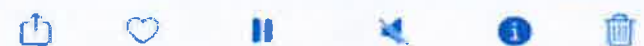
30.01 FPS

01:58



West Ballina

Adjust





Add a Caption

Look Up - Plant

Tuesday • 11 Apr 2023 • 9:58 am

Adjust

IMG_9949

Apple iPhone 14 Pro Max

Main Camera — 24 mm f/1.78

12 MP • 3024 x 4032 • 4.1 MB

ISO 80

24 mm

0 EV

f/1.78

1/4348 s



West Ballina

Adjust



Edit



PHOTOGRAPHIC EVIDENCE OF WHICH I ALSO HAVE VIDEOS OF SHOWING THE COMMENCEMENT OF A SIGNIFICANT INCREASE IN SLASHING ON THE 8TH NOVEMBER FOLLOWING THE FINDINGS OF THE LAND AND ENVIRONMENT COURT. THE 3RD PHOTO SHOWS THE DELIBRATE ENVIRONMENTAL DESTRUCTION CAUSED BY THE DEVELOPERS SLASHING OF THE PROPOSED DEVELOPMENT SITE OVER THE PROCEEDING 5 MONTHS AND REMENANTS OF REEDS GROWING ALONG THE BOUNDARY FENCE THAT COULD NOT BE SLASHED.

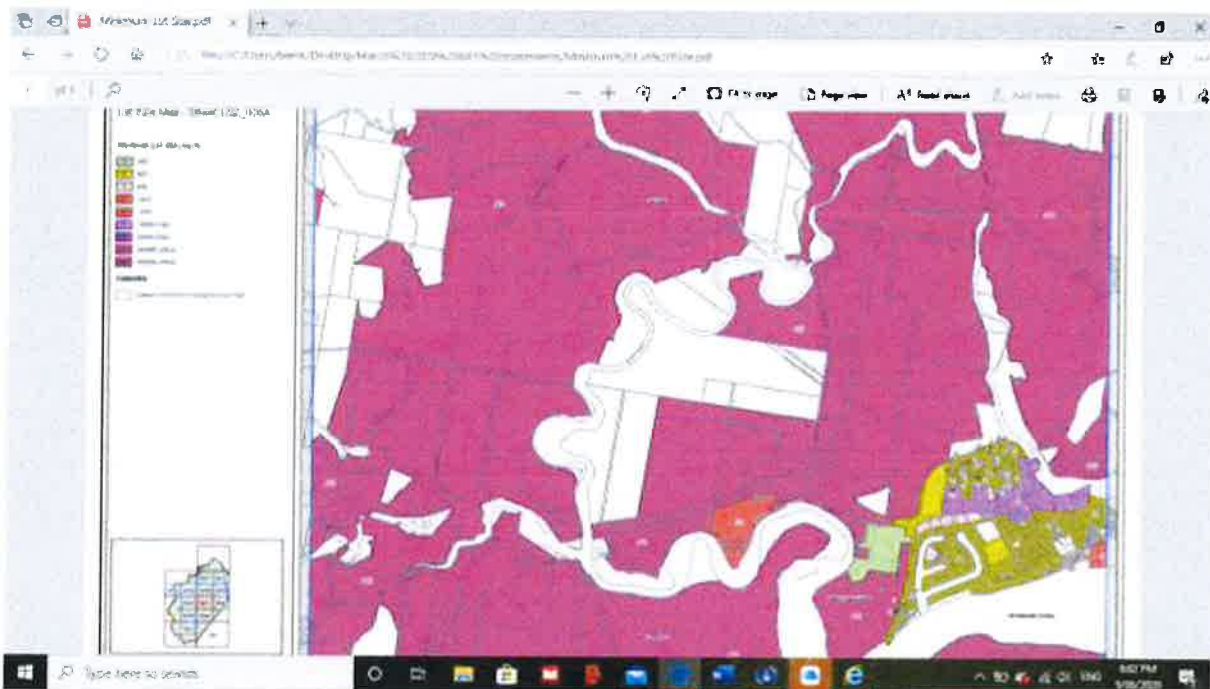
Further more, in considering the evidence presented in the Land & Environment Court, the Chief Judge determined that the site provides habitat for five threatened species including the Southern Myotis, Black-necked Stork, Collared Kingfisher, Mangrove Honeyeater, Curlew Sandpiper. I have been delighted on my weekly sleep overs at my fathers house while assisting with his care to wake to the singing of these and many other bird species that call the wetlands of this proposed development home.

Based on the Land & Environment Court judgement, which considered the detail site investigations that formed the basis of the Joint Ecologist Expert report, the whole of the property constitutes HEV land. The judgment concludes that the whole of the property contains Endangered Ecological Communities (EECs) that would be significantly impacted by urban development. The Chief Judge of the Court determined that not developing the part of the land which is zoned RU2 Rural Landscape could not be considered as an 'avoid' mechanism that would allow urban development within the part zoned R2 Low Density Residential. Based on the evidence, therefore, it is apparent that

any urban development of the land would significantly impact the existing HEV land. It follows, therefore, that the existing urban zoning of the land is not suitable.

Further I would like to draw your attention to The Technical Reports Bundle Page 657 (ADG Consulting Pty Ltd) from the previous Development Application No. 2020/192.1 which shows that a previous Contaminated Site Investigation Carried out in 2005 by E.A Systems Pty Ltd. Found that "A garbage disposal area was located in the north-western section of the site with soil analysis suggesting levels exceeding residential criteria for lead (311mg/kg)". However ADG Consulting Pty Ltd in their Conclusion & Recommendations claim "The presence of waterways & minor surface pooling of water surrounding this location prevented sampling from occurring in this location as part of this preliminary site investigation". Given ADG Consulting Pty LTD's acknowledgement of the proximity of waterways (Emigrant Creek) and the pooling of water on the contaminated, the development and proposed scrapping of the site exposing the contaminated soil presents an unacceptable risk of contaminated water runoff from the contaminated site into the adjacent Emigrant Creek, which poses a significant risk of contamination of the creek and marine life including fish which are consumed by both the residents of Emigrant Creek Lane including my father, the residents of West Ballina Waterfront Village & Tourist Park & the vast number of Ballina Shire residents that fish from Emigrant Creek which subsequently feeds into the Richmond River. I note Cr Williams widely publicised concerns regarding a fish kill in Emigrant Creek in January 2020, in addition to the January 2020 fish Kill of 10,000 fish in the Richmond river of which Emigrant Creek Feeds into. The development of this contaminated site on Emigrant poses an unacceptable risk of further fish kills on this fragile waterway.

You will also note from the attachment & screen shot below of the Lot Size Map from the current version of the Ballina Local Environmental Plan 2012 that the minimum lot size for development site is 450 square Meters while all 148 units will be on lots of less than 157-220 square Meters, being less than half of the minimum lot size required under the Ballina Local Environmental Plan 2012.



Kind Regards,

Cameron Bienne

References

Planning Proposal 22/007 Ballina Shire Council

Land & Environment Court Judgement:- Planners North v Ballina Shire Council

~~Stratford~~

From: Paul Rutledge <PRutledge@protonmail.com>
Sent: Wednesday, 12 April 2023 2:39 PM
To: Ballina Shire Council
Subject: CM 23/25359 objection to DA-2022-721
Attachments: Objection-to-DA2022-721.pdf; 20220302_123251.jpg

Dear Madam/Sir,

Please find attached our objection to development application 2022/721 and a photo of the site demonstrating our objection.

yours sincerely
Paul and Margaret Rutledge

CM23/25359

Paul and Margaret Rutledge
Unit 22
3 Burns Point Ferry Road
Ballina NSW 2478
12 April 2023

to Ballina Shire Council
regarding development application 2022/721

Dear Madam, Sir,

I am writing to voice our strong objection to the construction of 148 independent living units plus other buildings and earthworks in Burns Point Ferry Road, West Ballina, as proposed in development application 2022/721.

The land on which the application refers is subject to flooding.

Housing should not be built on land that floods, and especially seniors housing as in the application, as it unnecessarily puts residents, neighbours and emergency services at risk rescuing elderly residents when flooding occurs.

Storm water, king tides and flooding have not been addressed, with the surrounding community already suffering from these affects, this development will only push more water back into the neighbourhood and onto those already badly affected.

Transport, water and power infrastructure are at maximum capacity, or more so, within the community and this development will only make matters worse while providing no solutions or assistance to any of these problems.

The attached file shows River Street, West Ballina, looking east, with the land referred to in the application on the right hand side.

This proposal should not go ahead.

Yours sincerely

Paul Rutledge
Margaret Rutledge

CM23/25364

10 April 2023

Ballina Shire Council
Planning and Environmental Health Division
Attention: Ms Georgia Lee, Town Planner



Submission re: Development Application 2022/721 – GTH Resorts No 10 Pty Ltd (GemLife)
Lot 1 DP 124173 and Lot 1 DP 522558, 550-578 River Street and 6 Burns Point Ferry Road West
Ballina

We strongly object to the above development application. The storm and flood events in the Northern Rivers in 2022 have highlighted that overdevelopment, and inappropriate development in flood liable areas must not be permitted.

Our reasons for objecting include –

Storm water runoff & drainage -

Our existing Park, Ballina Waterfront Village & Tourist Park, will be considerably lower than the proposed development and our concern is the impact that storm water runoff would have on us. The developers cannot guarantee that there would be zero impact on us as an existing development.

Adverse impacts regarding filling of the site -

Due to the very significant amount of fill that is required to enable this type of development, we have concerns, that there should be no adverse overland flooding impact on us as an adjoining site/existing development from the proposed development. There is always an amount of uncertainty with flood modelling and there is no guarantee that a development such as this one would not cause an impact, as has been shown with inappropriate and overdevelopment that has been approved by other councils and the issues they have caused. Residents of Cumbalum in Ballina have noticed a significant change in the water flow since the Ballina By-pass was built, despite flood modelling being carried out. A former councillor, Sue Meehan, remarked on this at an ordinary meeting of Ballina Shire Council when considering a development application on the floodplain.

There should be no adverse overland flooding impacts on existing creeks.

Kind regards

Tracy Burke
Ballina Waterfront Village & Tourist Park

From: delma mcintyre <delmamcintyre@hotmail.com>
Sent: Wednesday, 12 April 2023 4:23 PM
To: Ballina Shire Council
Subject: CM 23/25437 Re: GemLife Development

Development Application (2022/721.1)

resident of Ballina for over 40 years.

concerned about the impact in the sensitive area prone to flooding.

Also the impact on the local residents, wildlife habitat Hospital and traffic and the need for the dredging of the Richmond River... This development proposal is all about money and not about the people our area and the impact it will have on our environmental living.

PLEASE STOP THIS DISASTER.

My name is Mr Kenneth McIntyre I have been a

My wife and myself object to this development as I am

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From: kim mcintyre <kimmy-12345@hotmail.com>
Sent: Wednesday, 12 April 2023 4:37 PM
To: Ballina Shire Council
Subject: CM23/25440 GemLife Development

Development Application (2022/721.1) I object to this Development. I am a resident of Ballina for 43 years. I do not think that this is in the best interest for Ballina residents, environment and the impact on our already stretched Hospital system. The loss of the fauna and flora in this fragile area... GO AWAY GEMLIFE

I OBJECT. Ms.Kim McIntyre

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CM23/25547

RECEIVED
12 APR 2023
RECORDS

52 DOLPHIN DR
WEST BALLINA

10-4-23.

General Manager
Ballina Shire Council

Dear Sir,

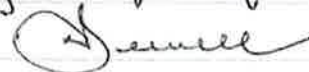
I write to express my concerns regarding
GEM LIFE DEVELOPMENT APPLICATION (2022/721.1)

My home was flooded in March 2022
and repairs have yet to commence.

If GEM LIFE's development is approved then
the future for West Ballina residents looks
very bleak.

I therefore extend my support for Council's
plan to rezone the land to CE Environmental
Conservation - Planning Proposal (22/007)

Yours faithfully



RONALD JAMES SEWELL

MOBILE: 0408200782

From: T Bowers <tballina@gmail.com>
Sent: Thursday, 13 April 2023 9:10 AM
To: Ballina Shire Council
Cc: Cr. Stephen McCarthy; Cr. Sharon Cadwallader; Cr. Phil Meehan; Cr. Rod Bruem; Cr. Jeff Johnson; Cr. Eva Ramsey; Cr. Kiri Dicker (she/her); Cr. Eoin Johnston; Cr. Simon Chate; Cr. Nigel Buchanan
Subject: CM23/25560 Objection to DA 2022/721.1 Re Gemlife Proposal to Develop Fragile Wetland

To Whom It May Concern,

I am writing to express my significant concerns re the proposal by GemLife to develop the fragile wetlands between Burns Point Ferry Road and Emigrant Creek as reflected in DA 2022/721.1.

While I understand the need for housing in the area, destroying critical wetlands is not the solution, which should be overwhelmingly apparent following the flooding that occurred in Ballina in March, 2022. If anyone needs a reminder of this I can certainly provide many, many photos of the devastation, including the flooding of our home and all of those around us. The reality is that we need more wetlands, not less, and the need to preserve what is there is nothing short of critical. I've heard the comment that some homes only got a little water in them, yet even a little water in a home is enough to cause hundreds of thousands of dollars in damage to each home, so we must do all that is reasonably possible to mitigate future risk and take sensible measures such as preserving these irreplaceable wetlands.

There are other concerns re the proposed development as well, with there already being significant delays in getting from West Ballina into Ballina with traffic being backed up bumper to bumper for long periods. This is not only causing inconveniences to the thousands who use the road each day, it is a safety concern for anyone who may have a need for emergency services, who are unable to respond quickly due to traffic congestion.

I would encourage those involved to reject this DA and ensure that this important and fragile wetland area is retained as wetlands, which I would suggest is its highest and best use.

Regards,

Thomas (Tom) Bowers
42 Dolphin Drive
West (or Wet?) Ballina

~~Secret~~

From: Carol Brown <caroljoybrown@gmail.com>
Sent: Thursday, 13 April 2023 10:03 AM
To: Ballina Shire Council
Subject: CM23/25566 Development application (2022/721.1) and environmental conservation proposal (22/007)

Dear council members,

I write to you as a land/home owner in Kalinga Street, West Ballina. I wish to lodge my objections to the development application (2022/721.1) by GemLife to rezone and develop housing and ancillary buildings on the property, Cnr Burns Point Ferry Road and River Streets West Ballina.

I understand the urgent need for housing in Ballina area but clearly this is not the place! We see the flooding at the corner of Burns Point Ferry Road and Kalinga Street every time there is a King tide, not to mention most of us are still waiting for our homes to be repaired following the 2022 flood. To raise the area with fill, as GemLife proposed would just cause more flooding as the water would have nowhere to go. The proposed area is actually is a wetland, hence the reason they want to raise it.

I therefore support the council's proposal C2 (Environmental Conservation) planning (22/007) to rezone the land as a wetland and develop it for fauna, and floral.

Note: the previous Motel on that site was demolished due to wetland flooding, the proof is there!

Thank you for the opportunity to have my say, may it assist you in your decisions.

Carol

From: rwjemison12@bigpond.com
Sent: Thursday, 13 April 2023 10:12 AM
To: Ballina Shire Council
Subject: CM23/25571 objection to GemLife development DA 2022/721.1

Dear Councilors,

I wish to register my opposition to the proposal to the GemLife development.

I was recently flooded, and it cost \$520,000 to repair my house. Any development which puts more water into the river is madness given our knowledge of recent events. The flood plains serve an Important purpose and provide area for flood waters to spread without entering homes. The part of the flood plain in question is the habitat of small fish, mud crabs and other

environmental sensitive species. I am not surprised that the Land and Environment Court raised their objections.

I fully support the Council's plans to rezone this land to C2 .

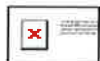
I am amazed that anyone would submit such a development proposal.

Evidently in early March they weren't anywhere near Lismore or Ballina or the towns in between.


The Council has my full support to take all necessary steps to prevent DA 2022/721.1 or any "MODIFICATION " of it ever taking place.

Yours sincerely

Dr Robert W Jemison PhD, BSc (Hons) BSc , Fellow Royal Australian Chemical Institute, FTUAA.



Virus-free www.avast.com


From: jonbeverley jonbeverley <jonbeverley@bigpond.com>
Sent: Thursday, 13 April 2023 10:24 AM
To: Ballina Shire Council
Subject: CM23/25602 Submission re DA 2022/721.1

We herewith submit our objection for the Development Application 2022/721.1 by GemLife for 148 residential units on River Road, West Ballina.

Our reasons for objection of this development are:

Housing supply - GemLife states this development will contribute to meeting the housing supply demands forecast by the Council. Housing supply needs are currently far greater for low cost and social housing, especially for essential workers (health carers, teachers, shop assistants) and the homeless. Essential workers underpin the well-being of our society and without whom the general economy and well-being of the area would deteriorate. There is a lesser need for housing for seniors, who by contrast would already be in a better socio-economic position than essential workers, at this time.

Traffic - GemLife states that the development will host 296 car spaces for residents, who will be retired or semi-retired, plus an additional 51 spaces for visitors. The proposed access during construction phase from River Road, the main South-Western access to/from Ballina, will add to the current traffic congestion as it is only single lanes at that point. Further, the proposed entry/exit to Burns Point Ferry Road adjacent to Kalinga Street, and also close to the River Road junction will cause traffic flow issues. River Road is already congested and another 150+ vehicles at this intersection will increase current travel delays causing greater motorist frustration. What is Council planning to decrease traffic congestion on River Road at this point - with or without this new development?

Noise - The proposed construction of noise barriers along the River Road frontage of the development is all good and well for the GemLife properties. It is however highly likely to add to traffic noise for the adjacent caravan village. The barriers will create an unwelcoming initial visual impact for visitors to Ballina township.

Environment - GemLife refers to 'improved environmental protection and enhancement through a new stewardship management plan'. We support increased biobanking of the area and enhancement of the ecological site to attract wildlife and biodiversity. However, the entire site is a natural wetlands area and should be fully declared a Biobanking Area. Council should be supportive of identifying this areas as a natural wetlands and restoring endemic vegetation to the site, with public access for information and education of the importance of biodiverse wetlands.

Flooding - GemLife refers to flood modelling in accordance with the Ballina Development Control Plan 2012, the reduced footprint, and additional flood modelling based on Council' most recent data - yet to be completed. The 2022 flood event impacted a vast number of properties adjacent to the proposed development causing huge displacement and emotional distress to residents. (And, that is before any increase in land levels as proposed by GemLife's development application.) Future flood waters may not directly affect the GemLife development (except making it an island). However, raising the development site land by 2 metres is highly likely to have a greater impact to the surrounding area due to flood waters being redirected to lower points, specifically adjacent properties on Emigrant Creek, Burns Point Ferry Road, Kalinga Street, Spinnaker Crescent, Sirius Place, Mainsail Place and Dolphin Drive.

Further, whilst the extent and the impact of the 2022 flood was the first seen for the vast majority of Ballina population, with current climate change predictions, including increased ocean levels and rainfall, the area will flood again - only a matter of time. What is Council doing to mitigate future flood impacts on this area with or without the GemLife development? This area should be retained undeveloped as part of future flood mitigation strategies.

We implore Ballina Shire Council to reject the GemLife Development Application (DA 2022/721.1), and all future proposals for development of the site bordered by River Street and Burns Point Ferry Road.
Thank you for the opportunity to make a submission against this development application.

JJ & BA Grant
47 Dolphin Drive, West Ballina
jonbeverley@bigpond.com



Sue Wade

From: Ian Leven <leftylev1945@yahoo.com.au>
Sent: Thursday, 13 April 2023 11:51 AM
To: Ballina Shire Council
Subject: CM 23/25603 Objection to GemLife DA 2022/721.1
Attachments: BALLINA SHIRE COUNCIL 1.pdf

Please find attached our written objection to the GemLife DA 2022/721.1

Could you please acknowledge the receipt of the email to our objection.

Yours Sincerely
Ian and Wendy Leven

BALLINA SHIRE COUNCIL

In relation to Development Application DA 2022/721.1 for housing in southern side of Burns Point Ferry Road West Ballina we wish to lodge our objection to this development going ahead.

We have resided in West Ballina since 1996 having lived in Kalinga Street, Burns Point Ferry Road and currently in Dolphin Drive. During this time we have witnessed flooding from the river and localised flooding due to storm activity. On many occasion the land in question on the southern side of Burns Point Ferry Road has been inundated by water many times. This flooding has always extended out of the wetlands flooding into Burns Point Ferry Road and Kalinga Street. The Ferry Boat Motel (which no long exists) on the corner of Burns Point Ferry Road and the highway we have seen it inundated with water on many occasions from flooding of the wetlands. A major concern is the raising of the land 2 to 3 metres to build this development as it could cause flood water to be dammed in and cause additional flooding in Burns Point Ferry Road and Kalinga Street.

In relation to the February/ March 2022 flood the flood water from the wetlands caused major flooding in Burns Point Ferry Road and continued several hundred metres along Kalinga Street inundating houses and units with flood water.

In the development application it shows the entrance to this proposed site is in Burns Point Ferry Road at the intersection of Kalinga Street. At the present time Kalinga Street experiences heavy traffic from vehicles exiting the ferry and vehicles leaving the highway and travelling along Kalinga Street to avoid the congestion caused by the upgrade of River Street. When vehicles are parked opposite each other in Kalinga Street it is too narrow for vehicles to pass safely in both direction. With excess traffic that may be experienced by vehicles leaving the proposed development site Kalinga Street would be more dangerous to road users.

We feel with the amount of flooding that occurred in Ballina Quays during last year's flood more residents needed to be notified of this proposed development as only a small amount of homes were notified by council. We only became aware of this in the past week when Gem Life dropped a community newsletter at our residence with the closing date for objections being 14 April 2023. We note that NSW Land and Environment Court ruled against Gem Life's proposed development in 2021.

We have attended Burns Point Ferry Road to check the notice of this development and found it to be a very small sign erected in long grass and could not be easily read because of its location and it would be unsafe to stand on the roadway to read it.

WE TOTALLY OPPOSE THIS DEVELOPMENT APPLICATION GOING AHEAD.

Yours Sincerely

Ian and Wendy Leven

76 Dolphin Drive

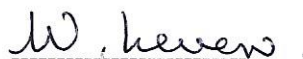
West Ballina 2478

02 66813488


13th April 2023



Ian Leven



Wendy Leven



From: TroydBoy <troydboy@gmail.com>
Sent: Thursday, 13 April 2023 12:32 PM
To: Ballina Shire Council
Subject: CM23/25607 Objection to GemLifes DA 2022/721.1
Attachments: BALLINA SHIRE COUNCIL 2.pdf

Please find attached my objection to the proposed development.

Please acknowledge receipt of this email.

--
Have A Great Day

TroydBoy

CM 23/25607

BALLINA SHIRE COUNCIL

In relation to Development Application DA 2022/721.1 for housing in southern side of Burns Point Ferry Road West Ballina I wish to lodge my objection to this development going ahead.

I have lived in West Ballina since 1997 having lived in Dolphin Drive and currently reside in Kalinga Street. I have seen the south side of Burns point Ferry road totally underwater at king tides and during heavy rain. This flooding has always extended out of the wetlands flooding into Burns Point Ferry Road and Kalinga Street. My major concern by filling and raising the land 2 to 3 metres to build this development will cause flood water to be unable to escape and cause the water to dam up and even more flood water to enter homes that have already been effected prior to this development being built and cause additional flooding in Burns Point Ferry Road and Kalinga Street.

In the February/ March 2022 floods I stood on Kalinga Street near Burns Point Ferry Road and witnessed firsthand the flood water coming from the proposed site which flooded Burns Point Ferry Road and caused major flooding to my complex and the neighbouring complexes in Kalinga Street.

The entrance to this proposed site is in Burns Point Ferry Road at the intersection of Kalinga Street. Kalinga Street already experiences high volumes of heavy traffic. At this time already when vehicles are parked on both sides of Kalinga Street it is not wide enough for two vehicles to pass each other safely in both directions. The proposed development site would see Kalinga Street become even more dangerous to residents and other road users.

I received no notification of this proposed development. It was only brought to my attention last week by the concerns of other local residents. More residents needed to be notified of this proposed development as only a small amount of homes were notified by council.

I have seen the notice of development sign on the south side of Burns Point Ferry Road. It is located in amongst very high grass and cannot be seen easily and is in a totally unsafe area for people to read the sign.

I TOTALLY OPPOSE THIS DEVELOPMENT APPLICATION GOING AHEAD.

I trust that our elected councillors will hear our concerns and object to this proposal going ahead.

Kind Regards

Troy Leven

16/121 Kalinga Street

West Ballina 2478

0419493471

13th April 2023



Troy Leven

Ms Georgia Lee
Ballina Shire Council
For the attention of The Northern Regional Planning Panel
40 Cherry Street
Ballina NSW 2478

Ms Teresa Dodd
1/83 Burns Point Ferry Road
West Ballina NSW 2478
12 April, 2023

**SUBMISSION AND OBJECTIONS REGARDING
DA 2022/721 – Lot 1 DP 124173 and Lot DP 522558
550-578 River Street and 6 Burns Point Ferry Road, West Ballina**

Dear Ms Lee, and Members of the Northern Regional Planning Panel,

As a resident at 1/83 Burns Point Ferry Road, I must again submit my objections to the above development application because, even in its new incarnation of 148 manufactured home sites, it does not satisfy environmental issues, let alone traffic flow, significant increase in floodwater and noise pollution.

In the attached document I will again outline the sound reasons why this DA should not be given the go-ahead and I will draw heavily on the Judgment of the Land & Environment Court concerning the previous DA for this site, where the Judge, Mr Brian Preston, found that the development would have serious and irreversible impact on three endangered ecological communities and the five threatened species that exist on the development site. Further, since the refusal of that DA, a lot has happened in Ballina.

Burns Point Ferry Road, Kalinga Street (and West Ballina in general) were heavily affected by the floods that devastated our region. I attended the subsequent Council meeting on flood mitigation, read the report, and I attended the CSIRO meetings (where I handed over a submission to them) and was interviewed about my experience and my suggestions.

One of my submissions to Council and to the CSIRO, was that all further development in flood-prone, environmentally sensitive land be denied, since not only would those new home owners be endangered, but constructing a multi-home village on monumental landfill, would create a dam so that floodwater surging up Burns Point Ferry Road from the river system and Emmigrant Creek would meet the dam and have nowhere to go. Although I am not a hydrologist, surely the result would be even more floodwater causing threat of inundation to the residents and to the precious environment of the area. I believe that Lot 1 DP 124173 and Lot 1 DP 522558 should be rezoned and set aside as environmentally significant habitat and that this DA should again be refused.

Yours sincerely,


Teresa Dodd

Determination of development application and disposition of appeal

191. I have decided that four preconditions to the grant of consent have not been satisfied. First, the proposed development is to be carried out partly on land that is excluded land under cl 6(a) and cl 5 of Sch 2 of the Manufactured Home Estates SEPP, being land within the Coastal Wetlands and Littoral Rainforests Area identified under the Coastal Management SEPP, on which development for the purposes of a manufactured home estate is not permissible.
192. Second, I am not satisfied, under cl 9(1) of the Manufactured Home Estates SEPP, that the proposed development on that excluded land will not have an adverse effect on land having special ecological qualities, which the land within the Coastal Wetlands and Littoral Rainforests Area has.
193. Third, I am not satisfied, under cl 11(1) of the Coastal Management SEPP that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or the quantity or quality of surface and ground water flows to and from the adjacent coastal wetland.
194. Fourth, I am of the opinion, under s 7.16(2) of the BC Act, that the proposed development is likely to have serious and irreversible impacts on the biodiversity values.
195. Under each of these four circumstances, development consent cannot be granted to the proposed development. The development application must therefore be determined by refusal of consent and the appeal dismissed.
196. The Court orders:
1. The appeal is dismissed.
 2. Development application 2020/192, as amended, for a manufactured home estate on Lot 1 in DP 124173 known as 550-578 River Street, West Ballina is determined by refusal of consent.
 3. The exhibits may be returned.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated: 03 November 2021

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- [Accessibility](#)
- [Contact Us](#)
- Website last updated: 08 September 2021

The Judge, in his lengthy summation of his decision to reject the application, was adamant that GemLife was not to build on that environmentally fragile land and condemned the company for the multiple inaccuracies and omissions in its DA.

I would like to urge the Council to apply to have the entire site rezoned so that it is no longer in danger of being destroyed by a company determined to build on a unique wetland.

FURTHER CONCERNS REGARDING THE REVISED GEMLIFE DA

Recently, GemLife circulated a Newsletter which was hand delivered to nearby residents of the proposed Development Application attempting to explain its revisions.

It is difficult to understand why, after having had a major turnout of residents opposed to the original DA and after having had such a convincing judgment against it by the Land and Environment Court, that GemLife is still attempting to persuade residents that the proposed DA will not affect the unique biodiversity of the site, and that they will take steps to protect the threatened species and environment on site.

As well, to suggest that the development will not negatively affect residents of West Ballina via floodwater, noise, traffic gridlock, fumes and safety is gaslighting at its worst.

TRUCKLOADS OF FILL AND NO PLAN TO CONTAIN IT

With regard to the huge amount of fill needed to raise the development site, according to the Land Environment Court judgment, at that time the applicants had not given a detailed plan of how they would prevent the fill from spilling into Emigrant Creek and upsetting the ecological balance that exists there. To say to the Court, please pass the DA and, "we will come up with a plan to prevent spillage" is not good enough. How could such a suggestion be enforced once the DA is approved? Do they just say, Oops!? When Emigrant Creek and the wetland is contaminated? There is enough precedent for this gambit – take for instance the destruction of sacred Aboriginal paintings in a cave by a mining company! Oops!

ANY spillage of fill, mud or contaminated runoff into the environmentally fragile land would be intolerable – and the judgment backs this up in its dismissal of the application.

The Applicants say that "the highest level of heavy vehicle generation will occur during the initial bulk earthworks phase. However, once completed this will reduce significantly". So how long is a piece of string?

As well, the original DA cited construction would take five years. So, while construction is going on, that's five years of rain, flood, drought, fire affecting the site with inevitable erosion, mud and dust impacting the environment of the wetland and its occupants.

If the fill turns to mud and seeps into our already overstretched drains, will than mean the mud seeps into our drains and river system and pollutes the creek where the precious Storks,

which I have seen with my own eyes, migrate each year to build their nests? Let alone the other birdlife, including a very rare Curlew that I have also seen, ring necked parrots, pied oystercatchers, rarely spotted satin flycatchers, ground owls, our precious Ospreys and, of course, the microbats that the judge in the Land and Environment Court said would be severely affected by the lights on the proposed home site; a conclusion backed up by scientific experiments that proved the bats refused to feed when test lights were set up in their area.

As well as the animals and birds, there are several varieties of tree, including swamp oak that were cited as being in danger of contamination from such polluted groundwater caused by fill altering the ecological balance of the area.

IMPACT ON TRAFFIC AND AMENITY CAUSED BY SEVERAL HUNDRED TRUCK MOVEMENTS

In my previous submission to Council regarding the first DA, I brought up the issue of the company's "estimated" 800 truckloads of fill that would be required to raise the land approximately 2 to 3 metres to a sufficient level to alleviate inundation by floodwater. It was not clear if this meant single trucks or B-double trucks, that already regularly use Burns Point Ferry Road creating noise, fumes and wash when water is over the road at high tides. And, those 800 trucks would be coming AND going, making the truck movement 1600 journeys.

The new DA claim suggesting only half as much fill would be required, is irrelevant, since 400 trucks making 800 return journeys, (single or B-Double) rumbling up and down Burns Point Ferry Road is still unacceptable.

Currently, my home, situated roughly 300 metres from the Ferry already shakes whenever trucks and B-doubles laden with fill come off the Ferry and hurtle down the street. During the regular high tides, the trucks still roll through at speed, creating wash onto properties the length of Burns Point Ferry Road. The noise is already unacceptable to residents from the trucks already using this quiet street, let alone the anticipated number.

As each stage commences, over five years, would they cause structural damage to my home? Already my home shakes as they go by. The existing fleet of trucks create so much noise that if I am on the phone, or watching TV, I cannot hear myself speak? So, will I, and all the other residents affected, have to put up with closing up doors and windows and lose our amenity . . . for FIVE YEARS?

As Isobel and Laurence Johnstone, at 63 Burns Point Ferry Road, so ably report in their Submission in Opposition, in which they give a recent example of construction noise at nearby Emmanuelle College, the noise was consistent for 8 hours each day. The racket included constant noise from piledrivers. They list screeching, reversing alarms, siren-type noise and digging machines at work creating almost unbearable noise all day. For GemLife to suggest that this kind of noise over five years will be at "expected negligible levels" is cynical at best.

THE PROPOSED DEVELOPMENT AND MORE FLOOD AFFECTS ON RESIDENTS

At the first meeting residents had with GemLife representatives, they suggested after questioning that once the development was constructed, we could expect only about 10% more floodwater over Burns Point Ferry Road and neighbouring Kalinga Street. Even if we accepted that unsubstantiated figure, and an out-of-date report done in 2012 that said "there would be NO adverse impacts on neighbouring properties and the wider network", residents of West Ballina now know better.

The people whose lives were shattered when their homes were inundated (TWICE), and when they were evacuated due to the dangerous floodwater levels, have plenty to say about anything that would create a new backflow of floodwater into their homes.

I feel for my neighbours, whose homes were inundated, because my home, and about four others, were narrowly spared, although my front garden and surrounding yard were completely washed away. But we were still marooned without power, water or phone service for ten days. I will be 76 next week. I live alone and I can tell you that the terror and exhaustion of that night, when I was attempting to carry everything precious to me up the stairs to the first floor, was something I never want to experience again in my lifetime.

So, to the residents of West Ballina, having survived TWO major floods, I think I speak for everyone when I say that GemLife's unsubstantiated figure of only a 10% extra level of water generated by their "village in the sky", and their report suggesting NO ADVERSE impacts is not only unacceptable, it is insulting.

When floodwater surges down Burns Point Ferry Road and it will encounter the ramparts of "the village in the sky" and even a layperson such as myself can guess that that water surging through West Ballina from the Richmond River, Emigrant Creek and beyond, will have nowhere to go but to further flood the homes in West Ballina. As well, any residents of the proposed development itself will also be cut-off by floodwater exacerbated by the development. The Applicants even said that "Additional flood modelling will be completed with Council's most recent flood modelling data, however the outcomes are expected to be the same." How can that possibly be?

In other words, Judge, give us the DA, we will build the Manufactured Homes horror story, and, sorry, I guess we were wrong about the extra flooding caused by the ramparts, and the impact on the environment by the pollution of Emigrant Creek from tonnes and tonnes of fill.

TRAFFIC CONGESTION

In my previous submission to Council, I personally carried out a traffic survey of Riverbend, the neighbouring over 55s manufactured village on the opposite side of River Street which GemLife said would be very similar to their proposed village, except the GemLife proposal would have almost twice as many homes. BEAR IN MIND I COUNTED TRAFFIC WHEN NSW WAS IN THE MIDDLE OF THE COVID CRISIS AND PEOPLE GENERALLY WERE NOT GOING ABOUT AS FREELY AS USUAL.

I recorded all the Riverbend traffic movements from 10.30a.m. to 11.30 a.m. I counted residents' cars leaving through the gate, and assumed they would all be returning at some time later in the day, so I doubled the figure. Then I counted all the tradesperson vans, all the delivery trucks and specialist services vehicles entering Riverbend, and doubled it for their exit from Riverbend. That came to 900 traffic movements DURING COVID when we were in lockdown. (The GemLife village at the time was supposed to be 300 manufactured homes. Almost double that of Riverbend.) The following day I sat and recorded traffic movements to and from the Burns Point Ferry from 8.30 a.m. to 10.00 a.m. Again, this was during lockdown.

Council has a copy of my, admittedly basic but accurate, traffic study that showed that building the GemLife village would contribute significantly to traffic problems at the River Street roundabout.

Currently, all the Ferry traffic, vehicles belonging to Burns Point Ferry Residents and Riverbend resident traffic currently uses the roundabout at the end of Burns Point Ferry Road, or else takes the turning into Kalinga Street through the industrial estate: a rat route shortcut into Ballina central district. As well, all the traffic heading into and out of Ballina uses the River Street roundabout.

When you add of all the traffic from the 148 homes plus Manager's Residence on the proposed site, all of which have two car spaces, and when you consider that the site has only one entrance/exit into Burns Point Ferry Road which is opposite the luckless residents of Number 13, then negotiating the turning into Kalinga Street and getting round the roundabout into River Street would create gridlock for everyone.

And since the development village will be appealing to a 55+ age group, a large number of whom would presumably still be working, then you can assume that there would be 148 extra cars trying to get round the roundabout at least twice a day – 592 traffic movements – provided they only left their homes once a day.

Being held up at the roundabout would also inspire all those drivers who currently speed down Burns Point Ferry Road in order to catch the Ferry before it leaves, or to disembark and get to their destination as quickly as possible, to drive even faster, creating a danger to elderly residents, children and cyclists alike. I have seen multiple B-double fill trucks race down my street, EVEN WHEN THE ROAD IS FLOODED BY HIGH TIDES, creating unacceptable wash over our properties.

Such a substantial increase in traffic, and B-double fill trucks would inevitably create more danger, more noise, more fumes and more disturbance to the unique creatures in what has been declared an environmentally sensitive site.

CONCLUSION

I would like to conclude by saying that despite all the significant objections raised by residents regarding noise, traffic, safety, loss of amenity and fear of even more flooding, Ballina Council's proposal to rezone this land to C2 Environmental Conservation and protect it forever, is not only the overriding concern but the noble thing to do.

As a senior citizen who loves living in this environment where I enjoy the wildlife and vegetation every single day, I would ask that my support for rezoning be recognised.

I would urge Council to pursue this objective and I thank you for the opportunity to make my Submission in Opposition.



