



## FRIENDS OF BUDDINA LTD.

ACN 636 176 764

[www.friendsofbuddina.com](http://www.friendsofbuddina.com)

<https://www.facebook.com/BuddinaCommunity/>

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### **The BUDDINA BEACHFRONT legal challenge**

**Update 31 December 2020**

After our local community mobilised to challenge the council and the developer in the Planning and Environment Court, with legal support from our lawyers and barrister, the matter was finally heard in the Maroochydoore P&E Court over two days on 26 & 27 November 2020.

Following the proceedings, **Judge Long told the court he would take time to review evidence and the law and deliver his decision at a later date.** There is no time-frame for this decision which His Honour will provide in 2021 after his deliberations.

During the long drawn-out legal processes from November 2019 to November 2020, council and the developer sought to change the approval conditions relating to Turtle lighting. This was one of the components of the case we argued were not lawful.

The changes made and approved by Council in July 2020 (half-way through the legal process) not only improved the turtle lighting approval conditions, but created enforceable outcomes at (i) construction and (ii) ongoing for the life of the building. Future unit owners from now on will *always* be liable for penalties that would apply to each incident where a unit owner fails to comply with the approval conditions, such as not ensuring the blinds are closed by 8pm during turtle nesting season! In making this decision, council created a **HUGE WIN** for the endangered loggerhead turtles and the Buddina Community effectively acknowledging that their original approval conditions were unenforceable and therefore unlawful?

This **HUGE WIN** happened BEFORE our case was even heard in Court - that's the power of community action and standing up where Council decision-making does not reflect community expectations and where that decision-making appears to preference developers, threatening our lifestyle, our amenity and disregarding the protection the environment and its biodiversity.

### **The Planning and Environment Court Hearing**

Three days prior to the 2 day hearing, our ***Applicant's Outline of Argument*** was lodged at the Planning and Environment Court in Maroochydoore.

This 35 page document is a written statement of the issues and arguments supporting our case that we believe will convince the Court that *"Council's decision-maker process failed to take into account relevant considerations, was tainted by errors or law and fell into jurisdictional error. These errors could have materially affected the decision and, as such, the decisions should be set aside and the application remitted to Council to reconsider according to law."*

So, what happened in Court today? ***Day 1 Thursday 26/11/2020***

Here are a few "snippets" from the SCD's story: Friends of Buddina has told a court that Sunshine Coast Council wrongly came to the view it had to approve the development of a seven-storey apartment building.....barrister Chris McGrath on Thursday argued the council had actually failed to



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consider assessment benchmarks or misconstrued them. The Friends of Buddina representative told the court three primary errors in council's decision related to considerations for beachfront character, views and vistas, and the Coastal Protection Overlay Code.

"Those assessment benchmarks weren't complied with and (the council) did have a discretion to refuse (the development application)," Dr McGrath said.....

Read the full story at: <https://www.sunshinecoastdaily.com.au/.../friends-of.../4147397/>

And then, what happened in Court the next day? **Day 2 Friday 27/11/2020**

Here is "snippet" from the next SC Daily's story: "Dr McGrath, representing Friends of Buddina, had argued the council had considered the development aimed to minimise its impact on turtles, which misconstrued the assessment benchmark. He said the council should have considered if the development would keep the coastal ecosystem the same or improve it.

Barrister John Ware, for the council, on Friday responded by saying the planning scheme required developments to maintain or enhance the ecosystems, not specifically the turtle nesting system on Buddina Beach.

"But if the turtles are recognised as being part of the ecosystem and their part of the ecosystem is not maintained, how is the ecosystem maintained?" Judge Gary Long replied.....

Judge Long told the court he would take time to review evidence and the law and deliver a decision at a later date".....

Read the full story at: <https://www.sunshinecoastdaily.com.au/news/judge-talks-turtles-in-controversial-development-f/4148032/>