TERESA DODD

RESIDENT

1/83 BURNS POINT FERRY ROAD

WEST BALLINA 2478

0427526886

texdodd@yahoo.com

PART OF ORIGINAL SUBMISSION

Subject: Appendix T Dodd Submission

Dear Georgia,

I would like to add the following to my Submission in respect of the 300 lot DA 2020-192

Environmental Concern

According to Mr Francis Binkey, whose property adjoins the subject land and Emigrant creek, that land is the habitat of the Grass Owl. This is a rare bird and Mr Binkey recounts that when the owner of cattle attempted to slash the marsh grass so his cattle could feed there, he was ordered to cease and desist by authorities because of the presence of the owls.

Further, Mr Binkey backs up the claims of the Ferry-master, that he has observed on many occasions vulnerable Brolgas in flight to the subject land where they feed.

He has also seen turtles making their way through the swamp.

Again, I think some investigation of the valuable birds and animals that inhabit the creek area needs to be carried out and taken into consideration.

Designation of the proposed development

After speaking with you, and after being handed a copy of GemLife's prospectus for their Maroochy-dore development, I was given the impression that this was to be an Over 55 Complex. In fact, I was told to use the Riverbend Over 55 site as my guide as to what the GemLife development was to be.

We have since learned that this is NOT what the development will be. It has been described as a Resort and rentals and caravans have been mentioned.

I think it would not be unreasonable to instruct GemLife to spell out the definitive use for this site. What are their intentions?

During my first conversation with you, Georgia, and with respect, I specifically asked if this was a "caravan park by stealth". I was again referred to the Riverside Over 55 complex as my example.

Site suitability

Recent investigations of the site by a civil engineer specialising in building on floodland, suggests that the raised Fill would begin to sink in an alarmingly short space of time, resulting in cracks and severe damage to buildings. (this concern is spelled out on page 13 of the report being submitted to you by the residents of No 13 Burns Pt Ferry Rd.)

Since the developers must know this, again one wonders what their intentions are.

GemLife has not been responding to answers and because this development will have an enormous impact over a now estimated 5 YEAR period on everything from floodwater, traffic, 800 trucks carrying fill, noise and not least the loss of precious wildlife, I think more information needs to be tabled before any go ahead is given to this project.

Yours sincerely,

Teresa Dodd
0427526886

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Land and Environment Court New South Wales

Medium Neutral Citation:

Planners North v Ballina Shire Council [2021] NSWLEC 120

Hearing dates:

2, 3, 4, 5, 6 and 13 August 2021

Date of orders:

03 November 2021

Decision date:

03 November 2021

Jurisdiction:

Class 1

Before:

Preston CJ

Decision:

The Court orders:

- (1) The appeal is dismissed.
- (2) Development application 2020/192, as amended, for a manufactured home estate on Lot 1 in DP 124173 known as 550-578 River Street, West Ballina is determined by refusal of consent.
- (3) The exhibits may be returned.

Catchwords:

APPEAL – manufactured home estate – refusal of development consent – proposed development partly on coastal wetlands and littoral rainforests area made under State Environmental Planning Policy No 36 – Manufactured

Timbarra Protection Coalition Inc v Ross Mining NL (1999) 46 NSWLR 55;
[1999] NSWCA 8

Tomasic v Port Stephens Council [2021] NSWLEC 56

Weal v Bathurst City Council (2000) 111 LGERA 181; [2000] NSWCA 88

Category:

Principal judgment

Parties:

Planners North (Applicant)

Ballina Shire Council (Respondent)

Representation:

Counsel:

Mr P Tomasetti SC (Applicant)

Mr A Stafford (Respondent)

Solicitors:

McCartney Young Lawyers (Applicant)

Lindsay Taylor Lawyers (Respondent)

File Number(s):

2020/249843

Publication restriction:

Nil

Judgment

The nature of the appeal and outcome

1. The applicant, Planners North, as the agent for Ballina Waterways Pty Ltd, lodged a development application with Ballina Shire Council (the Council) for a manufactured home estate on Lot 1 in DP124173 known as 550-578 River Street, West Ballina (the site). Ballina Waterways Pty Ltd is the owner of the site.
2. As amended, the proposed development involves:

“(a) use part of the land at 550-578 River Street, Ballina, being Lot 1 in DP124173 for a manufactured home estate with 230 sites,

(b) carry out earthworks including filling of the land,

(c) carry out engineering works to retain all fill,

(d) construct internal roads with associated drainage and site services,

(e) construct a club house with parking, recreation facilities and recreational vehicle compound,

land on which development for the purposes of a caravan park may be carried out, except for certain land, including land within one or more of the categories described in Sch 2. One of the categories of excluded land in Sch 2, in cl 5, is:

“Land which is identified in an environmental planning instrument, or in any planning strategy of the Department or the council approved for the time being by the Director, by words which are cognate with or a description consistent with any one or more of the following—

- extractive resources,
- services corridors,
- airport/industry buffer area,
- habitat corridor,
- containing significant remnant vegetation,
- littoral rainforest,
- water catchment,
- wetlands.”

9. The Land Use Table for Zone R2 does not expressly specify development for the purposes of a caravan park as being permitted with consent, but such development would be permitted as an innominate purpose, being “any other development not specified in Item 2 or 4”. Caravan parks are not specified in Item 2 or 4 of the Land Use Table for the R2 Zone. Caravan parks are specified expressly as being permitted with consent in Zone RU2. Development for the purposes of a caravan park may, therefore, be carried out on land in both the R2 Zone and the RU2 Zone.

10. However, cl 6 of the Manufactured Home Estates SEPP excludes certain land, including land within the category in cl 5 in Sch 2 to the Manufactured Home Estates SEPP. The Council contended that the site does fall within this category of excluded land.

11. The Council contended that parts of the site are identified in an environmental planning instrument, namely the State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP), by words which are cognate with or a description consistent with any one or more of “littoral rainforest” and “wetlands”, being two of the words or descriptions specified in cl 5 of Sch 2. Clause 6 of the Coastal Management SEPP identifies land as the “coastal wetlands and littoral rainforest area” for the purposes of the Coastal Management SEPP and *Coastal Management Act 2016*. Clause 6(1) and (2) provide:

“(1) This clause identifies land for the purposes of the *Coastal Management Act 2016* and this Policy.

(2) The ***coastal wetlands and littoral rainforests area*** is the land identified as such by the *Coastal Wetlands and Littoral Rainforests Area Map*.

18. The Council submitted that this construction is corroborated by the notes to cl 6(2) and cl 11 of the Coastal Management SEPP. The note to cl 6(2) states that the coastal wetlands and littoral rainforests area is made up of land identified as “coastal wetlands” or as “littoral rainforests” and, in turn, land so identified includes land identified as “proximity area for coastal wetlands” and “proximity area for littoral rainforest”. The note to cl 11 states that:

“The *Coastal Wetlands and Littoral Rainforests Area Map* identifies certain land that is inside the coastal wetlands and littoral rainforests area as ‘proximity area for coastal wetlands’ or ‘proximity area for littoral rainforest’ or both.”

19. The Council submitted that this construction is also supported by the differential regulation in cl 10 and cl 11 of the Coastal Management SEPP of land identified on the Coastal Wetlands and Littoral Rainforests Area Map as “coastal wetlands” and “littoral rainforests” (in cl 10) and land that is identified as “proximity area for coastal wetlands” and “proximity area for littoral rainforest” (in cl 11). The inclusion of cl 11(2) is important in this regard. Clause 11(1) in terms refers to land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map but cl 11(2) nevertheless states that the clause does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map. Subclause (2) only has work to do if the land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” is included within “coastal wetlands” or “littoral rainforests” respectively. The subclause operates to apply the clause only to land identified particularly as “proximity area for coastal wetlands” or “proximity area for littoral rainforests” and not to land identified particularly as “coastal wetlands” or “littoral rainforests” on the Coastal Wetlands and Littoral Rainforests Area Map.
20. The Council submitted that this construction was accepted by the Court of Appeal in *Reysson Pty Ltd v Minister Administering the Environmental Planning and Assessment Act 1979* (2020) 247 LGERA 277; [2020] NSWCA 281 (*Reysson*). Payne JA, with whom Bell P and Gleeson JA agreed, noted that one function of the Coastal Wetlands and Littoral Rainforests Area Map is “to identify a total area as the ‘coastal wetlands and littoral rainforests area’” (at [93]). Payne JA continued:

“The particular map which has been adopted by the Coastal Management SEPP identifies the sub-areas of ‘coastal wetlands’ and ‘proximity area for coastal wetlands’. It does not follow that the first sub-area is to be construed as being linked to one part of the jurisdictional precondition, whereas the second sub-area is to be construed as being linked to another part. That does not follow either from the nature of the provisions or from the form of the map. These are legislative choices, not classifications driven by the asserted jurisdictional precondition.” (at [94]).

21. Payne JA noted that:

“An area identified on the map as either ‘coastal wetland’ or ‘proximity area’ could legitimately include land which, though not itself displaying the hydrological and floristic characteristics of a wetland, adjoined such land.” (at [95]).

27. The applicant submitted that this decision in *S J Connelly* is sufficient authority to support the conclusion that land mapped as a "proximity area for coastal wetlands" is not a "wetland" for the purposes of cl 5 of Sch 2 to the Manufactured Home Estates SEPP.
28. I find that most of the southern part of the site zoned RU2 and the southern section of the northern part of the site zoned R2 are excluded lands under cl 6(a) and cl 5 of Sch 2 of the Manufactured Home Estates SEPP. The inquiry required is not the particular one suggested by the applicant of ascertaining whether the words or description of "proximity area for coastal wetlands" are words which are cognate with or a description consistent with "wetlands" but rather the general one required by cl 6(a) and cl 5 of Sch 2 of the Manufactured Home Estates SEPP of whether this section of the site is land identified as being within the coastal wetlands and littoral rainforests area by the Coastal Management SEPP. Clause 6(a) excludes from the operation of the Manufactured Home Estates SEPP land "within one or more categories described in Schedule 2". One of the categories described in Sch 2 is "land which is identified in an environmental planning instrument", here, the Coastal Management SEPP, "by words which are cognate with or a description consistent with any one or more of the following", including "littoral rainforests" and "wetlands". The Coastal Management SEPP identifies an area of land described as the "coastal wetlands and littoral rainforests area". The "coastal wetlands and littoral rainforests area" is defined in cl 4(1) and cl 6(2) of the Coastal Management SEPP to be "the land identified as such by the Coastal Wetlands and Littoral Rainforests Area Map." The Coastal Wetlands and Littoral Rainforests Area Map is defined in cl 4(1) as meaning "the State Environmental Planning Policy (Coastal Management) 2018 Coastal Wetlands and Littoral Rainforests Area Map". All of the land identified as being within the "coastal wetlands and littoral rainforests area" by the Coastal Wetlands and Littoral Rainforests Area Map is land within the category described in cl 5 of Sch 2 of the Manufactured Home Estates SEPP, as it is identified in the Coastal Management SEPP by words which are cognate with or a description consistent with any one or more of "littoral rainforests" and "wetlands". These are the very words or description used in identifying the "coastal wetlands and littoral rainforests area".
29. In the present case, the site is identified as being within the coastal wetlands and littoral rainforests area by the Coastal Wetlands and Littoral Rainforests Area Map, being most of the southern part of the site zoned RU2 except for a small area to the west adjoining Emigrant Creek, and the southern section of the northern part of the site zoned R2. For the purpose of identification of land as being within the coastal wetlands and littoral rainforests area, it is irrelevant that land identified as such might be subclassified as either "coastal wetlands" or "proximity area for coastal wetlands". For the site, land within the outer boundary of the mapped coastal wetlands and littoral rainforests area contains two subareas, "coastal wetlands" and "proximity area for coastal wetlands". The mapped subarea "coastal wetlands" is wholly contained within the southern part of the site zoned RU2 and the mapped subarea "proximity area for coastal wetlands" is mostly in that southern part but extends into the southern section of the northern part of the site zoned R2.
30. However, this mapping of subareas is not relevant in determining whether land within these subareas is excluded land for the purposes of cl 6(a) and cl 5 of Sch 2 of the Manufactured Home Estates SEPP. What is relevant is that land within these subareas is identified as being within the coastal wetlands and littoral rainforests area by the Coastal Wetlands and Littoral Rainforests Area Map, under the Coastal Management SEPP. It is this coastal wetlands and littoral rainforests area that is the category

“A council may grant a development consent pursuant to this Policy allowing development for the purposes of a manufactured home estate only if it is satisfied—

(d) that the development will not have an adverse effect on any—

- conservation area
- heritage item
- waterway or land having special landscape, scenic or ecological qualities,

which is identified in an environmental planning instrument applicable to the land concerned.”

36. Land having special landscape, scenic or ecological qualities, which is identified in an environmental planning instrument, is the coastal wetlands and littoral rainforests area identified by the Coastal Wetlands and Littoral Rainforests Area Map under the Coastal Management SEPP. As I have earlier noted, most of the southern part of the site zoned RU2 and the southern section of the northern part of the site zoned R2 have been identified as within the coastal wetlands and littoral rainforest area by the Coastal Wetlands and Littoral Rainforests Area Map under the Coastal Management SEPP.
37. As a consequence, the Court is precluded by cl 9(1) of the Manufactured Homes Estates SEPP from granting development consent allowing the proposed development for the purposes of a manufactured home estate unless it is satisfied that the development will not have an adverse effect on any land within the mapped coastal wetlands and littoral rainforests area.
38. The Council contended that the proposed development will have an adverse effect on land in this area in two ways. First, the development for the purposes of a manufactured home estate will be carried out on the southern section of the northern part of the site that has been identified as being within the subarea of “proximity area for coastal wetlands” within the coastal wetlands and littoral rainforests area. This section of the site will be cleared and filled and have constructed upon it roads, lots on which manufactured homes will be installed, recreational facilities including the club house, earthworks, drainage structures and utility services. The ecological qualities of this section of the site, that led to its being identified within the coastal wetlands and littoral rainforests area, will be lost.
39. Second, the development for the purposes of a manufactured home estate on the northern part of the site, including on this southern section of the northern part, will have an adverse effect on the southern part of the site that has been identified as “proximity area for coastal wetlands” and “coastal wetlands”, both being within the coastal wetlands and littoral rainforests area. The Council contended that surface water runoff and groundwater seepage from the manufactured home estate will adversely affect terrestrial and aquatic biodiversity in the mapped coastal wetlands and littoral rainforests area on the southern part of the site. There was extensive evidence by the parties’ respective experts on hydrology, stormwater and ecology on the nature and extent of these adverse effects. The Council submitted that the proposed, but not yet finalised, management plans, which the applicant suggested

- rainforests area, which is identified by the Coastal Wetlands and Littoral Rainforests Area Map under the Coastal Management SEPP. Development consent cannot therefore be granted allowing the development for the purposes of a manufactured home estate on the site.
46. This conclusion on the application of cl 9(1) of the Manufactured Home Estates SEPP is consistent with my earlier conclusion on cl 6(a) of the Manufactured Home Estates SEPP. Land in the southern section of the northern part of the site that is identified as being within the coastal wetlands and littoral rainforests area by the Coastal Wetlands and Littoral Rainforests Area Map under the Coastal Management SEPP is excluded land by cl 6(a) of the Manufactured Home Estates SEPP on which development for the purposes of a manufactured home estate may not be carried out. Consistently, cl 9(1)(d) of the Manufactured Home Estates SEPP operates to prevent development consent being granted allowing development for the purposes of a manufactured home estate if the development will have an adverse effect on land within the coastal wetlands and littoral rainforests area, being land having special landscape, scenic or ecological qualities which is identified in the Coastal Wetlands and Littoral Rainforests Area Map under the Coastal Management SEPP.
47. Again, the part of the development on the southern section of the northern part of the site is integral to the manufactured home estate for which consent is sought. Development consent cannot be granted for the manufactured home estate except for the part of the development on this section of the site.
48. In this circumstance, it is unnecessary to decide whether the development for the purposes of the manufactured home estate on the northern part of the site will have an adverse effect on land in the southern part of the site identified as being within the coastal wetlands and littoral rainforests area. Even if I were to be satisfied that the development will not have an adverse effect on land in the southern part of the site within the coastal wetlands and littoral rainforests area (which I do not decide), because I am not satisfied that the development will not have an adverse effect on land in the northern part of the site within the coastal wetlands and littoral rainforests area, development consent for the development cannot be granted.

Precondition to grant of consent under cl 11(1) of the Coastal Management SEPP

49. The second statutory provisions setting a precondition to the grant of consent is in cl 11(1) of the Coastal Management SEPP. Clause 11 applies to land identified in the subarea of "proximity area for coastal wetlands" on the Coastal Wetlands and Littoral Rainforests Area Map. Clause 11(1) provides:
- "Development consent must not be granted to development on land identified as 'proximity area for coastal wetlands' or 'proximity area for littoral rainforest' on the *Coastal Wetlands and Littoral Rainforests Area Map* unless the consent authority is satisfied that the proposed development will not significantly impact on—
- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest."

56. Dr McLean noted the sensitivity of coastal saltmarsh to stormwater flows. Dr McLean referred to studies showing that increased nutrient loading on saltmarsh causes loss of saltmarsh ecosystems, citing Linda A Deegan et al, "Coastal eutrophication as a driver of salt marsh loss" (2012) 490 *Nature* 388-391. Dr McLean opined that this evidence suggests that without undertaking an appropriate assessment of the nutrient and sediment inputs, the development has not demonstrated that it will not have an adverse impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland (p 4).
57. Dr McLean considered that the basin-like topography of the adjacent coastal wetland in the Biobanking area makes the area more sensitive to the impacts of sedimentation and eutrophication due to reduced hydraulic connectivity to Emigrant Creek and the Richmond River estuary. The changed flows may also facilitate mangrove incursion into saltmarsh, a phenomenon that is already occurring (pp 2-3). Mr Howland, the Council's hydrologist, confirmed that surface water becomes impounded within the depression/basin immediately to the south and south-east of the development site. He observed that while spring high tides are high enough to reach into the basin and introduce saline water, neap tides are not. Mr Howland also observed mangrove pneumatophore intrusion in former agricultural drains in the Biobanking area, restricting tidal flow within the drains. In making those observations, Mr Howland was not saying the basin is completely impermeable, only that exchange by groundwater or via small side drains is restricted (p 3).
58. Dr Johnson, the Council's hydrologist, considered there was "the potential for the total annual mass loading of nutrients to increase as a consequence of development" (p 9). If this were to occur, Dr Johnson said that "further stormwater control systems may need to be adopted to ensure that no adverse impacts result" (p 9).
59. Mr Sutherland, the applicant's hydrologist, asserted that water quality impacts could be mitigated by conditions of consent. He said that he and Dr Johnson had agreed that "the stormwater treatment proposed can be satisfactorily conditioned" (Joint Expert Report – Ecology and Fish Habitat, p 4). If this were to be achieved, Mr Sutherland considered that "there will be no 'nutrient enrichment' post development and that the developed portion of the site, after stormwater treatment, will exhibit better water qualities than now exist" (pp 4, 8).
60. The applicant's ecologist, Mr Parker, contented himself with relying on the applicant's stormwater engineers and hydrologists, noting that his understanding was that "the water quality will be matched to background conditions" (Joint Expert Report – Ecology and Fish Habitat, p 5). In oral evidence, he recommended that there be adaptive management and adhere to criteria that set standard best practice (T 05/08/21 p 291). He did not explain what such adaptive management would involve or what was standard best practice to which criteria should adhere.
61. On ecology more generally, Dr McLean noted that the adjacent coastal wetland is a known important habitat for migratory wading birds and other wildlife. He considered that an adequate assessment of increased human activity on the development site and edge effects of the development on the adjacent coastal wetland has not been made. Edge effects include artificial lighting at night. Micro bats have been shown to be sensitive to lighting. One of the threatened bat species that is known to occur on the site, the Southern Myotis (*Myotis macropus*), has been shown by a study to be adversely affected by artificial lighting. The study's researcher, Dr Haddock, found: "There was an immediate and substantial decline in *M. macropus* activity, echolocation calls and foraging activity after the introduction of artificial light at our study site. Immediate recovery (to pre-light levels) was observed in both acoustic

Management SEPP. The Council submitted the applicant's evidence is long on promising an outcome of no significant impact on the adjoining coastal wetland but short on demonstrating the means by which this promised outcome will be achieved. The applicant has suggested that design and management measures are capable of being developed, and management plans prepared, that would prevent the development having a significant impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland. The applicant had not, however, put in evidence the design and management measures or the management plans, but contented itself with relying on conditions of consent that would require such measures and management plans to be submitted to the Council for approval after consent has been granted. The only site-based management plan that was proffered by the applicant's expert, Mr Sutherland, was disavowed by the applicant. The applicant suggested that it would prepare a different management plan after consent had been granted and in accordance with the conditions of consent.

68. The Council submitted that this approach of the applicant involved deferring the critical matter of the likely significance of the impact of the development on the adjacent coastal wetland in the respects required by cl 11(1) to a later time after consent has been granted. This is impermissible, citing *Weal v Bathurst City Council* (2000) 111 LGERA 181; [2000] NSWCA 88 at [91]-[92]; *Cameron v Nambucca Shire Council* (1997) 95 LGERA 268 at 274; *Ballina Shire Council v Palm Lake Works Pty Ltd* [2020] NSWLEC 41 at [37].
69. The Council submitted that while there might have been agreement between the parties' engineers that design and management measures are capable of being developed to protect the environment, and at a conceptual level the "after development" conditions could in a number of respects match the "before development" conditions, including as to quantity and quality of water and the absence of scour or preferential flows, the suitability of the means to be employed to protect the environment or to mitigate harm cannot be considered at the current time because there has been a total lack of specificity in how the current design seeks to achieve these goals or what the management and monitoring measures are to be to confirm that these outcomes have been achieved.
70. The Council noted the applicant's ecologist, Mr Parker, relied wholly on the engineers to establish the same conditions onsite before and after the development. If this were to be achieved, Mr Parker opined that the development would not significantly impact the biophysical, hydrological or ecological integrity of the adjacent coastal wetland. The Council submitted, however, that Mr Parker has not turned his own expert mind to whether the measures proposed by the engineers will achieve their promise or whether the concept for ongoing management and monitoring is appropriate. Mr Parker's evidence was based on facts that were assumed but were not proven.
71. The Council submitted that the engineers' evidence was also based on assumptions, not proven facts. The baseline groundwater monitoring was for an insufficient period of time (particularly to encompass seasonal variation), at an insufficient number of locations, and at locations that are not within the development footprint or on the site. The data collected from the ground water monitoring is therefore insufficiently reliable to set the baseline criteria for the quantity and quality of ground water flows to and from the adjacent coastal wetland. The surface water monitoring points at each of the outlets from the biobasin/Atlantis cell systems have not been identified. Although Mr Sutherland sought to propose monitoring measures, including the sites and criteria for monitoring, in his site-based management plan, the applicant did not

“(iii) Measures necessary to ensure that the development maintains no net increase in the annual mass of suspended solids, total nitrogen and total phosphorus discharged from the site in comparison to pre-development conditions (Rural Residential node) during both the construction and fully developed phase of the project” [again, there was no definitive, site-specific, baseline data of the annual mass of the suspended solids, total nitrogen and total phosphorus in the pre-development conditions to undertake this analysis];

“(ix) A detailed modelling report and design must be submitted to and approved by Council” [such modelling report and design was not yet available];

“(xii) Provide design details and surveys plans to identify the location, depth and sizing of all gravel material to be placed on the development fill pad to allow for filling works to commence. This assessment must include a hydrological assessment to determine whether the placement of the fill will impact on the split between surface runoff and groundwater seepage. This assessment is to include the potential of stormwater leaving the Atlantis cells and spreading laterally through the place gravel material before it [sic] entering as groundwater” [again, neither a detailed, site-specific, hydrological assessment of the existing split between surface runoff and groundwater seepage to set the baseline pre-development conditions, nor an assessment of the potential of stormwater discharge to spread laterally before entering as groundwater was provided];

“(xiii) Details on how construction works will be undertaken protecting the adjacent environment including the land affected by Biobanking Agreement No 444” [this information was not yet available];

“(xiv) Details on how any dewatering can be undertaken without having an adverse impact on the receiving environment including the identification of water quality parameters and legal discharge points” [the final water quality parameters and legal discharge points were not provided]; and

“(xv) Assessment of how fill will be placed on areas of the development site without having an impact [on] the adjacent environment including the land affected by Biobanking Agreement No 444” [such assessment has not yet been done, or baseline parameters for undertaking the assessment fixed].

“(c) A stormwater monitoring plan shall be prepared. This plan shall include the following requirements:

(i) Provision for stormwater sampling which demonstrates that there is no net increase in the annual mass of suspended solids, total nitrogen and total phosphorus discharged from the site to either surface or groundwater in comparison to pre-development conditions. This requirement is to be demonstrated for both the construction and operational phases of the development. Monitoring shall be ongoing until it can be demonstrated that all relevant objectives of the Stormwater Management Plan are being achieved in relation to stormwater/groundwater quality. Notwithstanding this requirement, monitoring shall be carried out for at least a period of 10 years after completion of the installation of the final manufactured dwelling in the final stage of the development (Stage 4)” [again, there was no definitive, site-specific, baseline data for the annual mass of suspended solids, total nitrogen and total phosphorus in the pre-development conditions to enable comparison with the post-

(ii) The environmental safeguards to ensure no impact on the existing hydrology (both surface and groundwater) retained wetland system and/or the Biobank site" [Detailed information on the drainage network and the environmental safeguards was not provided. Without knowing what the environmental safeguards are it is not possible to assess whether they can be effective to ensure no impact on the wetland and Biobanking site].

76. I am not satisfied on the evidence before the Court that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or the quality or quantity of surface and groundwater flows to and from the adjacent coastal wetland. As I am not so satisfied, development consent cannot be granted to the development.

77. The central reason for my not being so satisfied is the insufficiency of the evidence to establish that the development will not significantly impact the adjacent coastal wetland in the respects required by cl 11(1)(a) and (b) of the Coastal Management SEPP. The applicant's approach, of relying on conditions of consent to address the impacts of the development on hydrology, scour, water quality and ecology, fails to recognise that cl 11(1) sets a precondition that must be satisfied before development consent is able to be granted. The satisfaction required by the precondition is that the development will not significantly impact the adjacent coastal wetlands in these respects. Reaching this satisfaction requires evidence, firstly, that the outcomes or objectives required by cl 11(1)(a) and (b) can be achieved, secondly, of the means by which the outcomes or objectives will be achieved, so as to allow the Court to be satisfied that the outcomes or objectives will be achieved, and thirdly, of the clear criteria against which achievement of the outcomes or objectives must be assessed.

78. As to the first, as I have noted in my comments on the applicant's suggested conditions of consent, the evidence did not establish baseline data on hydrology, water quality or ecology in the adjacent coastal site in the pre-development conditions against which the impacts of the development can be measured to determine that the outcomes or objectives will be able to be achieved. The suggested conditions of consent require the collection of this needed baseline data. As to the second, the evidence did not establish the means by which the outcomes or objectives will be achieved. The suggested conditions of consent again required preparation and submission to the Council for approval of the various management and monitoring plans, which would propose the measures and safeguards that would be taken to achieve the outcomes or objectives. Without knowing what these measures and safeguards will be, it is not possible for the Court to evaluate their effectiveness. As to the third, this is the requirement in s 4.17(4) of the EPA Act where a consent is granted subject to a condition expressed in terms of outcomes or objectives. That subsection provides:

"A consent may be granted subject to a condition expressed in a manner that identifies both of the following—

(a) one or more express outcomes or objectives that the development or a specified part or aspect of the development must achieve,

(b) clear criteria against which achievement of the outcome or objective must be assessed."

79. In the present case, neither the applicant nor its experts specified clear criteria against which achievement of the outcomes or objectives in cl 11(1)(a) and (b) of the Coastal

“The consent authority must refuse to grant consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values.”

85. The concept of “biodiversity values” is defined in s 1.5(2) of the BC Act to be the following biodiversity values:

(a) vegetation integrity—being the degree to which the composition, structure and function of vegetation at a particular site and the surrounding landscape has been altered from a near natural state,

(b) habitat suitability—being the degree to which the habitat needs of threatened species are present at a particular site,

(c) biodiversity values, or biodiversity-related values, prescribed by the regulations.”

86. Additional biodiversity values have been prescribed by cl 1.4 of the Biodiversity Conservation Regulation 2017 (BC Regulation):

“The following are prescribed as additional biodiversity values for the purposes of the Act—

(a) threatened species abundance—being the occurrence and abundance of threatened species or threatened ecological communities, or their habitat, at a particular site,

(b) vegetation abundance—being the occurrence and abundance of vegetation at a particular site,

(c) habitat connectivity—being the degree to which a particular site connects different areas of habitat of threatened species to facilitate the movement of those species across their range,

(d) threatened species movement—being the degree to which a particular site contributes to the movement of threatened species to maintain their lifecycle,

(e) flight path integrity—being the degree to which the flight paths of protected animals over a particular site are free from interference,

(f) water sustainability—being the degree to which water quality, water bodies and hydrological processes sustain threatened species and threatened ecological communities at a particular site.”

87. The expression “serious and irreversible impacts on biodiversity values” of a proposed development is defined in s 7.16(1) of the BC Act:

“In this section, *serious and irreversible impacts on biodiversity values* of proposed development or activity means serious and irreversible impacts on biodiversity values as determined under section 6.5 that would remain after the measures proposed to be taken to avoid or minimise the impact on biodiversity values of the proposed development or activity.”

90. Pursuant to s 6.5(2) of the BC Act, the relevant Environment Agency Head, the DPIE, has published criteria to assist in the application of the principles in cl 6.7 of the BC Regulation, in the form of the “Guidance to assist a decision-maker to determine a serious and irreversible impact” (September 2019) (Guidance document). The criteria to interpret the principles in cl 6.7 of the BC Regulation are set out in Appendix A. The Department applied the criteria in Appendix A to all threatened species and threatened ecological communities listed under the BC Act. Entities that meet the criteria under one or more of the principles in cl 6.7 of the BC Regulation are identified as entities at risk of a serious and irreversible impact (SAII) in the Threatened Biodiversity Data Collection housed in BioNet and displayed on the Department website. This list includes a number of species that occur in and around the site on which the development is proposed to be carried out. In section 3, the Guidance document provides a framework for decision-makers to take into account the scale of an impact and the potential for avoidance and mitigation within the context of the principles in cl 6.7 of the BC Regulation and the supporting criteria in Appendix A. The framework involves five steps:

- Step 1: Identify relevant entities at risk of a SAI
- Step 2: Evaluate the extinction risk of the entity to be impacted
- Step 3: Detail measures taken to avoid, minimise and mitigate impacts on the entity
- Step 4: Evaluate a serious and irreversible impact
- Step 5: Decision-making

91. This precondition in s 7.16(2) of the BC Act is distinct from two other requirements in Part 7 of the BC Act dealing with biodiversity assessment and approval under the EPA Act.

92. The first is the requirement in s 7.7(2) of the BC Act that if the proposed development is likely to significantly affect threatened species (which by dint of s 7.2(1) includes threatened ecological communities), the application for development consent is to be accompanied by a Biodiversity Development Assessment Report (BDAR). A development is likely to significantly affect threatened species if it meets one or more of the three criteria in s 7.2(1) of the BC Act:

“(a) it is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3, or

(b) the development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or

(c) it is carried out in a declared area of outstanding biodiversity value.”

93. The first criterion is that the development is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in s 7.3 of the BC Act. Section 7.3(1) provides a five part test for determining whether the proposed development is likely to significantly affect threatened species or ecological communities, or their habitats:

“The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats—

96. Clause 7.1(1) of the BC Regulation provides:

“Proposed development exceeds the biodiversity offsets scheme threshold for the purposes of Part 7 of the Act if it is or involves—

(a) the clearing of native vegetation of an area declared by clause 7.2 as exceeding the threshold, or

(b) the clearing of native vegetation, or other action prescribed by clause 6.1, on land included on the Biodiversity Values Map published under clause 7.3.”

97. This refers to two types of clearing of native vegetation. The first type is clearing declared by cl 7.2 as exceeding the threshold. Clause 7.2(1) provides:

“Clearing of native vegetation is declared by this clause to exceed the biodiversity offsets scheme threshold if the area proposed to be cleared is the area set out in Column 2 of the Table to this clause opposite the minimum lot size applicable to the land to be cleared in Column 1 of that Table.”

98. The minimum lot size applicable to the land to be cleared is specified in cl 7.2(2) as being either the standard minimum lot size prescribed in an environmental planning instrument in relation to the land on which the proposed development is to be carried out or, in any other case, the actual size of the allotment of land on which the proposed development is to be carried out. For this site, the Lot Size Map under BLEP prescribes a minimum lot size of 40ha for the southern part of the site zoned RU2 and 450 sqm for the northern part of the site zoned R2. The area of clearing set out in Column 2 of the Table to cl 7.2 opposite each of these minimum lot sizes is 1ha or more for the 40ha minimum lot size in the R2 zoned land and 0.25ha or more for the 450sqm minimum lot size in the R2 zoned land. In the case of the proposed development for the purposes of a manufactured home estate on the R2 zoned land, nearly all of this land (up to around 14ha) will be cleared, far in excess of the 0.25ha threshold.

99. The second type is clearing of native vegetation on land included on the Biodiversity Values Map published under cl 7.3. The published Biodiversity Values Map can, and does, include “land that is the coastal wetlands and littoral rainforests area of the coastal zone referred to in the *Coastal Management Act 2016*”: cl 7.3(3)(a). This area is the same as the coastal wetlands and littoral rainforests area identified as such by the Coastal Wetlands and Littoral Rainforests Area Map under the Coastal Management SEPP. The site is mapped as within the coastal wetlands and littoral rainforests area, including the southern section of the northern part of the site zoned R2, which is identified as being within the subarea “proximity area for coastal wetlands”. All native vegetation within this section of the site will be cleared.

100. The proposed development of the site, therefore, exceeds the biodiversity offsets scheme threshold for the purposes of s 7.2(1)(b) and s 7.4(1) of the BC Act in both of these ways.

101. The third criterion in s 7.2(1) of the BC Act is if the development is carried out in a declared area of outstanding biodiversity value, under s 3.1 of the BC Act. Only a few areas have been so declared, the site not being one of them.

102. If one or more of the criteria in s 7.2(1) of the BC Act are met, the development is taken to be likely to significantly affect threatened species or

“The impacts of actions on biodiversity values that are subject to assessment and offset under the biodiversity offsets scheme are as follows—

- (a) the impacts of the clearing of native vegetation and the loss of habitat,
- (b) the impacts of action that are prescribed by the regulations.”

108. Additional impacts on biodiversity values are prescribed by cl 6.1(1) of the BC Regulation:

“The impacts on biodiversity values of the following actions are prescribed (subject to subclause (2)) as biodiversity impacts to be assessed under the biodiversity offsets scheme—

- (a) the impacts of development on the following habitat of threatened species or ecological communities—
 - (i) karst, caves, crevices, cliffs and other geological features of significance,
 - (ii) rocks,
 - (iii) human made structures,
 - (iv) non-native vegetation,
- (b) the impacts of development on the connectivity of different areas of habitat of threatened species that facilitates the movement of those species across their range,
- (c) the impacts of development on movement of threatened species that maintains their lifecycle,
- (d) the impacts of development on water quality, water bodies and hydrological processes that sustain threatened species and threatened ecological communities (including from subsidence or subsidence resulting from underground mining or other development),
- (e) the impacts of wind turbine strikes on protected animals,
- (f) the impacts of vehicle strikes on threatened species of animals or on animals that are part of a threatened ecological community.”

109. The consent authority, when determining the development application, is not limited in its consideration of the impact of a proposed development on biodiversity values to the consideration that is required by s 7.13(2), as s 7.13(6) makes clear:

“This section does not operate to limit the matters that a consent authority may take into consideration—

- (a) in relation to the impact of proposed development on biodiversity values, the measures that a consent authority may require to avoid or minimise those impacts or the power of a consent authority to refuse to grant consent because of those impacts, or

Parker identified PCT 1235 (Swamp Oak) as covering the balance of the development site, except for a small area of mangroves on the western side near Emigrant Creek. Mr Parker classified this extensive area of Swamp Oak on the development site as being in three conditions: low condition (9.66ha), low/moderate condition (2.09ha) and moderate condition (4.34ha and 0.09ha). The bulk of the low/moderate condition Swamp Oak occurred in a swathe to the west of the saltmarsh triangular shaped area (along its hypotenuse) and to the east of the low condition Swamp Oak which covers most of the development site (see Figure 3 of the BDAR).

114. In the Joint Expert Report on Ecology with Dr McLean, Mr Parker noted that PCT 1235 (Swamp Oak) lists three associated endangered ecological communities, Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (Swamp Oak Floodplain Forest EEC), Coastal Saltmarsh EEC and Swamp Sclerophyll Forest EEC ([20], p 12). In the joint expert report, Mr Parker appeared to favour the first of these over the third, changing his position from what he had found in the BDAR. Mr Parker quoted from the Final Determination of the Swamp Oak Floodplain Forest EEC (at [21], pp 12-13, [28], p 14 and [35], p 16) and suggested that there is a transition of vegetation communities across the development site between Swamp Oak Floodplain Forest EEC and Coastal Saltmarsh EEC ([20], p 12).
115. Dr McLean identified four endangered ecological communities on the site: Coastal Saltmarsh EEC, Swamp Oak Floodplain Forest EEC, Freshwater Wetlands on Coastal Floodplains on the New South Wales North Coast, Sydney Basin and South East Corner Bioregion (Freshwater Wetlands EEC) and Littoral Rainforest in the New South Wales North Coast and Sydney Basin Bioregion (Littoral Rainforest EEC). Dr McLean identified saltmarsh in the triangular shaped area to the east of the development site, although along the unequal sides and in the area of the right angle rather than along the hypotenuse. He described the vegetation along the hypotenuse as being of another plant community type, PCT 1808 (Estuarine Reedland). Estuarine Reedland is part of the Freshwater Wetlands EEC. He identified Estuarine Reedland as extending across most of the site, including the areas identified by Mr Parker as low and low/moderate Swamp Oak. Dr McLean identified only small areas as Swamp Oak, including two disjunct patches along the hypotenuse of the scalene triangle. Swamp Oak is part of the Swamp Oak Floodplain Forest EEC. Dr McLean identified one patch of rainforest, PCT 1275 (Rainforest), in the north-western corner of the development site, which is part of the Littoral Rainforest EEC (see Figure 1, p 10 of Joint Expert Report – Ecology).
116. Once Mr Parker changed his classification from Swamp Sclerophyll Forest EEC to Swamp Oak Floodplain Forest EEC, the difference between the experts became whether Freshwater Wetlands EEC and Littoral Rainforest EEC also occurred on the site.
117. In relation to Freshwater Wetlands EEC, Dr McLean found from his field surveys that vegetation on the eastern side of the development site was changing from Coastal Saltmarsh to Freshwater Wetlands, indicated by saltwater-tolerant species such as Sea Rush (*Juncus kraussii*) becoming less common and freshwater-tolerant species such as Twig Rush (*Baumea juncea*) appearing (p 34). Dr McLean noted his purpose was not to determine the extent of the plant community types across the site but to determine the type of vegetation that occurred at and around the areas he surveyed (p 34). This served to check whether Mr Parker's vegetation mapping in the BDAR was accurate (p 34). Dr McLean identified vegetation in a number of areas he

in Swamp Oak Forest (PCT 1235) at the site. He considered it is an indicator of the vegetation community being PCT 1235 (Swamp Oak). Mr Parker did agree, however, that one of the plant community types comprising Freshwater Wetland EEC, PCT 1808 (Estuarine Reedland), is also characterised by dense growth of *Phragmites australis* on the margins of estuaries and brackish lagoons along the New South Wales coastline (p 6). Mr Parker considered that the slashed and grazed pasture lands on the site could not be described as being on the estuarine fringe (p 6).

124. Mr Parker considered that the presence of saltwater-tolerant mangrove and saltmarsh remnants in places is an indication that the vegetation community is not PCT 1808 (Estuarine Reedland), even though PCT 1808 tolerates mild levels of salinity (p 7).
125. Mr Parker analysed Dr McLean's field survey data for plots where Dr McLean considered the vegetation was better classified as being PCT 1808 (Estuarine Reedland) rather than PCT 1125 (Saltmarsh) or PCT 1235 (Swamp Oak) as Mr Parker had mapped the vegetation. In one plot (plot 8), Mr Parker considered the presence of Water Couch (*Sporobolus virginicus*) indicated the vegetation should be classified as PCT 1125 (Saltmarsh) rather than PCT 1808 (Estuarine Reedland). In another plot (plot 15), Mr Parker noted that the dominant presence of *Phragmites australis* was insufficient to classify the vegetation as PCT 1808 (Estuarine Reedland) because other species characteristic of PCT 1808 were not recorded in the plot, species not characteristic of PCT 1808 were recorded as present, and *Phragmites australis* is also a diagnostic species of PCT 1235 (Swamp Oak). Mr Parker made similar comments about plot 16 (p 11).
126. Mr Parker noted that two other plots (plots 17 and 19) were located in areas of tidal inundation mapped by Mr Sutherland, hence could not be a freshwater wetland. In plot 17, the dominance of *Phragmites australis* (90%) with a few Swamp Oak (1%), supported classification as PCT 1235 (Swamp Oak). In plot 19, the presence of *Phragmites australis* and Water Couch, both occurring in PCT 1125 (Saltmarsh), indicated the better classification was PCT 1125 (Saltmarsh) rather than PCT 1808 (Estuarine Reedland) (p 11).
127. Finally, Mr Parker considered that the vegetation in plot 20, which Dr McLean classified as PCT 1808 (Estuarine Reedland) on the basis of 50% cover by *Phragmites australis*, which is a diagnostic species of this PCT, should be classified as PCT 1235 (Swamp Oak) because *Phragmites australis* also characterises PCT 1235 (Swamp Oak). Mr Parker noted there were scattered Swamp Oaks in the vicinity of the plot, although not in the plot (p 12).
128. Mr Parker disagreed with Dr McLean's points about slashing and waterlogging. Mr Parker considered that as the site has been slashed for decades, this would have prevented Swamp Oak regenerating. In this respect, he agreed with Dr McLean that Swamp Oak no longer occurs in the slashed area. However, Mr Parker claimed that the BAM requires an assessor to consider what the vegetation would be if left unslashed and unmodified for well over half a century, not what is there today (p 17). Mr Parker did not consider waterlogging would inhibit Swamp Oak growth or regeneration. The reason for the absence of Swamp Oak is not waterlogging but instead the regular slashing (p 17).
129. Mr Parker disputed Dr McLean's argument that the emergence of freshwater-tolerant species rather than saltwater-tolerant species in some plots suggested the better classification was PCT 1808 (Estuarine Reedland) rather than PCT 1125 (Saltmarsh), instead suggesting classification as PCT 1235 (Swamp Oak) (p 18).

134. Dr McLean opined that the BDAR should, but failed to, undertake the assessment required by subsection 10.2.3 of the BAM for these threatened species:

“- Black-necked Stork, due to having an estimated 75 pairs in NSW (see Clancy and Andren 2010).

- Green and Golden Bell Frog. While this is a species that has not been observed around Ballina for over 30 years, adequate steps have not been taken to eliminate this species as a potential candidate. The species meets criteria 4, in that due to Chytrid fungus recovery actions are limited.

- Pied Oystercatcher, due to a rapid rate of decline.

- Australian Fritillary, which has the potential to use the Study Area as foraging habitat (rather than breeding habitat which is associated with plant species not found in the study area), due to being in a rapid rate of decline.

- Curlew Sandpiper, due to being in a rapid rate of decline.

- Collared Kingfisher and Mangrove Honeyeater, due to a small NSW population size, and very limited geographical distribution.

- Beach Stone Curlew, while this species is very rare in NSW, adequate steps have not been taken to eliminate this species as a potential candidate. The species has a very small NSW Population Size.” (pp 44-45 Joint Expert Report – Ecology).

135. Further in relation to the Black-necked Stork, Dr McLean stated that it is a threatened species in NSW (so that cl 6.7 of the BC Regulation applied) and its population numbers in NSW are low, there being fewer than 250 in NSW (p 45).

136. Mr Parker maintained his position that the only threatened species likely to occur on the site is the Southern Myotis, which Mr Parker recorded in February and March 2021 on the site in the Biobanking area. He considered that there is not suitable habitat for the other threatened species. Mr Parker’s reasons for excluding the eight threatened species put forward by Dr McLean were:

Species	Suitable Habitat	Reason for exclusion
Australian or Laced Fritillary	This butterfly occurs in open swampy coastal habitat with eggs laid singly on a leaf of the caterpillar’s food plant, the Arrowhead Violet (<i>Viola betonicifolia</i>).	Suitable habitat does not occur at the site. Not previously been recorded in Ballina Shire. Extensive surveys over many years have not recorded the caterpillar’s food plant required for laying eggs.
Green and golden bell frog	Not a species candidate species in the BAM-C, has not been recorded within the Ballina Shire for several decades.	Not a species candidate species and not recorded.
Black-necked Stork	Not a species candidate species in the BAM-C, so not addressed by Mr Parker.	Not a species candidate species.
Pied	Intertidal flats of inlets and bays, open	Not recorded. No areas of suitable

139. There is no avoidance at all of the endangered ecological communities or habitat of the threatened species that occur on the northern part of the site; the whole area is to be developed. The applicant's ecologist, Mr Parker, sought to justify this lack of avoidance in two ways.
140. First, he asserted that there is avoidance of clearing of the endangered ecological communities and habitat of threatened species in the southern part of the site zoned RU2. The Council rebutted that this constitutes avoidance as development for the purposes of a manufactured home estate is not permitted in the southern part of the site. This area is protected by the Biobanking Agreement, which prohibits any development for the purposes of a manufactured home estate on the site. Further, most of the southern part of the site is within the coastal wetlands and littoral rainforests area, including around half of the site in the subarea "coastal wetlands", on which development for the purposes of a manufactured home estate may not be carried out under the Manufactured Home Estates SEPP (it is excluded land) or under BLEP in the RU2 Zone. In this circumstance, the Council submitted, the applicant cannot be avoiding carrying out development for the purposes of a manufactured home estate that it is not permitted to carry out on that part of the site.
141. Second, Mr Parker asserted that the area of Coastal Saltmarsh EEC in the north-eastern corner of the site could not be avoided because of the necessity to locate the entrance to the manufactured home estate off Burns Point Ferry Road rather than the classified road of River Street. The Council submitted that, even if locating the entrance at this point were to be necessary, this does not explain the clearance of the majority of the saltmarsh in the south-east of the development footprint that did not need to be cleared in order to provide the entrance in the north-east. The Council submitted that the real explanation for the lack of avoidance in the northern part of the site is the applicant's desire to maximise the area to be developed in the northern part of the site and to rely on offsets being surrendered for the endangered ecological communities and habitat of threatened species that will be lost.
142. The Council submitted that there is equally no minimisation of the impact of the development on the endangered ecological communities and habitat of threatened species in the northern part of the site. Any mitigation measures that are proposed are only intended to mitigate the impacts of the development on the endangered ecological communities and habitat of threatened species on the southern part of the site zoned RU2. That is not mitigation of the impacts of the development on the northern part of the site.
143. In any event, the Council submitted, the applicant has not established that the proposed measures will mitigate impacts on the endangered ecological communities and habitat of threatened species in the southern part of the site. The Council reiterated its earlier submissions that the design, management and monitoring measures that the engineers considered were capable of being formulated, but have not yet been finalised, have not been shown to protect the adjacent coastal wetland. The applicant merely asserted, but has not proven, that there will be no significant impact on the adjacent coastal wetland.
144. The Council submitted that this failure to avoid and minimise before offsetting impacts is central to the biodiversity conservation scheme. The BC Act establishes a biodiversity mitigation hierarchy that requires, in order, avoiding impacts, minimising impacts, and only then offsetting or compensating for residual impacts that remain after all steps are taken to avoid or minimise these impacts: see s 1.3(k), s 6.2(d), s 6.4(1) and s 6.12(c) and (d) and *Tomasic v Port Stephens Council* [2021] NSWLEC 56 at [169].

the garden around the homestead. The presence of these planted trees is not an indicator of the vegetation community.

150. The applicant submitted that the Court should also accept Mr Parker's evidence about the unlikelihood of any threatened species occurring on the site other than the Southern Myotis. Mr Parker gave reasons, in the BDAR, the joint expert reports, and oral evidence, for why he considered the development site does not provide suitable habitat for the threatened species identified by Dr McLean. Again, the applicant submitted that the Court would prefer Mr Parker's evidence on the unsuitability of the habitat on the development site for the threatened species, having regard to his work on the site "over many many years".
151. The applicant submitted that the development will avoid and minimise impacts on threatened species and endangered ecological communities on the site. The applicant submitted that avoidance is demonstrated by the development for the purposes of a manufactured home estate only being carried out on the northern part of the site zoned R2, thereby avoiding the southern part of the site zoned RU2 that is within the Biobanking area. Thus, land of high ecological value in the south of the site is avoided, confining the development to land in the north of the site of lower ecological value.
152. The applicant submitted that to do so accords with orderly planning. The planning history demonstrated that precinct 1, the northern part of the site, was zoned R2 to allow for the development of that part for the purposes permitted in the zone, while precinct 2, the southern part of the site, was zoned RU2 allowing for less development. The rezoning also depended on the landowner entering into a voluntary planning agreement and a Biobanking Agreement to conserve precinct 2. The applicant submitted that to ignore that planning history would be to undermine the objective of orderly planning. To say to the landowner who has provided a material public benefit by avoiding precinct 2 that it must also avoid part of precinct 1 would discourage people from entering into biobanking agreements, absent more certainty as to what they may or may not do.
153. The applicant also noted that the small stand of mangroves on the western side of the site will also be avoided.
154. The applicant accepted that the endangered ecological communities and habitat of any threatened species within precinct 1, the northern part of the site zoned R2, will be cleared, but the planning history has dictated where future development of the site will proceed, which is this area.
155. The applicant submitted that the evidence of the stormwater engineers and hydrologists was that the discharge of stormwater from the site will be done in an environmentally sensitive manner and will not adversely affect the endangered ecological communities or habitat of threatened species in the adjacent Biobanking area. Mr Parker's BDAR proceeded on the assumption that impacts on the Biobanking area would be avoided through the design and engineering of the stormwater system. That assumption has been established on the evidence.

The development's serious and irreversible impacts on biodiversity values

156. I find that the development is likely to have serious and irreversible impacts on biodiversity values, so that I must refuse to grant consent to the development by reason of s 7.16(2) of the BC Act.
157. The determination of serious and irreversible impacts on biodiversity values is to be undertaken under s 6.5 of the BC Act, which in turn requires the determination

Floodplain Forest EEC or PCT 1808 (Estuarine Reedland) which is part of the Freshwater Wetlands EEC, the finding should be made that the vegetation is part of an endangered ecological community, whichever one does not matter. The onus is on the applicant to establish that the vegetation, although being of a plant community type that is part of an endangered ecological community, nevertheless is so degraded as to no longer be able to be classified as being part of that endangered ecological community. On the applicant's case, this required demonstrating that the vegetation, although still of PCT 1235 (Swamp Oak), no longer meets the description in the Final Determination of Swamp Oak Floodplain Forest EEC. The applicant did not discharge this onus. Mr Parker did not assay this task of comparing the vegetation in the slashed area of the site that he classified as low condition PCT 1235 (Swamp Oak) with the Final Determination listing the Swamp Oak Floodplain Forest EEC, so as to establish that the vegetation is no longer of that EEC. An example of what needed to be done, but was not done, is *Hornsby Council v Vitone Pty Ltd* (2003) 132 LGERA 122; [2003] NSWLEC 272.

162. This leaves the area of the former homestead in the north-western corner of the site. Mr Parker classified this area as moderate condition PCT 1235 (Swamp Oak), essentially as a derived PCT. Dr McLean classified it as PCT 1275 (Rainforest) because of the presence of rainforest species, particularly in the ground layer. I prefer Mr Parker's classification of the vegetation in this area to Dr McLean's classification. Whilst some rainforest species might have germinated and be growing in this area, this does not establish that PCT 1275 (Rainforest) is the correct classification of the vegetation community in this area. There is merit in looking at the vegetation community from which the current vegetation is derived to more accurately classify the plant community type that best fits the current vegetation. The area is the site of the former homestead and has been landscaped with exotic and native plantings. The slightly higher elevation of the area, selected for the homestead, would have been suitable habitat for PCT 1235 (Swamp Oak).

163. The upshot is that the whole of the northern part of the site zoned R2 is comprised of three endangered ecological communities, Coastal Saltmarsh EEC to the east and south, grading to the west into a mosaic of Freshwater Wetlands EEC and Swamp Oak Floodplain Forest EEC, depending on the different microhabitats across the site, ending in the north-western corner with Swamp Oak Floodplain Forest EEC. There is a small stand of mangrove to the west adjoining Emigrant Creek.

164. Turning to threatened species, I find the site is habitat of five threatened species. The first is the bat species, the Southern Myotis, which Mr Parker and Dr McLean agreed is likely to occur on the site and indeed has been recorded by Mr Parker twice in the Biobanking area this year. Mr Parker noted that the site does not contain suitable roosting habitat such as hollow-bearing trees, bridges, caves or other artificial roosting structures. The Southern Myotis forages over streams and pools catching insects and small fish by raking their feet over the water surface. Mr Parker considered that although the development site might not contain suitable waterbodies for foraging, it is proximate to suitable foraging waterbodies, so that it should be concluded that the site is likely to be used for foraging.

165. The second is the Black-necked Stork. A Black-necked Stork was photographed by Dr McLean and a Council officer on the site on 25 and 26 February 2021. The Black-necked Stork breeds in trees and forages in freshwater wetlands. The site is evidently suitable habitat as it has been recently used by the Black-necked Stork.

170. I consider it unlikely that the site provides suitable habitat for the Australian Fritillary or Green and Golden Bell Frog. The Australian Fritillary has not been recorded in New South Wales in the last decade and no records have been made in the Ballina Shire. The site does not contain the plant species necessary for breeding, the Arrowhead Violet. The Green and Golden Bell Frog has also not been recorded in the Ballina Shire for several decades. Both species are unlikely to occur on the site.
171. Having identified the endangered ecological communities and threatened species likely to be impacted by the development, the next step is to evaluate the likely significance of the impacts that would remain after the measures proposed to avoid or minimise the impact on these endangered ecological communities and threatened species have been taken: see s 7.16(1) of the BC Act.
172. The applicant has proposed no measures to avoid the impacts of the development on the endangered ecological communities or habitat of the threatened species that occur on the development site, being the northern part of the site zoned R2 that is to be developed for the purposes of a manufactured home estate. The development of this part of the site involves clearing all native vegetation, except for a small stand of mangroves to the west adjoining Emigrant Creek. The cleared land will be filled with large volumes of fill and have constructed on the filled land, roads, lots on which manufactured homes will be installed, recreational facilities including a club house, manager's residence, retaining walls and fences, drainage structures and utility services. The existing endangered ecological communities and threatened species, and their habitats, on this land will be destroyed.
173. The non-development of the southern part of the site zoned RU2, which is the Biobanking area, is not an avoidance measure. That part of the site is not permitted to be developed for the purposes of a manufactured home estate, not only under the relevant environmental planning instruments of the BLEP, Manufactured Home Estates SEPP and Coastal Management SEPP, but also under the Biobanking Agreement. Avoidance of the impact of a development on land presupposes that that development is otherwise permitted to be carried out on the land. If land is not permitted to be developed for a purpose, there can be no avoidance of the impact of a development that cannot be carried out on the land in any event.
174. This otherwise evident proposition is reinforced by the terms of s 7.16(1) of the BC Act. Serious and irreversible impacts on biodiversity values of a proposed development are the serious and irreversible impacts on biodiversity values that would remain after any proposed measures to avoid or minimise the impact on biodiversity values of the proposed development have been taken. The proposed development of land generates the impacts on biodiversity values. Measures are to be taken to avoid or minimise these impacts. The residual impacts that remain after taking the measures to avoid or mitigate the impacts of the proposed development are then to be assessed for their seriousness and irreversibility. If development is not permitted to be carried out on certain land, there can be no impacts of any development of that land to be avoided or mitigated.
175. The proposed development also does not involve minimisation of its impacts on the endangered ecological communities or threatened species, or their habitats, that occur on the northern part of the site zoned R2 to be developed for the purposes of a manufactured home estate. As noted earlier, the whole of this part of the site is to be cleared, filled and have constructed on it the manufactured home estate, which will destroy the endangered ecological communities and threatened species, and their habitats, on this part of the site. No mitigation measures are proposed to minimise these impacts of the proposed development.

(paragraph 12). The proposed development will reduce and fragment Freshwater Wetlands EEC on the site.

182. Second, the proposed development will further degrade or disrupt the three endangered ecological communities on the site that are currently severely degraded or disturbed. The Final Determinations for the Coastal Saltmarsh EEC, Swamp Oak Floodplain Forest EEC and Freshwater Wetlands EEC describe the current severe environmental degradation of these communities. The proposed development will exacerbate this environmental degradation and disrupt biological processes, including removing habitat for the species assemblages of the communities and for the threatened fauna species that forage, roost or breed in the communities.
183. The third and fourth principles in cl 6.7(2) of the BC Regulation do not assist, as the three endangered ecological communities do not themselves have a very limited geographic distribution (although localised occurrences of the communities may have very limited geographical distribution in the locality) and the endangered ecological communities cannot be said to be unlikely to respond to measures to improve their habitat and vegetation integrity, so that they cannot be offset.
184. Nevertheless, by reference to the first two principles, the impacts of the proposed development on the endangered ecological communities on the development site are to be regarded as serious and irreversible under cl 6.7(2) of the BC Regulation.
185. For the five threatened species, the impacts of the proposed development are to be regarded as serious and irreversible as they are likely to contribute significantly to the risk of the threatened species becoming extinct because of one or more of the principles in cl 6.7 of the BC Regulation.
186. For the Southern Myotis, it is identified as a Species Credit Species by the BAM. Threats to the Southern Myotis include clearing adjacent to foraging areas, filling of streams and pools that are foraging areas, and loss or disturbance of roosting sites. The Southern Myotis was recorded foraging on the site this year. For the Black-necked Stork, it has a very small population size (principle 2), estimated to be only 75 pairs in NSW. Black-necked Storks were recorded and photographed on the site this year. For the Curlew Sandpiper, it is in a rapid rate of decline (principle 1). The saltmarsh and wetlands on the site provide foraging habitat for the Curlew Sandpiper. For the Collared Kingfisher and Mangrove Honeyeater, they have a very small population size (principle 2) and a very limited geographic distribution (principle 3). The site contains foraging habitat for both species.
187. The proposed development by clearing, filling, constructing roads, buildings and structures on, and using as a manufactured home estate, the development site, will destroy the habitat of these threatened species in this part of the site. Such impacts will exacerbate the current threats to the species. By reference to three of the principles in cl 6.7(2) of the BC Regulation, the impacts of the proposed development on these threatened species and their habitat on the development site are to be regarded as serious and irreversible.
188. Accordingly, I determine, in accordance with s 6.5 of the BC Act and cl 6.7 of the BC Regulation, that the proposed development is likely to have serious and irreversible on the three endangered ecological communities and the five threatened species that occur on the development site. These serious and irreversible impacts are taken to be serious and irreversible impacts on biodiversity values for the purposes of s 7.16 of the BC Act: see s 7.16(1).
189. In addition, these impacts are serious and irreversible impacts on biodiversity values by reference to the biodiversity values defined in s 1.5(2) of the BC Act and cl

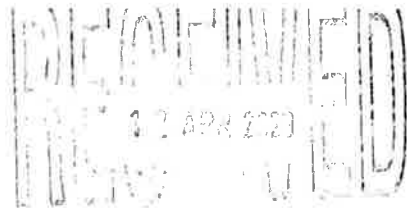
Determination of development application and disposition of appeal

191. I have decided that four preconditions to the grant of consent have not been satisfied. First, the proposed development is to be carried out partly on land that is excluded land under cl 6(a) and cl 5 of Sch 2 of the Manufactured Home Estates SEPP, being land within the Coastal Wetlands and Littoral Rainforests Area identified under the Coastal Management SEPP, on which development for the purposes of a manufactured home estate is not permissible.
192. Second, I am not satisfied, under cl 9(1) of the Manufactured Home Estates SEPP, that the proposed development on that excluded land will not have an adverse effect on land having special ecological qualities, which the land within the Coastal Wetlands and Littoral Rainforests Area has.
193. Third, I am not satisfied, under cl 11(1) of the Coastal Management SEPP that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or the quantity or quality of surface and ground water flows to and from the adjacent coastal wetland.
194. Fourth, I am of the opinion, under s 7.16(2) of the BC Act, that the proposed development is likely to have serious and irreversible impacts on the biodiversity values.
195. Under each of these four circumstances, development consent cannot be granted to the proposed development. The development application must therefore be determined by refusal of consent and the appeal dismissed.
196. The Court orders:
1. The appeal is dismissed.
 2. Development application 2020/192, as amended, for a manufactured home estate on Lot 1 in DP 124173 known as 550-578 River Street, West Ballina is determined by refusal of consent.
 3. The exhibits may be returned.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated: 03 November 2021

- [Policy and Procedures](#)
- [Accessibility](#)
- [Contact Us](#)
- Website last updated: 08 September 2021

**Ballina Shire Council**

We wish to make a submission against DA 2022/721 by GTH Resorts No 10 Pty Ltd as per your letter dated 14 March 2023.

Background:

We reside at 63 Burns Point Road Ballina. As also was the case with more than 90% of this street's residents, my wife and I had to be evacuated by the SES, A.D.F. and Surf Life Savers for two weeks from 2 March 2022, before being allowed to return and begin cleaning out the conglomeration of mud, sea creatures and sewerage (from Lismore) within our home and without electricity. (she had to receive medical assistance for injuries resulting from the evacuation procedure). Having not being covered by flood insurance it has certainly been an expensive, traumatic and life-changing exercise as you could imagine.

Please also note that the few residents whose homes were not flooded, were still marooned without power for 10 days or more.

Reason 1: Flooding Potential.

We believe this DA will negatively impact on the fragile wetland waterways in terms of exacerbating another major flood from excessive stormwater runoff associated with the massive 'estimated' \$75 million plus (at this stage) scope of work proposed, both during and well after completion.

Details:

We observed that the proposed DA site was well under water as we left Burns Point Ferry road, rescued by volunteer surf lifesavers in a rubber duckie, but in reading the pdf plans I can only interpret the DA will raise the level of the site to keep *their* new buildings supposedly dry. One would ask however where will their stormwater be diverted *to*? Now the existing underground stormwater pipe system is clearly incapable of coping with the current load, so as a neighbouring resident I feel threatened by this prospect.

In reading the Council's online information on how to prepare a decent submission, I am conscious of trying to not generalise but to be specific to DA 2022/721. However, because I believe one must learn from history (rather than just writing things off as one in one hundred events), I feel I must point out some relative examples:

The Emmanuelle College fields and new basketball arena, Quays Drive estate (which was a lovely grassed community park and sports field area capable of *swallowing* huge volumes of water), and even where the rubber duckies took us to that terrifying day to the Bunnings carpark; all these sites have been raised, concreted and sealed with the existing rainwater runoff system left to cope. I am also conscious of not repeating hearsay but even recent homebuilders at Anchorage Point (200 metres away) have advised that Council made them raise their land height before allowing them to build, now musing they indirectly contributed to their neighbour's dilemma? It is clear to us all that once the surrounding wetland has been artificially raised, concreted and built upon, both storm and flood waters *must* negatively impact the flooding potential of all previously built residences in West Ballina.

Reason 2: The Increased Traffic.

After only recently gaining relief from the highway by-pass traffic (which I believe also largely contributed to the flood and which would in hindsight, be obviously constructed more responsibly, one would hope), the increased volume of traffic attributed to this proposal will also hugely impact

negatively on both the Burns Point Ferry Road and Kalinga Street, as well as the intersections of adjoining streets of West Ballina, potentially all the way east to join River Street, thus potentially requiring future traffic lights.


Details:

The 'declared' 148 new houses with 2 car spaces and 50 visitor bays, accessing the Burns Point Ferry Road, will also *choke* the quiet and narrow 50 km/hr Kalinga Street (measuring barely 6 metres wide between the 'normally-occurring' two vehicles parked on opposite sides throughout its length), and whose entrance is directly opposite their access and egress gates. Even today it is often necessary to 'give way' to oncoming vehicles in Kalinga Street to avoid a head-on collision! (even at <50 km/hr, which is very rare indeed). Consider too, that Burns Point Ferry Road is partly covered in water during high tide periods, and regularly for several days in-between tides after the heavy rainfall the Northern Rivers normally experiences. (Council regularly installs an electric road sign at the intersection of these two streets warning drivers of "Water across Road"- Clearly an impending recipe for disaster)

Reason 3: The increased noise.

Details: The recently hand delivered (Thursday April 6th) GemLife 'Community Newsletter' of March 2023 advises that "noise impacts" other than to River Street, (ie. Burns Point Ferry Road and Kalinga Street) "are *expected* to be negligible with maximum level *expected* to reach *approximately* 60 decibels, which is equivalent to normal conversation levels or background music." Notice that "expected" is used twice here in the same sentence, together with 'approximately'. I again use the example of Emmanuelle College; Bunnings; the highway by-pass and Riverbend Village when they pile drove into the wetland soft soil to set up their foundations. It was constant; loud and repetitive for 8 hours each day (like Chinese water torture might be!) Additionally, anyone who has been subjected to the constant, repetitive, screeching 'reversing alarm' siren-type noise that construction digging machines make all day, could be forgiven for being sceptical about GemLife's "expected negligible levels".

Look, my wife and I are in our late seventies and just couldn't go through this again, (and relatively speaking, we are some of the younger and luckier ones). So I appeal to you on behalf of both the West Ballina residents and 'our' beautiful unique, but fragile wetland water system, (which nature uses as a 'sponge' for the inevitable 'excessive rainfall events' in this Region) to please address these concerns and help the "Applicant" find a more environmentally stable and sustainable site for their "Seniors Housing Development".



Yours Sincerely

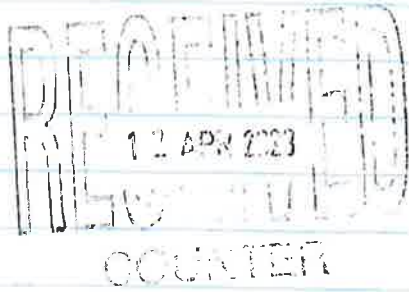
Isobel and Laurence Johnstone.

63 Burns Point Ferry Road

West Ballina. 2478.

(02) 66816814.

9 April 2023.



M.B. + M.J. Cox

Ballina Waterfront Village +
Tourist ParkSite 14 586 River St
West Ballina 2478
7/4/2023

Submission re DA 2022/721

We live at the above address + recently suffered flood damage to our house.

I am not concerned about a 12 hour storm event as cited in the above DA, the calculations of which I am not qualified to comment on, but I am concerned about a major flooding event which fills the proposed retention basins and underground storm water tanks.

Currently the development site in question, the boundary of which is approximately 30 meters from our house, is lower than the said house + one can assume helps drain and soak away to some extent the flood waters.

The filling proposed to raise dwellings and infrastructure takes away this current advantage we have, as does the loss of vegetation through transpiration + would presumably add to the floodwaters volume than is currently the case in our village. I am also concerned about subterranean water flow changes which could adversely affect the existing water table levels + hence soil stability.

The 2022 flooding has taken its toll on all in the park and still the recovery

process continues, consequently we are
against the current proposal.



M.B. COX



M.J. COX.

From: no-reply=paperform.co@mg.paperform.co on behalf of Compliment LAVERCOMBE
<no-reply@paperform.co>
Sent: Thursday, 13 April 2023 1:47 PM
To: Ballina Shire Council
Subject: CM 23/25725 Feedback Received - 13-04-2023 13:47:16

Submitted At

13-04-2023 13:47:16

What is the reason for your feedback?

Compliment

What type of Council service does your feedback relate to?

Development Applications

Details regarding your feedback

RE: GemLife Development Application 2022/721.1

I am writing out of concern with the above noted development application in particular to the potential for even more water displacement problems and flooding of the West Ballina residential area which was witnessed in the recent Feb/ March 2022 weather event. I am not opposed to Ballina expending BUT not at the expense of the current residences suffering water inundation because the drainage cannot handle any excess of water. Fix the drainage before any further development in the West Ballina region.

First Name

GARRY

Surname

LAVERCOMBE

Email

glavers72@gmail.com

Preferred Phone

0480308512

Street Number

24 HORIZON DRIVE

Street Address

HORIZON DRIVE

Suburb

West Ballina

Postcode

2478

How would you prefer us to contact you?

Email

I consent to have Ballina Shire Council collect my name, address, and email information

Yes

Submission ID

64377b4494faba941b056a15



From: Paul Helen Parry <helen_paul_parry@hotmail.com>
Sent: Thursday, 13 April 2023 2:03 PM
To: Ballina Shire Council
Subject: CM 23/25727 DA 2022/721.1
Attachments: Submission on GemLife DA.docx

Attached please find our submission concerning GemLife's proposed development (DA 2022/721.1)

Regards
H.P Parry

Sent from [Mail](#) for Windows

CM23/25727

The General Manager
Ballina Shire Council
PO Box 450

BALLINA NSW 2478

Mr H. P. & Mrs H.M. Parry
5 Dolphin Drive
WEST BALLINA 2478

Dear Sir,

**Re: Proposed Development – 544-548 River St, West Ballina NSW 2478
550-578 River St, West Ballina NSW 2478
6 Burns Point Ferry Rd, West Ballina NSW 2478
Pacific Hwy, West Ballina NSW 2478**

**Seeking consent to develop 148 Independent Living Units- Erection of a Seniors
Housing Development under State Environmental Planning Policy Housing 2021.**

I refer to the abovementioned proposed land development, the following are my concerns in regard to its possible approval listed below in 'dot point' form for your consideration and reference.

- Application is on land considered by local community as **floodplain**, although zoned as R2 Low Residential Housing.
- Land is inappropriate for residential/habitation due to existing (semi marsh, wetland) nature of land.
- Site requires an expansive and significant volume of fill, 2 to 3 meters high across the proposed built portion, to meet building regulations.
- Volume of fill import required for the site will have detrimental impact on existing / surrounding precinct, ascetically and drainage pattern.
- Import of fill alters the displacement of surface water on site and that of the immediate adjoining precinct (Burns Point Ferry Road).
- Drainage Management Plan: really only two (2) water exist points although a third (3) is nominated.
 - Emigrant Creek via 250mm pipe (limited capacity)
 - coupling into Burns Point Ferry Road stormwater drainage system (system regularly floods and will exacerbate struggling system while adding danger for precinct occupiers)
 - open drain in southern section (hoping to reach Richmond River)
- Burns Point Ferry Road stormwater system regularly floods/ fails. Is known to Council and remains unrectified (maybe it cannot be rectified but any added stormwater from this DA will exaggerate existing problems for precinct residents)
- Changing land surface – (current surface is water self-absorbing – to hard surface (built environment with roads etc) will initiate and create a significant increase in capturing water and generate more stormwater run-off drainage issues.
- Increased stormwater changes drainage requirements not appropriately addressed in Drainage Management Plan.
- Application is seeking advantage from or exploiting State Environmental Planning Policy Housing Shortage – I believe the site is inappropriate for senior and disabled housing from a safety perspective, coupled with the monumental volume of earthworks required to render site habitable and in turn the detrimental impact this works has on immediate precinct.

- Application really only nominates one (1) entrance/exit point, other suggested as emergency point. Occupation is primarily for aged senior over 55years and disabled, as stated in application – is there safety issues during any evacuation – fire flood etc
- State Environmental Planning Policy clearly states land to be suitable and appropriate – this site does not meet either of these criteria.
- Stage development means a slow cumulative impact upon existing precinct (slowing recognition of detrimental impacts over nearby surrounds.
- Report admits or **validates there is a cumulative drainage impact. Quote ‘....it is expected that the proposed development will result in acceptable cumulative impacts and an incremental impact’.**
- **Does a statement like this instill justice and acceptability with residents who were impacted by the Feb/March Flood 2022**
- Any impact, even if minimal, adds thousands to flood damage costs/bills.
- State Environmental Planning Policy (SEPP 55) Remediation of land. Requires planning authorities to consider, at development and rezoning stage, the potential for contamination to adversely affect **the suitability of site for its proposed use.** (floodway – import fill – safety of proposed occupants – impact on adjoining precinct and residents – inadequate local stormwater system ...etc etc)
- Ballina Council currently is reviewing this portion of land for rezoning and seeks public submissions on rezoning subject land from Low Density Residential to C2 Environmental Conservation. (sound logic and foresight).
- This DA application has been referred to Regional Planning for deliberation and consideration. This suggests Ballina Council does not support the application and wishes to remain neutral in the deliberations and given it has instigated a rezoning procedure of such land.
- Ballina Council is aware of the existing and unresolved drainage issue within the Burns Point Ferry Road precinct and of the impact that approving this DA would have on exacerbating drainage in the area.
- Can the applicant and/or Council and/or body considering/determining the DA application provide a guarantee / assurance to immediate precinct owners/occupiers that they will not be adversely impacted should the development be given approval.
- A prior application was denied in 2021 by NSW Land and Environment Court and the land site remains unchanged from that time. Should not the determination on this occasion produce the same result/outcome? Maybe the application is endeavoring to exploit the criteria of State Environmental Planning Policy on housing shortage.

.....
Mr H. P. & Mrs H.M. Parry

Thursday, April 13th 2023.

~~Sac Wanda~~

From: Roslyn Mayberry <roslynmayberry92@gmail.com>
Sent: Thursday, 13 April 2023 2:06 PM
To: Ballina Shire Council
Subject: CM 23/25729 Submission: Nominated Integrated Development Project. DA 2022/721
Attachments: GEMLIFE DA Submission.odt

Dear Mr Hickey, General Manager, Ballina Shire Council,

I have attached my submission with regard to the **Gemlife DA in West Ballina DA 2022/721**.

I request that my submission be presented to the Northern Region Planning Panel, who will be determining the outcome.

Yours faithfully

Roslyn Mayberry
0412758124

CM23/25729 GEMLIFE DA WEST BALLINA – SUBMISSION

Dated 13.4.23

Respondent Roslyn Mayberry

P.O.Box 823

BALLINA NSW 2478

Email roslyn.mayberry92@gmail.com

Introduction

This submission is by way of **objection** to the Gemlife planned fill elevated housing development in West Ballina on flood prone land.

Specific Grounds for Objection

Having read the documents submitted to Ballina Shire Council by Gemlife, I believe that the two most recent devastating 2022 floods have not been factored into any reports and modelling and that the floodwater/stormwater modelling is possibly outdated and inaccurate. The developer notes in various documents that Ballina Shire Council and NSW Planning have a responsibility to ensure any new development on flood prone land should not be detrimental to existing properties/developments. The Northern Region Planning Panel has this responsibility too.

The Planning Panel should delay any consideration of this latest development application until all the findings and data being gathered about the 2022 floods is finalised and the subsequent recommendations. Research and analyses of the 2022 floods are being conducted on a number of fronts by Ballina Shire Council, CSIRO, NSW SES, NSW Flood Inquiry and Natural Hazards Research Australia. The latter will be reported to relevant emergency services and government departments to reduce flood risk in the future.

The NSW Flood Inquiry 2022(August 2022) recommended an explicit risk based approach to determining how future development on floodplains should proceed. However, there is little or no detail on how Councils/Planning Panels should conduct risk-based assessments. As stated in their report, *"It is incredibly challenging to identify trends and patterns in flood events due to the complexities of pinpointing the causes of, and interplay between the various factors that lead to flood."* Similarly, this plethora of factors makes the design and implementation of flood prediction models and stormwater behaviour models for this proposed DA difficult for engineers. In addition, not much credence was given in the flood inquiry report to flood intensity/frequency/severity as a result of future climate change and sea level rise, nor does the proposed Gemlife DA documentation.

Most of the documents submitted in this most recent DA proposal from Gemlife are dated December 2022, but many of the reports were clearly prepared prior to the major flood events in 2022. These reports should note the date/time period that the observations, measurements, data collection, research were carried out.

I attended the Northern Rivers Development Corporation's seminar at Ballina RSL last year and they offered three solutions to Ballina flood victims - buy back, house raising(by stilts, not fill) and support for flood resilient solutions to homeowners. Filling floodplain land was not an option to deliver more housing, nor prevent future flooding.

The proposer states that the *"site shall be above the DFL to ensure safety of residents."* This is a noble objective, but the neighbouring residents' safety also needs to be ensured. The most recent site in West Ballina to be filled to be above the DFL is in Leech Avenue(a considerably smaller project than the Gemlife project), has been causing concerns for neighbouring residents throughout 2021 and into 2022 in rain events and high tides, even prior to the 2022 major flood. This site was not prone to flooding prior to the filling and development. For over 40 years, I have observed that this site allowed infiltration into the soil in heavy rain events coinciding with king tides to saturation point. The water then trickled off the grassed site over the kerb into the drain. The roadway never flooded as it did in October 2021, when the stormwater basin approved for the Leech Avenue development, overflowed

and flooded the road and footpath verges in a small 0.71 tide and after only 100 mm of rain at around 7am. A Ballina Shire Council engineer in January 2022, confirmed to me that the basin was inadequate and that a stormwater engineer was to be engaged by Council to investigate solutions. In the 2022 flood events, residents in Howard Crescent and Riverview Avenue noted that water was running off this raised/filled development into their properties and the dish drains at the base of the fill were clearly not designed to take the volume of water in heavy rainfall. In addition, no one monitors whether the drains or the stormwater basin are kept free of debris and blockages. I question whether the Gemlife flood and storm water modelling used is the same as the Leech Avenue development.

I note that the storm water basins proposed in the DA are mostly designed to improve stormwater quality from the site, but these basins should also be capable of storing and releasing stormwater from the built environment in a timely manner, so as not to exacerbate the flooding of neighbouring properties. There is mention that the proposed "bio-retention basins" and underground tank could regulate discharge. I ask, how is this going to be monitored? It is also not clear to me from the DA reports whether king tides and post flood 2022 river bed silting have been factored into the modelling.

The DA(23/21581 – Stormwater Management) does state "*stormwater detention shall be provided, if required, for catchment draining to the conservation area.*" The size of these detention systems needs to be determined once the 2022 flood analyses are completed and recommendations adopted or legislated.

In 1978, following flood rains and record falls in the Teven Valley and Emigrant Creek catchment, Emigrant Creek broke its banks immediately downstream of the Teven bridge and crossed the floodplain heading directly for this Gemlife site. The Ferry Boat Motel was deeply flooded and the water escaped to the Richmond River in a surge, via the path of least resistance, across Ferry Boat Road and out towards where the mouth of the Quays canal is located now. The Gemlife River Street retaining wall and drain proposed would be a barrier to a similar water flow, if this were to occur again, and the velocity and turbulence of the water would be directed towards the residents of Ballina Quays. These homes have already been devastated by the most recent floods. Many residents fear flooding every time it rains, many are living elsewhere whilst they wait for restoration and several are suffering mental health issues.

Up to date flood studies are needed to determine the impact of this proposed 3.2m fill on flood heights and flood water behaviour to ensure real life, up to date flood modelling.

At the NSW Housing Strategy workshops held at Ballina Surf Club, in late 2022, the disadvantages of fill for new builds were discussed and many advocated that future developments should be on stilts or raised above car parking on the groundfloor. The participants included builders, developers, long term residents, flood victims and Council personnel.

The development would have less impact if the footprint of this development was raised on concrete piers rather than fill, to allow natural flow of runoff in flood time under the development. I cite the new development at Currumbin Waters in Queensland as an excellent example of this flood resilient engineering on a floodplain. The developer has constructed a highway service centre, two huge industrial warehouse complexes and large concreted area for truck and car parking areas on the piered concreted raised platform. This is an innovative solution to building on flood prone land.

Conclusion

I urge the Planning Panel to delay consideration of this DA until all reports and recommendations relating to the 2022 flood events in West Ballina are finalised and provide updated data for effective modelling and then final decision making to ensure the safety of all residents, new and old. Concern of worse flooding because of this development is a major reason for the need to base the Panel's decision on recent data and modelling, that recognises the variables at play in this fragile location.

From: kathy.bell@iinet.net.au
Sent: Friday, 14 April 2023 8:14 AM
To: Ballina Shire Council
Subject: CM 23/25799 Submission - DA 2022/721 - Kathryn E Bell

Dear Sir/Madam,

I would like to submit my objection to the above development.

Grounds:

- Flood studies released, yet not reviewed - Await outcome to comeback
- Fear by residents increased risk of flooding
- Increased traffic flow causing gridlocked traffic
- Flood modelling and Flood Management Plan required
- Preservation of Wetlands - precious
- March 2022, flooded for first time in 35 years, future increased risk and more extensive flooding
- Many residents are still to return to their homes since the 2022 event, or are living in incomplete dwellings with environmental risks for the aged, disabled or sick.
- Zoned R2 (low density housing)
- Increase of 2-3.2 metres of fill, run off increasing risk of flooding

The above and not limited to, should provide doubt in the successful and best use of this land.

Kind Regards,

Kathryn E Bell
Rate Payer 182810

From: Julie Davis <jjdavis1@bigpond.com>
Sent: Friday, 14 April 2023 3:52 AM
To: Ballina Shire Council
Subject: CM 23/25800 Submission - DA 2022/721 - Julie Davis

To the General Manager and Council Members of Ballina Council,
I refer to the proposed development (CRN 52934) at West Ballina.

Despite living within sight of part of the development, I did not receive direct notification.

I have great concerns about this large project.

- the environmental impact on native flora and fauna, in particular various birds, the threat to mangroves and other native trees and grasses, which provide habitat for small species.
- increased risk of flooding to nearby homes
- increased traffic at an already busy intersection
- increased pressure on local infrastructure (e.g. local roads already flood with certain tides)

I acknowledge that the area needs additional, affordable housing, especially for the vulnerable, older demographic, but the location concerns me greatly and I do not believe it is suitable.

Like so many others, my house was severely impacted by the March 2022 flood event. It had never flooded previously. Also, like so many others, my home is still not repaired after 13+ months.

The local available workforce is stretched beyond capacity, beyond anything previously experienced. A local builder has told me he has never seen such shortage of labour in his 50+ years in the area.

I am greatly concerned that the proposed development will increase the risk of flooding in the future, by blocking natural floodplains.

I expect the proposed development will be raised and the proposed dwellings may not be directly impacted by possible future flooding, but residents would be, as roads become impassable, increasing the pressure on Emergency Services and Evacuation Centres.

At the moment, when I walk along Burns Point Ferry Rd, in the morning, I hear a chorus of birdsong and see many tiny birds. The wetlands are alive.

We have few areas remaining with such diversity. The loss of this habitat would be very sad.

Yours sincerely,
Julie Davis
10 Sirius Place,
West Ballina
0427 878 226

From: kth43747 kth43747 <kth43747@bigpond.net.au>
Sent: Thursday, 13 April 2023 5:19 PM
To: Ballina Shire Council
Subject: CM 23/25801 Submission - DA 2022/721 - Jean and Ken Thurston

Categories: Calliope

Dear Councillors,

We wish to lodge a strong objection to the proposed development listed above. We believe there have been a number of objections to the development for varied reasons. As residents of West Ballina our major concern is the increased risk of the frequency and level of flooding.

Our concerns are:

- the area is already subject to low level flooding from minor floods and king tides. By raising 10 hectares of the site by 3 metres will result in water in future floods from Emigrant Creek building up against the raised level of the site and dispersed across West Ballina;
- the flood impact projections are based on modelling therefore carry a possibility of inaccuracy. Even small errors from predictions carry extreme consequences for surrounding residents. It is assumed future flood projections were determined on current weather circumstances. Given recent extreme weather events (floods, etc.) future more severe climatic conditions are predicted.
Without certainty, that obviously cannot be given, Council would be taking a risk if it were to approve this development, a risk that could be avoided by rejecting the proposed development.

As stated there are numerous other reasons to reject this development. Having been directly effected by last years flood we, as other West Ballina resident, would not want to experience the trauma, anguish and disruption of another flood.

Sincerely,
Jean and Ken Thurston

From: Gregory Porter <yblek5@outlook.com>
Sent: Thursday, 13 April 2023 5:39 PM
To: Ballina Shire Council
Subject: CM 23/25802 Submission - DA 2022/721 - Greg and Annette Porter

Categories: Calliope

BALLINA SHIRE COUNCIL

In relation to Development Application DA2022/721.1 for housing in southern side Burns Point Ferry Road West Ballina I wish to lodge our objection to this development going ahead.

We have lived in West Ballina since 2004, have seen increasing flooding and increasing traffic in Kalinga Street.

We definitely are against this development as will increase both flooding and traffic to the area.

We only found out today 13/ 4/ 2023 ,

Why were we not notified before this.

We thought the council was going ok here in Ballina but if the Council goes ahead and gives permission for this to happen we will have no alternative and will definitely have to sell.

Commonsense, come and have a look at how much traffic in the street now, will definitely make flooding worse, when we get a King tide comes up Ferry Road that's without flooding.

Please use your Commonsense and squash this proposal for the people that have lived here for many years and already have gone through a lot of hardship.

We do know that Council would like to see Ballina grow, and is a nice area to live but yes build things in the right areas.

For Gods sake don't make it any harder on us.

This is total greed if you approve this, sometimes you have just got to say no.

Totally, totally disagree.

Kind Regards

Greg Porter

Annette Porter

20 / 121 Kalinga Street

West Ballina

0429662620

13 / 4 / 2023

From: Richard Crandon Email <crandon612@gmail.com>
Sent: Thursday, 13 April 2023 7:20 PM
To: Ballina Shire Council
Subject: CM 23/25803 Submission - DA 2022/721 - Richard Crandon

Importance: Low

Expires: Tuesday, 10 October 2023 12:00 AM

Attention Georgia Lee – Town Planner

I wish to submit this submission statement in support of this proposed development by GTH Resorts No.10 Pty Ltd.

The Northern Region of NSW is in dire need for all mass housing to meet the demographic demands for housing & infrastructure now being experienced, particularly in Ballina and its environs.

This is the second attempt for the GemLife Company to seek approval to development this most needed quality Senior Housing for retirees wanting to settle in Ballina.

I have resided for 16 years at 55 Burns Point Ferry Road West Ballina and received the full impact of the March 2022 flooding – lost all contents ,one car etc but been able to reoccupy my residence on Christmas Eve

thanks to the services of a local Building Company and a sympathetic Insurance Company.

On the morning of the 2nd March 2022 at 9.30am I witnessed floodwaters entering my residence from off Burns Point Ferry Rd through my property into the canal way on my back property boundary.

I estimated a difference of 0.5m height variation of the floodwaters coming over Burns Point Ferry Road to that water height in the canal also high-water flow velocities in excess to 4 m/sec. to cause erosion of

my side gardens & lawn . It was evident that this excessive cross flow was coming from Emigrant Creek west beyond Burns Point Ferry Road through cross country the land now being proposed for the abovementioned development.

The proposed development now calls for the filling of this area as building platforms that will form a partial levee to stop this cross flow of floodwaters onto Burns Point Ferry Road residence to give some flood mitigation relief.

to the mentioned residence.

It would be beneficial to all concerned in the proposed development to extend this building platform levee (say 2-3m high) from southern extremes of the development to River Street to ensure completed protection to these existing residences.

In Burns Point Ferry Road. Considerations must be given to raising the road formation in River Street and tie into the fill height of River Bend Resort opposite .

I see this as a two - fold win situation – the proposed site filling for the proposed development now forms the basis for a complete levee system i.e., flood mitigation to give flood clearance to the proposed development and protection to the

residences in Burns Point Ferry Road.

It should be noted I consulted to Clarence River Flood Mitigation Council, Grafton in 1975-78 in the design & development of the successful Levee systems at Maclean & South Grafton.

The next major concern I envisage with this proposed development is the landlocking of the proposed conservation area between the proposed development and Burns Point Ferry Road

This area must be adequately drained to stop ponding of rainwaters which now form a perpetual putrid swamp , to stop the proliferation of mosquito & midge breeding and the support of noxious flora and fauna

History of this area proves all existing vegetation is regrowth as this area was cleared extensively in the 1930-40s for sugarcane production, note the mole drains carrying through to Emigrant Creek. This drainage system is now blocked & non-functional.

This area is regarded as a direct health hazard to the residents in Burns Point Ferry Road.

It would ideal to develop this subject area as a maintained nature park with adequate pedestrian/public access enhanced with native flora to become a permanent buffer and idyllic open space for the public.

I believe I am qualified to support these statements mentioned in this submission and prepared to discuss further if called on by the Northern Region Planning Panel

Regards



Richard Crandon CPEng. MIEAust.(Ret'd)
Consulting Engineer
Mobile 0411422222

CM 23/25919 DA 2022/721 – Seniors Housing Development

Attention Georgia Lee – Town Planner

I wish to submit this submission statement in support of this proposed development by GTH Resorts No.10 Pty Ltd.

The Northern Region of NSW is in dire need for all mass housing to meet the demographic demands for housing & infrastructure now being experienced, particularly in Ballina and its environs.

This is the second attempt for the GemLife Company to seek approval to development this most needed quality Senior Housing for retirees wanting to settle in Ballina.

I have resided for 16 years at 55 Burns Point Ferry Road West Ballina and received the full impact of the March 2022 flooding – lost all contents, one car etc but been able to reoccupy my residence on Christmas Eve thanks to the services of a local Building Company and a sympathetic Insurance Company.

On the morning of the 2nd March 2022 at 9.30am I witnessed floodwaters entering my residence from off Burns Point Ferry Rd through my property into the canal way on my back property boundary. It should be noted this directional flow onto my property.

I estimated a difference of 0.5m height variation of the floodwaters coming over Burns Point Ferry Road to that water height in the canal also high-water flow velocities in excess to 4 m/sec. to cause erosion of my side gardens & lawn. It was evident that this excessive cross flow was coming from Emigrant Creek west beyond Burns Point Ferry Road through cross country the land now being proposed for the abovementioned development.

The proposed development now calls for the filling of this area as building platforms that will form a partial levee to stop this cross flow of floodwaters onto Burns Point Ferry Road residence to give some flood mitigation relief to the mentioned residence.

It would be beneficial to all concerned in the proposed development to extend this building platform levee (say 2-3m high) from southern extremes of the development to River Street to ensure completed protection to these existing residences.

In Burns Point Ferry Road. Considerations must be given to raising the road formation in River Street and tie into the fill height of River Bend Resort opposite.

I see this as a two - fold win situation – the proposed site filling for the proposed development now forms the basis for a complete levee system i.e., flood mitigation to give flood clearance to the proposed development and protection to the residences in Burns Point Ferry Road.

It should be noted I consulted to Clarence River Flood Mitigation Council, Grafton in 1975-78 in the design & development of the successful Levee systems at Maclean & South Grafton.

The next major concern I envisage with this proposed development is the landlocking of the proposed conservation area between the proposed development and Burns Point Ferry Road.

This area must be adequately drained to stop ponding of rainwaters which now form a perpetual putrid swamp, to stop the proliferation of mosquito & midge breeding and the support of noxious flora and fauna

History of this area proves all existing vegetation is regrowth as this area was cleared extensively in the 1930-40s for sugarcane production, note the mole drains carrying through to Emigrant Creek. This drainage system is now blocked & non-functional.

This area is regarded as a direct health hazard to the residents in Burns Point Ferry Road.

It would be ideal to develop this subject area as a maintained nature park with adequate pedestrian/public access enhanced with native flora to become a permanent buffer and idyllic open space for the public.

I believe I am qualified to support these statements mentioned in this submission and prepared to discuss further if called on by the Northern Region Planning Panel

Regards

A handwritten signature in black ink, appearing to read 'Richard Crandon', with a checkmark at the end.

Richard Crandon CEng. MIEAust. (Ret'd)
Consulting Engineer
Mobile 0411422222

~~Sup-Michele~~

From: Marilyn Chaseling <marilyn.chaseling@outlook.com>
Sent: Friday, 14 April 2023 2:37 PM
To: Ballina Shire Council
Cc: michele brown
Subject: CM 23/25999 Submission - DA 2022/721 - Michele and John Brown
Attachments: Michele & John Brown_ GemLife Development Application DA2022.docx

Dear Ballina Council

My neighbour Michele Brown has asked me to email to you the objections she and her husband have to the GemLife Development Application DA2022/721. Please note:

- Michele is a cc to this email
- Michele and John's objections are attached to this email as a Word document.
- Can you please delete the earlier email of today Michele sent to Ballina Council? This Word document is a substitute for Michele Brown's earlier email.

Can you please acknowledge receipt of the attached objections to Michele Brown
corriganbrown@hotmail.com

Thank you

Marilyn Chaseling
13 Burns Point Ferry Road
Ballina 2478

CM 23/25999Re GemLife Development Application DA2022/721

April 14, 2023

In July 2021 my husband John and myself, Michele Brown, moved from the Blue Mountains to Northern Rivers.

Before moving I enquired at Ballina Shire Council regarding the wetlands on Burns Point Ferry Rd opposite the home we had purchased. I was advised that a proposed retirement village had been planned and was currently in the Land and Environment Court as the BSC had objected to this proposal. The week I arrived I met some of my neighbours who would be involved via Zoom and would be speaking at the Land and Environment Court.

Because I was only a new arrival, I took on board what it was all about. I did learn of the outcome—that the Land and Environment Court had rejected GemLife's proposal. I knew if my neighbours who had lived Burns Point Ferry Rd for many years, were pleased, then of course I knew it was a good outcome for our neighbourhood.

Following on, I attended BSC on 18th January 2022 in regards to 'Flood Mitigation'. We had had King Tides a week before with stormwater issues from the roadside on BPFRd. So, consequently, it was in our interest to attend the BSC meeting. I also put in a submission to BSC by their cut-off date in early February.

Well of course we on the Northern Rivers know exactly what occurred in late February and early March 2022 in our area. Firstly, the storm water from BPFRd entered our homes and on the 1st March we were flooded from the Quays. Later again on 15th March, this event affected even further into Ballina.

I attended the BSC meeting in May as this was the delayed follow-up about flood mitigation. I was handed Section 10.2 which was from Council. It was quite a thick document but to this date I haven't read it as at the time my husband and I were in temporary accommodation due to having been flooded and had nowhere to store. It is with a friend for safekeeping.

I believe Council keeps us well informed via multiple media and I wish to make a reference to Community Connect Issue 50—Burns Point Ferry Rd West Ballina; Storm Water Project, BSC meeting January 2022 Number 14 on the list

May 2022 Number 2 on the list

March 2023 nowhere on the list.

I refer to BSC CC Magazine Page 11; Road and Stormwater Projects; completed current and future. Nowhere is BPFRd mentioned.

I refer to page Capital Expenditure \$1.7 million Stormwater.

Of course, I am writing in regards to GemLife's new revised development proposal which my husband and myself object to. I will state.

- I believe the land should all be rezoned as Conservation because it contains many creatures on the ground and in the air. This is their habitat.
- I see the birds fly in and out. See their nests on trees and, of course, you can hear at different times these creatures living in the wetlands and their beautiful sounds.

Next where is BPFRd on the above said project for stormwater?

Are we to believe it's expected that GemLife, if its development is approved, will be responsible for our stormwater? I understand that BSC object to GemLife proceeding, but these matters aren't adding up.

The traffic flow is reasonable on any given day as we live on a main thoroughfare to the ferry and River Street being the arterial road to the M1 and Ballina surrounds. The traffic doesn't bank up but there is an ongoing rush of trucks and cars to meet the ferry and alight. But with the GemLife planned development, the traffic will be far too much for this junction of BPFRd, Kalinga St and River St.

The most important factor in all of this is our vulnerability to the water. The 2022 flood has given us further insight that West Ballina's stormwater system, locality to water with Emigrant Creek, Richmond River and Quay West, has all been sustainable up to 2022.

We have all been through serious peril and this makes us all somewhat insecure with ongoing stress. But we live here and so do the creatures in the wetlands. Why do we have to fight to save our homes and theirs?

We now understand that any future development in areas like ours will not withstand what we are currently all still recovering from, let alone with the prospect of even higher water levels if Gem Life's Development get approval.

Allowing Gem Life to proceed with this new revised development is obscene given that much of our neighbourhood still has not returned to their homes post flood and may not even be aware of this new proposal.

The Land and Environment said NO to GemLife in 2021. When does No really mean NO!!!

Please acknowledge receipt of our objection, thank you very kindly.

Kind Regards
Michele and John Brown
15 Burns Point Ferry Rd
West Ballina NSW 2478

From: michele brown <corriganbrown@hotmail.com>
Sent: Friday, 14 April 2023 11:42 AM
To: Ballina Shire Council
Subject: CM 23/25922 Submission - DA 2022/721 - Michele Brown

Sent from [Mail](#) for Windows

From: [michele brown](#)
Sent: Friday, 14 April 2023 11:31 AM
To: [Marilyn Chaseling](#)
Subject: GemLife Development Application DA2022/721

In July 2021 my husband John and Myself; Michele Brown moved from the Blue Mountains to Northern Rivers. Before moving I enquired at Ballina Shire Council regarding the wetlands on Burns Point Ferry Rd opposite our home we had purchased.

I was advised that a proposed retirement village had been planned and was currently it the Land and Environment Court as the BSC had objected to this proposal.

The week I arrived I met some of my neighbours who would be involved via Zoom and would be speaking.

Because I was only a new arrival I took onboard what it was all about.

I did learn of the outcome being and knew if my neighbours who had lived here for many years, were pleased, then of course I knew I too it was a good outcome for our neighbourhood.

Following on, I attended BSC on 18th January 2022 in regards to 'Flood Mitigation'.

We had King Tides earlier a week before with storm water issues from the roadside on BPFRd so consequently it was in our interest to attend that meeting.

I also put in a submission to BSC by their cut off date in early February.

Well of course we on the Northern Rivers know exactly what occurred On late February and early March in our area.

Firstly the storm water entered our homes from the BPFRd on 28th February and on the 1st March we were flooded from the Quays.

Later again 15th March this event affected even further into Ballina.

I attended the BSC in May as this was the delayed follow up about flood mitigation.

I was handed Section 10.2 which was from Council.

It was quite thick but to this date I haven't read it as at the time my husband and I were in temporary accommodation and no where to store.

It is with a friend for safe keeping.

I believe council keeps us well informed via multiple media and I wish to make a reference to Community Connect Issue 50.

Burns Point Ferry Rd West Ballina ; Storm Water Project, BSC meeting January 2022 Number 14 on the list
May 2022 Number 2 on the list
March 2023 nowhere on the list.

I refer to BSC CC Magazine Page 11; Road and Stormwater Projects; completed current and future, nowhere is BPFRd mentioned.

I refer to page Capital Expenditure \$1.7 million Stormwater.

Of course I am writing in regards to Gem Life new revised development proposal which my husband and myself object to; which I will state.

I believe the land should all be rezoned as Conservation because it contains many creatures on the ground and in the air, this is their habitat.

I see the birds fly in and out.

See their nests on trees and of course you can hear at different times these creatures living in the wetlands and their beautiful sounds.

Next where is BPFRd on the above said project for stormwater?

Are we to believe its expected the Gem Life, if approved are to be responsible for our stormwater.? I understand that BSC object to Gem Life proceeding but these matters aren't adding up.

The traffic flow is reasonable on any given day as we live on a main thoroughfare to the ferry and River ST being the arterial road to the M1 and Ballina surrounds. It dosen't bank up but its a ongoing rush of trucks and cars to meet the ferry and alight.

But with the planned development it will be far too much for this junction of BPFRd, Kalinga St and River St.

The most important factor in all of this is the vulnerability to the water and has given us further insight that West Ballina storm water system, locality to water with Immigrant Creek, Richmond River and Quay West has all been sustainable up to 2022.

We have all been through serious peril and makes us all somewhat insecure with ongoing stress but we live here and so do the creatures in the wetlands.

Why do we have to fight to save our homes and theirs.

We now understand that any future development in areas like ours will not withstand what we are currently all still recovering from, let alone with the prospect of even higher water levels if Gem Life get approval.

Allowing Gem Life to proceed with this new revised with plan is obscene given that much of our neighbourhood still have not returned to their homes post flood and may not even be aware of this new proposal.

Land and Environment said NO July 2021. When does No really mean NO!!!

Please acknowledge receipt of my objection, thankyou very kindly.

Kind Regards

Michele and John Brown

15 Burns Point Ferry Rd

West Ballina NSW 2478

Sent from Mail for Windows

From: Aiden Chalker <aiden.chalker@kyogle.rh.com.au>
Sent: Friday, 14 April 2023 2:56 PM
To: Ballina Shire Council
Subject: CM 23/25994 Submission - DA 2022/721 - Aiden Chalker

Dear Sir/Madam,

I write in relation to the proposed seniors housing estate on Burns Point Ferry Road, West Ballina.

This would have to be the worst possible location for this development to be placed.

The Land & Environment Court has previously advised the land to be "ecologically sensitive".

Yet the developer is persisting with this.

Should this development be approved, it would be a huge misjustice on the land and the local community. As well as local, state, and federal government who will no doubt be handing out grants in the event of the next natural disaster. This is not a matter of if, only when.

I look forward to seeing common sense prevail and a stop once and for all to this and any future development of this land. There are many other suitable sites, I will look forward to seeing these developments occur.

Thank you.



Aiden Chalker
Director / Principal, Raine & Horne

A: 91 Summerland Way, Kyogle NSW 2474
M: 0429 141 789 T: 02 6632 2122
E: aiden.chalker@kyogle.rh.com.au W: rh.com.au/kyogle

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From: merryan payne <merryanpayne@gmail.com>
Sent: Friday, 14 April 2023 2:44 PM
To: Ballina Shire Council
Subject: CM 23/25998 Submission - DA 2022/721 - Jo Payne

**DA Submission - Nominated Integrated Development Project for determination by the Northern Regional Planning Panel 2022/721
Developer - GTH Resorts No 10 P/L GEMLIFE BALLINA**

Name Jo Payne
Phone 0400826516
merryanpayne@gmail.com

OBJECTION TO PROPOSED DEVELOPMENT

I object to the proposed development on the grounds of concern that future flooding events will potentially be more devastating than in 2022 for West Ballina if the DA is approved.

This development plans to fill a large area of flood prone land to 3.2m adjacent to Ballina Quays and Waterview Park, all of which was flooded in the 2022 floods, for the first time.

The majority of the flooded homes in the neighbouring estate are either still being restored or awaiting restoration. Many residents have been displaced from their homes for over 12 months.

A large number of the documents on exhibition have been prepared prior to the two 2022 flooding events and policies, formulated prior to the 2022 flood event, are also referenced in the DA.

Ballina Shire Council and Northern Regional Planning Panel do not have all of the results of research and inquiries being undertaken in relation to the 2022 devastating floods. This DA must be assessed in relation to risks posed and, without the updated information providing recommendations, it is difficult to understand how this DA can be assessed to ensure neighbouring properties are not adversely affected.

I attended two public workshops in Ballina last year after being flooded in the 2022 floods. At the Northern Rivers Reconstruction Corporation conference we were told that three options were available to flood victims – buy backs, house lifting and retrofits. House lifting was by way of stilts or stumps, not land fill. At the NSW Housing Strategy workshop presenters and participants spoke about the benefits of raising new builds on stilts or having ground level parking below the home over filling land to the level required on flood prone land. Concerns were raised that filling the land was not a desirable approach, as it posed potential hazards to neighbouring properties and creates significant displacement of water both in flooding and stormwater.

The size and capacity of the storm water retention basins and the underground storm water tank should be determined using data from the 2022 flood events. The DA states that the 'sizing of each basin is in accordance with BSC pollutant reduction and NSW oyster aquaculture guidelines' and proposed to be capable of retaining water prior to discharge into Emigrant Creek or the conservation area during prolonged rain. These basins are unlikely to alleviate the threat of flooding in neighbouring properties if this DA were to go ahead.

The applicant has addressed many of the environmental flora and fauna concerns raised in the first DA rejected a few years ago but has not addressed flood concerns, if the same set of flood conditions occurred in the future as in 2022.

Many residents have feared the effect of future flooding when they saw the two mounds laid on the site. The height is daunting for those who have been flooded in the recent floods.

Filling land to provide housing in flood prone areas is being avoided across the globe and is not a solution that should be supported by governing authorities, especially to the extent of this proposal.

Kind regards

M J Payne

From: Scott Gollan - Senior Accountant <sgollan@standrew.com.au>
Sent: Friday, 14 April 2023 2:04 PM
To: Ballina Shire Council
Cc: leanne.gollan@gmail.com.au; Scott Gollan
Subject: CM 23/26000 Submission - DA 2022/721 - Scott & Leanne Gollan

Hello Council,

1. We are writing to record our Objection against approval of the above Development:

- We were impacted by the March 2022 flooding and are still NOT back in our home.
- We are concerned that additional development will increase risk of future flooding by impacting the ability of water to "flow".
- Existing high tides in the area impact on Burns Point Ferry Road.
- Additional development will add significant risk to more frequent, higher levels and longer flooding events.

2. Rezone land to C2 Environmental Conservation

- We believe this is the most appropriate zoning for this parcel of Land.
- We support approval of this Zoning for this property due to its ability to disperse flood waters and to retain the flora and fauna diversity in that area.

Yours faithfully,

Scott Gollan & Leanne Gollan
4 Dolphin Drive, West Ballina NSW 2478
Ph: 0413 227 871

From: [REDACTED]
Sent: Friday, 14 April 2023 1:50 PM
To: Ballina Shire Council
Subject: CM 23/26001 Submission - DA 2022/721 - [REDACTED]

To Whom It May Concern

Please accept this email as a submission against DA 2022/721 by GTH Resorts No 10 Pty Ltd.

[REDACTED] we have concerns on the impacts this will have to our property and standard of living and object to the development proposed for the following reasons:

Environmental concerns

- In 2021, the Land and Environment Court refused the previous application stating this land is NOT for urban development.
- The land has been deemed unsuitable for urban development and environmental consequences for the wetlands, river, flora and fauna are enormous.
- Ballina Shire Council are proposing to re-zone the land to C2 Environmental Conservation and we support this proposal.

Flooding concerns

- The significant fill required for the development will significantly impact neighbouring properties. This is a concern during times of high rainfall and during high tides. The stormwater system cannot currently cope. Where will the stormwater extra run-off be diverted to? Burns Point Ferry Road is part covered in water during rainfall and hightides as the water is unable to drain away (this appears worse since the . Significant fill and more development will only exacerbate this situation and impact on existing properties
- Burns Point Ferry Road floods during high rainfall and at time of high/king tides. The proposed development negatively impact this more.
- Detailed flood modelling referred to was done 11 years ago in 2012.
- We are still recovering from the acute flood impacts of March 2022. Many residents in Burns Point Ferry Road (including us) and in the locality have still not been able to return to their homes. Any development that will increase risk of flooding to our properties is not wanted.
- What is Council's most recent flood modelling data? The flood impacts from this proposed development will negatively impact on neighbouring properties and wider network

Increased Traffic and Noise

- Heavy vehicle generation during earthworks will generate noise.
- Increased traffic from 148 residences will negatively impact on Burns Point Road, Kalinga Street, River Street and other adjoining intersections in locality. The roads are already gridlocked and struggling to cope with the volume of daily car movements.
- Increased Noise and possibly dust from earthworks, construction and development over a prolonged period.

Thank you for this opportunity to comment on this submission

Kind regards

[REDACTED]
West Ballina

From: [REDACTED]
Sent: Friday, 14 April 2023 1:08 PM
To: Ballina Shire Council
Subject: CM23/26002 Submission - DA 2022/721 - [REDACTED]

Dear Sir / Madam

I would like to express **concern and objection** to the proposed development listed above. I am concerned with the size and scope of the proposal should it have significant affect to my property [REDACTED].

Also, the proposed change to allow this Development may cause future impact to my property that was severely impacted by recent flooding and drainage capacity or lack of. I understand that a considerable amount of fill must be put in place. Where will the water go, how will the road cope with the volume of traffic in this area, how will the environment be affected. This is a wetland with river, fauna and flora likely to be affected if this is approved.

I understand there is objection to this in place and would like to add mine.

Sincerely,

[REDACTED]

From: John Heaton <johnheaton56@gmail.com>
Sent: Friday, 14 April 2023 3:27 PM
To: Ballina Shire Council
Cc: Councillors
Subject: CM 23/26026 Submission - DA 2022/721 - John Heaton

I've just been made aware that submissions for above DA close today. The following is my submission.

I oppose the DA purely on the basis of the impacts of heavy rain & increased flooding along Burns Pt Ferry Rd & surrounding streets. I believe that no amount of engineering solutions will mitigate increased flooding, not only in the immediate area of proposed development but further areas of West Ballina.

Haven't we learnt anything from the devastating floods of 2022??

While I appreciate the benefits of an Over 55's type development for the town, I can't ignore the unintended consequences this development will have on other people.

John Heaton
128 Platypus Dr
Uralba NSW 2477

From: Kim Kirkby <Kim.Kirkby@wesleymission.org.au>
Sent: Friday, 14 April 2023 3:40 PM
To: Ballina Shire Council
Subject: CM 23/26049 Re: Development Application 2022/721.1

Categories: Krish

Good afternoon,

My objections & concerns re the GemLife development West Ballina:

- The NSW land and Environment Court ruled against this development in 2021
- Proposed development means that 90,000 square metres will be filled with 2 to 3 metres high of compacted fill. Where will the displaced water go during high tides, storms & floods?
- The land is zoned at R2
- Does the application meet R2 zoning requirements?
- The environmental consequences for our wetland, river, fauna & flora are enormous
- Another 148 plus residents to an already gridlocked traffic nightmare?

I would prefer that this land be rezoned to C2, planning proposal 22/007.

Thank you

CM23/20050

To Ballina Shire Council,

Objection to Development Application (2022/721.1)
The GemLife Development in West Ballina

As a resident of West Ballina who was flooded in the 2022 March floods, I would like to object to the proposed development application proceeding.

If this application is allowed to proceed, it will increase the number of smaller flooding events that will impact the residents of West Ballina. Currently, flood waters spread out across this flood plain, alleviating the impact on West Ballina. If the proposed land filling occurs, where will the flood waters go? They will spread into more areas of West Ballina and Ballina Island, flooding more homes and in some cases, devastating the lives of some of our residents.

I was evacuated to Southern Cross School of Distance Education last year and spent a few days staying there and helping out. There were quite a few older people, who had previously lost their partners, who then lost, not only all their possessions, but also their mementos of family/friends and their partners. I realised then, that I was lucky in some ways in that I was insured, but insurance cannot replace the loss their memories.

After the Lismore floods, the Government came forward with grants to buy back the land or raise houses. In West Ballina, raising houses will not be possible in a lot of cases. There are quite a number of unit complexes which cannot be raised. If Council allows this development to proceed, will anyone be buying back homes or giving grants to raise homes?

In the complex I live in, there are a few elderly residents. They cannot afford to buy elsewhere. They have also stated that they can't go through this again. I had only a couple of years until I planned to retire. However, it seems I will have to work for longer to sell my place and buy somewhere else and pay it off.


It has been nearly 14 months since the event. I am still not in my home, but hopefully in a few weeks I will be able to return. Other people I have spoken to have said that they have been told it will be at least another 12 months for them to move back home. You may not get many objections from West Ballina residents. I didn't even know it was going ahead until yesterday when I went back to my unit to check on building works and saw a flyer in my mailbox. Many homes in West Ballina are still empty.

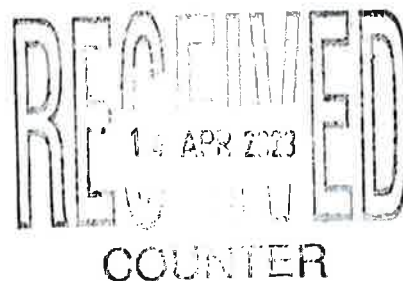
My complex was insured, however, even though we have never been flooded before, no insurance company will offer us flood insurance.

This land needs to be rezoned to C2 immediately. Soon most of Ballina's flood plains will be gone the way developers are putting in estates. This means that more and more of Ballina will flood with every event.

My last question to Council is this. When do the "wants" of a developer to make money, out way the "needs" of a community?

Thanking you

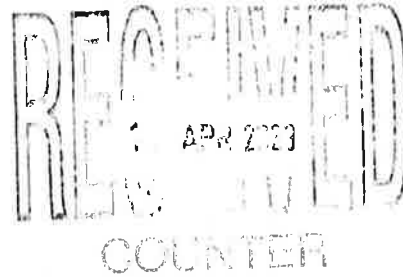
Brett Rhodes 
11/111 Kalinga St
West Ballina



CM23/26057

14 April 2023

Mr Paul Hickey
The General Manager
Ballina Shire Council
40 Cherry Street
BALLINA NSW 2478



Ms Nicole Eldridge
31 Emigrant Creek Lane
WEST BALLINA NSW 2478

Dear Mr Hickey,

RE: DEVELOPMENT APPLICATION No. 2022/721.1

Seeking consent to develop 148 Independent Living Units- Erection of a Seniors Housing Development under State Environmental Planning Policy Housing 2021 in five stages including 148 independent living units (four x two bedroom and 144 x 3 bedroom units), community facilities, managers residence, earthworks (filling) and retaining walls, removal of vegetation, stormwater management and infrastructure works, landscaping and outdoor recreation areas. Vehicular access to the development is proposed via Burns Point Ferry Road with an emergency access via River Street.

As an adjoining landowner to the proposed development site I object to the proposed application on the following grounds: flood risk to adjoining landowner properties, visual impact, environmental impact, lifestyle destruction and flood.

Flood Risk:

The large amount of fill required for the proposed development will back onto and along the sides of the adjoining properties.

The DA does give any reassurance there will not be substantial run off from such a large housing development, causing water damage and flooding to the adjoining properties and possible contamination of Emigrant Creek. Surrounding the existing residential blocks with high retainer walls will impact the ability for water to drain away locking the possibility for flood and tidal water to flood existing homes in Emigrant Creek Lane.

The concern of retainer walls is, the stormwater drains will not be able to manage when tides are high/king tides and rain occurs, water will be trapped and it will have to be dispersed onto the adjoining landowner's property.

The attention given to flood risk is poor in the DA and there has been no consideration to the adjoining properties concerning king tides or storm water. Consideration from council regarding the flood impact is needed as this will adversely impact the properties along Emigrant Creek Lane.

Visual Impact:

The visual impact of the proposed development is enormous, the test pads currently positioned on the site have impacted the visual beauty of the rural area the destruction of the flood plain and forest land which is home to many green/native frogs and an array of bird life.

The development will reduce the effectiveness of tranquillity and beauty to the adjoining properties with large amounts of fill, held up by enormous retainer walls built close to current homes. This development is inconsistent with the zoning of rural residential land.

Environmental Impact:

The environmental impact of the proposed land would include the destruction of mangrove, flood plain animals, birds and trees to house an intrusive large, manufactured housing development.

The change of use of the subject land from coastal forest is detrimental on many environmental aspects, destruction of native wildlife, mangroves, coastal flood plain.

There has been little to no acknowledgement from the developer on the environmental impact to this delicate reserve of land and the residents of Emigrant Creek Lane.

Lifestyle Destruction:

To purchase a property which includes flood plain beauty and a pristine natural waterway was a lifestyle we envisaged for the rest of our lives. The adverse impact of mass housing (148) deprives the current residents right to privacy, quiet and spacious surrounds, and visual beauty.

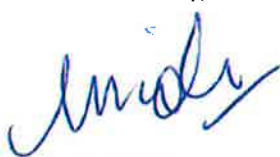
The financial detriment can impact the adjoining residences of the development as being seen to be "blocked in" with retainer walls, over housing and to be uninsurable due to flood.

The lack of consideration for the adjoining landowners by the developers and council needs to be strongly reviewed.

Conclusion:

Ballina Shire was impacted by a historical flood in 2022, my home was greatly impacted also, for Ballina Shire Council to even consider such a proposal on floodplain would be inconsiderate to current residents and environmentally criminal. I reject the proposal of Development Application No. 2022/721.1 in its current form on the grounds noted in this letter.

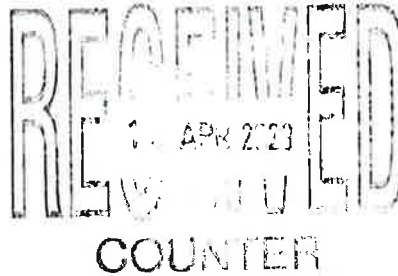
Yours faithfully,



Nicole Eldridge

CM 23/26058

To Whom It May Concern
Ballina Shire Council
40 Cherry Street
Ballina NSW 2478



Mr Geoffrey Sinclair
45 Dolphin Drive
West Ballina NSW 2478

11TH April 2023

Re: GemLife Development Application (2022/721.1).

Dear Sir/Madam,

As a resident of West Ballina, who was severely affected by the March 2022 floods I am writing to strongly object to the appalling suggestion of further residential development on this adjacent floodplain. My fellow residents and I have been out of our homes for up to at least 10 months before repairs could begin. In my specific case I have been residing with my niece in Wollongbar since the occurrence of the floods now well past one year and repairs to my property only started at the beginning of this month. For the very prominent reasons outlined below this development must not be approved.

. The raised development with up to 2-3 metres of fill being used will cause a severe displacement of water in a flooding emergency sending it flowing through West Ballina and then quite possibly into Ballina CBD. Upon adding any tidal waters and river water back up from Lismore this enormous volume of water is headed straight to our residential streets and into our homes again.

. Our immediate road systems will encounter significant flood damage yet again with previously unaffected roads now unpassable with the extra water and flooding. On a general traffic note this increased traffic flow will cause extreme congestion in peak periods and current upgrades will not be sufficient to cope, installation of traffic lights may even be required. It is currently very difficult to join River Street in either north or south direction from the West Ballina residential streets before introducing more traffic.

. Residents of this estate will be trapped in their homes in the event of a flood, stuck on a man-made island unable to go to work or shops for essential supplies. If there was a life threatening situation and they had to be rescued there is greater risk and more pressure on first responders e.g SES, Police staff and equipment to reach them in time.

. Infrastructure such as electricity would need to be installed, not just upgraded which is a costly exercise and cause of immense strain on the grid for our area. Not only do people have to cope with rising electricity costs they now would encounter regular shortages or full outages of power supply.

. As stated in the written development information I received, the development area is reserved for low density housing only, placing 148 residences then another 4 buildings in the 90,000 square metres, leaves little or no space between premises e.g for communal grounds, paths, and property yards et.c. The occupants having to live just about on top of each other brings concerning social

issues to the project. I can also add the higher cost of a flood clean up not only in West Ballina but also at the new residential ~~site~~ post flood. The most recent March flood had repercussions for months to come.

. For West Ballina residents the highly lightly and predictable event of another flood would render our homes unsalable if we choose to sell rather than go through the devastating event again. This proposal would alter the environment in allowing far greater volumes of flood water through West Ballina that has ever been there before. Being a man-made cause and direct effect, those responsible should be prepared for legal action against themselves and compensation given to West Ballina residents affected by such poor planning.

In conclusion, whilst it was stated a letter of objection did not need to be long, all the above points are of great value. I trust that along with many other letters regarding this matter you receive it will be given due serious attention and acted on. Thankyou

Yours Sincerely

A handwritten signature in cursive script, appearing to read 'G. Sinclair'.

Mr Geoffrey Sinclair

(currently of

36B Avalon Ave

Wollongbar NSW 2477)

D.O.B. 24/10/1939

Sue Wade

From: gary Pitt <amamoor@hotmail.com>
Sent: Friday, 14 April 2023 4:29 PM
To: Ballina Shire Council
Subject: CM 23/26118 Re: application (2022/721.1)

Categories: Krish

To whom it may concern

Surely any developer or anyone at that matter can see that any development with 2-3 metres of land fill will cause flooding in king tides with heavy rain not to mention the major flood of 2022.

Maybe if the developer would take responsibility and sign an agreement with all residence if any houses flood in West Ballina they will reconstruct our homes or any or do any repairs needed from flooding.

We have just spent 12 months getting our homes and lives back together so give us a break.

Thankyou

Gary Pitt

136 Kalinga St

West Ballina

0404842065

Sent from [Mail](#) for Windows

~~Save Memo~~

From: Tamara Cook <tamaracook68@gmail.com>
Sent: Friday, 14 April 2023 4:34 PM
To: Ballina Shire Council; office@franklin.minister.nsw.gov.au; Cr. Sharon Cadwallader
Subject: CM 23/26123 Objection to Development Application DA 2022/721.1
Attachments: BALLINA SHIRE COUNCIL T.Cook.pages

Categories: Krish

To the Council, and relevant governing persons,

Please find attached by letter of objection to the further development on Burns Point Ferry Road in West Ballina.
I thank you for carefully considering the merits and objections to this development.

Sincerely,
Tamara Cook

From: Marilyn Chaseling <marilyn.chaseling@outlook.com>
Sent: Friday, 14 April 2023 5:06 PM
To: Ballina Shire Council
Cc: loddobpfr@bigpond.com
Subject: CM 23/26124 GemLife Proposed Development (DA 2022/721.1) Anne & Wayne Lodington's Submission
Attachments: Anne & Wayne Lodington_14042023.pdf

Dear Ballina Council

My neighbour Anne Lodington has asked me to email to you the objections she and her husband have to the GemLife Development Application DA2022/721. Please note:

- Anne is a cc to this email
- Anne and Wayne's objections are attached to this email as a pdf.

Can you please acknowledge receipt of the attached objections to Anne Lodington <loddobpfr@bigpond.com>

Thank you

Marilyn Chaseling
13 Burns Point Ferry Road
Ballina 2478

Anne and Wayne Lodington
19 Burns Point Ferry Road
West Ballina 2478

My husband and I have been residents of 19 Burns Point Ferry Road, West Ballina, for 18 years.

After examining the above proposal, we would like to express our objections and concerns.

1. Zoning

The proposed land is currently zoned R2 – low-density houses, i.e. blocks from 650 square metres. The GemLife proposal proposes more than 145 residences at less than half this size. This in no way fits the zoning requirements or objectives. The proposed development is more akin to small lot of medium-density housing.

2. Water and Flood

Burns Point Ferry Road homes are built on low-lying reclaimed land recognised as part of the Ballina floodplain. The proposed development and Burns Point Ferry Road are situated on a vulnerable peninsular bordered on three sides by the canal to the east, Richmond River to the south and Emigrant Creek to the west. West Ballina, particularly this peninsular area are subject to all three flood sources:

- i. Riverine flooding
- ii. Flood catchment and runoff water
- iii. Surges in tide and high seas.

The Burns Point Ferry Road photos supplied are evidence of the common unwanted water occurrence of our road, driveways and occasionally our backyards, resulting from any or all of these three sources.

The GemLife proposed development land is a containment area for massive amounts of water. Any displacement of water or afflux created by GemLife filling the proposed land by two to three metres would be catastrophic to the Burns Point Ferry Road and low-lying properties.

BMT WBN studies 2016 titled Richmond River Flood Warning and Evacuation recognises that the filling of large areas of land adjacent to the river not only impacts local owners but also land upstream.

Current local flood mitigation studies have now recognised Burns Point Ferry Road as number 2 on their overland flood hotspot list. The study suggests no practical way to ensure the safety of our properties except by adopting strong land use discretion on our floodplains and wetland.

Local governments have the responsibility to regulate and prevent inappropriate development of the floodplain to limit the danger to the populace associated with flooding.

3. Traffic

Increased traffic from the proposed GemLife Development trying to access the already gridlocked River Street to Fishery Creek Bridge area will result in subsidiary roads backing up into our suburban streets.

4. Suitable Development Site

After reading the Geotech study on the soil make-up and groundwater levels, settlement, saturation and runoff are concerns. Is this site suitable for any type of development?

5. Environment

GemLife's previous development application was strongly rejected by the NSW Land and Environment Court in late 2021 when they were not satisfied that the development would "not significantly impact on the biophysical hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest or the quantity and quality of surface and groundwater flows to and from the adjacent coastal wetland and littoral rainforest" and that "residential development as proposed would have unacceptable impacts on the lands high environmental values". Studies showed three endangered ecological communities and is the habitat for five threatened species. "The impact on biodiversity values is to be regarded as serious and irreversible."

6. Hydrology and Health of the Richmond River

Pressures from development and agricultural activities have added to acid sulphates leaching into the Richmond catchment, contributing to the river being identified as one of the environmentally worst-performing rivers on the east coast of Australia. Development on the sensitive wetland and floodplain is taking away another piece of the ecological balance of the lower Richmond.

7. 2022 Floods

These devastating March 2022 floods inundated our West Ballina homes with up to 800 mm of contaminated water flowing through our houses for three to four days. We lost all our furniture, belongings and treasured possessions. Our houses were completely stripped up to 120 mm. Now in April 2022, 14 months after the floods, our homes have either not started to be rebuilt, or are only partially rebuilt. Much of our West Ballina community has not yet been able to return to our flood-damaged homes. We are living in caravans or away from our homes.

Yes, the March 2022 floods were an uncommon event, but they do highlight the concern communities have for global warming and climate change. The 100-year projection studies are unrealistic and impossible to predict.

The later housing development at the end of Burns Point Ferry Road is a testament to these concerns. In a period of ten years building heights were increased from 500mm to 2.5m.

8. Rezoning

Council has wisely resolved to rezone the land adjacent to Burns Point Ferry Road. The Council's planning proposal is to rezone the northern part of the land zoned R2 and the southern part zoned RU2 to C2, Environmental Conservation.

The State Government has now issued a Gateway Determination which allows the rezoning proposal to proceed to public exhibition.

Conclusion

The amount of fill, problems with groundwater and settlements, flooding and afflux, and the damage to the environment and existing properties would make it not only imprudent but also irresponsible to approve a development like the one proposed by GemLife on this waterlogged wetland peninsula.

Anne Lodington

Appendices

Examples of flooding of Burns Point Ferry Road and adjoining properties from December 7, 2021 to March, 2023. The photos show a history of water issues that residents contend with in this Burns Point Ferry Road and Ballina Quay area.



December 7th 2021. Note the water has crossed the centre of the road. This was not a flood time.



December 7th 2021. Note the water has crossed the centre of the road at the far left of the photo. This is stormwater unable to drain away which is a common occurrence in Burns Point Ferry Road. The adjacent GemLife proposed development site is completely saturated. We cannot sustain further afflux or displaced water draining into adjoining waterways and streets.



January 3, 2022. Burns Point Ferry Road backyards looking onto the canal. Note:

1. The whole backyard is flooded



January 4, 2022. Looking west on Burns Point Ferry Road. Note:

1. water is completely over the road
2. there is so much water that the gutter cannot be seen. Water is over lawns.
3. Adjacent land is completely inundated with water.



January 4, 2022. Looking south on Burns Point Ferry Road.

1. water is completely over the road
2. there is so much water that the gutter cannot be seen. Water is over lawns
3. despite water covering the entire road, Council did not close the road, the ferry or erect warning signs.



January 4, 2022. Burns Point Ferry Road backyards looking onto the canal Note:

2. the water is well over the revetment wall and completely floods the backyards of some properties
3. the entrance to pontoons is submerged.



January 4, 2022. A Burns Point Ferry Road backyard looking onto the canal Note:

1. the backyard is completely inundated with canal water



January 4, 2022. Burns Point Ferry Road backyards looking onto the canal Note:

1. the flooded canal is close to encroaching the swimming pool's raised wall.

January 20, 2022. Burns Point Ferry Road, only tidal water in the road. Note:

1. the presence of this water in the street disputes Council's claims that the tidal gates are effective.
2. On this occasion, there was no backyard flooding or run off from rain fall.





February 3, 2022. Note:

1. Again, we had water flooding Burns Point Ferry Road
2. No action by Council to erect warning signs or close the road



February 3, 2022. 19 Burns Point Ferry Road backyard



On or about March 4, 2022

- On March 1, 2022, our 19 Burns Point Ferry Road, West Ballina, home flooded. This photo shows our house after the almost one metre high of floodwater had begun to recede.



On or about March 5, 2022

- This photo shows our garage after the almost one metre high of floodwater has mostly receded from the house. Note our furniture and possession piled on the side of the road.
- The greenery is part of the GemLife land. While the land appears green, drone photos indicate that this wetland is waterlogged at all times, not just during the flood.



A view of the flooded Ballina Quays on or about March 3, 2022. Note:

- The red arrow points to our home.
- Drone footage (see next page) show apparent greenery adjacent to Burns Point Ferry Road—part of the GemLife site. Nevertheless, this wetland (part of the proposed GemLife development) is waterlogged at all times.
- The proposed entrance to the GemLife proposed site is covered with floodwater (see blue arrow).
- Green arrow. This is part of the proposed GemLife Development, showing that the site is flooded. Clearly the water from GemLife site will be displaced as a result of GemLife's proposal to create a 2-metre-high platform. The displaced water must go to someone—potentially into the Ballina Quays.



A drone photo in March 2023 showing part of the GemLife site in the foreground. This wetland is clearly waterlogged even though the rest of the Ballina Quays has no flood water. Clearly the water from GemLife site will be displaced as a result of GemLife's proposal to create a 2-metre-high platform. The displaced water must go someone—potentially into the Ballina Quays.

~~Sine Walsh~~

From: AJ Walsh <001sqn@gmail.com>
Sent: Friday, 14 April 2023 5:13 PM
To: Ballina Shire Council
Subject: CM 23/26129 - Objection to DA (2022/721.1).
Attachments: DA Objection 2022-721.1 AJ Walsh.docx

Categories: Laura

Please find attached an objection for above mentioned DA

Regards

AJ. Walsh

OBJECTION TO DEVELOPMENT APPLICATION (2022/721.1).

AJ Walsh

7 Mainsail Place

West Ballina NSW 2478

14th April 2023

To: Ballina Shire Council

Subject: Development Application (2022/721.1). GemLife Development.

I strongly object to this development being approved by my council for the following reasons: -

1. The chance of additional flooding from this development has increased dramatically since the March 22 floods. My property was flooded, and an inspection of the sight and the present environment show plainly that this build up of land would have a major impact on existing properties in West Ballina. Council should look at the result of build up areas that were previously built in Quays Dr and look at the previously existing properties around that development and ask those residents "did they think the additional 3 to 4 metres that their new neighbours built on affect the older residents". So, we have had correspondence that GemLife believe that there will be no adverse impacts on neighbouring properties as was confirmed by Council on the previous DA in accordance with the **Ballina Development Control Plan 2012 and Council's flood studies undertaken for the site.** Excuse me , am I missing something here? The big flood we had was in March 2022 not 2012 and at this point there apparently has not been a new flood study, so wouldn't it be prudent to wait until this is achieved before we rush in?
2. This land is zoned at R2 (low density housing) Gem Life's revised application clearly does not meet R2 requirements.
3. I agree completely with the Land and Environment Court (2021) in declaring that the consequences for the wetland, river, fauna and flora are enormous. So, what has changed? The footprint is halved but does that take away any of the previous environmental consequences? No.
4. The traffic at present is horrendous each morning and we, the residents of West Ballina have another few years of this traffic without the addition of hundreds of additional car movements each day.
5. GemLife's assertion that this will provide much needed seniors housing for Ballina is a true statement, but surely there are more suitable parcels of land around Ballina that would be fine without the potential to badly impact the existing residents and harm the environment.
6. I support Ballina Council's proposal to rezone this land to C2 Environmental Conservation and believe that the majority of West Ballina residents would agree.

AJ Walsh

AJ Walsh

From: Anthony Cattle <akase66@gmail.com>
Sent: Friday, 14 April 2023 5:16 PM
To: Ballina Shire Council
Subject: CM 23/26147 Application (2022/721.1)

To whom it may Concern,

I'm a homeowner in West Ballina, and I have grave concerns regarding the development on Ferry Road. Common sense suggests that any development in that area will adversely affect flooding and the West Ballina residents.

It appears this development is not logic driven only profit.

Regards,

Anthony Cattle
0403 422 402

From: Troy Anderson <troyando2478@gmail.com>
Sent: Friday, 14 April 2023 5:45 PM
To: Ballina Shire Council
Subject: CM 23/26153 Submission for application (2022/721.1)

To whom it may concern, I Troy Anderson representing the Numbahging People and Traditional Sovereign Owners, wish to make a formal submission into the proposed Development proposals 2022-721.

I was made aware of the details by registered Aboriginal Parties, and would like to register our interests in the development of the riverfront as prescribed in the reports as documented in the D.A.

We would like to advise these area's are of cultural and historical significance to our people and community, and would like to be consulted in regards to this proposed developments.

Kind regards
Troy Anderson.
14/04/2023.

From: sian quick <bunyahouse@hotmail.com>
Sent: Friday, 14 April 2023 6:07 PM
To: Ballina Shire Council; Cr. Eoin Johnston
Subject: CM 23/26161 OBJECTION TO DEVELOPMENT APPLICATION D/A 2022/721.1

ATTENTION: MAYOR, DEPUTY MAYOR, COUNCILLORS, GENERAL' MANAGER

Pertinent to this development application is Sydney Morning Herald article dated 04.03.2022 'Living on a floodplain must end.' "The taxpayer and the ratepayer cannot continue to pick up the bill for these huge, catastrophic events."

Having objected to previous Development Proposals for this site, all our previous grounds for objection apply to the current proposal. The Land and Environment Court agreed with the objections.

Considering the costings put forward by previous proposals were so woefully inaccurate, then one must suggest we doubt the current figures.

It is noted a helicopter pad was indicated but not planned or approved. Aboriginal heritage sites are near this development and we have not been informed how the proposed D/A plans to address both these issues.

Ballina township and surrounds suffered considerable and severe flooding recently - partly self-inflicted because of Councils' constant filling in of tidal flats, low lying areas and interference to drainage runoff into a flooding river.

Traffic entering Ballina can back up as far as the proposed D/A 2022/721.1 and another 400 plus traffic movements will not help. Dismissing this by mentioning expansion of the current two lane bridge into Ballina is inappropriate as two other developments have been approved at that end of River Street, so more and more congestion.

We have added a few more reasons to add to all our previous objections which we allowed Ballina Shire Councils' Legal Team to put to the Land and Environment Court. We should not have to keep writing letters of objection. We give permission for those earlier objections to be resubmitted for the current D/A 2022/721.1 as they were available to the public.

Additional objections are those listed below:

Lawful point of discharge: Discharges into tidal creek. Sea levels are rising. Ballina flooding because drainage cannot cope with king tides and heavy rainfall. Rivers and creeks cannot

cope because all major low level/flood plains, tidal flats have already been filled in on Ballina Island and surrounds.

External catchments: Filling the area will significantly add to serious flooding already occurring on Burns Point Ferry Road.

Flooding: Ballina Shire Councils' flood mapping has recently been shown to be inadequate and seriously flawed.

Stormwater: Ballina Shire Council is currently trying to improve its' drainage into the Richmond River and failing. It is not possible to drain into a flooded river or creek with a king tide and sea levels rising. It must back up and affect other peoples' properties. We see figures used as of 06.09.2019 which would be outdated. Many figures will change when all the hard surface roads, roofs are included. With climate change many older models cannot be trusted.

We declare no gifts or political donations of any kind have been made by us to Council, Councillors' or BSC employees.

Yours for the environment, safe drinking water & our childrens' future

Clive & Sian Quick

From: ws2 <ws2@bmha.com.au>
Sent: Friday, 14 April 2023 11:43 PM
To: Ballina Shire Council
Cc: 'Mr Francis Bienke (Applicant)'; 'Mr Francis Bienke (Applicant)'
Subject: CM 23/26188 Development Application 2022/271
Attachments: 230414 - Ltr to Ballina Council.pdf

Dear Sir/Madam

Please see the attached.

We advise we act for Mr Francis Bienke.

Please let us know of any further materials or information you may need in your consideration.

Further, please confirm receipt of the **enclosed** by way of return correspondence.

Kind regards
Charles James

Solicitor
BSc&BUS, LLB.

Baker Mannering & Hart

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BAKER MANNERING & HART
SOLICITORS & ATTORNEYS

Directors:
A. J. Mannering
S. W. Hart



Liability limited by a scheme approved under
Professional Standards Legislation

Suite 14, "Ballina Boulevard"
70 River Street
Ballina NSW 2478

PO Box 218
Ballina NSW 2478

ABN: 96 619 470 889

Telephone:

(02) 6686 4233

Facsimile:

(02) 6686 5749

E-Mail: mail@bmha.com.au

C23/26188

BAKER MANNERING & HART
SOLICITORS & ATTORNEYS

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THE LAW SOCIETY OF NSW

**PROFESSIONAL
STANDARDS SCHEME**

Director:

S.W. Hart B.A.,LL.B

Consultant:

A.J. Mannering

Suite 14, "Ballina Boulevard"
70 River Street
Ballina NSW 2478

PO Box 218
Ballina NSW 2478

ABN: 96619470889

Telephone:

(02) 6686 4233

Facsimile:

(02) 6686 5749

E-Mail: mail@bmha.com.au

14 April 2023

By email: council@ballina.nsw.gov.au

Attn: Mr Paul Hickey

Ballina Shire Council

40 Cherry Street

Ballina NSW 2478

Dear Mr Hickey

RE: OBJECTION TO DEVELOPMENT APPLICATION NO. 2022/721

Development Application No. 2022/721

Seeking consent to develop 148 Independent Living Units-

Erection of a Seniors Housing Development under State Environmental Planning Policy

Housing 2021: in five stages including 148 independent living units (four x two bedroom and 144 x 3 bedroom units), community facilities, managers residence, earthworks (filling) and retaining walls, removal of vegetation, stormwater management and infrastructure works, landscaping and outdoor recreation areas. Vehicular access to the development is proposed via Burns Point Ferry Road with an emergency access via River Street

We advise we act for the following Objector, Mr Francis Bienke of West Ballina NSW 2478, to the above-mentioned development application (the 'DA').

We are instructed to submit the below submissions opposing the DA for your consideration.

It is noted that there have been amendments to a number of critical documents relating to the DA with close proximity to the closing date for submissions (14 April 2023), most noteworthy of which include the Statement of Environmental Effects (a 212 pp document) that is core to the DA. This includes but is not limited to, the Interim Flood Report. It is argued the original DA may not have been sufficiently or appropriately prepared prior to its lodgment and filing and subsequent processes may be prejudicial to the process of submissions.

We therefore ask Council if this appropriate and whether the development application should be refused on this basis.

Index

Our client is an adjoining landowner to the proposed development site and objects to the proposed DA on the following grounds which are further detailed in subsequent pages:

1. The Subject Land
2. History of the Subject Land
3. The Application and Statement of Environmental Effects
4. Flora, Fauna, and the Environment
5. Surface/Ground/Storm Water and Flood risk
 - 5.1. Surface water
 - 5.2. Storm water
 - 5.3. Flood risk
6. Noise
7. Waste Management
8. Traffic Management and Infrastructure
9. Visual
10. Soil
11. Economic Considerations and Loss of Amenity
12. Vague or ambiguous representations
13. Ancillary matters
 - 13.1. Subdivision
 - 13.2. Procedural Fairness
 - 13.3. Zone RU2 Rural Landscape

Introduction

The proposed development site, surrounding properties and West Ballina as a whole suffered catastrophic flooding twice in the month of March 2022, with the first of the two major floods lasting a number of days from the 1–3 March 2022; and the second occurring less than one month later on 30 March 2022.

The environmentally significant Coastal Wetlands on the proposed development site currently hold a significant amount of water during such flood events reducing the impact of such floods on surrounding properties and West Ballina.

The Council is implored to consider the recommendations from the outcome of the ‘NSW Flood Inquiry, July 2022’ when addressing the application. The inquiry found clear evidence of ‘the tropics expanding towards the poles’. The inquiry further found the intensity of short and extreme rainfall events has increased.

It said there was currently ‘no coherent or principled approach’ to appropriate development on the state’s flood plains, meaning that certain regions and certain areas of cities and towns are increasingly dangerous places to live and will increasingly be a drain on the public purse and expenditure.

Recommendations from the inquiry included:

- Flood plains be treated by the NSW government as assets – including conversion to sports grounds and gardens – that specialise in uses ‘that are productive and minimise risk to life’. We note the current DA application is at odds with recommendation for flood plain use by the NSW Flood Inquiry.
- Disaster adaptation plans be drafted for all towns and to build a disaster adaptation plan for each city and town, with planning instruments discouraging (and in many cases forbidding) development in disaster-likely areas.

These plans should be developed under the NSW Climate Change Adaptation Strategy¹. For towns at high risk, this should be completed within three (3) years.

We note the local council are using planning instruments to re-zone the land to C2 Environmental Conservation. For this reason, the current DA is incongruent with the NSW Flood Inquiry recommendation for flood plain land use.

1. The Subject Land

The land the subject of the application (the 'Subject Land') is Lot 1 DP 124173 and Lot 1 DP522558 (550-570 River Street, West Ballina) owned by GTH Resorts no 10 Pty Ltd, and Christopher Mark Elliot and Joanne Monica Elliot (joint tenants).

The land has an area of 56.76 hectares. While its address is 550-570 River Street, West Ballina, it has an extensive frontage to Burns Point Ferry Road, West Ballina, and the western boundary fronts Emigrant Creek (near the proposed Clubhouse).

The subject land consists of mangrove swamps, salt marshes, and coastal swamp forest (including possible protected-species foliage such as *Melaleuca Quinquenervia* [used by roaming koalas as refuge trees or as a medicinal food source]).

Because of the topography, soil composition and the previous zoning, early attempts to farm or develop the land were largely abandoned in favour of rural residential settlement, by persons seeking a quiet rural lifestyle like the Objector and his family.

The limited human activity has allowed the subject land to ensure the continued survival of native plant species, as the Objector has seen over the twenty (20) years' he has owned the adjoining property.

There has also been an explosion in populations of other native fauna aided in part by the absence of feral animals and human activity. The local residents have played their part in restraining domestic pets and controlling feral animals.

The subject land remains an important buffer from traffic noise from River Street, West Ballina, for nearby residents, including the Objector.

Ballina Council has proposed to rezone land at Burns Point Ferry Road, West Ballina, in October 2022. The land, located at the corner of River Street and Burns Point Ferry Road and extending along the western side of Burns Point Ferry Road, is known as Lot 1 DP 124173 and has an area of approximately fifty-six 56 hectares.

The northern part of the land is currently zoned R2 Low-Density Residential, with the southern part zoned RU2 Rural Landscape.

The Council's proposal is to rezone the land to C2 Environmental Conservation, other than a small area located in the north-east corner, which would stay as R2 Low Density residential.

The proposal to change the site's zoning follows a previous Development Application for a manufactured home estate on the land, which was refused by the NSW Land and Environment Court in late 2021.

The Court found that residential development as proposed would have unacceptable impacts on the land's high environmental values and forms the basis of the Council's decision to rezone the site.

2. History of the Subject Land

To know the recent history of the subject land is important in the assessment of the application.

The subject land was originally proposed to be zoned as an environmental conservation area.

When the subject land was left relatively undisturbed, the land (including its flora and fauna) was flourishing.

In recent years the Objector, his family, and others have observed slashing and other activities that have impacted the natural environment. It is posited that this may have impacted the subsequent environmental and ecological assessments through both direct and indirect effects.

3. The Application and Statement of Environmental Effects

The application proposes a radical and invasive change to the use of the subject land, from what is effectively natural undisturbed coastal forest and mangrove swamp lands to a large senior land lease housing community.

In particular, the lighting, noise, visual impact, shade, and traffic effects of the proposed high-density housing will have a direct and detrimental effect on adjoining owners including the Objector's property.

Accordingly, the Objector argues the development will impact the residential amenity of the surrounding land.

In addition, the developer appears to be causing zoning creep: the incremental rezoning of land to 'manage' significant rezoning conflicts with adjoining lands.

The proposed development's height (through fill, structure, and use) will:

- 3.1. conflict with the streetscape and character of the area;
- 3.2. dwarf those buildings surrounding the site; and
- 3.3. likely affect lighting qualities and preserved aesthetics.

These are necessary and reasonable elements, which have also been considered in similar cases heard in the New South Wales Land and Environment Court;

It is also not evident how the size of lots or lack of landscaped, green and park areas comply with requirements.

Specifically, by not subdividing, this DA has referenced it is not required to abide by the minimum plot areas, and it could be argued this further exacerbates the impact on the significant ecological value of the site and surrounding areas.

It is disappointing to the Objector, that although there has been consultation by the Applicants with the council over some time, at no time has there been any consultation by the Applicants or the Council with the residents of Emigrant Creek Lane. We note a single notification letter was provided by Council dated 13 March 2023.

4. Flora, Fauna, and Environment

The Land & Environment Court judgment in *Planners North v Ballina Shire Council* [2021] NSWLEC 120 decided:

- '...the whole of the northern part of the site zoned R2 is comprised of three endangered ecological communities...'
- Preston CJ found the development proposed would have serious and irreversible impacts on Ecologically Endangered Communities (EECs) within the R2 zoned part of the site.

- The site provides habitat for five threatened species including the Southern Myotis, Black-necked Stork, Collared Kingfisher, Mangrove Honeyeater, Curlew Sandpiper.
- His Honour further found that the proponents had not demonstrated that the proposal would not have serious indirect impacts on the EECs present within the remainder, RU2 zoned, part of the site.

This included the Court finding that the Applicants had not been able to demonstrate that the development would not have serious or irreversible impacts on the EECs located in the RU2 zoned area, outside the development footprint, associated with changes to stormwater and groundwater patterns.

- The proposal included significant filling (an average height of 2.5m across this R2 zoned area, with maximum fill heights of around 3.5m) and the Court found that this filling would have serious and irreversible impacts on EECs located within the development footprint.

Discussed further below, page 105 of the SEE provides that 'land will be filled to a suitable level between RL 3.25m and RL 4.5m to avoid flood impacts for buildings and roads'.

It follows that an increase of the average filling height to 4.5m (as may occur in this DA) will exacerbate the 'serious and irreversible' impacts on the relevant EECs as previously established by his Honour.

- The expert evidence and court judgment in relation to biodiversity values indicate that the site is not suitable for urban development.

The above is supported by the contents of the Ecologists' Joint Report evidence of that case. This included the Court concluding:

'I consider that in circumstances where both experts agree that the vegetation in the slashed area is of a plant community type that is part of an endangered ecological community, either PCT 1235 (Swamp Oak) which is part of the Swamp Oak Floodplain Forest EEC or PCT 1808 (Estuarine Reedland) which is part of the Freshwater Wetlands EEC, the finding should be made that the vegetation is part of an endangered ecological community, whichever one does not matter. The upshot is that the whole of the northern part of the site zoned R2 is comprised of three endangered ecological communities, Coastal Saltmarsh EEC to the east and south, grading to the west into a mosaic of Freshwater Wetlands EEC and Swamp Oak Floodplain Forest EEC, depending on the different microhabitats across the site,

ending in the north-western corner with Swamp Oak Floodplain Forest EEC. There is a small stand of mangrove to the west adjoining Emigrant Creek.’

While this is a new development application, that part of the site zoned R2 currently is the area subject to the current development application and the assessments of the ecological value remain – including that of Ecologically Endangered Communities.

This is even acknowledged in the Applicant’s Biodiversity Report.

The fragility of environmentally valued vegetation was noted in the Geotechnical Report wherein it held ‘...access due to the access to the eastern and south-eastern corners of the site was restricted by the low-lying nature of the site and the environmentally sensitive nature of the vegetation in the area’.

Despite the above-mentioned, the property has continued to be slashed – the objective of such could be questioned given the above assessments.

We note the area homes mature casuarina trees on the proposed development site. These trees are respectfully irreplaceable. It is submitted that planting replacement trees will not adequately replace the existing mature trees. The existing trees provide a natural habitat for many species including black cockatoos and white cockatoos. The birds consume the tree seeds contributing to the proliferation of casuarina trees. Other bird life also abounds in the trees.

It is further argued that the DA contains plans to locate the clubhouse, which will generate the greatest activity and greatest traffic near areas of biodiversity and environmental value. This appears to run contrary to principles of protecting flora and fauna of environmental planning and ecological significance; and the North Coast Regional Plan, that states a DA should aim to avoid severe impacts on biodiversity.

In addition, another flaw is the developer’s plan to complete the fill over Ecologically Endangered Communities and immediately adjacent to environmentally sensitive areas. This includes close proximity (approx. 20 meters) from a natural waterway.

We submit this could have a detrimental environmental effect. The Objector wants this objection on record in the event this occurs in future.

While the DA has not made available to the Objector responses from all appropriate stakeholders (which is a question of whether the DA is complete or should in itself be refused for being incomplete), it was noted within the previous development application for the site and remains a concern:

- The Department of Primary Industry identified:
 - the significant impacts the proposed development will have on key fish habitats;
 - needs to clarify the exact area of impact to marine vegetation as it not clear whether these figures account for impacts within the 30m buffer area surrounding the proposed development as details of on-ground works and final elevations within the buffer area are limited;
 - that the proponent has not fulfilled their requirements as it relates to offset requirements and offset-to-impact ratio; and
 - water quality guideline requirements need to be complied including during the construction.

Section 7.16 of the *Biodiversity Conservation Act 2016* (NSW):

- states that ‘...the consent authority must refuse to grant consent if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values’; and
- impacts on high biodiversity values should be avoided, with mitigation of impacts, or offsets for impacts, only relevant where impacts cannot be avoided.

The Land & Environment Court judgment in *Planners North v Ballina Shire Council* [2021] NSWLEC 120 found the ‘the non-development of the southern part of the site zoned RU2, which is the Biobanking area, is not an avoidance measure’ because a manufactured home estate is prohibited in the RU2 zoned part of the land.

It is arguable this principle similarly applies to this development application as the proposed development does not fulfil the objectives of the RU2 Rural Landscape zoning within the Ballina Local Environmental Plan 2012 (Plan).

The Objector asks that the application be refused on this basis.

5. Surface Water, Storm Water and Flood risk

Analysis of the Contribution catchment parameters (3.1), Proposed development site drainage (3.2) and Existing and developed site comparison (3.3) within the Stormwater Management Plan establishes:

- slopes within the catchment will be increased for significant areas feeding into the Emigrant Creek lawful point of discharge (while other slopes are at least maintained);
- the proposed developed site peak flow rates to the Emigrant Creek lawful point of discharge will be considerably higher across all Annual Exceedance Probability (AEP) – ranging from multiples of 4.29 to 8.42 of the existing flow rates;
- the proposed developed site mitigated peak flow rates to the Emigrant Creek lawful point of discharge would remain considerably higher across all Annual Exceedance Probability (AEP) – ranging from multiples of 2.16 to 5.68 of the existing flow rates;

This considerable increasing the risk to the existing environment and to flooding.

The report details “The proposed development site is not deemed to require stormwater detention as the developed catchment shall discharge to a tidal waterway. BSC’s SMS states that developments that discharge into tidal waterways are not required to provide stormwater detention.” Significantly, this applicable tidal waterway is Emigrant Creek and it is difficult to imagine a scenario where this does not increase the risk of flooding when there is a history of flooding from this waterway at lower flow rates from the site than what will occur if the development occurs.

5.1. Surface water

The required fill will raise the surface of properties to the back of Lot 5 and Lot 6 up approximately 2.0 to 2.5 meters higher and more than the Objector’s property and a close neighbour’s property.

We note the Objector is not assured by the DA, that there will be no potential runoff of water from the proposed new properties to his. Noting: The Natural Resources Access Regulator’s 7 November 2018 letter stated:

‘Appropriate stormwater management will need to be implemented to minimise impacts on downstream environments such as riparian areas, groundwater and adjoining lands’.

The DA does not adequately address how runoff will be managed.

5.2. Storm Water

Emigrant Creek has average water flows and significant volume flows during periods of heavy rainfall, noting the creek flows into the Richmond River and vice versa.

The creek is used by some of the impacted residences for fishing and a source of food. The development site has been identified to fall within a priority oyster aquaculture zone.

The development may have unacceptable sedimentation and human impact on Emigrant Creek.

The cleared unsealed trails that will be dug for the development will become channels and gutters, increasing the possibility of unacceptable erosion and sedimentation of the creek, especially during periods of heavy rainfall.

The application does not propose adequate sedimentation or erosion measures.

The Richmond Ecohealth Report (2015) has shown Emigrant Creek's geomorphic and riparian condition and water quality is poor (i.e.: it suffers from contamination and pollution mainly from storm water, roads and land).

It is highly likely that human activity from the development, despite planned monitoring measures, could further impact the creek's ill health.

5.3. Flood risk

The Applicant's failure to complete appropriate flood modelling and assessments means the development application is incomplete and should be refused. Any claims that there are no flood impacts to adjoining lands as a result of the development (a requirement of Chapter 2, Section 3.9 of the *Ballina Shire Development Control Plan 2012*) are not and cannot be substantiated.

This is an issue of the highest order given the risk of flooding for the proposed site and its locality – a risk materialized in the March 2022 floods. This is further compounded by weather risks generated by acknowledged climate change.

During the two March 2022 floods, the Objector's immediate neighbour's property and house was flooded twice while flooding occurred under the house of the Objector. At the time, water levels reached the front doorstep of that house. Any change in the height or behaviour of flood waters elsewhere in the floodplain may materially and adversely impact other property or the environment.

Development cannot detrimentally increase the potential flood affectation on other development or properties either individually or in combination with the cumulative impact of development that is likely to occur in the same floodplain (DCP 3.7.2 Performance Criteria v.).

Development should not change the height or behaviour of flood waters elsewhere in the floodplain in a manner that is likely to materially and adversely impact other property or the environment.

Furthermore, Council constituents, neighbors in the locality, and Councilors have not been provided with appropriate documentation to facilitate informed comment – undermining the public's capacity for informed decision-making.

Relevantly, the Applicant's Interim Flood Report (Project A12349) identifies:

'As the overall site is affected by flooding, it is necessary to complete flood modelling to confirm that the earthworks associated with the development site will not result in unacceptable impacts. Ballina Shire Council has developed the most appropriate flood model for use in assessing the impact of developments. This approach also allows approved developments elsewhere in the catchment to be modelled.

Council typically requires proposed developments to be modelled by the consultants appointed by Council to maintain the model, with Council approving model requests prior to them being passed to the consultants and the consultants supplying the results of modelling development footprints.

At the time of preparing this report, the process of modelling with Council is underway and the results of the modelling will be supplied when available.

This report consequently provides an initial assessment of the potential impact of development based on the results of previous flood modelling of the site completed as part of the recent Land and Environment Court (*Planners North v Ballina Shire Council* [2021] NSWLEC 120).

Similarly, it is necessary to consider the ability to access the development site as part of the management of flood risk. This work will necessarily be based on the results from the modelling of the proposed development and will occur when the results of modelling are available.'

The Applicant's report states:

'Given the outcome achieved for the development footprint modelled for the 2021 Assessment, it is expected that the proposed development will result in acceptable cumulative impacts and an incremental impact relative to the new Base Case considered for the 2021 Assessment that is less than 10mm.'

However, as noted in Section 1, detailed modelling will need to be completed by Council's consultants to confirm this expectation.

The Interim Flood Report also references the May 2008 report "Flood Impact Assessment for Ballina Waterways Development" and Council's regional flood model for cumulative and incremental impacts – the latter applying a base case (pre-development) model and an integrated (all approved and rezoned development) model which has been progressively updated since 2013 to include changes to the catchment. Importantly, the noted inclusions in the integrated model per the 2021 assessment does not include the River Street Duplication project which has commenced.

Recent developments include:

1. Further planning proposal amendments have been made, as have additional draft amendments been proposed to the Ballina Shire Development Control Plan. This includes filling the land of the proposed site to a height of at least 2.7 meters and significantly greater (considerably higher than previously) and proposed changes to the application of the zoning. It is argued this would manifestly affect the impact of the proposed development and render the flood assessment inadequate for consideration by adjacent owners and other stakeholders, including Council.
2. The Ballina by-pass has been completed.
3. The River Street Duplication has been planned and commenced.
4. Two significant floods occurred in March 2022.

The developer has referenced reports that state:

‘[t]he proposed development has a fill footprint considerably less than that of the original flood modelling with the exception of a small portion of land along Emigrant Creek and is the same as the approved rezoning extents of fill. We, therefore, believe that additional flood modelling is not required as the proposed development will have a lesser impact on flooding than the original modelling and that the proposed development is within the intent of the original development.’

This conclusion is unsubstantiated. Furthermore, the ‘... small portion of land along Emigrant Creek...’ is nearest to the Objector’s property and environmentally sensitive land therefore potential impact has not been determined.

Furthermore, the Interim Flood Report, previous assessments as part of the earlier development application and Land and Environment Court case over the site (*Planners North v Ballina Shire Council* [2021] NSWLEC 120), and the figures included, establish development on the site will detrimentally impact the property of the Objector and his neighbours in times of flood. It is important that details within reports are referred to not just conclusions as the conclusions are not consistent with included details (e.g. the 2021 assessment includes “Peak flood levels external to the site for all events modelled are expected to remain effectively unchanged (<10mm incremental increase) across all fill scenarios.’

Noting:

- Chapter 2, Section 3.9 of the Ballina Shire Development Control Plan 2012 requires there to be no flood impacts to adjoining lands as a result of the development.
- The available flooding assessments have indicated that planned proposals will heighten flood risk for the Objector and adjoining properties.
- There is a significant concern regarding the impact of flood risk and potential damage to property. This comes about by filling land to a height of at least 2.7 meters for the proposed site and significantly more – significantly higher than existing properties and structures and surrounding existing properties with high retainer walls.

The existing residential lots owned by the Objector and another close neighbour currently have higher ground than much of the proposed site.

The DA contains possibly contradictory information regarding the extent of the fill and the height that will be achieved.

(i) For example on page 99 of the Statement of Environmental Effects (SEE) and immediately following each other this report provides:

1. 'The site will be filled to a level of 3.5m AHD and above.'
2. 'To achieve the minimum habitable floor level the entire site will be filled to a minimum level of approximately 2.7m. The majority of the site being above 3.2m AHD.'

(ii) By further example, page 105 of the SEE provides:

1. 'The land will be filled to a suitable level between RL 3.25m and RL 4.5m to avoid flood impacts for buildings and roads, which is higher than the 2.7m AHD minimum prescribed in the Ballina DCP 2012.'

In *Planners North v Ballina Shire Council* [2021] NSWLEC 120, his Honour found at [156] the 'development is likely to have serious and irreversible impacts on biodiversity value' at filling of RL 3.5m. As previously discussed, it is foreseeable that filling of RL 4.5m will continue to have, and may even increase, the serious and irreversible impacts on the biodiversity within the EEC.

- There are already noted flood risks for this area, and this build-up will cause considerable water displacement, which will affect adjoining properties and the ability for water to be drained.
- In addition to filling land to a height of approximately 2.0 to 2.5 meters and more above the Objector and his neighbours' properties and building upon the land, which will alter existing environmental status as it relates to flooding and existing heightened flood risk, the size of individual properties and the roof catchment of water, there are concerns that stormwater drains will not be able to manage particularly when the tide is up or with the effect of flood (i.e. there will be nowhere for the stormwater to escape per normal conditions other than adjoining properties).
- The Objectors land will be wedged between the proposed development and Emigrant Creek. It appears the proponent is intending to dispose of storm water via an open drain which will border the Objectors land and the surrounding proposed development. The effect of this will be to

seriously impact the Objector's land both visually and its amenity. The drains being open can lead to overflow onto the Objector's land.

Further, it is reasonable to assume the presence of an open drain system and heightened fill surrounding residential properties may increase the deleterious effects of flooding. This is of particular concern to the Objector whose property (including adjoining properties) will be surrounded by heightened fill and an increased risk of flood entrapment. This creates a likely safety risk to residents as entrapped persons may be unable to escape rising or accelerating flood waters. This is further exacerbated by the age of the Objector.

- The SEE also identifies 'The proposed ground level around the club house will be filled to be above 4m AHD to exceed the PMF level. This ensures that the club house and surrounding high ground can be used as a nominated refuge area for people to gather in times of extreme flood events for emergency evacuation purposes.'

Together with the commercial nature of this building, this height and the height of the building itself with significant overshadow the Objectors property which is in immediate proximity – significantly impacting the Objector's amenity of his property and will be inconsistent with the characteristics of the zoning of his land. The extent of this fill and proposed use of this land near the proposed conversation area will likely have serious implications to that area.

Furthermore, the 2021 assessment noted that it only reported on impacts to the peak flood levels not the cumulative impacts which forms assessment criteria for Ballina Shire Council.

The inclusion of retainer walls surrounding existing properties will mean that the current distribution of flood waters will be restricted and trapped within the existing properties, including the Objector. Furthermore, the capture of rain and drainage into Emigrant Creek will contribute to this, for that water would have otherwise been distributed across the development property and not contributing to rising waters in the river.

The Objector has great concerns regarding the discharge from the proposed development to boundary lines of his property and his adjoining neighbours leading into Emigrant Creek (for discharge of heavy and at times flooding rains) – a creek which had catastrophic flooding twice in March 2022 with devastating impacts to this Objector's neighbour and while damage was sustained by the Objector, very narrowly avoided devastating impact himself (meaning any change to the flood risk from this development is a material change).

There is serious concern the unrestricted flow rate capture by all hard combined surfaces of the overdeveloped site due to flood risk, demonstrates the risk of flooding on the proposed site and the level of displacement that will occur – further demonstrated by classification of part of the property as ‘Extreme Flood Risk Precinct’ during the construction and upon completion of the site.

While the considerations regarding flooding appear to centre on the risk for the planned development, there appears to be little concern about the effect on adjoining properties and how this effect will be negated. Nuisance and loss of enjoyment and amenity of property should not be imposed upon others.

Furthermore, there are likely significant financial implications of such as it will devalue the adjoining properties, particularly with insurance either not available or already highly-priced.

Burns Point Ferry Road currently floods with king tides in normal weather conditions; how is the drainage supposed to escape when the land is filled, and roads and laneways plus curb and guttering is completed (which in turn would speed up the flow rate of drainage in flooding rains)? Likewise, there will be a multiplying factor of roof catchment once buildings are constructed. It is submitted that when there is heavy rain and the tides are full, the drainage will be unable to discharge into Emigrant Creek or raise the levels of this creek.

How does the developer propose to overcome this huge planning discrepancy for drainage to ensure neighbouring properties aren’t affected?

A high-water table presents across the site, and the very low strength of the surface soils, it is anticipated that trafficability across the site will be poor. Difficulties have already been encountered for conventional trucks with multiple bogging events encountered.

To improve trafficability, it would be recommended that the construction area be drained by installing a series of drains with subsequent pumping to suitable disposal areas with the existing drains may be used as a basis for the drainage network. However, additional drains may be required. However, this would have detrimental impacts upon the ecological value of the site as separately referenced.

The attention given to flood risk in the application is cursory at best and not proportionate to the risk to the adjoining properties. It does not address the impact of rising sea levels and the experienced combination of king tides and storm surges.

The proposed development should not be allowed to adversely affect adjoining properties.

DCP 3.7.2 Performance Criteria v. provides:

‘Development does not detrimentally increase the potential flood affectation on other development or properties either individually or in combination with the cumulative impact of development that is likely to occur in the same floodplain.

Development should not change the height or behaviour of flood waters elsewhere in the floodplain in a manner that is likely to materially and adversely impact other property or the environment. The assessment of these effects must include the potential for similar impacts that would arise as a consequence of other development in the floodplain that has the potential to occur in the future under current zoning and planning controls.’

Noting: if, despite this information, the councilors accept this DA, there must be a condition of consent requiring the developer to provide on every allotment:

1. Water tanks being installed for each home, clubhouse and other facilities (including roads etc.) and be of sufficient size that would retain all rainwater such that the development would not increase the risk of flooding of Emigrant Creek or adjoining properties; and
2. A storm water retention tank to address ‘1 in 100 years’ rainfall and the effect of the fast flow of rain into Emigrant Creek.]

6. Noise

Appendix K of the Acoustic Report provides the following:

Table 6: Receiver category (Table 2.3 of the Noise Policy for Industry)

Receiver category	Typical planning zoning – standard instrument	Typical existing background noise levels	Description
Rural residential	RU1 – primary production RU2 – rural landscape RU4 – primary production small lots R5 – large lot residential E4 – environmental living	Daytime RBL <40 dB(A) Evening RBL <35 dB(A) Night RBL <30 dB(A)	Rural – an area with an acoustical environment that is dominated by natural sounds, having little or no road traffic noise and generally characterised by low background noise levels. Settlement patterns would be typically sparse. Note: Where background noise levels are higher than those presented in column 3 due to existing industry or intensive agricultural activities, the selection of a higher noise amenity area should be considered.
Suburban residential	RU5 – village RU6 – transition R2 – low density residential R3 – medium density residential E2 – environmental conservation E3 – environmental management	Daytime RBL <45 dB(A) Evening RBL <40 dB(A) Night RBL <35dB(A)	Suburban – an area that has local traffic with characteristically intermittent traffic flows or with some limited commerce or industry. This area often has the following characteristic: evening ambient noise levels defined by the natural environment and human activity.

In particular, it is noted that the Objector’s property and that of his neighbours’ are zoned as RU2, which is described as an ‘...acoustical environment that is dominated by natural sounds, having little

or no road traffic noise and generally characterised by low background noise levels. Settlement patterns would be typically sparse'. The amenity this presents is acknowledged in the table/report and needs to be preserved.

Furthermore, this table suggests the clubhouse activity and the traffic it would create are not consistent with the zoning for the proposed development.

The development will have an unacceptable noise impact on the locality and the impacted residences both during the construction phase and after completion. This is clear by the planned 'buffering' walls.

The development has already operated outside permitted construction operating hours by conducting works before 7 am and after 5 pm – a complaint was submitted by the Objector's family, and video footage was taken. This has established the proponent's disregard for surrounding properties, and in doing so, the Council cannot extend further flexibility that will materially affect the enjoyment and amenity of adjacent and surrounding properties.

The use of heavy vehicles and machinery, which will be required during the filing and construction process and the effects, such as noise, on adjoining residents, have not been addressed adequately by the acoustic treatments outlined in Appendix K in the DA. Nor has the ongoing noise from the club's planned outside activities planned and related external music.

Furthermore, the planned development has proposed housing surrounding the southern and eastern boundaries of the Objector's property, which will create noise which is not consistent with that described in the Acoustic Report as characteristic of the zoning of the Objector's property.

The proposed location of the clubhouse and road system means that almost all vehicular and foot traffic to and from this clubhouse will travel in close proximity to the Objector's property. Furthermore, there will be a direct line of sight and travel of noise from the clubhouse and extending almost the entire length of the Objectors house which has bedrooms lining that length. The associated noise and street lighting are inconsistent with the characteristics and zoning of the Objector's property.

The positioning of the clubhouse is also inconsistent with protecting the natural environment of the area designated for conservation.

Despite these points, if the Council approves the clubhouse, the location of it must be on River Street to minimise the said impacts and manage traffic effectively.

A greater community landscaped area and buffer zone should also be located adjacent to Lot 6 – this would further reduce noise and further maintain the characteristics of the Objector’s property that are so valued and provide compliance with the suitable buffer requirement of Development Control Plan 5.8.3 e which requires such.

7. Waste Management

Despite the significant size of the proposed development, it has not been appropriately established that the sewerage and septic management plans will be adequate and whether the council has the capacity for this and other significant developments in the works (e.g. 450 lots at Sharpes Beach, ‘Aureus’ development).

The Statement of Environmental Effects identifies:

‘Council have indicated that the existing sewer pump station located at the intersection of Kalinga Street and Burns Point Ferry Road does not have capacity for the proposed development. After discussion with council officers it is proposed to inject the sewer outflow into the existing “low pressure” rising main that runs along the front of the site then up Kalinga Street.’

This may put further pressure on existing infrastructure in an area that residents have raised issue with odours in the previous development application.

8. Traffic Management and Infrastructure

Effective traffic management with existing infrastructure has not been established.

River Street, from the highway all the way into Ballina Central Business District (CBD) is primarily one lane on each side of the road. The left-hand exit at Burns Point Ferry Road will establish right of way for those exiting the proposed site, which will add significantly to the congestion of River Street leading into the CBD. The exits will also add to congestion heading out of the CBD and directly and significantly impact the ability of those exiting Emigrant Creek Lane to enter the traffic – *this is already an issue*. Understanding that there is a proposal to make River Street a dual carriage way, the Objector would like to ask Council:

1. If it is proposing major works to alleviate the situation?
2. How will expected 'bottlenecking' at the bridge or traffic lights be avoided if dual carriageway works are undertaken for River Street?

There is inadequate infrastructure to support 148 additional homes at the proposed site . Noting that River Street (from where the proposed development site through to the CBD) is single lane (both sides) with considerable congestion currently, with duplication having commenced. Adding further traffic entering and departing via River Street or Burns Point Ferry Road will slow traffic and further add to the congestion which the duplication is already seeking to address.

Page 9 of the Applicant's Rytenskild Traffic Engineering Traffic Impact Assessment provides the following peak hour traffic volumes in October 2021 and 2022:

- AM: Running along River Street through the River Bend/Burns Point Ferry Road roundabout:
 - To the East: 1,179
 - To the West: 845
- PM: Running along River Street through the River Bend/Burns Point Ferry Road roundabout:
 - To the East: 955
 - To the West: 1,036

This directly relates to the ability of the proposal to conform with the network hierarchy and that adequate carriageway and verge are provided to allow the proposed streets to safely perform their appropriate function.

How will the proposed access to Emigrant Creek and Emigrant Creek Lane be controlled to prevent impacts upon biodiversity and the amenity of adjoining property owners and residents which is driven by living on a quiet and serene street surrounded by rural landscape.

Whilst opposing this DA, the Objector submits if the Councilors approve it, in regard to this issue, consent should be based on: traffic being directed to a road that is built cutting North/South through the development as opposed to along the boundary. By doing so, this could establish no through roads

for each street running to the west of such a road cutting through the development, which would reduce the traffic for the internal properties themselves.

This would minimise the impact on existing properties and maximise the preservation of their enjoyment and amenity – which is a requirement and said to be a key objective of the development.

9. Visual

The visual impact of the development will be monstrous. The ‘test’ pads clearly demonstrate how the filling of the land to the nominated height will detrimentally impact the visual amenity of the surrounding rural and residential neighbourhood and from the highway. Added to this eyesore will be an overdevelopment of the land. The clearing of tracks and destruction of the swamp and forest will adversely impact on those

‘To ensure that the proposal conforms with the network hierarchy and that adequate carriageway and verge are provided to allow the proposed streets to safely perform their appropriate function.’

The Statement of Environmental Effects provides:

“The proposed ground level around the club house will be filled to be above 4m AHD to exceed the PMF level. This ensures that the club house and surrounding high ground can be used as a nominated refuge area for people to gather in times of extreme flood events for emergency evacuation purposes.”

Together with the commercial nature of this building, this height and the height of the building itself with significant overshadow the Objectors property which is in immediate proximity – significantly impacting the Objector’s amenity of his property and will be inconsistent with the characteristics of the zoning of his land. The extent of this fill and proposed use of this land near the proposed conversation area will likely have serious implications to that area.

How will access to Emigrant Creek and Emigrant Creek Lane be controlled to prevent impacts upon biodiversity and the amenity of adjoining property owners and residents which is driven by living on a quiet and serene street surrounded by rural landscape?

Whilst opposing this DA, the Objector submits if the Councillors approve it, in regard to this issue, consent should be based on: traffic being directed to a road that is built cutting North/South through the development as opposed to near the boundary. By doing so, this could establish no-through roads for each street running to the west of such a road cutting through the development, which would reduce

the traffic for the internal properties themselves. The traffic to the clubhouse should also be by route furthest away from the Objector's property.

This would minimize the impact on existing properties and maximise the preservation of their enjoyment and amenity – which is a requirement and said to be a key objective of the development].

10. Soil

The land does not provide adequate foundation and support for the fill weight and added infrastructure of the proposed development – the extent of which is difficult to determine given inconsistent referencing of the height of fill throughout the Statement of Environmental Effects

The development is on land that forms part of the Richmond River Flood Plain. The soil type is a thin layer of river sediment, overlaying swamp pug which is sixty to eighty meters deep.

The water table normally lies near the surface and rises notably during frequent rain events. Studies have been done in the area of the proposed development (for road and bridge infrastructure) demonstrating the inability of this soil profile to bear any significant weight loading.

The Geotechnical Report provides the following excerpts:

4.0 GEOTECHNICAL MODEL

The subsurface conditions as encountered over the site were alluvial in nature, consisting of natural surficial upper level firm to stiff clays and isolated sand bands overlying significant, varying thicknesses of weak compressible marine clays. Underlying the marine clays, over interbanded layers of sand and very stiff clays were encountered.

The upper surface level consisted of a thin layer of clay (root fibres throughout/high organic content) overlying loose to very loose sand and interbedded clayey sand/sandy clay profile. This typically extended to depths of between 1.9 and 2.6 metres where a soft marine clay profile was intersected.

The marine clay typically increased in consistency with depth to depths of between 6.6m and 19.0m where either a stiff clay or loose to medium dense clayey sand was intersected. The compressible marine clay stratum will have a significant impact on the proposed development, from a geotechnical perspective.

The lower level profile consisted of interbanded very stiff clays and medium dense to dense sands and dense gravels.

Groundwater was noted at depths of between 0.4m and 1.2m at the testing locations across the site. Significant areas of the site were either waterlogged or under standing surface water. The method of drilling precluded measurement of a steady groundwater level on completion of undertaking the CPT testing.

Following periods of wet weather, it could be expected that the groundwater level will rise. Groundwater levels may also be affected on a dampened cycle by tidal influence in the lower lying, eastern area of the site.

The report identified “geotechnical issues” that need management and noted that the long-term settlement potential across the development site means that methods to reduce the potential settlements under the construction loads will be required as part of the site development. A clear issue has been identified and the use of such methods will create risks to the site and neighbouring properties, and the environment.

The significant settlement and subsidence, in a short period of time, will likely reduce the flood height buffer and compromise the integrity of the foundations of any building and service infrastructure.

The Geotechnical Report also includes within its limitations that:

- it has relied upon information provided by the client or their agents; and
- ‘[t]he results are indicative of the subsurface conditions on site only at the specific testing locations. Subsurface conditions can change between test locations and the design and construction should take the spacing of the testing and testing methods adopted and the potential for variation between the test locations.’

11. Economic Considerations and Loss of Amenity

The proposed development will have adverse impacts on neighbouring residences and their amenity. For example: the development may seriously impact the neighbours’ (including this Objector) quiet and spacious surroundings, and visual and aural privacy. It is also inconsistent with the zoning of adjacent land, rural residential, and other nearby properties.

In particular, the conflict with the existing use of the Objectors and neighbours’ rural residential properties and the characteristics they value in the amenity of such is evident in the:

- the size of the development and maximisation of the number of lots by reducing sizes of such and not planning for substantial landscaped, green and park areas; and
- inclusion of a clubhouse (inclusive of: a ballroom/seating hall; hair and beauty salon; a commercial kitchen; bowling alley; library; multi-purpose hall; indoor pool; gym, cinema; and internal golf simulator) is of the nature that should be located in a central business district.

As referenced above, the Statement of Environmental Effects provides “[t]he proposed ground level around the club house will be filled to be above 4m AHD to exceed the PMF level. This ensures that the club house and surrounding high ground can be used as a nominated refuge area for people to gather in times of extreme flood events for emergency evacuation purposes.” Together with the commercial nature of this building, this height and the height of the building itself with significant overshadow the Objectors property which is in immediate proximity – significantly impacting the Objector’s amenity of his property and will be inconsistent with the characteristics of the zoning of his land. The extent of this fill and proposed use of this land near the proposed conversation area will likely have serious implications to that area.

The above is also in conflict with the use and amenity of other nearby properties.

The development will reduce the effectiveness of the subject land to act as a buffer zone from traffic noise and a site for adjoining neighbours.

The development will arguably impact the value of adjoining properties. The Objector posits the adverse impact of the development far outweighs its economic value.

12. Vague or ambiguous representations

The Applicant has included a survey (Community Survey Residents of the Ballina Legislative Assembly District Attitudes to Housing) regarding, *inter alia*, the perceived status of housing (including senior housing), assessment of the merits of the application, and views on potential down zoning of land.

The survey methodology has not been detailed, including statistical validity as to whether or how results are representative of the population.

This includes whether or how respondents were appropriately informed to provide responses (e.g. whether they had reviewed the development application and planning proposal).

In the absence of a clear rationale or methodology the Objector argues the survey should be disregarded as it leaves the public interest argument unsubstantiated.

Furthermore, seeking to rely on such a survey rather than established records suggests there is little reliable evidence or statistical significance to support claims being made as to the public interest of providing further senior housing in the area.

13. Ancillary Matters

13.1. Subdivision

The Objector notes a lack of, or capacity for subdivision in the DA will preclude the development of amenities such as parks or other community or recreational sites.

The loss of these potential benefits in the DA is not insignificant and will likely contribute to a decrease in aesthetic and other functional uses for the land and affecting community.

This also reduces compatibility with the zoning of the adjacent properties being Zone RU2 Rural Landscape, as provided below.

13.2. Procedural Fairness

It is noted that there have been amendments to a number of critical documents relating to the DA with close proximity to the closing date for submissions (14 April 2023), most noteworthy of which include the Statement of Environmental Effects (a 212 pp document) that is core to the DA. This also includes but is not limited to the Interim Flood Report. It is argued the original DA may not have been sufficiently or appropriately prepared prior to its lodgment and filing and subsequent processes may be prejudicial to the process of submissions.

Our concerns include the amended Statement of Environmental Effects (critical to the DA) has been included subsequent to submissions by concerned residents.

This raises questions of due process and procedural fairness to subsequent submissions by Objectors.

We submit the DA should be rejected on this basis.

13.3. Zone RU2 Rural Landscape

The Objector's residential property is situated within Zone RU2 Rural Landscape (the 'Rural Landscape').

Pursuant to the *Ballina Local Environmental Plan 2012* (2013 EPI 20), the following objectives for Rural Landscape are provided:

- To maintain the rural landscape character of the land;
- To minimise the fragmentation and alienation of resource lands;
- To minimise conflict between land uses within the zone and land uses within adjoining zones;
- To encourage development that involves restoration or enhancement (or both) of the natural environment if consistent with the production and landscape character of the land; and
- To enable development that does not adversely impact on the natural environment, including habitat and waterways.

In accordance with the positions presented by the Objector, we submit the DA directly conflicts with the legislative objectives.

Close

We advise:

1. The Objector, objects to the proposed development on the grounds stated herein; and
2. The Objector submits the development should not proceed in its present form or at all.

Please let us know of any further information or materials you may need from our client in your consideration.

Thank you for taking the time to consider this document.

Yours faithfully

BAKER MANNERING & HART



STEPHEN HART

Baker Mannering & Hart

From: Ballina Shire Council <notifications@engagementhq.com>
Sent: Friday, 14 April 2023 7:16 PM
To: Ballina Shire Council
Subject: CM 23/26208 Anonymous User completed Feedback - BSCPP 22/007 - Proposed Rezoning of Land - Burns Point Ferry Road West Ballina - Task to Rob Van Iersel

Anonymous User just submitted the survey Feedback - BSCPP 22/007 - Proposed Rezoning of Land - Burns Point Ferry Road West Ballina with the responses below.

Your Name

Leon and Cheryl Bartlett

Your email address

cherylgbartlett@live.com

Were the documents easy to read and understand?

Yes

Do you support the overall objectives and content of the documents?

No

Please provide further information about your response below.

We Strongly object to the proposal by Gem Life to build 148 residences as the impact on our homes in times of king tides and Floods will be enormous as the area will be built up 2-3 metres so where will the water go?? The impact on our wetlands will also have a detrimental effect on our river, flora and fauna.

I have read and agree with Council's [Privacy Policy](#).

Please notify Council if you wish your comments to be confidential.

Yes

From: Jan Smith <jansmith.cloudnine@gmail.com>
Sent: Sunday, 16 April 2023 7:42 AM
To: Ballina Shire Council
Subject: CM 23/26255 NO to GemLife's proposed development Plan in West Ballina

As a rate paying owner of property in West Ballina I OBJECT to this large area of wetland being developed. The area to be filled to any height will greatly increase the flooding in our area and destroy valuable flora and fauna. This is NOT acceptable

Jan Smith
Kalinga Street
West Ballina

From: Roger Peate <rpeateortho@bigpond.com>
Sent: Sunday, 16 April 2023 6:36 PM
To: Ballina Shire Council
Subject: CM 23/26270 DA (2022/721.1) Gemlife Developmmment

Dear Sir

As an owner of a house in West Ballina at 88 Dolphin Drive Lot 110/775228 I wish to object to the GemLife Development DA 2022/721.1 on the grounds that filling of the land will result in displacement of the run-off water into surrounding residential areas and waterways.

This is already evidenced by the Emmanuel College recent development.

The flood in March 2022 resulted in severe water inundation in the residences of West Ballina. The proposed GemLife development is on a natural floodplain which would normally accommodate high tides and minor flooding of the adjacent waterways.

Yours sincerely

Roger Peate

Swire Mail

From: Susan Jacobsen <susan.jacobsen.artist@gmail.com>
Sent: Sunday, 16 April 2023 6:14 PM
To: Ballina Shire Council
Subject: CM 2023/26278 Objection to DA 2022/721
Attachments: Burns Point Ferry Rd Development.pdf

Susan Jacobsen
82 Riverside Drive
West Ballina

16th April 2023

Re: Objection to DA 2022/721

My Council,

I am writing with the greatest of urgency that the
Development DA 2022/721
Application PA N 294809 **be fiercely opposed!**

I appreciated the opportunity to speak to a Town Planner on Friday late, and to have been granted additional time to submit this protest.

The approach to advertising the development was no doubt legitimate, but the kindness and decency of sharing information that closed last Friday is terribly disappointing. Few residents are aware of the revised DA.

Many residents, some elderly and without computer access, are still terribly traumatised by the 2022 storm water and flooding events. They are not yet re-living in their homes. The letter drop was to immediate nearby houses, many of which are still stripped bare and awaiting rebuild. Empty, flooded homes!

The position of the DA Notification was such that one had to squat in the sodden wetlands to read news of the \$175 million development. It was dangerously placed. Being visible for drivers from Kalinga Street is not a safe concept. On reading the DA, squatting in the wetland mud and long grass, a truck roared down Ferryboat Road, dangerously close. I challenge all Councillors to stand collectively in front of this important advertised signage, safely and confidently! The other vantage point was from the main road, a place of hectic traffic and again easily missed in long grass.

P2 of 3

Many people do not know of the plan. When they eventually return home they will not only be shocked but frightened of their vulnerability and increased exposure to the risk of repeated and potentially more catastrophic flooding. Land fill and more development is inappropriate and irresponsible. A solution to the existing failed water drainage needs to be desperately resolved. Fix the poor existing and failing infrastructure!

As a resident of West Ballina, the destruction caused by two events of stormwater inundation and additionally, unprecedented flooding in 2022, remains shockingly as an event of sheer terror. Twice my property was inundated by storm water, clearly videoed on low tide. The footage of the overflowing and inadequate revetment pond approved in Quays Drive by Council, is undeniable evidence of insensitive development, developer greed, and complete disregard for existing residents. This gifted park was once a place of children's sport, birds, and a sensitive and effective catchment of water in extreme events. No longer. Council's responsibility is to keep residents safe. Any further development on this sensitive wetland will exacerbate the risk.

I implore my Council to fight against the construction of more than 150 residences on the West side of Burns Point Ferry Road! The raised land levels required for the "safety" for proposed new residents and infrastructure, will ultimately lead to unexpected flooding, at some point, beyond the predictions of engineering algorithms. Unprecedented events can occur, as we are all now acutely aware, and will continue to occur ! Surely the access to Ballina Heights, with it's frequent and failed all weather related inaccessibility, is a disappointing and potentially dangerous result for so many who live there. Was this expected?

The Quays Drive development "storm water retention pond", overflowed into Quays Drive, Howard Crescent and Riverside Drive. Video footage of this disastrous over-spill and it's destructive impact, shows undeniably that unexpected weather events can "surpass planned and engineered" criteria. The engineering failure and greed of developers and others ruined many homes. Was this expected?

P3 of 3

For the emotional health and future of the existing residents and the fragility of the wetland, Council must fight to reject this proposal. It must be stopped. Residents are frightened!

The frenzied private commercial development, earthworks and opportunist planning along the strip entering Ballina, is truly hard to accept in an area so recently impacted. Does this speak of Council's disregard for the safety of it's residents?

Please replace or strengthen existing infrastructure and reject any further land fill and development on this fragile and vulnerable approach to our home, of Ballina.

With great concern,
Susan Jacobsen

~~Send Mail~~

From: Peter Jacobsen <peterjacoemail@gmail.com>
Sent: Monday, 17 April 2023 12:55 PM
To: Ballina Shire Council
Cc: Peter Jacobsen
Subject: CM 23/26394 Objection to DA 2022/721
Attachments: Objection to DA 2022721.pdf

Peter Jacobsen
82 Riverside Drive
West Ballina

17th April 2023

Re: **Objection to DA 2022/721**

The General Manager
Ballina Shire Council

I thank you for this opportunity to submit an objection outside the advertised closure date.

Your methodology for advertising, whilst no doubt by the protocol, was I believe compromised hugely by several factors. Poor signage placement notifying of the DA, and the current absence of potentially "the most likely local residents to be impacted" by this development, I find as unfortunate for them, BUT opportunist "timely" for the developer.

As a resident impacted hugely by storm water inundation TWICE at my home, (outside of the greater Lismore Flood Event in early March 2022), my concern revolves about the currency of the submitted information, mapping, statistical and analysed outcomes presented for Council's consideration. It appears that the submission includes only for data pre-2nd March 2022, and does not factor in the actual "unprecedented outcomes" of 2nd March and again 30th March 2022. Statistical projection and hypothetical suggestion require re-evaluation based on factual results.

Since the (2) rain events experienced in Ballina early last year, the submitted documents relevant to this DA should be re-addressed using new "actual" rather than "hypothetical" statistical data base points. The disastrous outcomes throughout most of West Ballina early last year was never envisaged in previous DAs, BUT the reality speaks for itself!

Councillors, I appeal to you all to please consider with caution, the submitted "out-dated" and "mis-leading" criteria the developer has presented. It is opportunist, and sneaking "under the radar" to seek your approval.

Sincerely,
Peter Jacobsen



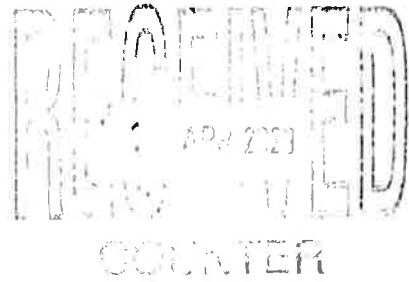
CM23/26403

Mr & Mrs M Betts
5 Marina Place
West Ballina NSW 2478

14 April 2023

Ballina Shire Council
40 Cherry Street
Ballina NSW 2478

Dear Sir/Madam



DA: 2022/721.1 GTH Resorts No Pty Ltd

We wish to raise our concerns over the proposed development application by GTH Resorts No 10 Pty Ltd.

We are residents of Marina Place West Ballina. Our house was inundated during the February March 2022 rain event. We were evacuated & not allowed back to our home for a number of days following the house being flooded. Nor did we have electricity for over a week. We was fortunate to have friends to assist in the clean up as we did not have volunteers offer assistance until well after the water subsided. Even though we are fully insured, the process of having the house repaired has been the most trying & stressful experience. We are still waiting on the insurance company to complete the make safe & provide a clearance certificate to commence the rebuild. It is unlikely that we will be able to move back into the house until close the Christmas being 22 months after the flood event.

We have two main objections to the proosed development being:

Increased flooding impact on surrounding existing homes.

The development site was flooded for days before the peak of the flood in March 2022. Even during periods of continued wet weather the development has large areas covered by water that remains on the surface.

In the DA the site will be filled to a level that the buildings will be above flood level. Following the recent event is the council going to require the height to be increased more? When filling the development site area to such an extent it will create a levy where it will change the natural water courses. Looking at the drawings, it appears that the excess water is going to flow around the raised areas & then down toward Burns Point Ferry Road & into Marina Place. This will most definitely negatively impact these properties including mine.

The site is also wetlands. Wetlands have an important ecological role in our environment and should be preserved.

Increased traffic onto Burns Point Ferry Road & into Ballina via River Street

Currently the traffic gridlock into Ballina CBD from West Ballina along River Street is significant and not only confined to mornings and afternoons Monday to Friday with workers going to & from work or school traffic. It is unpredictable when the roads will be gridlocked. It can take up to 45 minutes to get from the roundabout at Burns Point Ferry Road to over Fishery Creek Bridge.

With the proposed development it has the potential of at least another 296 cars plus visitors entering an already dangerous intersection at Kalinga Street. I witness numerous cars trying to get into Ballina by turning into Burns Point Ferry Road then up Kalinga Street to re-enter River Street near the Good Guys or the funerals home creating more traffic chaos.

Just because the development is for seniors it doesn't mean that they won't be driving in so-called peak hour. Weekend traffic is heavy and during holiday times especially Christmas the traffic is heavy.

In summary, the potential flooding impact on the proposed development will most definitely negatively impact the current home in the area. Ballina Council needs to have the upgrade of River Street dual lanes and the construction of the second bridge over Fishery Creek completed before approving a development such as this.

Yours faithfully

Mark & Chris Betts

CBetts

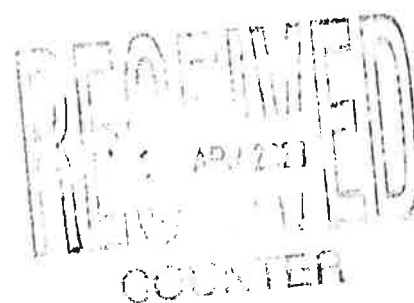
Mark CBetts

Mrs B George

4 Marina Place
West Ballina NSW 2478

14 April 2023

Ballina Shire Council
40 Cherry Street
Ballina NSW 2478



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In the DA the site will be filled to a level that the buildings will be above flood level. Following the recent event is the council going to require the height to be increased more? When filling the development site area to such an extent it will create a levy where it will change the natural water courses. Looking at the drawings, it appears that the excess water is going to flow around the raised areas & then down toward Burns Point Ferry Road & into Marina Place. This will most definitely negatively impact these properties including mine.

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Just because the development is for seniors it doesn't mean that they won't be driving in so-called peak hour. Weekend traffic is heavy and during holiday times especially Christmas the traffic is heavy.

In summary, the potential flooding impact on the proposed development will most definitely negatively impact the current home in the area. Ballina Council needs to have the upgrade of River Street dual lanes and the construction of the second bridge over Fishery Creek completed before approving a development such as this.

Yours faithfully

Bev George

A handwritten signature in dark ink, appearing to read 'Bev George', written over the printed name.

CM23/26406

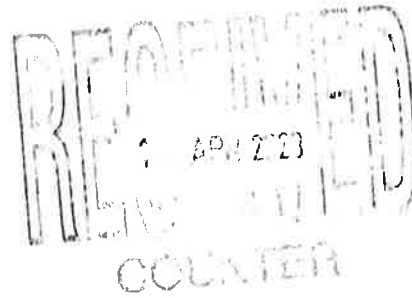
Mr & Mrs M Harrison

6A Marina Place
West Ballina NSW 2478

14 April 2023

Ballina Shire Council
40 Cherry Street
Ballina NSW 2478

Dear Sir/Madam



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We have two main objections to the proposed development being:

Increased flooding impact on surrounding existing homes.

The flooding of our property came from Burns Point Ferry Road not the river.

The development site was flooded for days before the peak of the flood in March 2022. Even during periods of continued wet weather the development has large areas covered by water that remains on the surface.

In the DA the site will be filled to a level that the buildings will be above flood level. Following the recent event is the council going to require the height to be increased more? When filling the development site area to such an extent it will create a levy where it will change the natural water courses. Looking at the drawings, it appears that the excess water is going to flow around the raised areas & then down toward Burns Point Ferry Road & into Marina Place. This will most definitely negatively impact these properties including mine.

The site is also wetlands. Wetlands have an important ecological role in our environment and should be preserved.

Increased traffic onto Burns Point Ferry Road & into Ballina via River Street

Currently the traffic gridlock into Ballina CBD from West Ballina along River Street is significant and not only confined to mornings and afternoons Monday to Friday with workers going to & from work

or school traffic. It is unpredictable when the roads will be gridlocked. It can take up to 45 minutes to get from the roundabout at Burns Point Ferry Road to over Fishery Creek Bridge.

With the proposed development it has the potential of at least another 296 cars plus visitors entering an already dangerous intersection at Kalinga Street. I witness numerous cars trying to get into Ballina by turning into Burns Point Ferry Road then up Kalinga Street to re-enter River Street near the Good Guys or the funerals home creating more traffic chaos.

Just because the development is for seniors it doesn't mean that they won't be driving in so-called peak hour. Weekend traffic is heavy and during holiday times especially Christmas the traffic is heavy.

In summary, the potential flooding impact on the proposed development will most definitely negatively impact the current home in the area. Ballina Council needs to have the upgrade of River Street dual lanes and the construction of the second bridge over Fishery Creek completed before approving a development such as this.

Yours faithfully

A handwritten signature in black ink that reads "M & P Harrison". The signature is written in a cursive, flowing style.

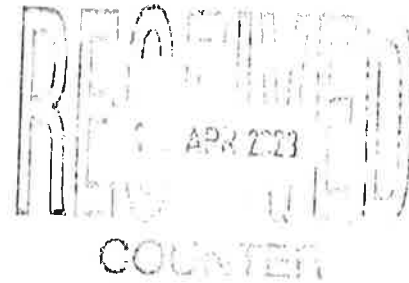
Michael & Patricia Harrison

CM 23/26407

Mr & Mrs M Debono
7 Marina Place
West Ballina NSW 2478

14 April 2023

Ballina Shire Council
40 Cherry Street
Ballina NSW 2478



Dear Sir/Madam

DA: 2022/721.1 GTH Resorts No Pty Ltd

We wish to raise our concerns over the proposed development application by GTH Resorts No 10 Pty Ltd.

We are residents of Marina Place West Ballina. Our house was inundated during the February March 2022 rain event. We were evacuated & not allowed back to our home for a number of days following the house being flooded. Nor did we have electricity for over a week. We was fortunate to have friends to assist in the clean up as we did not have volunteers offer assistance until well after the water subsided. Even though we are fully insured, the process of having the house repaired has been the most trying & stressful experience. We are still waiting on the insurance company to complete the rebuild. Currently we are relying on the generosity of neighbors to stay in their downstairs area. We are in our seventies & eighties and never expected to live the way we have been in the last 14 months.

We have two main objections to the proposed development being:

Increased flooding impact on surrounding existing homes.

The development site was flooded for days before the peak of the flood in March 2022. Even during periods of continued wet weather the development has large areas covered by water that remains on the surface.

In the DA the site will be filled to a level that the buildings will be above flood level. Following the recent event is the council going to require the height to be increased more? When filling the development site area to such an extent it will create a levy where it will change the natural water courses. Looking at the drawings, it appears that the excess water is going to flow around the raised areas & then down toward Burns Point Ferry Road & into Marina Place. This will most definitely negatively impact these properties including mine.

The site is also wetlands. Wetlands have an important ecological role in our environment and should be preserved.

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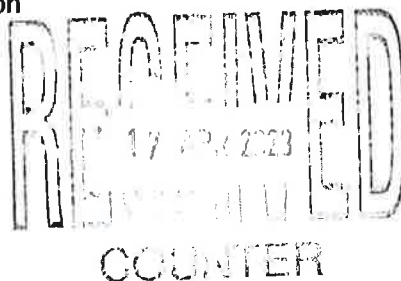
In summary, the potential flooding impact on the proposed development will most definitely negatively impact the current home in the area. Ballina Council needs to have the upgrade of River Street dual lanes and the construction of the second bridge over Fishery Creek completed before approving a development such as this.

Yours faithfully

Michael & Josephine Debono

Handwritten signatures of Michael Debono and Josephine Debono in cursive script.

C2 Environmental Conservation
Land Rezoning
Ballina Shire Council
40 Cherry Street
Ballina NSW 2478



Ms Teresa Dodd

1/83 Burns Point Ferry Road
West Ballina NSW 2478
15 April, 2023

SUBMISSION REGARDING REZONING

REGARDING PLANNING PROPOSAL (22/007)

DA 2022/721 – Lot 1 DP 124173 and Lot DP 522558

550-578 River Street and 6 Burns Point Ferry Road, West Ballina

Dear Members of the Land Rezoning Board,

As a resident at 1/83 Burns Point Ferry Road, I would like to give my support to the rezoning of the entire parcel of environmentally fragile land currently under threat by the second attempt of GemLife to build 148 manufactured homes on a site which has been adjudicated by Judge, Mr Brian Preston. In paragraph 194 of his Determination (attached) he writes:

194 Fourth, I am of the opinion, under s 7 16(2) of the BC Act that the proposed development is likely to have serious and irreversible impacts on the biodiversity values.

The land in question is referred to by residents as “the swamp” — and not in a derogatory way. It is a fact, that tide, storm and rainwater often turns most of the land proposed for building homes into a lake. It is a very boggy parcel of land that is a refuge for endangered flora and fauna.

That entire parcel of land is a flood plain and contains several precious species of bird, bat, frog, owl and even endangered Black Necked Storks (and I have seen them), that migrate to Emigrant Creek each year to breed. As well, there are multiple species of tree, including Swamp Oak. The importance of this site is irrefutable. I am a birdwatcher and nature lover and every day I see an unusual bird, frog, or I watch the rare Ospreys and other raptors as they soar over Emigrant Creek to feed. When I spoke to the contractor who slashes the ground, he told me there were also “other animals” living on that land – “but, I know where they are and I don’t slash there”. I know that Council rangers once intervened to prevent slashing on a certain section of the site which is the habitat of endangered grass owls.

All these creatures, according to the Determination, would be at irreversible risk. It has been decided by Judge Preston, that pollution of Emigrant Creek due to spillage of significant tonnes of fill needed to raise the village high enough not to be inundated by water, would inevitably contribute to toxic pollution of Emigrant Creek (since the developers had not planned to capture fill before it did damage) and therefore endanger the flora and fauna that lives there. As well as irreversibly damaging the littoral rainforest and coastal wetlands.

Also, and I believe I am not alone in suggesting that that slab of land contributes to Ballina enjoying a beautiful DARK SKY because there are no lights over the proposed development site. As a keen amateur astronomer, I can stand outside my home on a clear, cloudless night and see the entirety of the Milky Way and its gaseous clouds extending in a strip almost to the horizon. One night, I saw an unannounced, very low, green meteor streak across the sky heading, it looked to me, for Wee Waa. This meteor was never reported. I believe I was the only one who saw it. Because I was able too!

While I am very sympathetic that this region is experiencing a critical home shortage due both to the flood and to the high price of houses and especially rental properties, I would with respect suggest that allowing such speculative building to be carried out on wetland is not the way forward. Instead, could not Council assist this developer in finding a more suitable site?

Residents of West Ballina are well aware that building ramparts high enough on which to build homes (which have changed category from the first submission into fewer homes with some even two-storey) will create a dam effect. The developer has admitted at a meeting held with Residents, that floodwater would increase by "about 10%". They have apparently made no plans for extra drainage to prevent this. So when tidal and floodwater meets the ramparts, it will have nowhere else to go but flood the homes in close proximity to the site, and beyond. Already, residents upriver are trying to sue due to flood damage to their homes caused by the "dam walls" created in building the new sections of the M1, causing their homes and town to be completely flooded. That the developers suggest ANY extra level of water threatening our homes is inevitable, shows a lack of empathy for people living in West Ballina.

Currently, the adjacent "swamp" does help soak up excess water. Paving it over with concrete, creating dams, disturbing wildlife (such as the micro bats that site tests have proven refuse to feed when the area is lit at night) and threatening the fish and thereby upsetting the balance for the birds that rely on Emigrant Creek for their feed, seems a very poor solution to the lack of places to live in this region.

Instead, I urge you to please rezone that entire parcel of land running adjacent to Burns Point Ferry Road right down to the old boat ramp. And rezone the land running parallel to River Street up to the existing caravan park so that that land can no longer be under threat of destruction.

Thank you for your attention,

Yours sincerely,


Teresa Dodd
0427526886
texdodd@yahoo.com

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Land and Environment Court New South Wales

Medium Neutral Citation:

Planners North v Ballina Shire Council [2021] NSWLEC 120

Hearing dates:

2, 3, 4, 5, 6 and 13 August 2021

Date of orders:

03 November 2021

Decision date:

03 November 2021

Jurisdiction:

Class 1

Before:

Preston CJ

Decision:

The Court orders:

(1) **The appeal is dismissed.**

(2) Development application 2020/192, as amended, for a manufactured home estate on Lot 1 in DP 124173 known as 550-578 River Street, West Ballina is determined by refusal of consent.

(3) The exhibits may be returned.

Catchwords:

APPEAL – manufactured home estate – refusal of development consent – proposed development partly on coastal wetlands and littoral rainforests area made under State Environmental Planning Policy No 36 – Manufactured

Determination of development application and disposition of appeal

191. I have decided that four preconditions to the grant of consent have not been satisfied. First, the proposed development is to be carried out partly on land that is excluded land under cl 6(a) and cl 5 of Sch 2 of the Manufactured Home Estates SEPP, being land within the Coastal Wetlands and Littoral Rainforests Area identified under the Coastal Management SEPP, on which development for the purposes of a manufactured home estate is not permissible.
192. Second, I am not satisfied, under cl 9(1) of the Manufactured Home Estates SEPP, that the proposed development on that excluded land will not have an adverse effect on land having special ecological qualities, which the land within the Coastal Wetlands and Littoral Rainforests Area has.
193. Third, I am not satisfied, under cl 11(1) of the Coastal Management SEPP that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or the quantity or quality of surface and ground water flows to and from the adjacent coastal wetland.
194. Fourth, I am of the opinion, under s 7.16(2) of the BC Act, that the proposed development is likely to have serious and irreversible impacts on the biodiversity values.
195. Under each of these four circumstances, development consent cannot be granted to the proposed development. The development application must therefore be determined by refusal of consent and the appeal dismissed.
196. The Court orders:
1. The appeal is dismissed.
 2. Development application 2020/192, as amended, for a manufactured home estate on Lot 1 in DP 124173 known as 550-578 River Street, West Ballina is determined by refusal of consent.
 3. The exhibits may be returned.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated: 03 November 2021

- [Policy and Procedures](#)
- [Accessibility](#)
- [Contact Us](#)
- Website last updated: 08 September 2021

CM23/26413

14th April 2022

138 Kalinga Street
BALLINA NSW 2478

To Gemlife Development
C/- Ballina Shire Council

RE: Development Application 2022/721.1

As a homeowner and resident of 138 Kalinga Street, Ballina (for 34 years) we are objecting to the proposed Gemlife Development which is (one house) approx. 100 metres to the entrance from our house.

The flooding is now and will be a major issue if these 144 houses are built on higher land.

In December, 2021 with the king tide, we had the water rise into our garage and flood the street in Ferry Boat Road and Kalinga Street. In the February and March 2022 flood, our house filled with water. We have lost everything and our house was stripped and rebuilt. Fortunately we have been back in our house one week but it would be hard to imagine how much higher the water would be if this development is approved and the land raised and built on by metres.

Kalinga Street has become a very busy street with the ferry traffic and cars taking short cuts into town on this street. Traffic would escalate 400-600 movements a day and parking near impossible with this development. The streets will be much busier and noisier with more people and cars.

The environmental impact on this land would be huge and detrimental to the river, fauna and flora.

We believe you can not build on a flood plain. How can this happen? The land has been saturated for 2 years.

The land needs to be rezoned to c2 environmental conservation, as council plans to do.

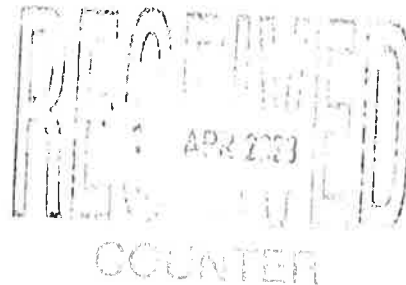
Thank you for reading our objection and taking it in to consideration.

Jill and Terry Bulmer

138 Kalinga Street
WEST BALLINA NSW 2478
0414 862873

Helen Joblin

24/41 Kalinga Street
WEST BALLINA NSW 2478
0407 004 053



From: Vivienne Gorec <vivienne19@bigpond.com>
Sent: Monday, 17 April 2023 1:51 PM
To: Councillors
Subject: CM 23/26427 DA2022/721

I draw to your attention a DA that has been stopped by the council for several enviromental reasons. This will (if it's approved) will cause havoc to the BurnsPoint Ferry Rd area and the Westland Estate which has already been subjected to horrific DA approvals.

This DA if it is approved will funnel flood water from the Richmond River straight up River Street, also the wall being built on the fence line of the Emmanuel School which is stopping any water going to whats left of the 38 year old retention pond, to drown the houses several of which are still empty after over 12 months in the Westland Estate.

The houses in these areas are the owners largest and in some cases only security and for them to be at risk for the sake of greed is deplorable to say the least.

I was under the impression that this DA was stopped because of enviromental reasons but we will see whats more important the enviroment or greed.

Vivienne Gorec

CM23/26467

From: Helen Woodburn <woodyandhelen71@gmail.com>
Sent: Friday, 14 April 2023 1:50 PM
To: Ballina Shire Council
Subject: CM - Submission - DA 2022/721 - Helen, Andrew, Lily & Eva Woodburn

To Whom It May Concern

Please accept this email as a submission against DA 2022/721 by GTH Resorts No 10 Pty Ltd.

As a family and residents of Burns Point Ferry Road, we have concerns on the impacts this will have to our property and standard of living and object to the development proposed for the following reasons:

Environmental concerns

- In 2021, the Land and Environment Court refused the previous application stating this land is NOT for urban development.
- The land has been deemed unsuitable for urban development and environmental consequences for the wetlands, river, flora and fauna are enormous.
- Ballina Shire Council are proposing to re-zone the land to C2 Environmental Conservation and we support this proposal.

Flooding concerns

- The significant fill required for the development will significantly impact neighbouring properties. This is a concern during times of high rainfall and during high tides. The stormwater system cannot currently cope. Where will the stormwater extra run-off be diverted to? Burns Point Ferry Road is part covered in water during rainfall and hightides as the water is unable to drain away (this appears worse since the . Significant fill and more development will only exacerbate this situation and impact on existing properties
- Burns Point Ferry Road floods during high rainfall and at time of high/king tides. The proposed development negatively impact this more.
- Detailed flood modelling referred to was done 11 years ago in 2012.
- We are still recovering from the acute flood impacts of March 2022. Many residents in Burns Point Ferry Road (including us) and in the locality have still not been able to return to their homes. Any development that will increase risk of flooding to our properties is not wanted.
- What is Council's most recent flood modelling data? The flood impacts from this proposed development will negatively impact on neighbouring properties and wider network

Increased Traffic and Noise

- Heavy vehicle generation during earthworks will generate noise.
- Increased traffic from 148 residences will negatively impact on Burns Point Road, Kalinga Street, River Street and other adjoining intersections in locality. The roads are already gridlocked and struggling to cope with the volume of daily car movements.
- Increased Noise and possibly dust from earthworks, construction and development over a prolonged period.

Thank you for this opportunity to comment on this submission

Kind regards

Helen, Andrew, Lily and Eva Woodburn
Burns Point Ferry Road
West Ballina

To:	Ballina Shire Council Ballina Councillors	
Date:	Friday, April 14, 2023	
Re:	Development Number	DA 2022/721.1
	Northern Regional Planning Panel	Reference Number PPSNTH-207
	Developer	GemLife
	Site	544-548 River St, West Ballina NSW 2478, 550-578 River St, West Ballina NSW 2478, 6 Burns Point Ferry Rd, West Ballina NSW 2478, Pacific Hwy, West Ballina NSW 2478
	Proposal	Seeking consent to develop 148 Independent Living Units- Erection of a Seniors Housing Development under State Environmental Planning Policy Housing 2021 in five stages including: <ul style="list-style-type: none"> • 148 independent living units (four x two bedroom and 144 x 3 bedroom units) • community facilities • managers residence • earthworks (filling) and retaining walls • removal of vegetation • stormwater management and infrastructure works • landscaping and outdoor recreation areas. Vehicular access to the development is proposed via Burns Point Ferry Road with an emergency access via River Street.
From:	John Chaseling johnchaseling@icloud.com	Dr Marilyn Chaseling marilyn.chaseling@outlook.com
	13 Burns Point Ferry Road, Ballina 2478 Temporary relocation to Smith Lane, Wollongbar 2477 while awaiting the rebuild of our Burns Point Ferry Road house after the March 2022 West Ballina floods	

This is an objection letter to the GemLife Proposal to construct a Seniors Housing Development on wetlands on the peninsula bordered by Burns Point Ferry Road, Ballina Quays, the Richmond River and Emigrant Creek.

We respectfully request that GemLife's application be refused. Our reasons are listed below and then explained in greater detail. In summary:

1. GemLife's marketing of its development as "housing for seniors" is misleading because only one member of a household must be 60 years or older. Therefore, all other household members can be any age, e.g. babies, toddlers, adolescents, early adulthood, middle-aged, seniors.
2. GemLife's Comprehensive Traffic Assessment Report is flawed.

3. The Burns Point Ferry Road and Kalinga Street proposed entrance to the GemLife Development will cause gridlock traffic on roads that are not capable of taking the traffic movement, especially during peak hours.
4. GemLife's Estimate of Development Costs Appears Grossly Inadequate
5. The amount of fill to be imported to raise 90,000 square metres by two to three metres and the disruption this will cause for a number of years to the lifestyle of the Burns Point Ferry Road, Emigrant Creek Lane, Marina Place and Kalinga Street residents.
6. The water run-off from the GemLife proposed site and the potential for more severe flooding of the streets, and potentially properties, during high tides and floods
7. Environmental Issues
8. Social Responsibility
9. Master Plan

Background

During March 2023, I, John Chaseling, had five unsolicited phone calls from GemLife representatives. Each phone call lasted from 30 to 45 minutes:

- i. The first two phone calls—16 and 17 March—were from Adrian Pulich who tried to convince my wife and me that the GemLife revised application was a good one. When Mr Pulich was asked if he had visited the site since the 2022 flood, he answered "No".
- ii. Phone calls 3, 4 and 5 were from GemLife's Public Relations person, Jeremy Vine. We expressed our concerns to Mr Vine about the displacement of water and floodwater that would result from GemLife's plan to build a two- to three-metre-high platform on a wetland for its proposed development. Subsequently, Mr Vines advised that he had checked with GemLife who advised that adding two to three metres high of landfill on the wetland adjacent to Burns Point Ferry Road would displace only 0.1% of flood water. Mr Vine maintained that GemLife had advised that its proposed development would have no impact on flood levels in Burns Point Ferry Road and its surrounds.

When asked if he had visited the site so he could view the damage to the community caused by the flood, Mr Vine advised that he had not visited the site.

- iii. The March 2022 floods forced the majority of West Ballina people to flee their houses. The majority have only just started to rebuild their homes more than a year after the flood inundation. As a result, the earliest many will return to their homes will be late 2023.

Comments we hear from West Ballina residents include that they perceive the GemLife proposal to be grossly disrespectful and insulting of West Ballina residents who have suffered through the debilitating and devastating floods. Residents tell us that they cannot believe that GemLife has submitted a revised application after the NSW Land and Environment Court rejected the previous GemLife proposed development on the same site. Residents also tell us that they are especially appalled by what they perceive to be GemLife's social and environmental disrespect for the damaged West Ballina community and our fragile precious wetland. Evidence cited to us for this is that GemLife personnel have not taken the time to visit West Ballina since the 2022 floods which decimated our community.

1. “Planned Seniors Housing Community”¹

- i. On or about April 6, 2023, GemLife hand-delivered its *Community Newsletter* to West Ballina houses in Burns Point Ferry Road, Kalinga Street and beyond.
- ii. In this *Community Newsletter*, GemLife stated on seven (7) separate occasions that its proposed development is “seniors housing development”, “housing for seniors”, “seniors housing for Ballina”, “Seniors Housing community”, “Senior Housings” (x 3).²
- iii. Despite GemLife’s claim that its proposed development is a “planned seniors housing community”:
 - a. GemLife also stated that only “one person needs to be over 60 years”.³ Therefore, all other residents can be of any age—that is, from birth upwards.
 - b. If one assumes two residents per household in GemLife’s four two-bedroom units, and three residents per household in GemLife’s 144 three-bedroom units, 148 residents must be 60 years or older (43.5%), with potentially 192 residents younger than 60 years (56.5%).
 - c. GemLife also maintains that “the majority of residents will be retired or semi-retired”.⁴ In this statement, GemLife acknowledges that it expects a percentage of its residents will not be retired or semi-retired.
We maintain that it is misleading for GemLife to advertise its proposed development as “senior housing” given that potentially more than half of the residents can be younger than 60 years. We, therefore, question GemLife’s description of its proposed development as “housing for seniors”.⁵
- iv. GemLife also maintain that its “comprehensive Traffic Assessment Report ... prepared with this application” assumes “the majority of residents will be retired or semi-retired”⁶:
 - a. Those seeking an Australian aged pension must wait until their 67th birthday to be eligible.⁷ It is reasonable to assume that such individuals would continue to work until their 67th birthday and so would not be retired until their 67th birthday.
 - b. Where is GemLife’s evidence and research to support its claim that “the majority of [GemLife’s] residents will be retired or semi-retired”?

2. “Comprehensive Traffic Assessment Report”⁸

- i. Under Traffic, in its *Community Newsletter*, GemLife state: “A comprehensive Traffic Assessment Report was prepared for the application. Each dwelling will have two car spaces and 51 spaces will be provided for visitor parking. Entry to the project will be from Burns Point Ferry Road and **given that the majority of residents will be retired or semi-retired, peak car movements are likely to occur outside the road traffic peak period.**”
- ii. We maintain that GemLife’s “Comprehensive Traffic Assessment Report” would appear to be flawed given it:

¹ GemLife, (March 2023), *Community Newsletter*.

² GemLife, (March 2023), *Community Newsletter*.

³ GemLife, (March 2023), *Community Newsletter*. p. 3.

³ GemLife, (March 2023), *Community Newsletter*, p. 2.

⁴ GemLife, (March 2023), *Community Newsletter*, p. 3.

⁵ GemLife, (March 2023), *Community Newsletter*, p. 1.

⁶ GemLife, (March 2023), *Community Newsletter*, p. 3.

⁷ Services Australia. (2023). *Who Can Get It: Age Pension Age*. <https://www.servicesaustralia.gov.au/who-can-get-age-pension?context=22526>

⁸ GemLife, (March 2023), *Community Newsletter*. p. 3.

- a. is based on the assumption that “the majority of residents will be retired or semi-retired”⁹. We maintain in Sections 1(iii) and 1 (iv) that the majority of residents may not be retired because only one person per residence must be 60 years or older and the Australian retirement age is 67 years.¹⁰ If it is indeed correct that many of GemLife’s residents are not retired, we maintain that peak traffic movements **will occur** during peak traffic periods. Therefore, 148 residents and four ancillary buildings will add hundreds of daily vehicle movements to West Ballina’s already peak-hour gridlock traffic.
- b. does not appear to make any allowance for the delivery vans, including those for online purchases, that will need to move in and out of the proposed development to service the needs of the community.

3. Entrance to Proposed GemLife Development

- i. When GemLife’s PR consultant, Jeremy Vine, phoned John Chaseling in the second half of March 2023, Mr Vine advised John Chaseling that the entrance to GemLife’s Revised application had been relocated from its position in the previous DA¹¹ because the roundabout at the intersection of Kalinga Street and Burns Point Ferry Road was flood free.
- ii. Below are photos of the proposed GemLife entrance showing it completely inundated with water. This inundation at the entrance also occurs on some high tides and king tide.



March 2022 photo supplied by Jim Britton showing Burns Point Ferry Road north to the River Street roundabout. Note that: i) the proposed Kalinga Street entrance to the proposed GemLife development is flooded, and ii) the site of the proposed GemLife development to the left of the photos is also flooded.

⁹ GemLife, (March 2023), *Community Newsletter*, p. 3.

¹⁰ Services Australia. (2023). *Who Can Get It: Age Pension Age*. <https://www.servicesaustralia.gov.au/who-can-get-age-pension?context=22526>

¹¹ In the 2020/1 GemLife DA, the proposed entrance to the entire development was opposite our 13 Burns Point Ferry Road home.

- iii. The two main traffic options on exiting the proposed GemLife development are:
 - a. Driving straight east along Kalinga Street
 - b. Turning left (north) then driving the one block to the Burns Point Ferry Road and River Street roundabout
- iv. We believe that Kalinga Street—a narrow two-lane wide street—will become the main exit street for residents in the proposed redevelopment. Our reason for this conclusion is that, already, many vehicles attempting to enter Ballina from the south, turn right into Burns Point Ferry Road, then immediately left into the narrow Kalinga Street in an effort to avoid the gridlock that results when the four-lane River Street reaches the two-lane Fishery Creek Bridge. Driving over Fishery Creek Bridge is the only entrance into the Ballina CBD from the south.



March 30, 2022, driving on Kalinga street towards proposed GemLife entrance

- a. The additional traffic from GemLife's proposed development will most certainly exacerbate the already peak-hour traffic gridlocks on the River Street West Ballina roundabouts and at Fishery Creek Bridge.

4. GemLife's Estimate of Development Costs Appears Grossly Inadequate¹²

- i. I, John Chaseling, refer to Mitchell Brandtman's *Genuine Estimated Cost of Development*.
 - a. Does the inclusion of "genuine" in this costing document's title mean that any previous GemLife estimates were "not genuine"?
 - b. The document contains a one-page Estimated Cost of Work. This appears grossly inadequate for a project of this size.
 - c. There is no schedule of quantities which is a standard expectation to determine the accurate costs of a project
 - d. The bulk figures are difficult to reconcile. As an example, the figure to construct the 148 dwellings equates to \$255,000.00 per unit. This includes "solar, curtains/blinds, loose furniture, fittings and equipment"¹³
 - e. Having been in the building and development industry for more than 48 years, I find it impossible to accept that this figure is accurate given the current shortage of trades, materials, supplies and cost movements.

5. The amount of fill to be imported to raise 90,000 square metres by two to three metres and the disruption this will cause for a number of years to the lifestyle of the Burns Point Ferry Road, Emigrant Creek Lane, Marina Place and Kalinga Street residents.

- i. Approximately 300,000 cubic metres of fill would need to be trucked in and compacted to raise the development site by up to two metres

¹² Mitchell Brandtman, (December 20, 2022), *Genuine Estimated Cost of Development – GemLife. Ballina, NSW.*

¹³ Mitchell Brandtman, (December 20, 2022), *Genuine Estimated Cost of Development – GemLife. Ballina, NSW, p. 1.*

- ii. Trucking in 300,000 cubic metres of fill will involve thousands of trailer-and-dog trucks pounding up and down the roads for many years. This will cause damage to the roads, years of pollution, noise, and the shaking of homes which many Burns Point Ferry Road residents advise, already occurs when similar trucks travel up and down the Road.
- iii. The compaction program for the imported fill will create high levels of noise, the shaking of the ground and no doubt, huge amounts of dust
- iv. The construction of 148 dwellings, plus other on-site buildings, will result in a substantial increase in traffic and additional noise from tradespeople, suppliers, concrete trucks, and building material deliveries. The construction of so many buildings will create further noise from nail guns, fasteners, electric saws etc for up to six days a week from 7am to 5pm each day.
- v. The DA application states that "All construction access to the site is intended to be taken from River Street." "Intended" gives the Developer the opportunity to still use the proposed Burns Point Ferry Road entry for the proposed Development's construction.

There can be no doubt that this proposed Development will have a major adverse impact on the residence of the adjoining properties, for potentially 10 hours a day for six days a week (60 hours per week) during the construction of this proposed Development!

6. The water run-off from the GemLife proposed site and the potential for more severe flooding of the streets, and potentially properties, during high tides and floods

- i. A drone video of the proposed Development site, taken in July 2019, is available at <https://youtu.be/wat7cj7xmFY>. The video clearly shows that the proposed Development will be built on already water-logged wetlands. Where will the water go once this swampy wetland is filled and compacted?
- ii. On many occasions, including on Wednesday 3 June 2020, Ballina Council has alerted the community of "Salt Water Over Roads – King Tides" which impact Burns Point Ferry Road.
"Ballina Shire Council is encouraging motorists to drive safely over the coming days with king tides leading to minor flooding of some local roads. Where possible, motorists, motorcyclists, pedestrians and cyclists should avoid affected roadways. Motorists are reminded the tides will be occurring during the evenings, and that salt water may also affect the maintenance of vehicles and bodywork. Roads likely to be affected by king tides and saltwater flooding include: ... **River Street, West Ballina; Burns Point Ferry Road.**"¹⁴
- iii. The issue of the water runoff has been assessed by an engineer— engineer Daniel Lee, MBA, BE (Hons), M.I.E.Aust., A.I.M.M., NPER, Chartered Professional Engineer #113806RPEQ 7709. Mr Lee's report has been submitted as a separate item to this submission.

7. Environmental Issues

- i. We have not addressed the environmental issues as we believe other residents are more qualified regarding this.

8. Social Responsibility

- ii. Please refer to the accompanying June 5, 2020 report prepared by engineer Daniel Lee, Chartered Professional Engineer #113806RPEQ 7709. While this engineering report was relevant at the time of GemLife's first proposal, many aspects are still relevant today, particularly the sections Climate Change, Social Responsibility, and Earthworks.

¹⁴ Ballina Council. (2020, Wednesday June 3). Salt water over roads: King tides.
<https://ballina.nsw.gov.au/news/salt-water-over-roads-king-tides--272>

9. Master Plan

- i. The street design, we believe, leaves access points so that future development by extending the roads will be achievable. These access points need to be eliminated.
- ii. GemLife appear to be relying on pre 2022 modelling. Were their consultants in the area during the 2022 flooding?

Marilyn Chaseling

John Chaseling

Appendix A

On March 30, 2022, West Ballina experienced a second much smaller flood. As an example, on March 1, our house was inundated by almost one metre of water. During this March 30 flood, only 2.5 cm came into the garage and none into our house. This photo shows the two-lane Kalinga street looking directly to the proposed entrance to the proposed GemLife development. Despite GemLife statements that this entrance to GemLife won't flood, clearly it does.



Drone photos courtesy of Jim Britton. Two photos showing the wetlands. GemLife proposes to fill by two metres high 90,000 square metres of this wetland. Both these photos were taken on the same March 2023 day. The top photo is Burns Point Ferry Road and Ballina Quays. The bottom shows the wetlands taken from above Burns Point Ferry Road towards Emigrant Creek. Note that the GemLife proposed development wetland is covered with water, as it is every day of the year.





Ballina Quays in flood. The purple circle indicates the proposed entrance to the proposed GemLife development. To drive into the Ballina CBD, vehicles will either drive north on the two-lane Burns Point Ferry Road or more likely straight ahead east on the narrow two-lane Kalinga Street.

CM 23/27546

Friday, June 5, 2020

Our Ref: 220069

John and Marilyn Chaseling
13 Burn Point Ferry Road,
West Ballina NSW 2478



Emailed to: mchase@qundra.com.au
unique@bigpond.com

Dear John and Marilyn,

**Engineering Comments for
Manufactured Home Estate - 550-578 River Street West Ballina**

Further to your instructions FTS has obtained the reports and drawing from Council's website for this application and is provide these comments for your consideration and to support your objections to the development. The comments are segregated by topic heading to facilitate your responses to the development application as a neighbouring and adversely impacted resident.

Stormwater Pollution

The Westera drawing N19/009 -sheet 15 Section E shows runoff from the road and clubhouse parking area being discharged over the top of the batter and directed towards the property boundary without suitable capture and treatment.

The other Westera section drawings (sheet 13 section A, sheet 14 section D, sheet 15 sections F and G) all show a batter up to 9 m wide that has no collection of the runoff to the treatment devices proposed.

How does the Stormwater Management plan address treatment and erosion of these batters during construction and for the longer term operation?

Stormwater Management

Westera state that they used the Queensland Urban Development Manual for the design! This project is in NSW and QUDM has no jurisdiction here -the design must be such as to demonstrate compliance with the performance requirements in accordance with NSW regulations.

Aesthetics and Visual Amenity

The change in levels indicated are 3.25 m higher than existing typically to the wall at the top of the bioretention system (Section B sheet 13 and Section F sheet 15 Westera drawings). In addition, there would need to be a non-climbable fence to prevent someone falling over the wall into the bioretention filter about 1 m high. That would likely result in a rise of 4.35 m

CONSULTING CIVIL, STRUCTURAL, HYDRAULIC and FORENSIC ENGINEERS

Email: info@fairdinkumtechnicalservices.com.au
Web: <http://www.fairdinkumtechnicalservices.com.au>

Operation Centres:

NSW: 12 Caribbean Place, Mt Colah NSW. 2079
Mbl: 0431 201 421 (Danny) or 0431 125 906 (Janine)

QLD: 90 Jean Street, Woodridge Qld. 4114
Mbl: 0466 970 683 (Troy) 0481 321 781 (Ben)

from existing to the top of the wall. In addition, you will have houses which could be a further 8.5 m high above the fill level being the maximum height in the NSW Housing Code (Complying Development Standard).

The homes will potentially loom well above other household nearby and may create loss of privacy for some residents.

Flooding

West Ballina is flood prone and this is well documented by Council and NSW Public Works over many years. The dominant flood is the critical flood which gives the highest flood levels, flows and velocities for a given design flood at a specific location. For West Ballina the dominant flood is from the Richmond River.

In a recent report by BMT WBM April 2016 titled Richmond River Flood Warning and Evacuation Management Review final report.

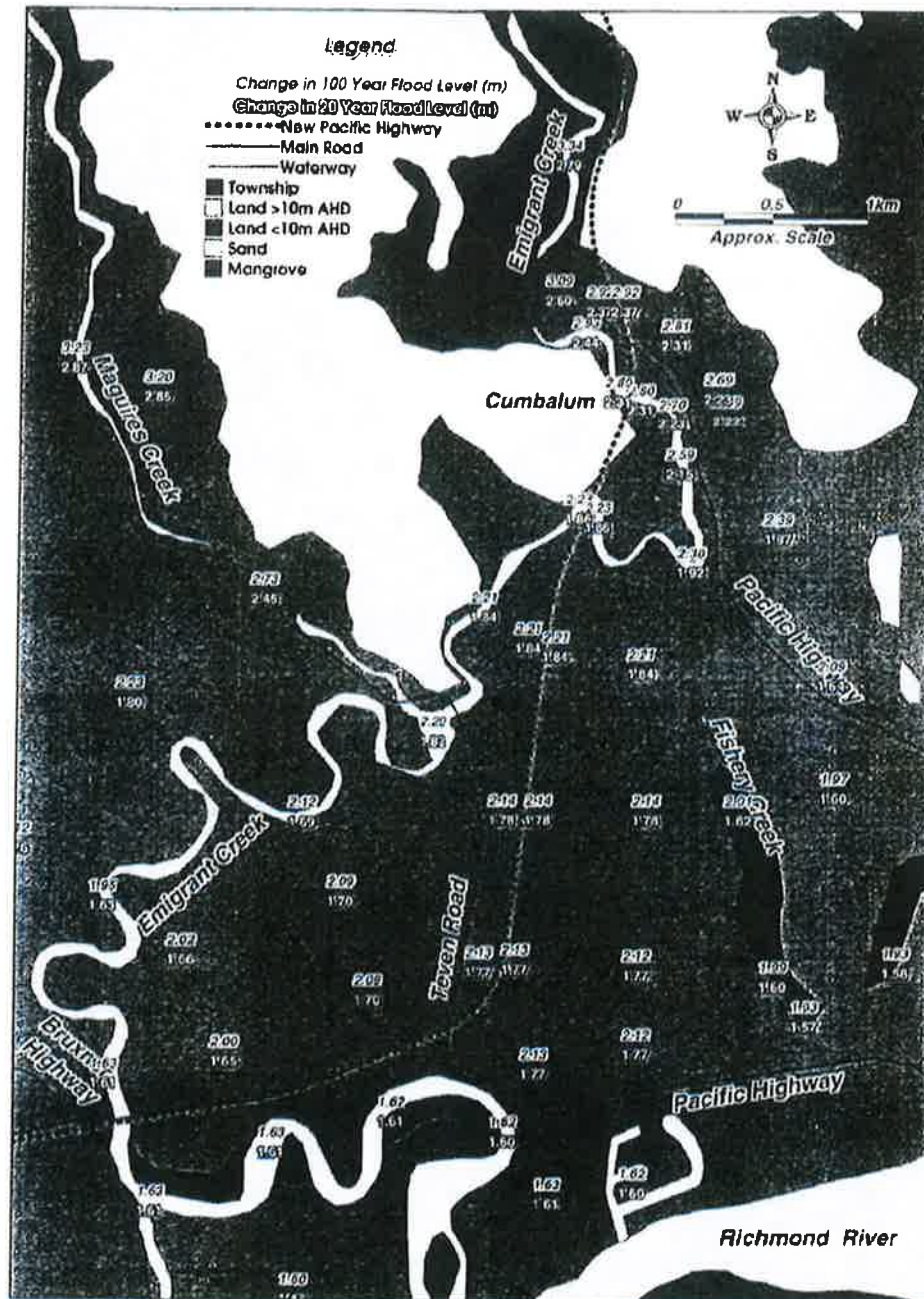
The recommendation for Ballina (emphasis added by FTS) was:

"The Richmond catchment has an established and relatively dense network of rainfall and river gauges serving the key communities within the region. An assessment has been undertaken to identify any communities which may be vulnerable to flooding and have no, or limited, existing flood warning infrastructure. A recommendation of the Ballina Floodplain Risk Management Study is to extend the gauge network with 'a minimum of three additional rain gauges (Newrybar Swamp, Brooklet and Cumbalum Ridge) and two river gauges (Emigrant Creek and North Creek)'. A further recommendation of that study is to investigate the potential for installing a dedicated flood warning system for Ballina and environs, since ***there is currently no formal flood forecasting system that covers Ballina Shire***. This should include Wardell". [Section 5.3 and 5.32 Page 33].

BMT WBM have had a long involvement with the Richmond River Floodplain and have a good database of knowledge about its behaviour for major flooding. It is surprising in light of the foregoing that when posed with a report for a development of the like such as the in filling of a large area of land immediately adjacent to the Richmond River and its proximity to its ocean outlet, that an increase in flooding afflux is acceptable. On a cumulative basis this would have extensive ramifications for upstream land holders if such development were permitted to continue. Why should one land holder benefit from the sacrifice of usable land tenure of another?

FLOODING CHARACTERISTICS

14

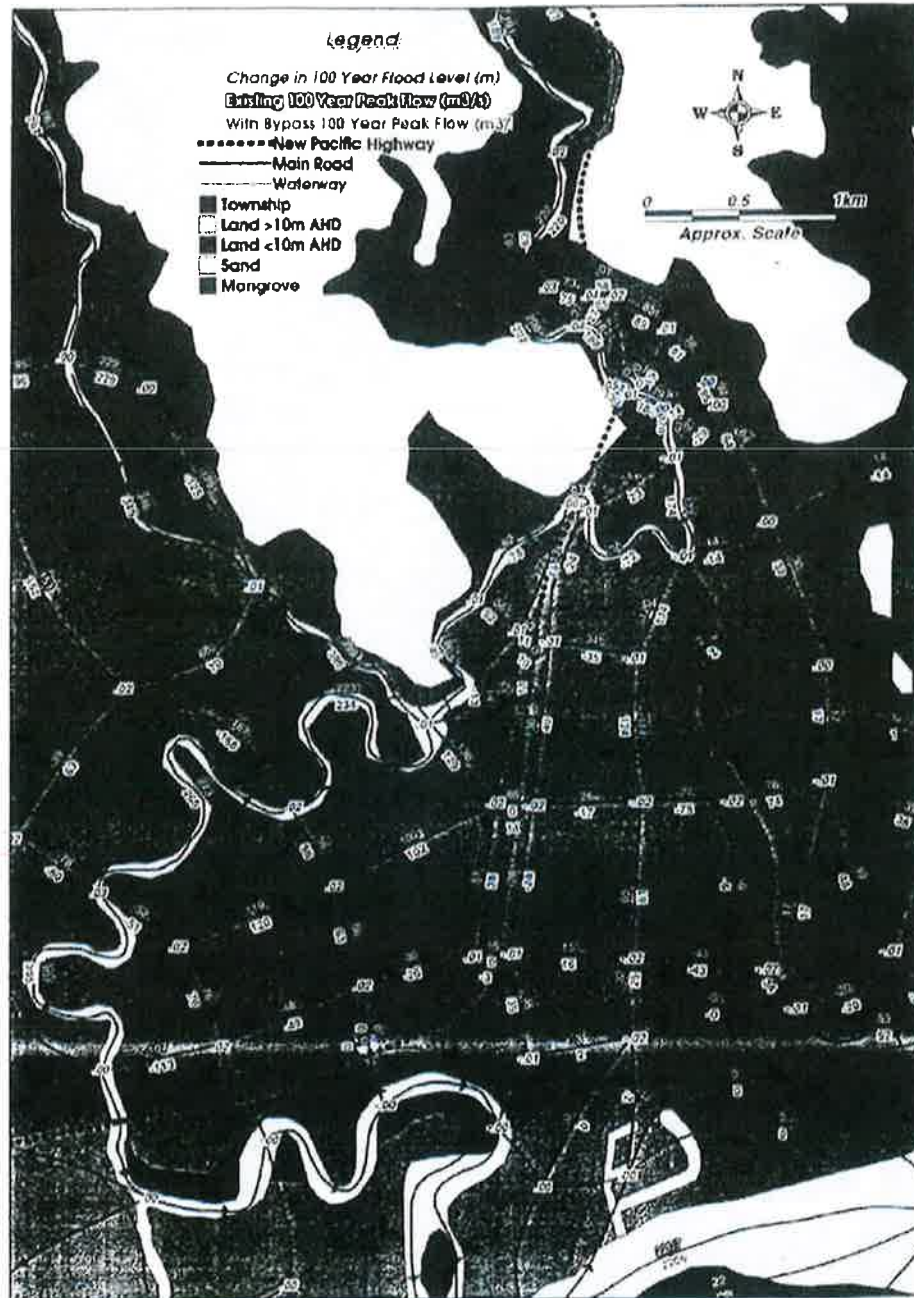


Existing 100 and 20 Year Design Flood Levels
(with Sandy Flat Overflow)

Figure 2.5



Excerpt from Ballina Bypass EIS - Pre-construction



**Impacts on Peak 100 Year Flood Levels
(Low Catchment Dominated Flood)**

Figure 4.1



Excerpt from Ballina Bypass EIS – Post-construction showing no afflux in West Ballina.

For a significant community asset such as a road benefiting the national interest i.e. the Pacific Highway, the economic benefits can be appreciated and a suitable benefit cost analysis can be readily demonstrated. The guideline at the time of the Ballina Bypass construction planning were constrained to the following:

The sizing of bridges and floodways was carried out to meet the following guidelines:

- Increases in peak flood levels for any flood event were to be limited to 5cm.
- The existing flood flow distribution was to be maintained.
- The existing duration of inundation on the floodplains was to be maintained.

The report by BMT WBM for the Ballina Waterways appear to adopt a similar analysis that despite a small increase in afflux predicted to be between 5 mm to 25 mm.

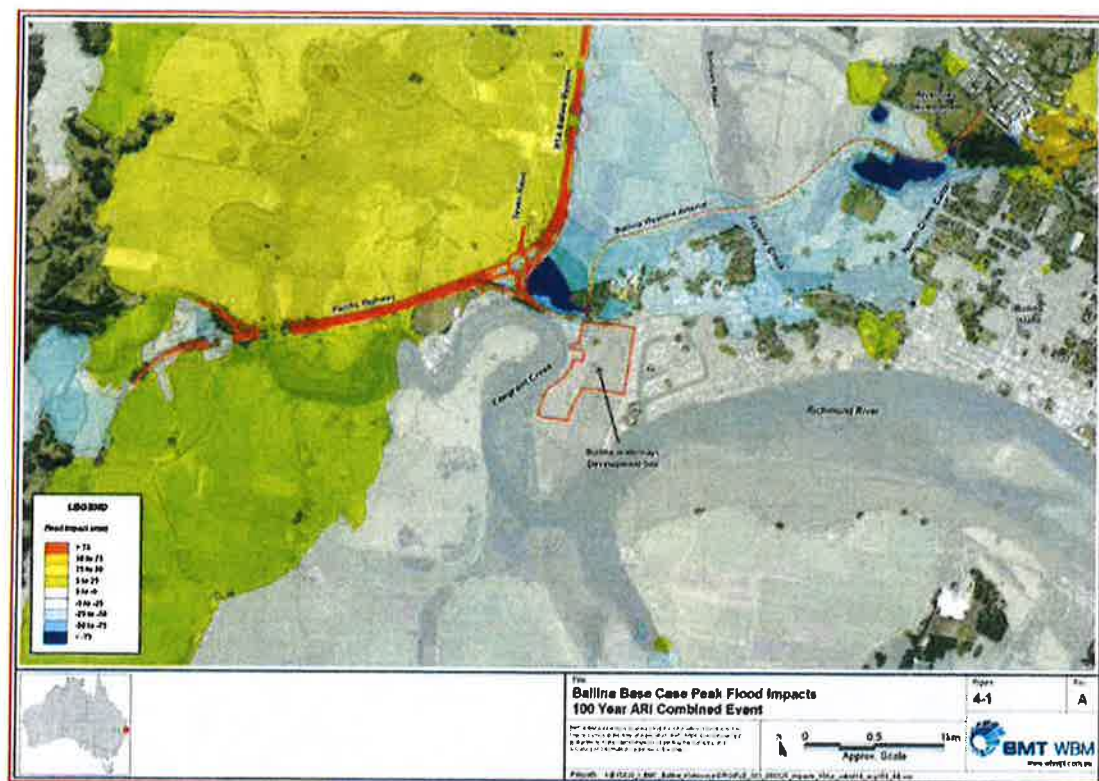


Diagram A - Fig 4.1 from BMT WBM Report on Ballina Waterways

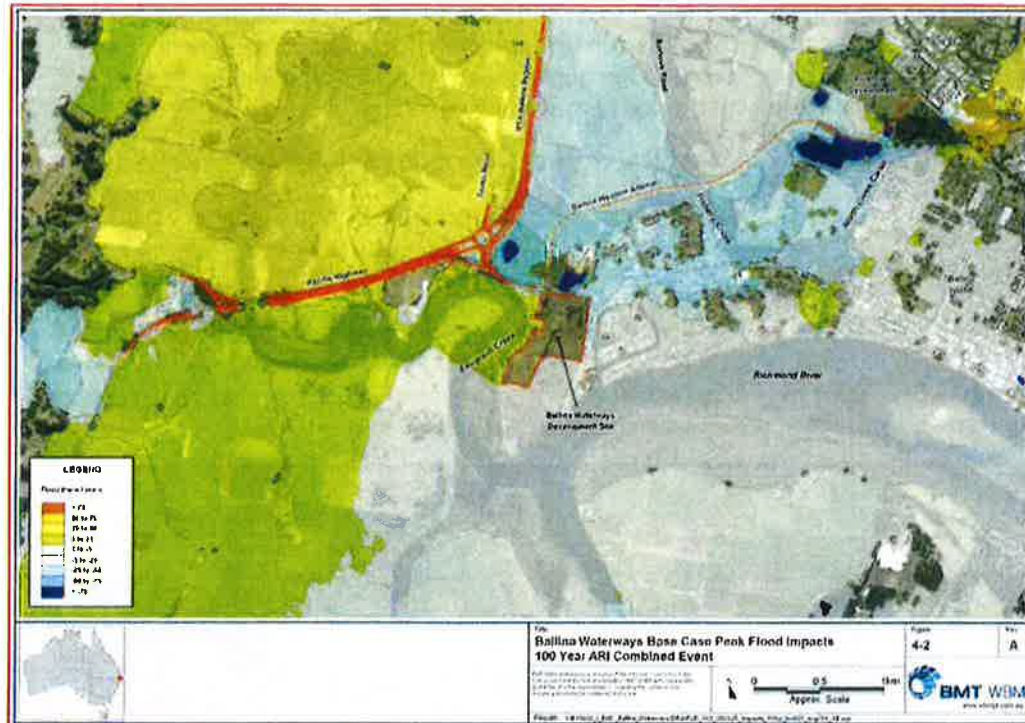
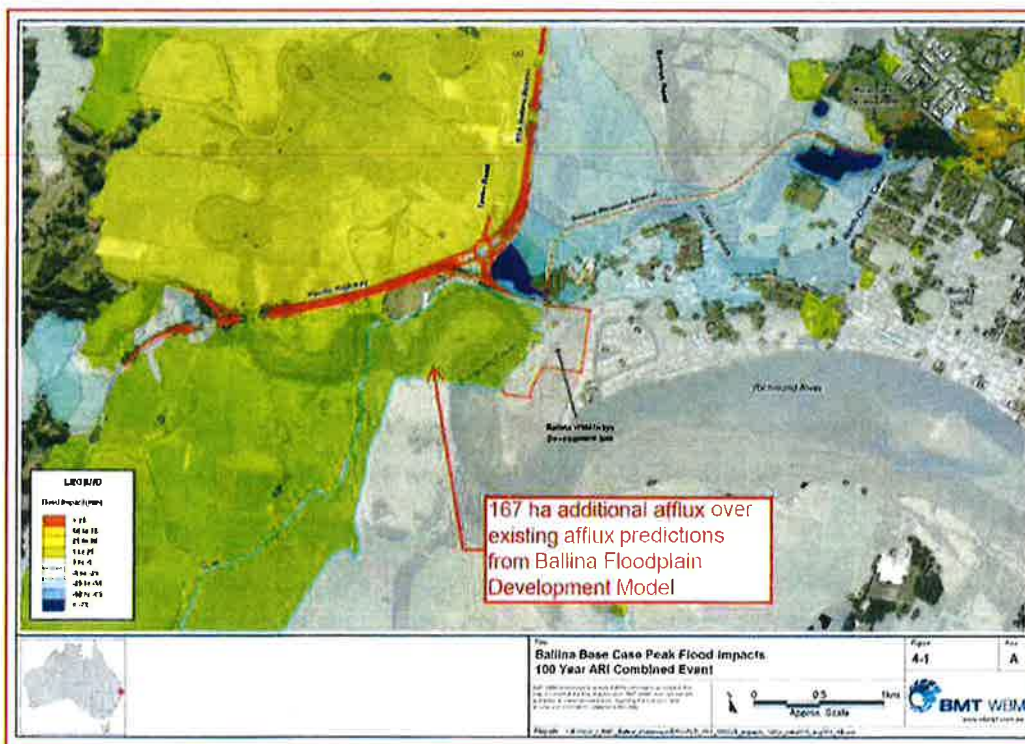


Diagram B - Fig 4.2 from BMT WBM Report on Ballina Waterways



It is difficult to justify how the merits of development of 13.787 ha of land at "Ballina Waterway" is a greater *benefit* than the *cost* of flooding of an additional 167 ha of land upstream (which does not even include the additional afflux on other land already flooded) – refer Diagram C above.

The NSW Floodplain Development Manual states:

A fundamental principle of floodplain risk management is to assess development applications within the strategic framework of a floodplain risk management plan and not in isolation or individually.

It is important to also note that the comparison or base case is for land in areas already zoned by council for future or existing development. Therefore development that increases flooding in the catchment should not be permitted otherwise in the long term the aggregate case will become like a boiled frog effect in respect of flooding! The Ballina Floodplain Risk Management Study figure 8.2 below shows the filled areas permitted in creating the BFRMS base case that was deemed acceptable by Council and the community as a whole pursuant to the NSW Floodplain Manual requirements.

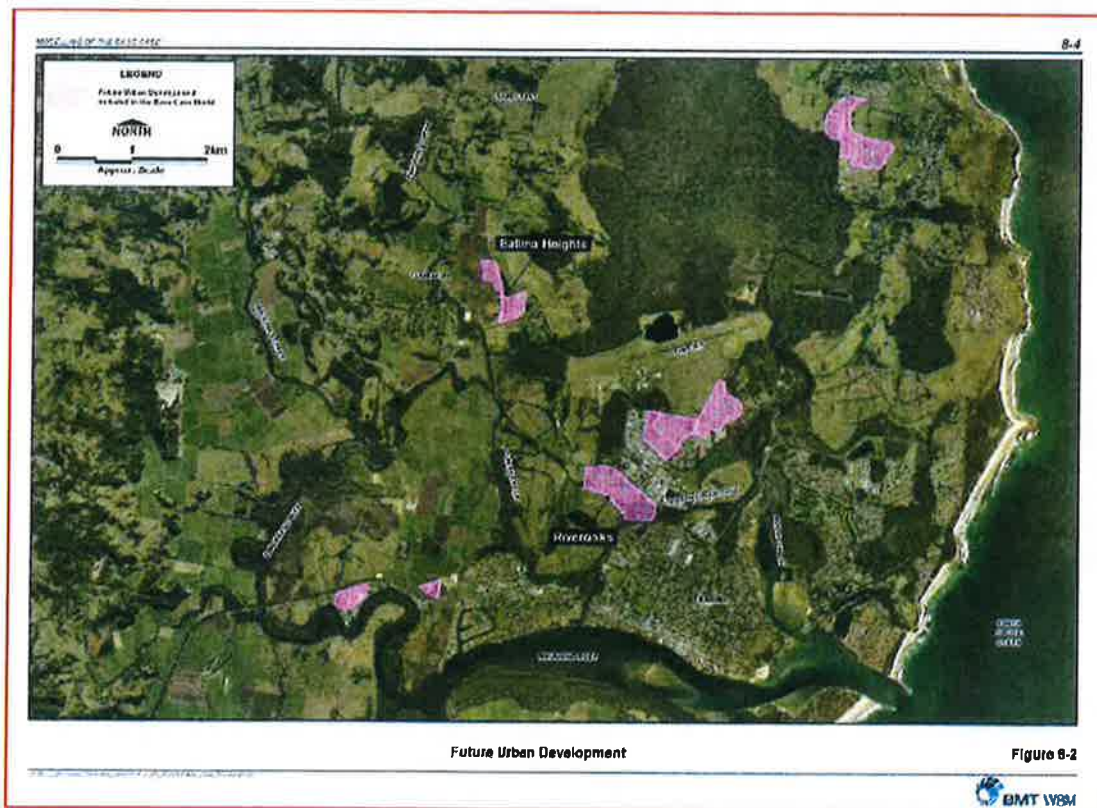


Diagram D - Fig 8.2 from BFRMS prepared by Brewsher Consulting, BMT WBM and Grech Planners.

The recommended Flood Mitigation Measures of the BFRMS clearly recognises the complexity and extent of the flood and apportionment of responsibility and cost for

implementation is complicated with many stakeholders to implement structural measures – and states that the benefits of these measures are to reduce existing flood levels and mitigate impacts of flooding caused by proposed development.

On the basis of flooding alone this development cannot proceed until resolution of the flooding or amelioration of its impact is demonstrated and no worsening of flooding occurs.

Climate Change

"In the longer term, cyclones will move further south more frequently as a result of climate change and flooding will increase both in frequency and severity". Personal communication (5/6/2020) with Mr Brian Pearson who is the retired Flood Engineer for NSW Public Works who was based in the northern rivers for over 30 years. *"He was present on 28 February 1978 when Alstonville received more than 610 mm of rain in 24 hours and in one 1 hr period during that event it received in excess of 150 mm. Any increase in afflux is ludicrous in his opinion and especially even small amounts must not be permitted given the widespread nature of the areas impacted".*

Social Responsibility

The development proposes to fill the site up to 3.0 m as documented. The report by Pacific Geotech only considers the impacts of filling of 1.5 m. therefore the impacts of filling will be greater than that predicted. the development proposes high quality raft slab type homes of conventional construction – on fill that is subject to extensive differential settlement in the order of up to 500 to 600 mm for both primary and secondary settlement. These settlement will occur over a 5 year timeframe approximately and as a result the roads, buildings, services will all require adjustment to correct inadequate falls, strains in pipes and structures and other adjustments. As this development is targeting retirees, how could they anticipate that they would need to be able to fund adjustments to their home or the estate infrastructure. It would be irresponsible of Council to approve the development for this reason alone!

Traffic

The single point access onto Burns Point Ferry Road for 300 lots appears to be ill conceived when considering the needs of vehicles with caravans and motor homes. A roundabout could be built on River Street at the Northwest of the site and become the main entrance that way the peace of the residents on Burn Ferry Road would be retained. Alternatively a boundary adjustment with the corner lot on River Street and a roundabout at Kalinga Road would be more suitable and safer option.



Noise

The proposed desire to build homes on site over 5 stages will subject the early residents to noise for many years and longer periods per dwelling than for prefabricated manufactured homes. This is in addition to the impact on adjoining neighbours outside the development. Are acoustic walls proposed at all? These would have a detrimental effect of visual amenity given the high filling proposed on the site.

Earthworks

Where will the developers source the 300,000 m3 of Virgin Excavated Natural Material (VENM) fill from and without disturbing Acid Sulphate soils? By the way that is 25000 to 30000 truck loads! In addition there is the need to preload the site with an additional 400,000 m3 of material that is placed and then removed – that is about another 80,000 to 90,000 truck movements.

Emergency Access

Burn Point Ferry Road Floods therefore in a major flood how to the residents of the development escape and where would they go – for periods of up to a couple of weeks usually at least for a 1 in 100 year event?

If you have any queries regarding the above, please do not hesitate to contact the undersigned.

Yours faithfully,
Fairdinkum Technical Services Pty. Ltd.

Daniel Lee, MBA, BE (Hons), M.I.E.Aust., A.I.M.M., NPER
Chartered Professional Engineer #113806RPEQ 7709
Director.

From: sharon gregory <sl_gregory2003@yahoo.com.au>
Sent: Tuesday, 18 April 2023 8:22 AM
To: Ballina Shire Council; ballina@parliament.nsw.gov.au
Subject: CM 23/26669 Development Application D.A. 2022/721

Some stories have been told and the full story of the 2022 floods is still unfolding. Society is realising that historic poor planning and active ignorance of flood as an issue led to our living, working and investing in flood-prone areas. For residential occupation of a floodplain, the perils are twofold:

(a) dwellings get flooded, and

(b) egress from them to higher ground (including to a safe evacuation centre) gets cut by floodwaters.

The science behind flood estimation is sophisticated and reliable. Estimates of flood levels and extent of flooding were sadly proven true in Ballina Shire in 2022. Planning for floodplains is likewise sophisticated but has often been ignored.

Let's change that now.

This DA needs to be brought to the attention of 'all' residents of West Ballina, not just the tiny percentage residing in the one and a half adjoining streets the BSC has notified by mail.

This \$75 million (+) DA proposes the construction of more than 150 residences on the south side of Burns Point Ferry Road even though the entire street and adjoining wetlands were inundated up to two metres in March last year, with many of the street's occupants still not even likely to be able to return for many months yet. This proposal will surely exacerbate the flooding of West Ballina again, as many of the recent, similar, 'raised-level' sites did for us last year.

Yes, there is a tiny little sign BSC has stuck in the mud and long grass on the south side of our road, but to read it, or even know what it is, you are required to alight from your vehicle some 40 metres away, walk back and stand on this very busy street (very dangerous stuff). BSC has advised they've only sent letters to the Burns Point Ferry residents together with a small portion of Kalinga Street in stone-throwing distance.

What I am saying is that the BSC, and subsequently the 'deeming authority' (The Northern Regional Planning Panel), will only receive a 'pittance' of concern from the majority of highly vulnerable West Ballina residents unless you publish this letter. So, for the sake of

our present and future homes, and our beautiful unique wetland and its wildlife, please say 'no' to development in all fragile environments.

Lastly, it proposes that we consider what should happen in relation to new development. The Shire does have dry land and does not have to house new people or set up new enterprises below flood level, including future flood levels (higher than current ones).

Let's not do what has happened in the past, where floods have occurred then memories have faded, and new development has brought new victims onto known floodplains.

Yours Sincerely,

Sharon GREGORY
Horizon Drive
West Ballina
NSW 2478

CM 23/27006

To: **BALLINA SHIRE COUNCIL**

From: **Tamara M Cook**, 21/121 Kalinga St., West Ballina, 2478

RE: Objection to the Development Application DA 2022/721.1 (Housing application for southern side of Burns Point Ferry Road, West Ballina, 2478).

Statement of Objection:

As a resident of West Ballina, I am against the development of further housing on Burns Point Ferry road for the following reasons:

- 1) Flooding: I have seen the south side of Burns point Ferry submerged during king tides and heavy rain. This flooding frequently extends from the wetlands over Burns Point Ferry Road and into Kalinga Street.
- 2) Land fill: Of primary concern is that the filling and raising of the land to 3 metres to build this development will cause flood water to effectively dam and cause a greater depth of flood waters, exacerbated by tidal surges, to enter homes that have already been effected in the area directly near the proposed development to again be flooded but, this time to a greater depth and therefore effecting more homes than during the recent event in 2022.
- 3) Access: The entrance to the proposed site is on Burns Point Ferry Road at the intersection of Kalinga Street. Kalinga Street already experiences high volumes of heavy traffic, which has increased since the floods of 2022, due to rebuilding and renovations. At this time already when vehicles are parked on both sides of Kalinga Street it is not wide enough for two vehicles to pass each other safely in both directions. The proposed development site would ostensibly cause an increase of traffic in a residential zone that is dangerous for residents and other road users. At the very least the the entrance to the development site should be moved so that the traffic on Kalinga Street is not further impacted.
- 4) Pollution: The increase in noise pollution and carbon dioxide emissions caused by increased traffic is also a concern. The speed and volume of road traffic on Kalinga Street is already problematic and the proposed development will only add to this problem.
- 6) Property Values: Due to the recent floods this area has already experienced a decrease in property values. This development would only add to the publics negative perception of 'the risk of flooding to homes in this zone', and therefore could effect the value of our properties.
- 7) Lack of proper consultation with the community: I have received no notification of this proposed development. It was only brought to my attention last week due to the concerns of other local residents. More residents needed to be notified of this proposed development as only a small amount of homes were notified by council.
- 8) Impact to the local wildlife: this area is a habitat for many species of bird life and too much of the Ballina wetlands near the creek have already been impacted by changes to land use and development.

In view of these objections, I hope that council will revisit the application and consider the negative consequences of allowing this proposed development to go ahead.

Yours sincerely,

Tamara Merelie Cook

21/121 Kalinga St

Ballina, NSW, 2478

Email: tamaracook68@gmail.com

Tel: 0435294186

1.
RECEIVED
21 APR 2023
COUNCIL

[REDACTED] We were told - assured at this time that there would NEVER be any flooding in this area.

after receiving this GemLife's proposal I am deeply distressed, especially after recent flooding [REDACTED]

Am I to be fooled into now believing that this proposal will not cause worse conditions in our area?

Am I also supposed to believe that the noise from all of this will not affect the lifestyles & privacy of [REDACTED] surrounds?

Am I also to believe that the wildlife I see daily on my walks will not be affected?
Come on, I'm not that old

2/

I realise life has to change, but not to the extent of destroying SO much around Ballina West.

I feel totally threatened by this proposal by all of these submissions & certainly sure I can't go through this again. My mind keeps going to our beautiful & unique, but very fragile wetlands system.

There must be a more environmentally stable & suitable site for their "Senior Housing Development."

Please: GTH Resorts Worro Pty Ltd. against

This DA 2022/121 Letter dated March 2023

Sincerely Yours

[Redacted Signature]

Planning Department

Ballina Shire Council

PO Box 450

Ballina NSW 2478

Dear Sir, Objection DA 2022/721 Burns Point Ferry Road

The floods of last year have demonstrated the failure of NSW Planning Laws to adequately protect ongoing development within flood plains where the historical method has been to continue to raise building levels every time the old levels are threatened. The strategy to fill more and more low lying land is a flawed approach and has no regard to all those properties which are already in place. The strategy guarantees that future equivalent events must result in higher flood levels. I would have thought that this would be a very obvious conclusion particularly to anyone with even basic knowledge of hydrology.

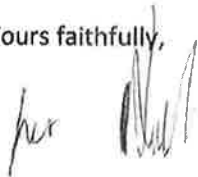
For the first time last year many properties had flood water entering them and this will be worsened by the filling of more and more flood plain which displaces the equivalent of the filled area and must raise the water level particularly when effected by other forces such as tides sandbanks and winds. Even when properties are affected by minimal levels of water, the renovation costs to buildings are substantial.

Council and consultants involved in the process to place other existing properties in peril face the prospect of legal action under common and statute law when the property owners can demonstrate that the defendants have erred in their "duty of care" having full prior knowledge of the recent events. We recall there have been legal cases within our own area (East Ballina and Plateau) where Council has been held liable for shortcomings and actions taken. (Details on request.)

Council is urged to refuse the subject application and suggest that the landowner investigate other options for the Burns Point Ferry land that do not involve the prospect of placing Council ratepayers in legal jeopardy.

Additionally further development of flood plain land should be discontinued.

Yours faithfully,



Gary John Faulks Glenn Frost Jenni Frost

Dolphin Drive

West Ballina NSW 2478

11th April, 2023

The General Manager
Ballina Shire Council
40 Cherry Street
Ballina NSW 2478

27.04.2023
175/1 Riverbend Dr
Ballina NSW 2478

Dear Sir

Re: DA 2022/721
Proposed Development
Corner Burns Point Road & River Street, Ballina

It is with great concern, that a Proposed Development has been submitted for Council in regards to construction of 150 residences, at the above location.

I hereby request, that the Council, take into high consideration, the affect that this will impact on the ecology, and environment, which is a valuable natural resource that is located on that particular parcel of land.

It also creates a worthwhile Vista to the Entry of the beautiful township of Ballina.

Not to mention, the high concentration of extra traffic, imposed on the residents, already exacerbated, by the Duplication of River Street.

I enclose herewith, copies of communique, with regards. 'Points of Interest', brought to the attention of West Ballina Residents, who unanimously concur, with the Author.

Could you kindly submit our concerns to the Northern Regional Planning Panel, that we seek 'To Save the Wetland'.

Your co-operation and interest, would be appreciated.

Yours sincerely



(Mrs) P. Foulis

RECEIVED
28 APR 2023
RECORDS

+

Echo *Wednesday 19 April*
Community at Work

Letters

Defend your wetland

Sometimes it is the case that Councils are incorrectly blamed for encouraging environmentally damaging development.

The Ballina Shire Council has lodged a submission to the Northern Regional Planning Panel to have our environmentally sensitive wetland area currently under threat from a \$75 million development (DA 2022/721) rezoned to C2 (Environmental Conservation). **Submissions close Friday 28 April.**

Council needs public support for the submission and I believe all 'thinking Ballina residents in particular (if not all of the Northern Rivers) should make the effort to achieve this end.

Please write/email to Ballina Council with your gratitude. Save Your Castle!

**Isobel and Laurence
Johnstone
West Ballina**

Letters to the Editor and cartoons

Send to Letters Editor Aslan Shand, fax: 6684 1719 email: editor@echo.net.au Deadline: Noon, Friday.
Letters longer than 200 words may be cut. Letters already published in other papers will not be considered. Please include your full name, address and phone number for verification purposes.

www.echo.net.au

Wednesday 12 April

\$75M Ballina DA

Just a short letter to advise your readers about the notification of Development Application D.A. 2022/721 to Ballina Shire Council (BSC) [submissions for] which close on 14 April 23. This DA needs to be brought to the attention of 'all' residents of West Ballina, not just the tiny percentage residing in the one and a half adjoining streets the BSC has notified by mail.

This \$75 million (+) DA proposes the construction of more than 150 residences on the south side of Burns Point Ferry Road even though the entire street and adjoining wetlands were inundated up to two metres in March last year, with many of the street's occupants still not even likely to be able to return for many months yet. This proposal will surely exacerbate the flooding of West Ballina again, as many of the recent, similar, 'raised-level' sites did for us last year.

Yes, there is a tiny little sign BSC has stuck in the mud and long grass on the south side of our road, but to read it, or even know what it is, you are required to alight from your vehicle some 40 metres away, walk back and stand on this very busy street (very dangerous stuff). BSC has advised they've only sent letters to the Burns Point Ferry residents together with a small portion of Kalinga

Street in stone-throwing distance.

What I am saying is that the BSC, and subsequently the 'deeming authority' (The Northern Regional Planning Panel), will only receive a 'pittance' of concern from the majority of highly vulnerable West Ballina residents unless you publish this letter. So, for the sake of our present and future homes, and our beautiful unique wetland and its wildlife, please say 'no' to development in all fragile environments.

Laurie Johnstone
West Ballina

Jessica Hutley

From: vivienne19 vivienne19 <vivienne19@bigpond.com>
Sent: Friday, 12 May 2023 2:04 PM
To: Councillors
Subject: Gemlife DA

I am extremely against this development as it will cause a tunnel effect from the river, up River Street to the lower lying original subdivisions in the Westland Estate and the Burns Point Ferry Road area. As we no longer have the retention pond that was put in 38 years ago to stop flooding in this estate, we cannot have anything that will cause extra water being funneled to flood this estate. There are numerous houses in this estate that are still empty, over 12 months on from the flood.

As I have said in several submissions against development in this area, what has happened to this estate is criminal. People have put their life into buying properties here and for profit and greed there now in jeopardy.

There should be **NO** more development on the flood plain.

Vivienne Gorec

DEAR COUNCILLOR

PLEASE CONSIDER OUR OPPOSITION TO THE PROPOSED GEMLIFE HOUSING DEVELOPMENT, BURNS POINT FERRY ROAD, WEST BALLINA.

Reasons: As members of Tuckombil Landcare Inc. , Bulwinkel Landcare, a member of OzFish Ballina Chapter, we find this proposed Gemlife housing development on the Richmond – Emigrant Creek floodplain a completely inappropriate development which shows ignorance & contempt for all our efforts to clean up & rehabilitate the Richmond River.

Gemlife's business model is simply " sell to over 55's, wait until they die or go into care & then sell that property again." Building a raised housing island on the floodplain will have several detrimental effects .

As Landcarers upstream of this development we are trying to train Maguires & Emigrant Creeks to slow floodwaters & increase biodiversity, which is costly. OzFish Ballina Chapter is being financed to protect & improve Saltmarshes in the Richmond River estuary. An important site is directly on the south side of the Richmond adjacent to the Burns Point Ferry. Saltmarshes are critical to foster the growth of fish larvae, prawn & mollusc populations. In the 1960's to 1980's Ballina lost mangroves & saltmarsh to housing developments & roads. The oyster industry collapsed after 1974.

We now know for certain that due to sea temperatures rising, sea ice declining in the Arctic & Antarctic, New Zealand's Fox, Franz Joseph & Tasman Glaciers disappearing by 2100, etc. that sea level is rising faster than predicted. BOM Report shows average sea level rise 1993 to 2020 has been 6cms. This will result in Ballina's saltmarshes, which are not permanently flooded, being overtaken and their retreat landwards will be halted by road & housing development which will lead to a decline in fish, prawn & mollusc populations. Gemlife's development will be a barrier to future saltmarsh thus impacting on the biodiversity & health of the Richmond River.

As members of organisations trying to improve the health & aquatic biodiversity of the Richmond River we believe Gemlife has only one aim & that is profit with complete disregard for all our investment in improving the Richmond River.

As President of Alstonville- Wollongbar Rural Fire Brigade I have witnessed first hand the trauma created by the floods of 2017 & 2022 and it is still ongoing for thousands of residents & farmers in the Northern Rivers. Emergency Services volunteers respond with the saying " ours not to reason why, just do it" but after witnessing so much tragedy some volunteers need counselling. The Gemlife development is going to add to disaster management & trauma. Residents of this "island housing estate" will be marooned in the next major flood event.

Meteorological science research reports state that the warmer condition of the atmosphere will have the propensity to hold much more moisture thus creating short "rain bomb" events which develop severe flash flooding & catastrophic damage. This is occurring currently throughout the world & in future the Northern Rivers will again not be immune from serious flooding.

I have been teaching & lecturing on geomorphology for 40 years but " Blind Freddy" could tell you what the impacts of this Gemlife Development will be. Because of this site's location between Emigrant Creek & the Richmond River it must be conserved as a buffer wetland for West Ballina.

Yours Faithfully, Malcolm Johnson, 0467 061 665

Judy Johnson, 0403 033 582, 29, Godfrey Place, Alstonville NSW 2477